



DEAN N. ALTERMAN
ATTORNEY

D: (503) 517-8201
DEAN@ALTERMAN.LAW

Via e-mail only: adams@ci.cannon-beach.or.us

November 4, 2021

Cannon Beach Planning Commission
c/o Jeffrey Adams, Planning Director
PO Box 368
Cannon Beach, OR 97110

Re: Application of MJ Najimi / Appeal of Jeff and Jennifer Harrison
Building permit – Lot 1, Cannon Beach Preservation (544 N. Laurel Street)
Permit No. 164-21-000179-DWL
Our File No. 5125.002

Ladies and Gentlemen:

I'm submitting this letter with additional evidence and argument in support of the application of our client MJ Najimi to build a house on Lot 1, Cannon Beach Preservation, and in opposition to the appeal of Jeff and Jennifer Harrison.

The appellants raised several points, which I've grouped into two categories. The first category comprises the points relating to the conditions of approval of the subdivision. The second category comprises the points relating to the garage that stands on Lot 1 for the benefit of the property of Victor and Jane Harding that lies adjacent to Lot 1 but outside the subdivision.

A. Now that the turret is gone, Mr. Najimi's house plan complies with all requirements applicable to the structure itself.

There is a "zeroth" category, which are points relating to the house itself. In the prior application, the Harrisons argued that the proposed turret on the house exceeded the height limit for this zone. As everyone involved in this long process knows, LUBA affirmed the city council's decision that denied Mr. Najimi his building permit based only on the turret exceeding the height limit. The city council did not identify any other respect in which the house, considered by itself, did not comply with any legal requirement, and LUBA firmly rejected the city council's attempt to apply the standards for planned developments to Mr. Najimi's application for a building permit.

805 SW BROADWAY
SUITE 1580
PORTLAND, OREGON 97205

T: (503) 517-8200

WWW.ALTERMAN.LAW

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Mr. Najimi's revised house plan is the same plan that you considered last year, except that he has deleted the turret. No one has suggested that his house, considered by itself, violates any legal requirement, and in the prior appeal the city agreed that Mr. Najimi's house complies with the plat restrictions in all respects.¹ No one appealed LUBA's decision, and it is now binding on the City and Mr. Najimi.

B. The Planning Commission cannot use a building permit application as a guise to enforce Condition 17 of the final approval of Cannon Beach Preservation.

The Harrisons have suggested that Lucie's Cottages LLC, the developer of the subdivision, did not comply with Condition 17 of the final approval that required Lucie's Cottages to construct a "living wall" as the retaining wall for the driveway in the access easement, and that the developer's noncompliance entitles the planning commission to withhold building permits from the owners of the lots in the subdivision.

1. The legal problem with the appellants' position.

The appellants' position has legal and factual problems. First, I'll describe the legal problems.

Condition 17 reads as follows:

17. Before permits for the driveway retaining wall are approved the applicant shall provide to the City an executed contract with a landscape professional responsible for the installation and maintenance of plant materials on the wall and shall provide a timeline for the establishment of plantings on the wall. If plants are not successfully established within those timelines, the City may take any necessary enforcement actions to assure that the requirements of the final plan and this condition are met.

Final Approval, page 15, appearing as page 17 of the record in LUBA No. 2016-033, *Harrison v. City of Cannon Beach*, and as page 277 of the record in LUBA No. 2020-118, *Najimi v. City of Cannon Beach*.

In this condition of approval, the city said that it would not issue a permit for the retaining wall until Lucie's Cottages provided the city with a contract with a landscape professional for installing the plants on the wall and with a timeline for establishing the plants on the wall.

¹ Respondent's Answering Brief, *Najimi v. City of Cannon Beach*, LUBA No. 2020-118, page 15.

a. **The city must have found that the developer complied with the requirement to submit a contract and a timeline.**

As the city did issue a permit to Lucie's Cottages to build the retaining wall, the city must have concluded that Lucie's Cottages **did** submit a contract with a landscape professional and **did** provide a timeline to establish the plants – otherwise the city would not have issued the permit.

b. **The city code assigns the power to enforce conditions of approval of a planned development to the city council, the building official, and the code enforcement officer, not to the planning commission.**

If plants were not successfully established within the timeline that Lucie's Cottages provided, then Condition 17 allows the city to "take any necessary enforcement actions to assure" that the condition is met.

CBMC 17.40.090, in the chapter on planned developments, does state that a developer who fails to comply with a condition of approval of a planned development violates the zoning code, and that in that event "the city council, may after notice and hearing, revoke the planned development permit." CBMC 17.40.090.

This section allocates the power to enforce conditions of approval of a final development plan to the city council, not to the planning commission. CBMC 17.92.020 gives other enforcement authority to the building official or code enforcement officer. Nothing in the zoning code grants that enforcement authority to the planning commission. Nothing in the code authorizes the planning commission to withhold a building permit from a lot owner or to take any other action to enforce a condition of approval because the developer of a subdivision has not complied with a condition of approval.

Lucie's Cottages gave the city a separate power of enforcement, in sections 5.4 and 5.5 of the Shared Access and Maintenance Easement that the city required Lucie's Cottages to adopt. The agreement was recorded on November 21, 2016 as Document No. 2016-09087, Clatsop County Records. Those sections read:

5.4 **Maintenance of Vegetation on Living Wall.**

The plantable living wall portion of the retaining wall shall be maintained with living plants.

5.5. **City Compliance.**

The City of Cannon Beach may enforce the maintenance called for in Section 5 of this Easement, including requiring that living plants be

maintained in the living wall. The City is a benefitted party of this easement only for purposes of Section 5 of this Easement.

Shared Access and Maintenance Agreement, page 4, reprinted at pages 258-59, LUBA Record 2020-118.

In bringing up this question of enforcement, the Harrisons present the city with a novel question. What happens to a planned development if the city council revokes the planned development permit after the developer has platted and sold all of the lots? Your pending action to recommend Section 17.40, the chapter of the zoning code that authorizes planned developments, and which you considered at the same meeting at which you heard this appeal, poses a second novel question. What happens to this subdivision – the city’s one and only planned development – if the city repeals the code chapter that authorizes planned developments?

You don’t have to deal with those questions in the Harrisons’ appeal of Mr. Najimi’s revised house plan if you decline the Harrisons’ invitation for the planning commission to step into the role that your code assigns to the city council. You **do** have to deal with both questions if you exceed the authority that the city code has given you.

2. The factual problem with the appellants’ position.

Next, I’ll describe the factual problem, which is very simple: the wall exists and has established plantings. I’ve attached a photograph taken last week that shows the top of the east portion of the wall and some of the terracing of the west portion of the wall. The planning commission may not like the particular plantings – there were some disparaging comments about sword ferns at the October 28 hearing – but the photograph does show plants on and around the wall. In any case, Condition 17 does not require any particular plantings.

C. The Hardings’ garage does not affect whether Condition 16 allows Mr. Najimi to have his own garage.

1. Condition 16 does not prohibit two garages on one parcel.

The Harrisons raise a more interesting point when they argue that under Condition 16 of the final approval of Cannon Beach Preservation, the presence of the Hardings’ single-car garage in the parking easement area prevents the city from granting a building permit for Mr. Najimi on the same lot, because his house includes a garage in the basement. The Harrisons argue that Condition 16 of the planned development approval prohibits one lot from holding two garages.

The portion of Condition 16 that relates to garages reads:

Should any lot contain a garage or carport, it shall be no larger than a two car garage. Garages or carports may be located under a house due to the natural topography, but if the garage is detached, then the garage may not include a second story or livable space.

LUBA Record 2016-033, Page 17, copied at LUBA Record 2020-118, page 277.

The Harrisons suggest that Condition 16 prohibits a lot in the subdivision from including more than one garage. As your planning director has explained, Condition 16 says no such thing; it says only that a garage or carport cannot be larger than a two-car garage. If the city council had meant to say “no lot in the subdivision may contain more than one garage” it would have said so when it approved the subdivision. The city cannot now add a new condition of approval to a subdivision whose approval became final years ago.

A more basic reason that the city cannot now use the Hardings’ garage as a reason to deny Mr. Najimi’s building permit is that the garage is the Hardings’ garage, not Mr. Najimi’s garage. The city approved the plat of Cannon Beach Preservation that shows the area of the parking easement for the Hardings’ property. The city approved the Hardings’ application to build the garage on the Hardings’ easement area. Mr. Najimi neither applied for nor consented to the Hardings building the garage on the easement area; in fact, he is suing the Hardings to force them to remove the garage. I’ve attached a copy of Mr. Najimi’s complaint as filed with the Clatsop County Circuit Court.

It would be difficult for the planning commission to try to force the city council to take the position that Mr. Najimi may not build a house with a two-car garage on his property now because the city had already given its permission to someone else, not the property owner, to build a one-car garage that Mr. Najimi cannot use, inside an easement area that the city council had approved as part of the subdivision. In theory the planning commission could approve Mr. Najimi’s house now, with the condition that he first eliminate all objections based on the Hardings’ garage by demolishing the Hardings’ garage, except that it’s at best problematic to condition a building permit and development permit on Mr. Najimi demolishing someone else’s garage located on property that he does not control.

2. No one argued in the prior application that Condition 16 prohibited two garages; however, the City Council did discuss the question of the number of garages on a single lot and did not find that Condition 16 or any other regulation prohibited having more than one garage on Lot 1.

The more specific reason that the presence of the Hardings' garage does not disqualify Mr. Najimi from having his own garage is because the City Council discussed that question in the prior proceeding. The minutes of the City Council meeting of December 1, 2020 include the following passage:

McCarthy added on the Harding garage and easement arrangement I am confused. Nicholson took over an easement Harding's had with original owners. Do they own the property the garage is on, Adams replied no. McCarthy replied so they are building a garage on an easement, but it doesn't say anything of construction on the easement. Adams replied it says for accessories uses. Nancy replied it is on Najimi's property, Adams replied yes, **a discussion ensued regarding the number of garages permitted.**

Minutes of the Cannon Beach City Council, December 1, 2020, page 5, reprinted at LUBA Rec. 2020-118, page 102 [emphasis supplied].

The City Council similarly took account of the Hardings' garage in its original decision in the prior case, when it stated that it would count the garage as habitable space. (It later withdrew that conclusion.) Nowhere in its prior decision did the council say or hint that Condition 16 prohibits the lot from having two garages, even though Condition 16 was pointed out to the City Council for other purposes in the prior decision.²

The City Council was aware of Condition 16 in the prior decision and discussed in some fashion how many garages could be built on the property. The council did not state that the limit was one. No one appealed the council's decision on that point. The council's decision that a lot in this subdivision may have more than one garage is now final and binding.

D. Conclusion

You and the City Council may be unhappy with how Jeff Nicholson and Lucie's Cottages LLC designed this planned development. If the City Council repeals Chapter 17.40 there will never be another planned development in Cannon Beach. The faults of the developer, however, are not those of Mr. Najimi. He simply wants to build his house.

² Prepared Statement of Jeff Harrison, December 2020, reprinted at LUBA Record 2020-118, page 302, 335.

He and I believe that his house design complies with all applicable code provisions. However, if you do find merit in the appellants' arguments, then he and I ask that you approve Mr. Najimi's house and impose clear and specific conditions of approval so that he knows exactly which sections of the applicable codes you believe the current plan does not comply with, and so that he will know exactly what he must change to bring his house into complete compliance.

Very truly yours,

Dean N. Alterman

Dean N. Alterman

Attachments: Photograph of the retaining wall, October 2021
Complaint, *Najimi v. Harding*,
Clatsop County Circuit Court case no. 21CV39140

Copy: Mr. MJ Najimi (e-mail only)
Gregory Hathaway, Esq. (e-mail only)



IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLATSOP

MJ NAJIMI, an individual,

Plaintiff,

v.

VICTOR J. HARDING, an individual, and
JANE BOUVET-HARDING, an individual,

Defendants.

NO. 21CV39140

**COMPLAINT (Breach of
Contract; Breach of Implied
Duty; Declaratory Relief;
Encroachment)**

Total Prayer Amount: \$999,000

Fee Authority:
ORS 21.160(1)(c)

Filing Fee: \$594

Plaintiff MJ Najimi alleges and avers as follows:

BACKGROUND ALLEGATIONS COMMON TO THE CLAIMS

1.

Plaintiff is owner of a parcel of real property in Cannon Beach, Clatsop County, Oregon (“the Najimi Property”), referred to as 544 Laurel St., Cannon Beach, Oregon, and described as Lot 1 of the Cannon Beach Preservation Planned Development. Plaintiff acquired this parcel in October 2018. Plaintiff and his wife have been planning to build a home on the property. Their application for a building permit was initiated in 2019. It has been tied up in the land use planning process with Cannon Beach Planning Department, Cannon Beach City Council, and LUBA. The most recent objection to their building permit application refers specifically to the

1 Harding Addition (described below) on Plaintiff's property as a basis for rejecting
2 Plaintiff's application.

3 2.

4 Defendants Victor Harding and Jane Bouvet-Harding ("Defendants" or "the
5 Hardings") are husband and wife, and owners of a parcel of real property directly to
6 the North of Plaintiffs' property ("the Harding Property"), referred to as 556 Laurel
7 St., Cannon Beach, Oregon, and described as "Lot 19 and the north 25 feet of Lot
8 18, Block 29, SEAL ROCK BEACH, in the City of Cannon Beach."

9 3.

10 Plaintiff Najimi acquired his property from Lucie's Cottages, LLC, in
11 December of 2018. Jeffrey Nicholson was and is the principal and authorized
12 signatory for Lucie's Cottages, LLC. The Najimi Property is one of four platted lots
13 in the residential planned development ("PUD"), sometimes referred to as the
14 "Cannon Beach Preservation," approved pursuant to the application of Lucie's
15 Cottages/Nicholson by the City of Cannon Beach in March 2016.

16 4.

17 At the time of approval of the PUD, that property was subject to a pre-existing
18 access/easement agreement entered into between developer Lucie's
19 Cottages/Nicholson and the Hardings, titled the Driveway and Utility Relocation
20 Agreement, dated September 10, 2015 ("the 2015 Access Agreement"). With the
21 2015 Access Agreement, the Hardings were entitled to driveway access and utility
22 easements across the PUD property to the Harding Property. As plans for the PUD
23 progressed, the Hardings sought an update of the 2015 Access Agreement. Lucie's
24 Cottages/Nicholson and the Hardings entered into the Access Easement dated
25 December 22, 2017 ("the 2017 Access Agreement"), which superceded the 2015
26

1 Agreement. A copy of the 2017 Access Agreement is attached hereto as Exhibit A
2 and incorporated as if fully set forth here by this reference.

3
4 5.

4 The 2017 Access Agreement provides for common, shared use by the
5 burdened property owners (the owners of the lots in the PUD) and the benefitted
6 property owners (the Hardings) of a driveway from Laurel Street, winding through
7 the PUD going all the way to the northwest corner of the Najimi Property and the
8 north boundary there shared with the Harding Property. In addition, at paragraph 2
9 (see Exhibit A hereto) it creates a parking easement in the northwest corner of the
10 PUD for the exclusive use of the Hardings “for parking vehicles.”

11
12 6.

12 In acquiring Lot 1 of the PUD, Plaintiff became owner of the property
13 burdened by the Grantee Parking Area portion of the easement and succeeded to all
14 the rights and burdens of Lucie’s Cottages/Nicholson under the 2017 Access
15 Agreement.

16
17 7.

17 In the fall of 2020, the Hardings erected a building on the Grantee Parking
18 Area described in the 2017 Access Agreement (“the Harding Addition”). The
19 Harding Addition is two stories, with garage doors and space to accommodate one
20 car. The placement of the Harding Addition occupies almost all of the square
21 footage of the designated Grantee Parking Area as it is built at the extreme south and
22 eastern boundaries of the Parking Area as far into the Najimi Property as the outline
23 of the Parking Area would allow. There is no offset of the building envelope from
24 the boundary of the easement.

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8.

The 2017 Access Agreement only allows the Hardings to use the Grantee Parking Area for “parking vehicles (cars and pickup trucks)” and only to improve that Area “for parking.” Despite the language of the Agreement, the Hardings sought to erect a complete accessory dwelling unit on the Najimi Property. Their original building permit application included plans for a complete housing unit, with kitchen, bathroom facilities, a designated bedroom, plus the garage space. While the City of Cannon Beach initially approved those plans, it subsequently withdrew its approval because the plans were in violation of local ordinances. Apparently because construction had already begun, the City allowed modification of the plans for the interior of the building. The Hardings withdrew plans for the kitchen and other amenities, although the building is otherwise in the same footprint of the original plans and, on information and belief, is fully wired and plumbed to accommodate later alteration of the building for use as housing or guest lodging. The Hardings are marketing the Harding Property for sale and refer to the Harding Addition as 2-story garage with a loft and potential storage or office space.

9.

Plaintiff is entitled to use of all the area of the Najimi Property, including portions within the common access easement, with the sole exception of the Grantee Parking Area, as those areas are defined in the 2017 Access Agreement. In particular, the 2017 Access Agreement and the negotiations underlying that Agreement and the plans for parking on the affected properties, included Plaintiff’s right to park in the common access area in order to make the best use of the remainder of the Najimi Property. The Harding Addition is placed and oriented in

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1 such a way that parking on the Najimi Property is limited, in violation of the
2 language and spirit of the 2017 Access Agreement.

3 **FIRST CLAIM FOR RELIEF**

4 **(Breach of Contract)**

5 10.

6 Plaintiff re-alleges and incorporates paragraphs 1 through 9 above.

7 11.

8 Defendants' erection of the Harding Addition is in violation and breach of the
9 2017 Access Agreement. The use of the Grantee Parking Area is limited to parking
10 and the Harding Addition is not "for parking." Not only is it meant for additional
11 housing or similar use, it is located and oriented in such a way that it impairs the use
12 of the Najimi Property for parking and Plaintiff's plans for a home.

13 12.

14 As a result of Defendants' breach of the 2017 Access Agreement, Plaintiff has
15 suffered and will suffer damages in the amount of at least \$300,000 for removing
16 the Addition and restoring the property and other related expenses, with the exact
17 amount to be proven at trial.

18 13.

19 Pursuant to paragraph 14 of the 2017 Access Agreement, upon prevailing
20 Plaintiff shall be entitled to an award of his reasonable attorney fees and costs.

21 **SECOND CLAIM FOR RELIEF**

22 **(Breach of the Covenant of Good Faith and Fair Dealing)**

23 14.

24 Plaintiff re-alleges and incorporates paragraphs 1 through 13 above.

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15.

Under Oregon law, the implied duties of good faith and fair dealing attach to all contracts, including the 2017 Access Agreement.

16.

The Harding Addition, even just with its present features, is beyond the scope of the grant of a parking easement in the 2017 Agreement. It is also deliberately placed and oriented in the Grantee Parking Area to interfere with and impair use of Plaintiff's property in violation with the language and intent of the 2017 Agreement.

17.

As a result of Defendants' breach of the duties of good faith and fair dealing attached to the 2017 Access Agreement, Plaintiff has suffered and will suffer damages in the amount of at least \$300,000 for removing the Addition and restoring the property and other related expenses, with the exact amount to be proven at trial.

18.

Pursuant to paragraph 14 of the 2017 Access Agreement, upon prevailing Plaintiff shall be entitled to an award of his reasonable attorney fees and costs.

THIRD CLAIM FOR RELIEF
(Declaratory Relief)

19.

Plaintiff re-alleges and incorporates paragraphs 1 through 18 above.

20.

An actual controversy exists between the parties as to the scope of the Grantee Parking Area easement and the Hardings' right to make "improvements" on the exclusive easement area.

///

1 21.

2 Plaintiff seeks a declaration under ORS 28.010 that Defendants' use of the
3 Grantee Parking Area easement is limited to parking, that any improvements must
4 only serve the use of parking in accordance with the 2017 Access Agreement, that
5 the Harding Addition exceeds the scope of the Grantee Parking Area easement and
6 so must be removed and the Area restored at Defendants' expense.

7 22.

8 Pursuant to paragraph 14 of the 2017 Access Agreement, upon prevailing
9 Plaintiff shall be entitled to an award of his reasonable attorney fees and costs.

10 **FOURTH CLAIM FOR RELIEF**
11 **(Encroachment/Action for Recovery of Property)**

12 23.

13 Plaintiff re-alleges and incorporates paragraphs 1 through 22 above.

14 24.

15 When Plaintiff acquired the Najimi Property, he took the Property in fee
16 simple, including the Grantee Parking Easement. Because the Harding Addition
17 exceeds the allowed use of the Parking Easement and impairs Plaintiff's use of his
18 own Property for parking and other plans, Plaintiff is entitled to removal of the
19 building. Such wrongful use of the Parking Easement amounts to a trespass and/or
20 encroachment on Plaintiff's property, causing Plaintiff damages in the diminished
21 value of the Najimi Property in the approximate amount of \$999,000, with the exact
22 amount to be proven at trial.

23 25.

24 Pursuant to paragraph 14 of the 2017 Access Agreement, upon prevailing
25 Plaintiff shall be entitled to an award of his reasonable attorney fees and costs.

26

1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment in his favor and against
3 Defendants as follow:

- 4 (1) For Plaintiff's First Claim for Relief for breach of contract, damages in the
5 amount of \$300,000;
- 6 (2) For Plaintiff's Second Claim for Relief for breach of the covenants of good
7 faith and fair dealing, damages in the amount of \$300,000;
- 8 (3) For Plaintiff's Third Claim for Relief for declaratory relief, a judgment that
9 Defendants' use of the Grantee Parking Area easement is limited to parking
10 and an injunction requiring Defendants to remove the Harding Addition at
11 Defendants' expense;
- 12 (4) For Plaintiff's Fourth Claim for Relief for encroachment, damages in the
13 amount of \$999,000;
- 14 (5) For an award of Plaintiff's reasonable attorney fees and costs, and
15 (6) For such further relief as this Court deems just and equitable.

16 Dated this 30th day of September, 2021.

17
18 SAMUELS YOELIN KANTOR LLP

19 By: 

20 LESLIE S. JOHNSON, OSB #954727
21 DENISE N. GORRELL, OSB #042938
22 111 SW 5th Avenue, Suite 3800
23 Portland, OR 97204
24 Ph: 503-226-2966
25 Fx: 503-222-2937
26 LJohnson@SamuelsLaw.com
Of Attorneys for Plaintiff MJ Najimi

Note:

Re: AA #21-01

Exhibits A-1 through A-19, C-1 through C-27, and D-1 through D-6 were included in the Packet and Staff Report Addendum for the October 28, 2021 Planning Commission Meeting.

These exhibits are also available on the City's website. To view, follow the link below;

<https://www.ci.cannon-beach.or.us/planning/page/aa-21-01-hathaway-administrative-appeal-behalf-jeff-jennifer-harrison>



Cannon Beach Planning Commission

Staff Report:

PUBLIC HEARING AND CONSIDERATION OF **AA 21-02**, WILL RASMUSSEN, MILLER-NASH, LLC, ON BEHALF OF HAYSTACK ROCK, LLC, APPEAL OF AN ADMINISTRATIVE DECISION TO APPROVE, WITH CONDITIONS, A DEVELOPMENT PERMIT, DP#21-20, FOR STABILIZATION PINNING OF A GEOLOGICALLY HAZARDOUS AREA FOR LOT 51031AA00600. THE PROPERTY IS A VACANT RESIDENTIAL LOT IS LOCATED NORTH OF NENENA AVE IN A RESIDENTIAL LOWER DENSITY (RL) ZONE. THE APPEALS 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.

Agenda Date: November 23, 2021

Prepared By: Jeffrey S. Adams, PhD

EXHIBITS

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on October 5, 2021 unless otherwise noted.

"A" Exhibits – Application Materials

A-1 Administrative Appeal Application – Notice of Appeal, with attachment 1, Answer to Question 2: Specific grounds relied upon for the appeal," Will Rasmussen, Miller-Nash, LLC, on behalf of Haystack Rock, LLC, dated September 21, 2021, received October 5, 2021;

"B" Exhibits – Agency Comments

None as of this writing

"C" Exhibits – Cannon Beach Supplements

C-1 Type 2 Development Permit DP# 21-20, Findings of Fact, Conclusions and Order, for Stabilization Pinning of a Geologically Hazardous Area through Chapter 17.50 Development Requirements for Potential Geologic Hazard Areas and Chapter 17.62 Grading, Erosion and Sedimentation Control for Taxlot# 51031AA00600

C-2 Stability Grade Beam Installation Site Plan, Roberts Property, Jay Raskin Architect, September 15, 2021;

C-3 Supplemental Materials are available on the Cannon Beach website, under the 'Alternative' Building Permit Submission on behalf of Stan and Becky Roberts Taxlot# 51031AA00600 (<https://www.ci.cannon-beach.or.us/planning/page/alternative-building-permit-submission-behalf-stan-and-becky-roberts-taxlot>)

"D" Exhibits – Additional Public Comment

D-1 Roberts Development and Grading Permit letter, applicant response, Fred Wilson, Kellington Law Group, PC, on behalf of Stan and Rebecca Roberts, dated November 15, 2021;

BACKGROUND

Will Rasmussen, on behalf of Haystack Rock, LLC, is appealing an administrative decision to conditionally approve a Development Permit for stabilization pinning of a geologically hazardous area for a vacant tax lot, with proposed building plans for a single-family residence, at taxlot# 51031AA00600.

The 5,312 square-foot (SF) Residential Lower Density Zoned (RL) lot is a corner-lot accessed from S. Hemlock St., off the unimproved Nenana Ave. right-of-way, bordering platted and unimproved Ocean Ave.

There is currently a case pending before the Oregon Court of Appeals regarding the initial development permit for the property, conditionally approved by the Cannon Beach Community Development Director on September 4, 2020, which was appealed to the Planning Commission, which denied the permit on November 17, 2020. That denial was appealed to the City Council and upheld by the City Council on December 8 and signed Findings on December 14, 2020, appealed to Oregon Land Use Board of Appeals and upheld by the LUBA on July 23, 2021, with oral arguments before the Court of Appeals on October 4, 2021 and an expected decision by January 4, 2021.

The applicants submitted a Type 2 Development Permit for a stability beam pinning system, along with 'alternative' plans, including an 'alternative driveway access,' with supplemental materials on August 3, 2021. The applicant subsequently submitted a Supplemental Stability Grade Beam Site Plan on September 15, 2021, to respond to a letter of completeness from the Community Development Director, issued August 18, 2021.

The Community Development Director approved the Type 2 Development Permit on September 21, 2021. On October 5, 2021, Haystack Rock, LLC, appealed the administrative decision and development of the stability system was halted to settle the appeal.

APPLICABLE CRITERIA

17.92.010 Development permits.

2. Administrative review of Type 2 development permits shall follow the following procedure:

e. A decision on the development permit may be appealed to the planning commission in accordance with Section 17.88.140.

17.88.140 Request for review of decision.

A. A decision on the issuance of a permit concerning a land use matter, or a development permit may be appealed to the planning commission by an affected party by filing an appeal with the city manager within fourteen consecutive calendar days of the date that written notice of the decision was mailed. In the case of a permit, the notice of appeal that is filed with the city shall indicate the nature of the interpretation that is being appealed. The matter at issue will be a determination of the appropriateness of the interpretation of the requirements of this chapter. In the case of a development permit, the notice of appeal filed with the city shall contain the information outlined in Section 17.88.150.

Staff Comment:

The appellant has argued that the stabilization system must be processed together with the building permit and that the arbitrary separation "will result in the unnecessary disturbance of sensitive land and destruction of vegetation, a pointless nuisance for neighbors and unnecessary danger for commuters along the construction access on the hazardous Hemlock Street S-curves."

The appellant furthers the argument that the stabilization system should not be severed from the foundation system of the building claiming that the “(a) Owners have not established compliance with applicable zoning and building standards, (b) Owners have not obtained necessary state and federal permits, and (c) the City has not approved the access and staging areas needed for the stability work, and (d) cannot do so until City Council legally approved the proposed private use of public land, something it is unable to do.”

When considering the original application to sever the stability system from the foundation, back in 2020, the Community Development Director requested proof that the stability system was geologically necessary, divorced from the foundation of the house. Mr. Rondema, on behalf of the applicants, states in his plan review, “this pile system is not relied on by any building foundation system for structural support. It is strictly dedicated to improving the lot stability.” The applicant states, “As shown in the drawings on sheet S5.01, the stability grade beam is intended to be placed below the existing ground surface at the site.” Although the appellant argues that the City should not consider the application for the stabilization system separately from a future building permit there is nothing in the Cannon Beach Municipal Code (CBMC) or State Statutes that allows the City to reject an application because the City believes another related application may be forthcoming. The CBMC has provisions for applicants to request that multiple permits be combined under one review yet there is nothing that requires the City to combine all permits or only allow one permit per lot.

In fact, the geologic site investigation report requires the following, under CBMC 17.50.04:

17.50.040 Reports and plans required.

A. Geologic Site Investigation Report.

1. A geologic site investigation report shall be prepared by a registered geologist or engineering geologist. The report is to be prepared in conformance with the city’s site investigation report checklist.

2. Where recommended by the geologic site investigation report, or required by the building official, an engineering report prepared by a registered civil engineer shall be prepared. The report shall discuss the engineering feasibility of the proposed development and include findings and conclusions for: the design and location of structures; the design and location of roads; the design and location of utilities; land grading practices, including excavation and filling; stormwater management; and vegetation removal and replanting.

3. The burden of proof shall be upon the applicant to show construction feasibility. A proposed use will be permitted only where:

a. The geologic site investigation report indicates that there is not a hazard to the use proposed on the site or to properties in the vicinity; or

b. The geologic site investigation report and engineering report specifies engineering and construction methods which will eliminate the hazard, or will minimize the hazard to an acceptable level.

4. The standards and recommendations contained in the geologic site investigation and engineering report, upon acceptance by the building official, shall become requirements of any building permit that is issued.

5. The building official may have the geologic site investigation report, or the engineering report reviewed by an independent expert of his or her choosing. Such a review may address either the adequacy or completeness of the site investigation, or the construction methods recommended in the engineering report. The applicant shall pay for the cost of the review.

6. A geologic site investigation report shall remain valid for a period of not more than five years from the date of its preparation. The continued reliance on a geologic site investigation report that is more than five years old requires the following additional new information:

a. An on-site re-inspection of the site by a qualified individual to determine if there has been any change in circumstances.

b. If no change in circumstances is found, a short report noting or including:

I. A description of site conditions and any changes between the date of the original geologic site investigation report and the date of the re-inspection;

II. Any additional maps, aerial photographs or other documents consulted; and

III. Conclusions regarding the accuracy of the original geologic site investigation report.

c. If a change in circumstances is noted, the information in subsection (b) of this section shall be provided along with:

I. Additional field data needed to verify and document any change in the status of the area;

- II. Revised mapping;
 - III. Data, documentation, and other information as needed to define the existing geologic condition of the property; and
 - IV. Revised recommendations and conclusions based on the changed circumstances applicable to the property.
- (Ord. 08-1 § 43; Ord. 98-5 §§ 2, 3; Ord. 92-11 § 62; Ord. 79-4 § 1 (4.110) (4))

The conditionally approved development permit, states, “The stabilization, under 17.50.040(A.1) is recommended by Don Rondema, Geotechnical Engineer, MS, PE, Geotech Solutions. Plans are provided, under 17.50.040(A.2), by Jay Raskin Architect and Miller Consulting Engineers, Inc. Construction feasibility, under 17.50.040(A.3) is met through the letter submitted and attached, by Don Rondema, dated September 2, 2020, which states “we have reviewed the plans and they conform to our geotechnical analyses and report recommendations for the stability pile system.” Mr. Rondema speaks to (A.3a) when he states, “these piles will also improve the stability of adjacent and upslope land, including the existing homes and infrastructure such as Hemlock Street and its associated utilities.”

The appellant argues that the applicant has not met the zoning and building requirements arguing that the City’s wetlands overlay and stream corridor language have not been addressed in the development permit. As can be seen in the GIS mapping, below, the Haystack LLC property to the north contains stream #49 identified in the Cannon Beach wetlands and stream report, but is not a wetlands lot of record, as identified by the purple tinted areas of the map. Thus, the Roberts’ property and the site of the piling system is well beyond the ten-foot buffer from the stream corridor and any wetlands or wetland buffer boundaries and would not be in any conflict with other zoning code requirements.

Any federal or state permitting follows any state waters or jurisdictional wetlands, which have not been mapped or delineated and are not impacted by the application. Staff would also direct those permits to the appropriate state or federal agency.



GIS Map of Wetlands and Streams in the S-Curve Area

17.62.030 Grading and erosion control permit.

A. *Development Permit Required.*

1. *Persons proposing to clear, grade, excavate or fill land (regulated activities) shall obtain a development permit as prescribed by this chapter unless exempted by Section 17.62.040. A development permit is required where:*

a. *The proposed clearing, grading, filling, or excavation is located within one hundred feet of a stream, watercourse or wetland; or*

b. *The proposed clearing, grading, filling, or excavation is located more than one hundred feet from a stream or watercourse or wetland and the affected area exceeds two hundred fifty square feet; or*

c. *The proposed volume of excavation, fill or any combination of excavation and fill exceeds ten cubic yards in a calendar year.*

2. *A development permit for regulated activities in conjunction with a structure requiring a building permit shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(1).*

3. *A development permit for regulated activities in conjunction with a subdivision or partition shall be reviewed in conjunction with construction drawings as required by Section 16.04.260.*

4. *A development permit for regulated activities not in conjunction with building permit, subdivision, or partition shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(2). However, notice to adjacent property owners, as specified by Section 17.92.010(C)(2)(d), is not required.*

{...}

17.62.040 Grading standards.

A. *The review and approval of development permits involving grading shall be based on the conformance of the proposed development plans with the following standards. Conditions of approval may be imposed to assure that the development plan meets the appropriate standards.*

1. *Cuts.*

a. *Designs shall minimize the need for cuts;*

b. *The slope of cut surfaces shall not be steeper than is safe for the intended use and shall not be steeper than two horizontal to one vertical unless an engineering report finds that a cut at a steeper slope will be stable and not create a hazard to public or private property;*

c. *Cuts shall not remove the toe of any slope where a potential land slide exists;*

d. *Cuts shall be set back from property lines so as not to endanger or disturb adjoining property;*

e. *Retaining walls shall be constructed in accordance with Section 2308(b) of the Oregon State Structural Specialty Code.*

2. *Fills.*

a. *Designs shall minimize the need for fills;*

b. *The slope of fill surfaces shall not be steeper than is safe for the intended use and shall not be steeper than two horizontal to one vertical unless an engineering report finds that a steeper slope will be stable and not create a hazard to public or private property. Fill slopes shall not be constructed on natural slopes steeper than two horizontal to one vertical;*

c. *Fills shall be set back from property lines so as not to endanger or disturb adjoining property;*

d. *The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, topsoil and other unsuitable materials, and scarifying to provide a bond with the new fill;*

e. *Any structural fill shall be designed by a registered engineer, in accordance with standard engineering practices.*

3. *Drainage.*

a. *Proposed grading shall not alter drainage patterns so that additional storm water is directed onto adjoining property;*

b. *All cut and fill slopes shall be provided with subsurface drainage as necessary for stability. (Ord. 98-5 § 1)*

In the cover letter submitted with the stability beam application, the applicant summarizes the proposal:

“Don Rondema, Geotechnical Engineer, has certified that the work proposed with this Development Permit application for a stability beam, will provide structural stability benefits to the site and surrounding properties including Hemlock Street with no adverse impacts. All work will be subgrade and below 30” above grade. PLI Systems, Inc. Jorge Castaneda, Project Manager will conduct the work under direct design team supervision.

The proposed stability beam is in the nature of a retaining wall or fence. It does not require a building permit because it does not support a building or other structure. A separate building permit application is submitted this date for a house that complies with the city's view of the required ocean setback. Either the originally submitted house for which review is pending at the court of appeals or the alternative house for which a building permit is also sought will eventually connect to the stability beam. But at this point, the stability beam stands alone to stabilize the site to make it (1) more stable, (2) allow site work toward establishing either house, to include installing a driveway, and make the property (3) capable of supporting a residential use which is permitted outright.”

In the application packet, the applicant continues: “Filed separately is an application for a driveway to serve the Robert’s property, including to serve workers who will install the stability beam, to enable the Roberts to enjoy their property as is and to eventually construct their home.” The Community Development Director responded to the submission materials with a letter of completeness dated August 18, 2021, which stated, “We cannot deem this a complete application until we have a complete set of ‘alternative’ building plans. We are also missing the ROW tree and private property tree removal permits, as required per CBMC 17.70.020(D) & 17.70.030(B) & (D) and, although there is a Type 2 Grading, Erosion and Sedimentation Control permit included, there are no plans as described in CBMC 17.62.” The applicant provided Alternative Plans for the stability beam installation on September 15, 2021, stating that the “stability beam installation requires no trees be removed. Trees are shown on the property and adjoining ROW for illustrative purposes only.”

The Public Works Department has also requested and will not approve the stability beam placement without a new Right-of-Way permit that is in keeping with this revised plan for the use of the right-of-way that does not require the development of the proposed alternative driveway. It should be noted that there is evidence in the record that a ‘staging area’ would be required for the eventual development of a home on the property, but we have no documentation that such staging areas and use of the right-of-way as the appellant claims would require the City Council to ‘legally approve’ the proposed ‘private use of public land.’ The Nenana Ave. right-of-way is not proposed under this development permit to be utilized in such a way as to render it ‘private use,’ but rather it will be temporarily accessed to convey the stability beam components and provide right-of-way access for its construction, under the conditions approved by DP#21-20 listed below:

CONDITIONS

- 1. The approval of this Development Permit is not dependent on any other permits, nor are any other permits dependent on this permit. This approval does not affect any other pending or future permits for other development, including in any way the pending permit for Nenana Road and/or any associated house plans. Should the construction of Nenana Road and/or the house not be approved or not go forward, The City will not be responsible for reimbursement for any work being performed under this permit. As it is the applicant’s decision to seek these permits separately, each permit application will be reviewed and decided on its own merits;***
2. The Revised Sheet 1, of the Stability Grade Beam plans, dated September 15, 2021, by Jay Raskin Architect, states “Stability beam installation requires no trees be removed. Trees are shown on the property and adjoining ROW for illustrative purposes only.” Applicant will notify City Public Works Department 24 hours prior to the commencement of work;
3. No tree removal or grading of city right-of-way is permitted as part of this development permit;
4. A site plan of the erosion control measures shall be approved by the Public Works Director prior to ground disturbance;
5. Work shall be completed as soon as possible and any ground disturbance of exposed surfaces during the wet season (November 1 through April 30) should be temporarily planted with grasses, or protected

with erosion control blankets, hydro-mulch, or hand broadcast straw a minimum of 3 inches thick and punched into the soil;

6. Exposed sloped areas steeper than 3 horizontal-to-1 vertical should be protected with a straw erosion control blanket (North American Green S150, or equivalent) to provide erosion protection until permanent vegetation can be established. Erosion control blankets should be installed as per the manufacturer's recommendations;
7. The use of motorized equipment shall be limited to the hours between 7:00 AM and 7:00 PM per Municipal Code Section 8.1;
8. Existing city infrastructure shall not be disturbed and any damages shall be at the expense of the applicant;
9. A certified geo-tech should monitor the pile installation during construction to verify that the structure's design objectives have been achieved, and notice will be provided the City at least five days prior to site disturbance.

It should also be noted that at the November 9th City Council work session, the driveway access easement was on the agenda for discussion. Although the conditionally approved Development Permit does not require such an easement, the City has initiated the process of considering such an easement that would grant an alternative point of access to the property, in contrast to the original plans for an elevated extension of W. Nenana, to provide a public roadway meeting City Standards.

PLANNING COMMISSION ACTION

TENTATIVE MOTION: Having considered the evidence in the record, I move to ***tentatively*** (affirm/modify in whole or part/reverse) the administrative decision to conditionally approve Development Permit DP#21-20 for stabilization pinning of a geologic hazard area on taxlot# 51031AA00600, Cannon Beach Planning Commission application number **AA#21-02 Administrative Appeal**, as discussed (subject to the following modifications) and request staff to draft findings for review and adoption, at a special called meeting, next Thursday at 6PM, December 2nd at City Hall:

If the Commission does not wish to review the Findings prior to final approval:

MOTION: Having considered the evidence in the record, I move to (affirm/modify in whole or part/reverse) the administrative decision to conditionally approve Development Permit DP#21-20 for stabilization pinning of a geologic hazard area on taxlot# 51031AA00600, Cannon Beach Planning Commission application number **AA#21-02 Administrative Appeal**, as discussed (subject to the following modifications):



Fred Wilson
P.O. Box 159
Lake Oswego OR
97034

Phone (503) 636-0069
Mobile (503) 409-7670
Facsimile (503) 636-0102
Email: fw@klgpc.com

November 15, 2021

Via Electronic Mail
City of Cannon Beach Planning Commission
C/O Jeff Adams
Planning Director
City of Cannon Beach, OR

RE: Roberts Development and Grading Permit – File No. DP#21-20

Dear Jeff:

As you know, this firm represents Stan and Rebecca Roberts in the above captioned case. Please include this letter in the record for the Planning Commission appeal for that case scheduled for November 23, 2021.

INTRODUCTION

There is a long history involving Stan and Rebecca Roberts' attempt to build a house on their property on Tax Lot# 51031AA00600 located off South Hemlock Road at the Nenana right-of-way. The Roberts filed an application to build an approximately 2700 square-foot home in 2020, but that application was denied by the City. The Roberts appealed that decision to the Land Use Board of Appeals (LUBA). LUBA affirmed the City's denial, and the Roberts appealed LUBA's decision to the Court of Appeals where the decision is still pending.

Although the Roberts hope to prevail at the Court of Appeals and build their 2700 square foot home, in the event they are not allowed to build that house because it would encroach into the oceanfront setback, on August 3, 2021, the Roberts filed a number of applications in order to build a tiny home that conforms to the City's required setback. The Roberts filed an application for building permit and driveway approval for the tiny home in a separate application. The Roberts also filed the application at issue in this case for a development permit and/or grading, erosion, and sedimentation control permit to approve a stability beam with supporting micro poles (stability beam) which will be necessary regardless of which house the Roberts build or even if they do not build a house in the immediate future.

Opponents take quotes from the Roberts' geotechnical experts out of context to allege that the stability beam will not enhance the stability of the lot itself. For instance, opponents cite a quote that the "western foundation grade beam for the home corresponds with the plan location for the" stability beam. That is because the design for the 2700 square-foot house would tie the foundation into the stability beam. That has nothing to do with whether the stability beam would stabilize the lot itself. Opponents also cite a quote that the stability beam is "modeled and designed to improve local global slope stability only to the Tax Lot 600 building pad." That is

because the design for the house presumed approval of the house. The stability beam was designed with a house in mind, but that does not mean it would not also provide stability for the lot. Finally, opponents cite a quote that the stability beam “is not designed or expected to substantially influence overall global slope stability of the larger S-curve landslide area.” That is because the stability beam was designed to protect the Roberts’ lot and also a future house. While the stability beam may not substantially protect the larger area, it does provide some support. In any event, support for the larger area is certainly not any kind of approval criterion.

While the Roberts would likely tie the 2700 square foot house into the stability beam, the tiny house would not tie into the stability beam. If the Roberts build the tiny house, the stability beam would not be connected to the house and would only serve to stabilize the lot. As the Roberts’ geotechnical expert has repeatedly stated, the stability beam would also support stability of the lot regardless of whether a house is ever built:

“These piles will also improve the stability of adjacent and upslope land, including the existing homes and infrastructure such as Hemlock Street and its associated utilities. The pile system is not relied on by any building foundation system for structural support. It is strictly dedicated to improving the lot stability. In that regard, we recommend its installation as soon as possible.” September 2, 2020 Letter.

“Regarding ocean front slope stability, we re-iterate that the shear pile system proposed for installation is designed to improve slope stability of the lot at, and eastward, of the system. This is the controlling stability for the lot and the S-curves overall stability is secondary. Stability increases from this system for the lot are roughly 30%. There is likely some uphill stability increase as well, but as the S-curves slide area is much larger than the lot, the system has a much smaller impact to increases in S-curves slide stability (hence referred to as secondary). This is true regardless of whether or not a home is ever built.” November 5, 2020 letter.

“The stabilization system includes the grade beam and battered piles, and the vertical piles also improve the system. The system is independent of where structures may or may not be built in the future. This location also provides the most stabilization for adjacent land with broadened positive influence to the north and south.” August 2, 2021 letter.

The Community Development Director approved the Type 2 Development Permit on September 21, 2021. On October 5, 2021, Haystack Rock, LLC, (opponents) neighbors who have a large house adjacent to the Robert’s property, who have opposed the Roberts at every stage of the proceedings, filed an appeal of the Community Development Director’s decision. Opponents have raised a number of arguments why the Community Director’s decision should be reversed. While most of those arguments are not relevant to the development permit at issue in this proceeding, this letter addresses those arguments.

RESPONSES TO OPPONENT'S ARGUMENTS

A. The Stability Beam May Be Approved Independently of any Future House

Opponents argue that the stability beam is a component of the eventual proposed house development and therefore may not be approved independently. According to opponents, there are City and state law rules that the stability beam and future house must be considered at the same time. The provisions opponents cite, however, do not stand for this proposition. First, opponents cite Oregon Residential Specialty Code (ORSC) 105.1 that provides that prior to construction of a “building or structure” an owner must “first make application to the building official and obtain the required permit.” This merely stands for the simple proposition that before the Roberts may begin construction of any future house that is approved that they must obtain a building permit for the house. We agree. ORSC 105.1 does not prevent a stabilization beam that may or may not eventually have a house attached to it from being approved separately from a future house. Regardless, ORSC 105.1 does not say that various parts of multiple applications must be combined. If the stability beam requires a building permit (we understand it does not), then one can be obtained. The application at issue merely establishes the land use approval for the stability beam.

Similarly, opponents cite Cannon Beach Municipal Code (CBMC) 17.92.010, which provides that a development permit is required for the proposed construction of a building. Again, this stands for the unremarkable proposition that in order to build any future house, the Roberts will need to obtain a building permit for that house. There is nothing in CBMC 17.92.010 that addresses the issue of whether multiple aspects or applications must be combined. Therefore, there is no *rule* that the stability beam and building permit for any future house must be processed in the same application.

Opponents also argue that CBMC 17.62.030(2) requires that the stability beam be considered with a building permit for a proposed house. CBMC 17.62.030(2) provides:

“A development permit for regulated activities in conjunction with a structure requiring a building permit shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(1).”

The simple response to this argument is that proposed installation of the stability beam is not being proposed in conjunction with a structure requiring a building permit. While the stability beam could have been proposed in conjunction with a building permit for a proposed house, as allowed by CBMC 17.92.050, an applicant is not required to consolidate all necessary permits.¹ As the Roberts have explained, if the 2700 square-foot house is eventually built it

¹ CBMC 17.92.050 provides: “Where a proposed development requires more than one development permit, or a change in zone designation from the city, *the applicant may request* that the city consider all necessary permit requests in a consolidated manner. * * *.” (Emphasis added.)

could tie into the stability beam. If the tiny house is built, however, the house would not tie into the stability beam. Even if a house is not approved, the stability beam would help preserve the current condition of the property while alternative development options are considered or even if no development ever takes place. In any event, if the application for the stability beam had been filed in conjunction with a building permit for a house then CBMC 17.92 would be applicable, but because the Roberts have not filed an application for a development permit in conjunction with a structure requiring a building permit CBMC 17.92 does not apply.

As discussed earlier, opponents make much of the fact that the Roberts hope to use the stability beam to stabilize an approved house in the future. While the Roberts hope to use the stability beam to support the western portion of their preferred 2700 square-foot house, the proposed tiny house would not tie into the stability beam. Therefore, it is indisputable that the stability beam can be installed and potentially never be connected to any house. It is possible (and opponents' desire) that the Roberts are never be able to build any kind of house on their residentially zoned lot. While installing the stability beam would be an expensive endeavor to stabilize property that does not ever get developed, that is certainly a potential outcome, and ultimately the Roberts' risk to run. There is no City, state, or other type of rule that prevents the Roberts from having the stability beam processed separately. Opponents' arguments provide no basis to reverse the Community Development Director's decision.

B. The Application and Decision Addresses All the Relevant Standards

Opponents argue that the application and the Community Development Director's Decision fail to address all the applicable approval criteria. The Community Development Director's decision properly addressed the applicable criteria: CBMC 17.50 for Development Requirements for Potential Geologic Hazard Areas and CBMC 17.62 for Grading, Erosion and Sedimentation Control.² Those are the only applicable approval criteria.

Opponents argue that the Community Development Director's decision does not address CBMC 17.71 regarding Stream Corridor Protection. Opponents only state that the Roberts' property is adjacent to a mapped waterway. Opponents do not explain why that means the decision must address CBMC 17.71. CBMC 17.71.020 provides where the regulations of the stream protection corridor apply:

"The regulations of this chapter shall apply to the following streams identified in the Cannon Beach wetland study: Sites 1, 2, 3, 4, 5, 6, 7, 12, 14, 15, 17, 18, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52. When a stream not inventoried in the Cannon Beach wetland study is identified, it shall become subject to the requirements of this chapter only after an inventory and analysis meeting the appropriate requirements of either Goal 5 or Goal 17 has been completed and adopted as an

² The application also explains that the proposal complies with CBMC 17.70 Tree Removal and Protection because no trees are proposed to be removed. The application also provides a site plan as required by CBMC 17.90.190.

amendment to the comprehensive plan background report, and the adoption of an ordinance adding the stream to the list of streams subject to stream corridor protection regulations.”

The only stream in the area is that could trigger application of CBMC 17.71 is located on opponents’ property. *See* Sheet 4 of the City of Cannon Beach Local Wetlands Inventory – Exhibit 1. CBMC 17.71.030.030 provides that a ten-foot buffer is established on both sides of streams identified in CBMC 17.71.020. The remaining provisions of CBMC 17.71 apply to what activities are and are not permitted in the stream buffer. In other words, the provisions of CBMC 17.71 only apply to areas within ten feet of identified streams. The proposed stability beam is not proposed to be installed within ten feet of an identified stream – being located adjacent to another property that contains an identified stream does not make the provisions of CBMC 17.71 applicable.

Opponents argue that because the proposal is within the Oceanfront Setback that the decision must address CBMC 17.42.040, .050, and .060. Those provisions respectively address Uses and Activities Prohibited, General Standards, and Specific Standards for the Oceanfront Management Overlay Zone (OM). While the Roberts’ property is in the OM overlay zone, it is not on a beach, active dune, foredune of any kind, or interdune area. Opponents do not explain what portions of CBMC 17.42.040 - .060 apply to the decision or why. As far as we can tell, the only thing in those provisions that could apply to the proposal is CBMC 17.42.050(A)(2), which provides that uses and activities in all areas contained in the OM zone are subject to the geologic hazard areas requirements of 17.50. The decision thoroughly addresses the requirements of CBMC 17.50.

Finally, opponents argue that because the Roberts’ geotechnical experts stated that surface water is sometimes present and groundwater levels can rise with heavy rain that the property is therefore a wetlands. Opponents then cite the CBMC 17.04.566 definition of “Wetland.” While opponents do not explain the significance of this extrapolation, presumably they mean to assert that the property has wetlands and is therefore subject to the Wetlands Overlay (WO) restrictions on development under CBMC 17.43. That assertion is wrong. CBMC 17.43.010 provides that:

“The purpose of the wetlands overlay zone is to protect wetland areas identified in the city’s comprehensive plan from uses and activities that are inconsistent with the maintenance of the wetland functions and values identified for those sites.”

The WO zone by its express terms therefore only applies to wetlands “identified in the city’s comprehensive plan.” CBMC 17.43.020(A) provides:

“The maps delineating the WO zone boundaries shall be maintained and updated as necessary by the city. The Cannon Beach Local Wetland Inventory maps dated September 20, 1994, shall form the basis for the location of wetlands. The WO zone includes both wetland and wetland buffer areas which abut wetlands. The wetland buffer area has a width of five feet measured from the outer boundaries of the wetland.”

The city’s Local Wetland Inventory (LWI) therefore determines whether areas are wetlands or not for purposes of protection under the WO zone. Sheet 4 of the LWI clearly shows that the proposed stability beam would not be located in any wetlands. *See Exhibit 1.* The comments from the Roberts’ geotechnical experts (who were certainly not performing any sort of wetlands determination) hardly rise to the level of demonstrating that the Roberts’ property contains wetlands. Even if those comments could be construed in such a way, the Roberts’ property is not identified in the LWI. Therefore, the WO zone provisions are not applicable to the proposed stability beam. Opponents’ arguments provide no basis to reverse the Community Development Director’s decision.

C. State and Federal Permit Issues are Irrelevant to this Application

Opponents argue that work in areas adjacent to waterways and wetlands is subject to state and federal regulation. While that may be true in the abstract, it is irrelevant to the present application.

Initially, opponents assert that because the proposed stability beam is “adjacent to waterways and wetlands” that the Roberts will need permits from the Department of State Lands (DSL) and the Corps of Engineers (Corps). Opponents also argue that the proposed foundation work for any future house would require a discharge permit from the Oregon Department of Environmental Quality (DEQ). As explained earlier, the proposed stability beam would not be within the stream protection buffer or within wetlands, so permits from DSL or the Corps are unnecessary. Even if such permits were required, however, they would need to be obtained through the appropriate state and federal processes – not pursuant to a Geologic Hazard Area or Grading, Erosion and Sedimentation Control permit.

Opponents’ arguments about stormwater discharge are incorrect. The application at issue is for a stability beam – not for a “stormwater outfall or facility.” The residential stormwater management opponents reference is for the Roberts’ proposed house – not the stability beam. The City has never required design review for gutters and downspouts on a residence and nothing requires that. But regardless, any challenges to the stormwater requirements or claims that DEQ approval is necessary are inapplicable to the present application. There is nothing in the CBMC that requires the Roberts to obtain any such permits or demonstrate that they can obtain such permits in order to obtain a Type 2 Geologic Hazard Area or Grading, Erosion and Sedimentation permit. Opponents’ arguments provide no basis to reverse the Community Development Director’s decision.

D. Prior Driveway and Roadway Approval is not Necessary

Opponents argue that the Geologic Hazard Area and Grading, Erosion and Sedimentation permit cannot be approved until the pending driveway permit is approved. The original driveway proposed with the 2700 square-foot home contained an elevated driveway in Nenana Avenue that neighbors objected to. The alternative driveway application provides an option to approve a less visually intrusive access. The Roberts have a residential lot located along a public right of way, so they are entitled to access in one manner or another.

While opponents are correct that the application states that the alternative driveway application is “to serve the Roberts’ property, including to serve the workers who will install the stability beam,” that does not mean the driveway application must be approved before the stability beam may be approved. There is nothing in any of the requirements of CBMC 17.50 or 17.62 that have anything to do with access. Therefore, all of opponents’ arguments regarding what may or may not be necessary to obtain the driveway permit are irrelevant to the present application.

The driveway application is being processed by the City. Even if installation of the stability beam cannot practicably be accomplished before approval of the driveway permit due to access limitations, that merely means the Roberts may have to wait until they obtain a reasonable way to get the necessary equipment and materials to the property. That is the Roberts’ risk to run if they so choose. Driveway approval is not an applicable approval criterion for the stability beam. Opponents’ arguments provide no basis to reverse the Community Development Director’s decision.

E. Prior City Council Approval of Nenana Avenue or Inspiration Point is Not Necessary for Approval of the Stability Beam

Opponents raise a convoluted argument that in order for the Roberts to have a driveway to their residential property or use a staging area for any purpose that the City Council must first grant specific approval for such uses. Opponents also argue that the City Council does not have the authority to grant such approval even if it wanted to.

The simple answer is that regardless of the dubious merits of opponents’ arguments, those arguments have nothing to do with whether the Roberts meet the requirements for a Geologic Hazard Area and Grading, Erosion and Sedimentation Control permit. The stability beam is not proposed to be installed in Nenana Avenue or on a staging point on Inspiration Point. There are no approval criteria that address access requirements for the stability beam. As with opponents’ previous argument, if the Roberts ultimately need to make improvements to the road system to get construction equipment to the property for the purpose of installing the stability beam then they may have to wait until they obtain approval of the driveway permit. Opponents will no doubt oppose the Roberts’ driveway application, and they are free to raise those arguments in that case where it might be applicable. It is undeniable, however, that those arguments are not applicable in this case. Opponents’ arguments provide no basis to reverse the Community Development Director’s decision.

THE APPLICABLE APPROVAL CRITERIA

The applicable approval criteria for the stability beam proposal are located in CBMC 17.50 for a Geologic Hazard Area permit and 17.62 for a Grading, Erosion and Sedimentation Control permit.

A. Geologic Hazard Area Permit

CBMC 17.50.040(A) addresses the required plans for geologic hazard areas:

“Geologic Site Investigation Report.

- “1. A geologic site investigation report shall be prepared by a registered geologist or engineering geologist. The report is to be prepared in conformance with the city’s site investigation report checklist.
- “2. Where recommended by the geologic site investigation report, or required by the building official, an engineering report prepared by a registered civil engineer shall be prepared. The report shall discuss the engineering feasibility of the proposed development and include findings and conclusions for: the design and location of structures; the design and location of roads; the design and location of utilities; land grading practices, including excavation and filling; stormwater management; and vegetation removal and replanting.
- “3. The burden of proof shall be upon the applicant to show construction feasibility. A proposed use will be permitted only where:
 - “a. The geologic site investigation report indicates that there is not a hazard to the use proposed on the site or to properties in the vicinity; or
 - “b. The geologic site investigation report and engineering report specifies engineering and construction methods which will eliminate the hazard, or will minimize the hazard to an acceptable level.

“* * * * *”

CBMC 17.50.040(A)(1) requires that a geologic site investigation report shall be filed by a registered geologist or engineering geologist. CBMC 17.50.040(A)(2) requires that when necessary an engineering report prepared by a registered civil engineer shall be prepared. A geologic site investigation report and an engineering report were prepared by Jason Morgan and

Don Rondema and submitted in conformity with the City's checklist. CBMC 17.50.040(A)(1) and (2) are satisfied.

CBMC 17.50.040(A)(3) requires the applicant to demonstrate construction feasibility by either demonstrating that there is no hazard or that construction methods will eliminate or minimize the hazard. Under CBMC 17.50(A)(3)(b), the Roberts' geotechnical experts have demonstrated that the construction methods for the proposed stability beam will minimize the hazard to an acceptable level. Opponents' appeal does not challenge the conclusions of the geotechnical experts. CBMC 17.50.040(3) is satisfied.³

The Community Development Director found that CBMC 17.50 was satisfied:

"Applicant has provided plans that call for a stability beam and its supporting micro-piles to be placed to shore up the slopes, protecting homesite.

"The location of the work is depicted by Civil Engineering Plans drawn by Jason Morgan, PE, CE Morgan Civil Engineering, Inc. The structures are shown by Engineering Plans and Calculations prepared by Miller Consulting Engineers, Inc. A Plan Review is provided by Don Rondema, MS, PE, GE, Geotech Solutions.

"All right-of-way work will be conditioned upon review and approval under the Public Works Director's Right-of-Way permitting criteria.

"The stabilization, under 17.50.040(A.1) is recommended by Don Rondema, Geotechnical Engineer, MS, PE, Geotech Solutions. Plans are provided under 17.040(A.2), by Jay Raskin Architect and Miller Consulting Engineers, Inc. Construction feasibility, under 17.50.040(A.3) is met through the letter submitted and attached by Don Rondema, dated September 2, 2020, which states 'we have reviewed the plans and they conform to our geotechnical analyses and report recommendations for the stability pile system.' Mr. Rondema speaks to (A.3) when he states, 'these piles will also improve the stability of adjacent and upslope land, including the existing homes and infrastructures such as Hemlock Street and its associated utilities.'" Community Director Decision 3-4.

The Community Development Director determined that the requirements for a Geologic Hazard Area permit are satisfied. Opponents do not refute the Community Development Director's findings. CBMC 17.50 is satisfied.

B. Grading, Erosion and Sedimentation Control Permit

³ The remaining provisions of CBMC 17.50.040(A) are not applicable at this time.

CBMC 17.62.030 addresses the requirements for a Grading, Erosion and Sedimentation Control permit. CBMC 17.62.030(C) provides the information requirements for a development permit:

“Information Required for a Development Permit.

-
- “1. An application for a development permit for regulated activities subject to the requirements of this chapter shall include the following:
 - “a. A site plan, drawn to an appropriate scale with sufficient dimensions, showing the property line locations, roads, areas where clearing, grading, excavation or filling is to occur, the area where existing vegetative cover will be retained, the location of any streams or wetland areas on or immediately adjacent to the property, the general direction of slopes, the location of the proposed development, and the location of soil stock piles, if any;
 - “b. The type and location of proposed erosion and sedimentation control measures.
 - “2. The city may require a grading plan prepared by a registered civil engineer where the disturbed area has an average slope of twenty percent or greater, the disturbed area is located in a geologic hazard area, or is part of a subdivision or partition. Such a grading plan shall include the following additional information:
 - “a. Existing and proposed contours of the property, at two-foot contour intervals;
 - “b. Location of existing structures and buildings, including those within twenty-five feet of the development site on adjacent property;
 - “c. Design details for proposed retaining walls;
 - “d. The direction of drainage flow and detailed plans and locations of all surface and subsurface drainage devices to be constructed.
 - “3. The city may require that the sedimentation and erosion control plan be prepared by a registered civil engineer where the disturbed area is greater than one acre in size, or the disturbed area has an average slope of twenty percent or greater.”

CBMC 17.62.030(C)(1) requires a site plan that shows the listed features. The required site plan was submitted with the application. CBMC 17.62.030(C)(2) requires a grading plan prepared by a registered civil engineer in certain circumstances, such as the present case when the property is located in a geologic hazard area. The grading plan submitted includes the required information. CBMC 17.62.030(C)(3) may require a sedimentation and erosion control plan when the disturbed area is more than one acre or the disturbed area has an average slope of more than twenty percent. The proposed area to be disturbed is less than one acre and has slopes of less than twenty percent. Opponents do not refute that the Roberts have satisfied these requirements.

CBMC 17.62.040(A) provides the technical standards for grading. The Roberts' geotechnical experts explain that the grading standards are satisfied. Opponents do not challenge those explanations. The Community Development Director found that the grading standards were satisfied:

“Plans indicate the grading of the site to place a fifty-foot stability grade beam, north-to-south across the site, anchored in place by a micro-piling system to ensure bank stability for a proposed foundation of a residential structure.

“It should be noted that, as Mr. Rondema states in his plan review, ‘this pile system is not relied on by any building foundation system for structural support. It is strictly dedicated to improving the lot stability’ The applicant states, ‘As shown in the drawings on sheet S5.01, the stability beam is intended to be placed below the existing ground surface at the site.’ The City has placed conditions on the approval that prohibit tree removal and grading.

“Plans shall meet the standards of CBMC 17.62.040(A) with conditions of approval.” Community Development Director’s Decision 5-6.

CBMC 17.62 is satisfied.

CONCLUSION

This application only involves approval of the proposed stability beam. This application does not involve the approval of any type of house in the future. The Community Development Director’s conditions of approval make clear that this permit has no impact one way or the other on any other permits or applications for the property. The approval criteria for activities in a geologic hazard area and for a grading permit are the only criteria at issue in this case. The Roberts have demonstrated that the approval criteria are satisfied, and the Community Development Director’s decision finds that all of those criteria are satisfied. Opponents do not challenge the applicable approval criteria, but instead raise a host of issues that do not have any relevance to the stability beam application. To the extent opponents have raised any relevant arguments, those arguments have been rebutted. Opponents are trying to make this case much

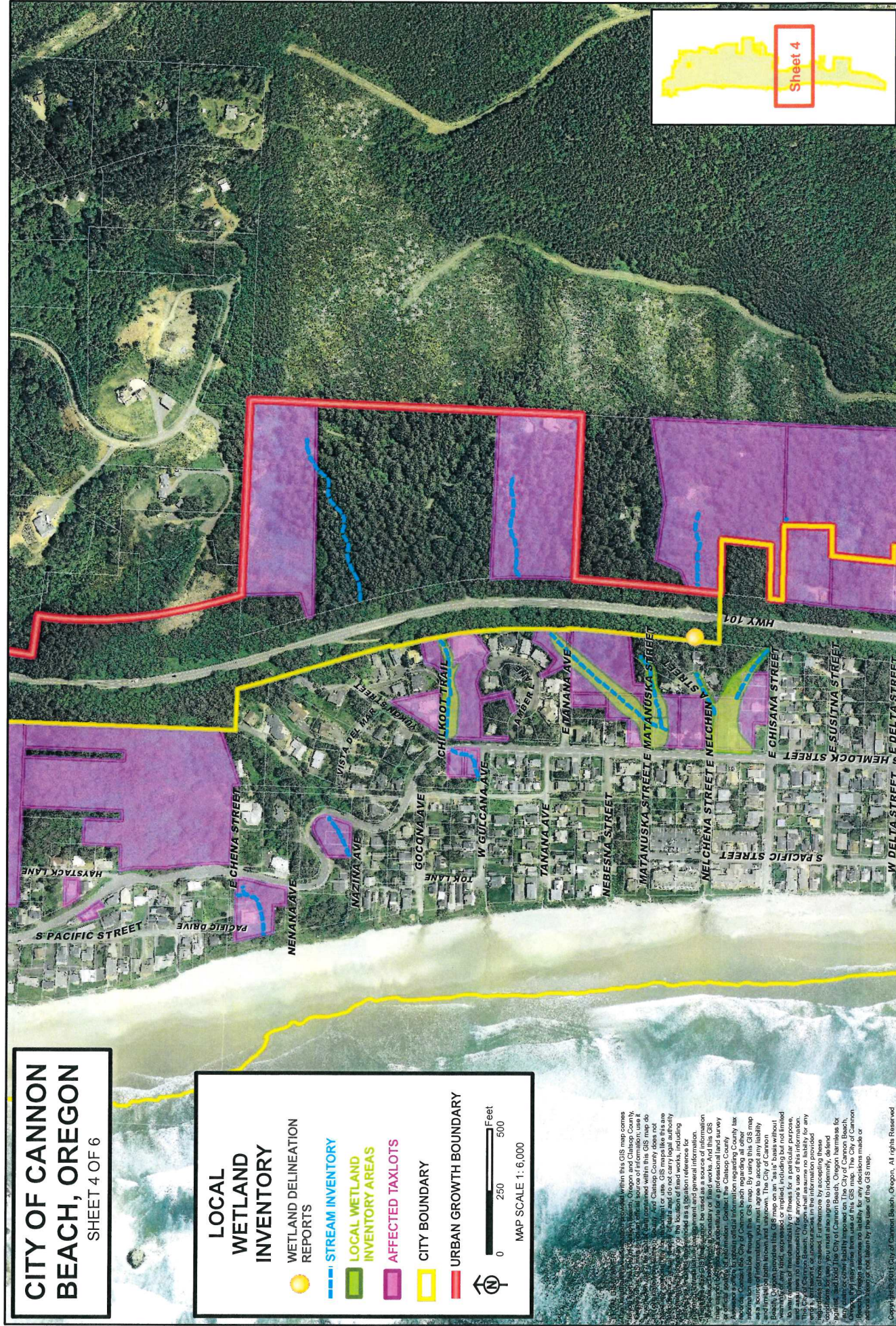
more complicated than it actually is. The Community Development's Director's decision is sound, and we respectfully request that it be affirmed.

Sincerely,



Fred Wilson

WFW:wfw
CC: Clients





CITY OF CANNON BEACH

NOTICE OF APPEAL - ADMINISTRATIVE DECISION

Appellant's Name: Haystack Rock, LLC

Email Address: william.rasmussen@millernash.com

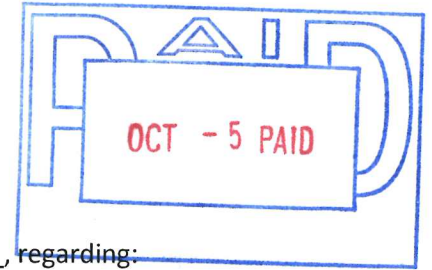
Mailing Address: Miller Nash LLP
111 SW Fifth Ave, Ste 3400, Portland, OR 97204

Telephone: 503.224.5858

City of Cannon Beach
Finance Department

OCT - 5 2021

Received



1. Appeal of Administrative Decision by Jeffrey S. Adams, PhD
Community Development Director, regarding:

ORDER DP# 21-20; IN THE MATTER OF A TYPE 2 DEVELOPMENT PERMIT FOR TAXLOT# 51031AA00600 FOR STABILIZATION PINNING OF A GEOLOGICALLY HAZARDOUS AREA THROUGH CHAPTER 17.50 DEVELOPMENT REQUIREMENTS FOR POTENTIAL GEOLOGIC HAZARD AREAS AND CHAPTER 17.62 GRADING, EROSION AND SEDIMENTATION CONTROL

as stated in letter dated September 21, 2021.

2. Specific grounds relied upon for the appeal, including any Zoning Ordinance criteria or standards that you consider to be relevant:

See specific grounds for appeal in attached narrative.

Please attach additional pages, if needed, and any other relevant information.

FEE: \$600.00

Appellant Signature: [Signature] Date: 10.05.21

For Staff Use Only:

Date Appeal Received: [Signature] By: [Signature]
Appeal Fee Paid: \$ 600.00 Receipt No.: 15791323691

Fee:
803 - Planning \$600
(Last revised March 2021)

ATTACHMENT 1

Answer to Question 2: “Specific grounds relied upon for the appeal”

1. Introduction

A property owner is not permitted to arbitrarily divide local review of a building into multiple applications for sequential construction of the building’s components. Rather, as mandated by Oregon’s building codes and the Cannon Beach (the “City”) zoning code, an Owner must apply and request review for the improvement as a whole and begin construction only after all of its components are approved.

This rule applies to development across the state because any other approach would result in the overburdening of planning staff with a convoluted myriad of overlapping and incomplete applications, the existence of partially constructed sites that cannot move forward, unnecessary disturbance of natural land and vegetation, nuisance for neighbors and commuters from pointless construction and corresponding demolition work, etc. Further, by permitting initial work and then denying completion of subsequent components, cities may expose themselves to increased frequency of unnecessary appeals and meritless lawsuits alleging the unconstitutional taking of private property.

For these same reasons, the rule also applies to the development proposed by Stan and Rebecca Roberts (“Owners”) and precludes approval of their August 3, 2021, applications for development and grading permits (the “Applications”).¹ The Applications propose the construction of a stability beam and piling system that is a component—in fact, the most critical component—of the residential structure proposed by Owners in June 2020 and still being pursued by them today (the “Proposed Residence”). Thus, the stability and foundation system must be reviewed, approved, and constructed only in conjunction with the Proposed Residence.

This is not the first time Owners have requested review of only the foundation and stability component of their development. Owners first attempted to separate the foundation and stability system from the Proposed Residence in applications filed in August 2020, immediately after the City informed them that it would not approve the home as designed.

The City correctly determined in 2020, however, that Owners’ arbitrary division of structural components is not allowed. Although the City’s response to the 2020 stabilization beam applications was technically termed a conditional “approval,” it required Owners to submit new building plans depicting a structure that was not connected to the proposed stability beam system. Owners subsequently withdrew the 2020 applications and have declined to file new building plans since that time.

¹ Attached as Exhibit 16.

Nevertheless, Owners propose the same arbitrary separation of structural components in the current Applications. As before, they claim that the proposed work is allowed because the stability beam and piling system is not *really* related to the Proposed Residence that it was designed for and tailored to. As before, these bald representations are unpersuasive. Not only illogical, they are directly contradicted by other statements made by Owners and their representatives throughout past and current application materials.

Permitting Owners to construct the stabilization system apart from the rest of the Proposed Residence would lead to the negative impacts meant to be avoided by the rule against arbitrarily dividing up review of an improvement. If the Proposed Residence is ultimately not allowed—which is likely—approving the premature Applications will result in the unnecessary disturbance of sensitive land and destruction of vegetation, a pointless nuisance for neighbors, and unnecessary danger for commuters along the construction access on the hazardous Hemlock Street S-curves. Further, Owners have already threatened on numerous occasions to sue the City for an unconstitutional taking of their property if the City does not approve their residence (as presently designed) as well as a new road access over public right-of-way for access thereto. Allowing Owners to construct this costly stabilization and foundation system will not only increase the likelihood of a threatened lawsuit, but proportionally increases the possible damages in the unlikely event Owners were to prevail.

As with the previous 2020 stabilization applications, the City’s planning staff (“Staff”) issued a conditional “approval” of the Applications on September 21, 2021 (the “Approval”),² that includes conditions that are meant to limit Owners to their claims that the stability system is not related to the Proposed Residence.

The Applications, however, should have been simply denied because the stability and foundation system obviously relate to the Proposed Residence and cannot be arbitrarily severed from that review process. Further, the Approval contradicts Staff’s previous review of the identical 2020 applications by omitting the key condition that Owners submit new building plans to show the absence of a connection between the stability system and planned residence. Thus, the Approval should be reversed.

And even if the stabilization and foundation components could be severed from the overall Proposed Residence, the Approval should still be reversed because (a) Owners have not established compliance with applicable zoning and building standards, (b) Owners have not obtained necessary state and federal permits, and (c) the City has not approved the access and staging areas needed for the stability work, and (d) cannot do so until City Council legally approves the proposed private use of public land, something it is unable to do.

2. Factual Background

a. Proposed development of the Property.

Owners’ oceanfront property (the “Property”) is located in southern Cannon Beach, west of the Hemlock Street S-curves, on the side of a hill with a steep grade running to the beach. The Property is located on one of, if not the least developed, stretches of coastline in

² Attached as Exhibit 17.

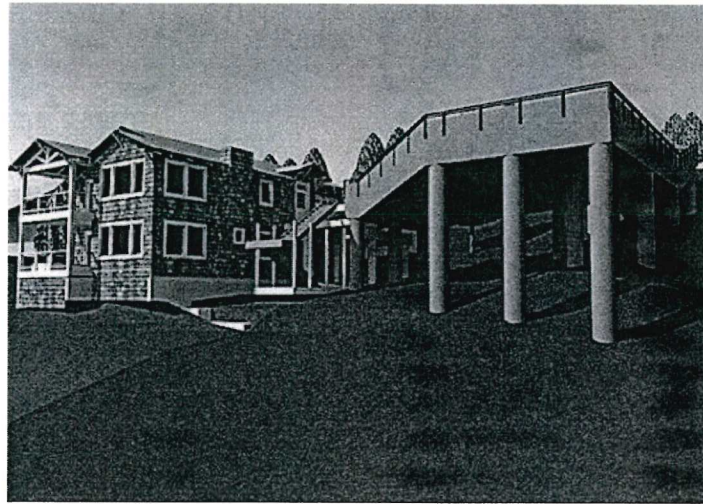
Cannon Beach, between the historic Oswald West Cabin (north) and the publicly owned Inspiration Point conservation land (south). The Property has no vehicular access to Hemlock Street, but fronts the undeveloped Nenana Avenue:



The Property and Nenana Avenue are currently undeveloped and covered by natural vegetation:



On July 16, 2020, Owners filed an application set with the City proposing the construction of a new home on the Property and a new bridge-like structure over Nenana Avenue providing dedicated access thereto.



The application set, however, took the position that the oceanfront Property was not subject to the City's oceanfront setback rule. Staff rejected this claim and required a demonstration of compliance in its September 4, 2020, decision. Owners appealed this decision to the Planning Commission and City Council, which both found that the setback applied, resulting in a final land use decision in December 2020. Owners then appealed to the Oregon Land Use Board of Appeals (LUBA), which affirmed the City decision in July 2021. LUBA No. 2020116. Owners subsequently appealed LUBA's ruling to the Oregon Court of Appeals, where the matter is currently pending. Ct of Appeals Case No. A176601.

b. The stabilization system is a necessary component of the Proposed Residence.

Owners' past and current application materials unequivocally show that the stability beam and piling system proposed in the Applications was designed for and is critically necessary for the development.

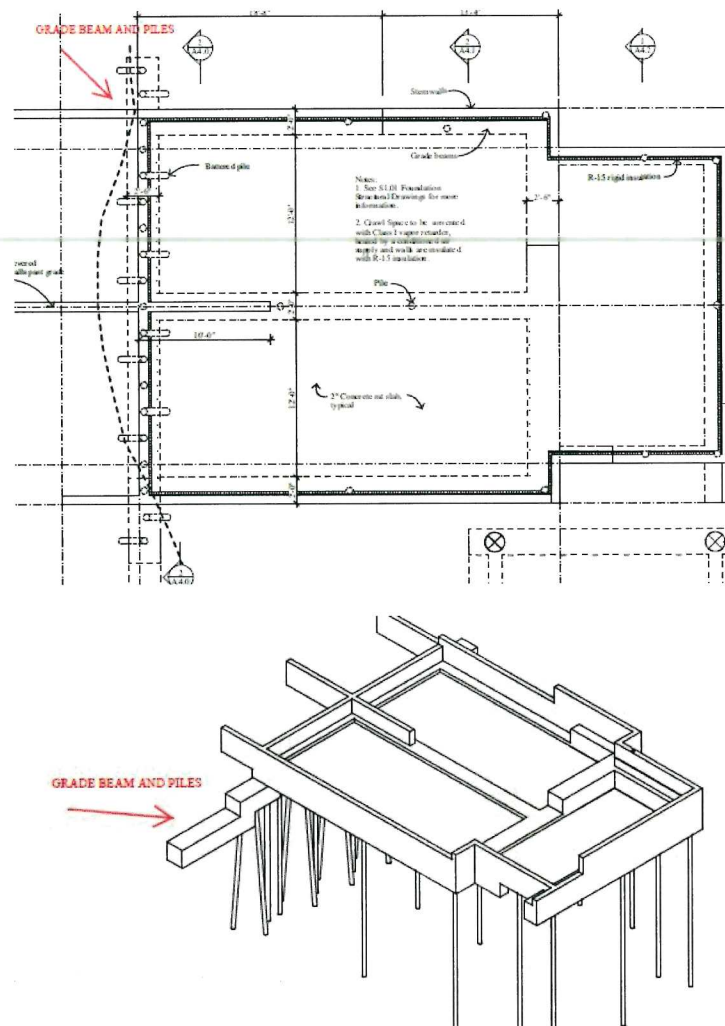
At the outset, Owners hired Don Rondema of Geotech Solutions, Inc., to conduct a geotechnical evaluation of the land. Mr. Rondema stated in his April 5, 2020, geotechnical report³ that the Property could support a residence if a complex Western Pile Stability Improvement System (WPSIS) was installed thereunder. The report recommended a grade beam under the western edge of the home supported by drilled, grouted micropiles and stated that "house support piles can be included in this grade beam." (Ex. 1, at 7.)

This design was subsequently implemented into the architectural and engineering plans for the Proposed Residence. The cover sheet and structural notes for the engineering plans state at "[t]he foundation is a grade beam system supported by micropiles."⁴ The architect's

³ "Proposed Residence at Tax Lot 600," attached as Exhibit 1.

⁴ Miller Consulting Engineers plans, dated July 1, 2020.

foundation plans⁵ show the west end of the house supported by the grade beam, as well as the east-west cantilevered stemwalls resting thereon:



As part of the application set for the Proposed Residence, Owners also submitted the July 16, 2020, engineering geological site investigation report from R. Warrant Krager. (Ex. 2.) The investigation report states that the WPSIS is being placed “under the western edge of the building area to enhance local toe slope stability of the western margin of the building area to acceptable minimum static factors of safety[,]” and that that “western margin of the home [is] to be structurally cantilevered over the Western Pile Stability Improvement System” as well. (Ex. 2, at 5.)

This WPSIS stability beam and piling system is identical to the structure proposed in the current Applications.

⁵ Jay Raskin, Foundation Plan, A2.0 Permit Set, dated June 29, 2020.

c. Owners only proposed independent review and construction of the stability system after they learned that Staff would not approve the Proposed Residence as designed.

Owners did not claim that the stability and foundation system was distinct and could be reviewed separately from the Proposed Residence until after Staff informed them that the residence could not be approved as designed.

On August 11, 2020, the City's Community Development Director, Jeff Adams, sent a letter to Owners providing Staff's final determination that the oceanfront setback applied, stating:

[T]he City does not consider the platted right-of-way of Ocean Avenue a 'buildable lot' and requests that the steps of 17.42.050(A)(6) be addressed, so that an oceanfront setback line can be established.

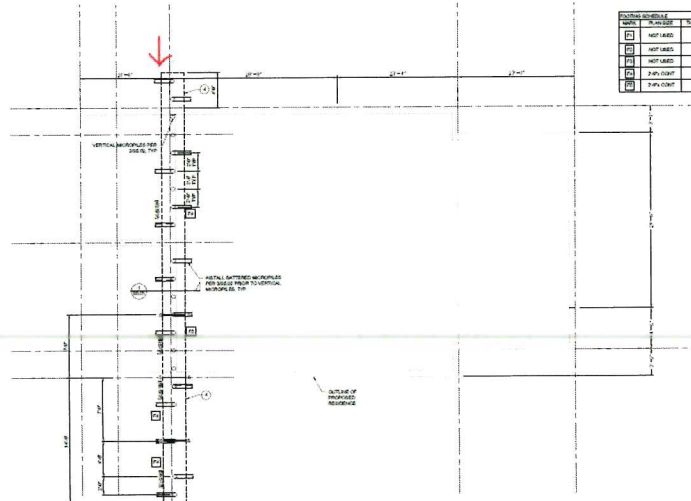
If you choose to stand by your reading of 'lot,' you may challenge my decision through an appeal of the administrative decision, which would be heard at the next available Planning Commission hearing. (Ex. 3.)

Two weeks later, on August 25, Owners' project planner, Sabrina Pearson, sent an email to the City's Public Works Director, Karen La Bonte, stating that Owners were separating the stabilization work from the Proposed Residence so they could get started on that part of the work right away. Ms. Pearson stated:

I think we are hoping that the City will issue the ROW permits for all the ROW work and that Jeff will be able to issue a Development Type 2 Permit for the stability bean [sic] and piles permits before the Ocean Avenue setback is resolved. (Ex. 4.)

Shortly thereafter, on September 14, 2020, Owners submitted new applications for the stabilization and foundation components, as well as related right-of-way work. (Ex. 5.) In the application narrative, Ms. Pearson claimed that the application was independent of the Proposed Residence, but conceded that "[t]his structural stability work is the same for both permits." (Ex. 5, at 1.) And in fact, the "new" engineering drawings submitted with the 2020 applications⁶ still depicted the proposed home over the beam and piling system:

⁶ Foundation Plan dated September 1, 2020, from Miller Consulting Engineering.



In support of their 2020 applications, Owners submitted a letter from Mr. Rondema dated September 2, 2020, which contradicts the substance of all his previous reports and communications by stating there is no connection between the Proposed Residence and the WPSIS system he designed. He stated that the “pile system is not relied on by any building foundation system for structural support” but rather it “is strictly dedicated to improving the lot stability.” (Ex. 6.) The letter does not explain how the WPSIS system could qualify as “strictly dedicated” to stability of the lot when it was designed for and, in fact, is the only reason the Proposed Residence is possible.

d. Staff properly determined that the 2020 stability beam applications could not be approved without proof that the stabilization system was no longer a component of the Proposed Residence.

On September 30, 2020, Mr. Adams responded to the 2020 stabilization applications.⁷ Mr. Adams informed Owners’ attorney, Wendie Kellington, that the City did not agree with their new theory that the stabilization work was unrelated to the residence in the Proposed Development. The email stated that:

“Based upon our review of the plans recently submitted and the building plans submitted and dated June 29 and July 1st, 2020, sheets A2.0 and S1.01, although the recent plans attempt to separate the two components, our Building Official believes the piling system to be an integral component of the structural foundation. Although Mr. Rondema has stated that “this pile system is not relied on by any building foundation system for structural support,” if the proposed pilings affect the house at all it would require a building permit.” (Ex. 7, at 1.)

Ms. Kellington, replied in a letter dated October 8, 2020, threatening to hold the City liable for the potential “catastrophic failure” and “loss” of the Property if the WPSIS beam and pilings were not immediately permitted. Therein, Ms. Kellington argued that the stabilization

⁷ Before the City could respond to the new stabilization application, Ms. Kellington sent an email on September 29, 2020, to the City claiming that no application was needed at all because the work was not related to a foundation. (Ex. 7, at 2.) Thus, Mr. Adams’s response concerned both the application and this incorrect assertion.

work and the proposed home are “wholly separate issues”—even though she conceded in the same paragraph that “[i]t is true that when the Roberts home is approved, the foundation will tie to it.” (Ex. 8, at 2.)

The following day, Mr. Adams responded in a letter to Ms. Kellington by once again pointing out that the “the building plans submitted by [her] clients and currently being reviewed by the City Building Official, show a clear tie from the home to the stability pilings at issue here.” (Ex. 9, at 1.) Accordingly, the letter stated that a building permit is required, which is the “same permitting processes that any other home owner in Cannon Beach would be required to follow.” *Id.* at 2.

On October 12, 2020, one of the Owners, Mr. Roberts, responded by email to Mr. Adams, stating, “I hereby advise you that my current request to stabilize my [sic] is not part of any house plan, but rather is an independent request to stabilize my lot because I am worried about the active landslide destroying my property.” (Ex. 10, at 1-2.)

That same day, Mr. Adams responded by telling Mr. Roberts that his email was not sufficient, but that the City needed “a letter or statement from the structural engineer stating that the stabilization project has nothing to do with the building plans, along with a revised set of Building Plans, which no longer show the stabilization pilings as integrated with the foundation, as the plans we currently have on file do.” (Ex. 10.)

On October 14, 2020, Owners refiled their stabilization application for the development permit to complete the WPSIS stabilization and foundation work. (Ex. 11.) In conjunction therewith, Owners still did not demonstrate, as repeatedly requested by the City, that the WPSIS system was no longer connected to the home proposed in the home application.

Nevertheless, on October 21, 2020, in the face of threats of legal action, the City conditionally “approved” the stabilization application. To address Owners’ failure to establish the disconnect between the WPSIS work and the new home, the City adopted two conditions. First, Condition 1 provided that the approval of the stabilization application is not related in any way to the pending or future permits for the Proposed Residence. (Ex. 12, at 7.)⁸ Even more importantly, Condition 2 required Owners to submit “[r]evised set of building plans, as the current set of building plans, dated June 29, 2020, still show the stability micro-piles as part of the foundation plan[.]” *Id.*

On November 4, 2020, Haystack Rock, LLC, appealed Staff’s conditional approval to the Planning Commission. Owners withdrew their application on November 13, 2020. (Ex. 13.)

⁸ “1. The approval of this Development Permit is not dependent on any other permits, nor are any other permits dependent on this permit. This approval does not affect any other pending or future permits for other development, including in any way the pending permit for Nenana Road and/or any associated house plans. Should the construction of Nenana Road and/or the house not be approved or not go forward, The City will not be responsible for reimbursement for any work being performed under this permit. As it is the applicant’s decision to seek these permits separately, each permit application will be reviewed and decided on its own merits[.]”

- e. **The Applications propose the same work as the 2020 stability beam applications but do not submit new building plans as required by the conditions of the 2020 approval.**

On August 3, 2021, Owners submitted the Applications for the stability system and grading work along with applications for a redesigned residence and private driveway over the Nenana Avenue public right-of-way.

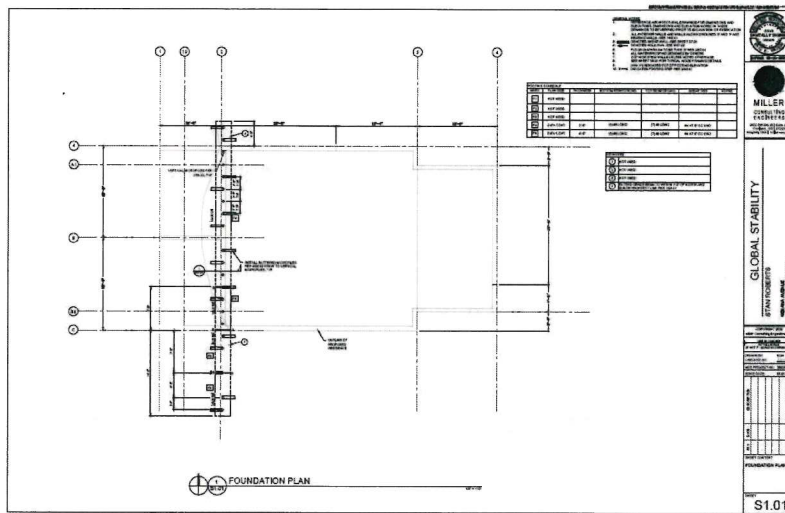
A cursory review of the very limited materials for the residence and driveway, however, shows that they are not actually applications, but—as Ms. Kellington concedes—merely requests for approval of “concepts.” (Ex. 14, at 3.) These two “application” sets contain only City forms and a few high-level site drawings. There are no building plans, basic construction documents, or the numerous other materials required by the Oregon Residential Specialty Code (ORSC) and the City’s municipal code.⁹

Thus, Owners did not satisfy the second condition of the 2020 stability beam application approval, which required Owners to submit a “[r]evised set of building plans, as the current set of building plans, dated June 29, 2020, still show the stability micro-piles as part of the foundation plan[.]” *Id.*

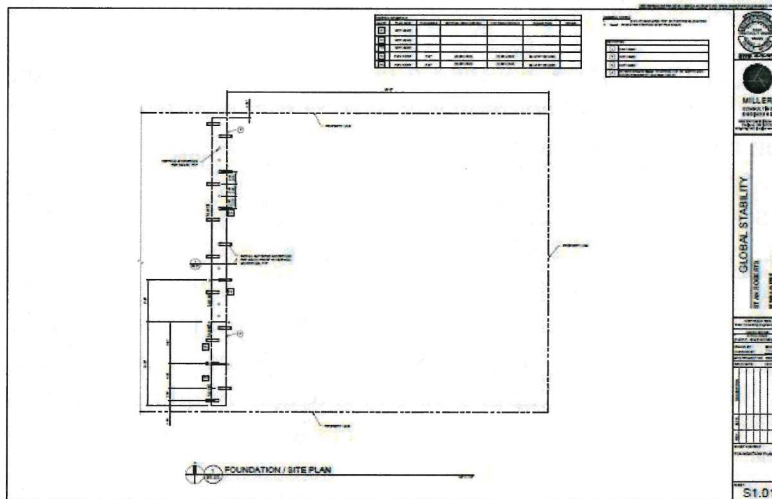
This could be because Owners mistakenly believe that the plans at issue in Condition 2 are drawings for the stability beam and piling system. Thus, in support of the new Applications, Owners obtained a new drawing from their engineering firm that simply removed the outline of the house footprint shown in the 2020 plans:

⁹ Site plans meeting the standards in CBMC 17.90.190; miscellaneous plans specified in the City’s building permit application form (e.g., elevation views, foundation plan and cross section, floor plans, wall bracing, floor/roof framing plans, beam calculations, etc.); geologic site investigation report and engineering report that “specifies engineering and construction methods which will eliminate the hazard, or will minimize the hazard to an acceptable level.” (CBMC 17.50.040(A)(3)(b)); oceanfront setback line survey (CBMC 17.42.060(A)(6)); application for grading and erosion control permit, specific to property/home site within 100 feet of a mapped stream (CBMC 17.62.030); grading permit site plan (CBMC 17.62.030)(C)(1)(a)); plan for erosion and sedimentation control measure prepared by a design professional (CBMC 17.62.030)(C)(1)(b)); application for tree removal permit, specific to property/home site (CBMC 17.70.015); arborist report addressing criteria in CBMC 17.70.030; signed consent of the owner as it relates to work in City right-of-way and public reserve land (CBMC 12.36.018, CBMC 17.92.040.A.2).

2020 Plans¹⁰



2021 Plans¹¹



Condition 2, however, refers to the building plans for the Proposed Residence in the development that were submitted in July 2020, which is because Owners must show that the stability beam and piling system is not part of the residence planned for the Property. Merely deleting the outline of the home from the “Foundation Plan” does not come close to making such a showing.

3. Grounds for Reversal

Despite the admitted connection between the stability work and the development, as well as the lack of building plans satisfying Condition 2 of the 2020 review, Staff

¹⁰ Ex. 15, at 7.

¹¹ Ex. 16, at 16.

conditionally approved the Applications on September 21, 2021. The Approval, however, makes several conclusions that are undermined by the application materials. It also includes conditions that cannot be met by Owners and thus should have been outright denials. Accordingly, there are several reasons why the Approval must be reversed and the Applications denied.

- a. **As a component of the development, the stability beam and piling system and grading work cannot be arbitrarily severed and reviewed/constructed independently.**

The City's zoning code and the ORSC¹² require structural improvements to be considered as a whole. Both provide that a building, including the structural support therefor, must be approved through one permit. *See* ORSC 105.1 (stating that prior to construction of a "building or structure," an owner must "first make application to the building official and obtain the required permit."); CBMC 17.92.010 (stating that a development permit is required for the proposed construction of a building).

Likewise, CBMC 17.62.030(2) provides that a development permit is required for grading and erosion control "*in conjunction with* a structure requiring a building permit" (emphasis added), and that this development permit shall be reviewed pursuant to "Section 17.92.010(A), (B) and (C)(1)," along with the review of the structure at issue.

There is no question that the Proposed Residence requires a development and building permit. Thus, all physical components of the proposed structure, as well as related grading and erosion control, must be considered as part of one review process.

As set out above, the stability beam and piling system is part of the residence currently proposed by Owners. The WPSIS stabilization system was developed for and implemented into all the plans and reports submitted with the application set for the development. The WPSIS system was first recommended by Mr. Rondema in his geotechnical report for the "house foundation support and stability analyses." (Ex. 1, at 1.) The WPSIS recommendation was then implemented into all of Owners' building and engineering plans for the development, along with Mr. Rondema's geotechnical report.

Owners' contradictory claim that the WPSIS system is for stabilization of the lot is further undermined by the geotechnical report from Mr. Krager submitted with the development applications. This report states that the WPSIS beam and pilings were designed *only* to support the building pad proposed in the development and will have little impact on the surrounding landslide. He states:

- "The western foundation grade beam *for the home corresponds with* the plan location of the Western Pile Stability Improvement System as allowed and discussed in geotechnical design reports by Geotech Solutions."

¹² Adopted by the City in CBMC 15.04.110.

- “The Western Pile Stability Improvement System is a subsurface pile and grade beam structure modeled and designed to improve local global slope stability *only to the Tax Lot 600 building pad.*”
- “The Western Pile Stability Improvement System is *not* designed or expected to substantially influence overall global slope stability of the larger S-curve landslide area.” (Ex. 2, at 5) (emphasis added).

In fact, Owners’ representatives have expressly stated on several occasions that the only reason for the independent stability beam applications is to start work prior to resolution of appeal of the development denial. This was first clearly communicated in Ms. Pearson’s contemporaneous email dated August 25, 2020, to Ms. La Bonte stating that the work was being separated to allow work to start while the “Ocean Avenue setback is resolved.” (Ex. 4.)

Further, in the current Application materials, Owners expressly state their intention to construct the Proposed Residence as originally designed, including the connection between the home and stability beam system, if the court of appeals rules in their favor. In the cover letter for the Applications, Ms. Kellington states:

“Also submitted under separate cover is an application for a building permit to serve a house that the Roberts intend to construct if the appellate courts do not reverse the city’s denial of their home as it was originally submitted and as is currently pending. Please understand that the application submitted today for the Roberts’ alternative home is without waiver of their original house submittal. * * * Roberts submit a “conforming” dwelling application[,] * * * but without waiver or withdrawal of the application pending at the city that the city has denied and that is under review or soon to be under review at the court of appeals. Approval of this building permit allows the Applicants to begin the work necessary to construct their home. The appellate processes will move swiftly such that the house framing for the home proposed in the application submitted this date can pivot to frame the house the Roberts prefer if the appellate courts revise LUBA.” (Ex. 16, at 2.)

City code and state law are clear, however, that to be reviewed apart from the development of the Property, Owners have the burden to show that the stability beam and piling system are not a component of the Proposed Residence. They have done the opposite. They have provided no alternative building plans and state in the Applications that they still hope to construct the Proposed Residence as originally designed.

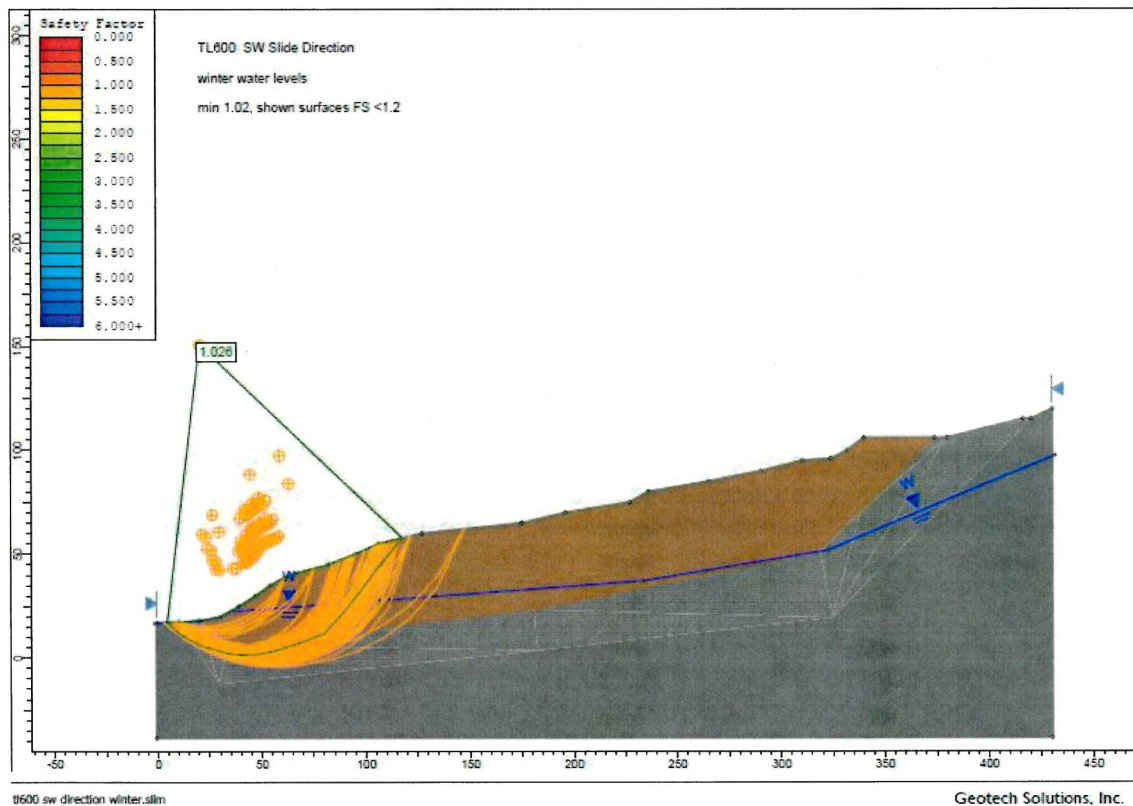
In the face of this clear evidence, the only reasonable finding of fact is that the WPSIS grade beam and piling system proposed in the Applications is part of the development and must be reviewed therewith. Accordingly, the Planning Commission should reverse the Approval and deny the Applications.

b. The proposal does not address all of the code standards applicable to the stabilization application.

Even if the WPSIS system could be separated from the Proposed Residence, it must still be reviewed under the applicable building code standards. Thus, the City should review the stabilization application for compliance with the ORSC foundation standards.

Further, as recognized by the City in a letter dated October 9, 2020, from Mr. Adams to Ms. Kellington, the Property is adjacent to a mapped waterway. Nevertheless, the Approval failed to analyze the City's zoning code governing "Stream Corridor Protection." (CBMC Ch. 17.71.) Similarly, the proposal is within the Oceanfront Setback requiring demonstration of compliance with CBMC 17.42.040, 17.42.050, and 17.42.060.

Finally, both of Owners' geotechnical experts outlined the frequent groundwater saturation of the Property, as well as standing surface water during the wet seasons. In his April 5, 2020, report, Mr. Rondema states that "[s]urface water is present at the ground surface in wet conditions near the southeast property corner and is likely associated with the group of three horizontal drains located offsite to the east." (Ex. 1, at 3.) Likewise, in reviewing Mr. Rondema's site observations, Mr. Krager's report states "that groundwater levels rise quickly with heavy rain." (Ex. 2, at 3.) Mr. Rondema's report also provided an illustration of the observed presence of ground and surface water:



These conditions seem to fall within the broad definition of wetlands in the City's code: "'Wetland' means those areas that are inundated or saturated by surface or groundwater at

a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”
CBMC 17.04.566.

The City, however, failed to analyze the applicability and regulations arising from the wetlands code on the proposed work. Because the City failed to consider these, as well as the waterway and building code standards, the approval of the stabilization application must be reversed.

c. Owners failed to get necessary state and federal permits for the foundation work.

Work in sensitive areas adjacent to waterways and wetlands is also subject to federal and state regulation. The proposed foundation work also includes collection and piping for stormwater from impermeable surfaces, as well as modification to the existing stormwater and groundwater drainage piping system. This is evidenced in Mr. Krager’s report¹³ and the engineering plans submitted with the stabilization application (e.g., C-2, “Drainage Connection”).

Owners, however, have failed to apply for several required permits, including a fill/removal permit from the Department of State Lands for work in wetlands as broadly defined under state law, a Section 10 permit from the United States Army Corp of Engineers for work in wetlands, and a discharge permit from the Oregon Department of Environmental Quality for conveyance of stormwater through the new and modified piping system. Without approval from the state and federal agencies, the City should not have approved the stabilization application.

d. The Applications cannot be approved without prior approval of the proposed driveway over Nenana Avenue and staging area/temporary roads on the Inspiration Point land.

Owners repeatedly claim that the stability and foundation work proposed in the Applications is entirely distinct from not only the Proposed Residence, but also the planned access thereto. Thus, Owners contend that the stability work can be reviewed apart from their applications for construction of a driveway over Nenana Avenue.

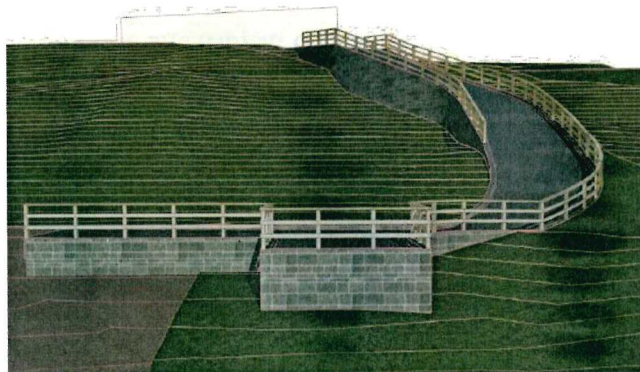
This premise, however, is contradicted by the submittal materials. In the cover letter for the Applications, Ms. Kellington explains that “[f]iled separately is an application for a driveway to serve the Roberts’ property, including to serve workers *who will install the stability beam * * **.” (Appl. Cover Letter at 1) (emphasis added).

This need for construction of access prior to the installation of the stability and foundation system is consistent with the original application materials, which also detail the need

¹³ “Stormwater runoff from impermeable surfaces will be collected and piped to a capped level spreader surface discharge system secured to the slope and erosion protected with straw wattle or other material on the western edge of Tax Lot 600 and within the Nenana Avenue right-of-way. It is expected that collected subsurface drainage from grade beam backfill can and will be added to the engineered stormwater conveyance and discharge system.” (Ex. 2, at 6.)

for completion of a construction staging area before beginning work on the Property. (See Right-of-Way permit application dated July 17, 2020, signed by Jorge Castaneda for “Staging Area Construction.”)

Both of these proposed improvements require building, development, and grading permits. Although Owners failed to provide plans or other construction details for their new private driveway application, the “Driveway Views” submitted in support of their application show the proposed driveway being significantly above grade, on both the public and private property:¹⁴



Accordingly, a building permit is required. See Oregon Structural Specialty Code (OSSC) § 105.1 (requiring a permit for the construction of a structure); § 105.2 (exempting “sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade[.]”); CBMC 15.04.110(A) (adopting and enforcing the OSSC as part of the City’s code). This means that a development permit is also required. CBMC 17.92.010(1). Similarly, a conditional use application as required by ZO 21-01 and amended CBMC 17.42.030.F.3 is needed.

Likewise, the proposed staging area involves the installation of retaining walls, pile, and other work necessitating a building and development permit. Finally, both improvements are within 100 feet of a stream, and thus also require grading permit approval and within the Oceanfront Setback requiring demonstration of compliance with CBMC 17.42.040, 17.42.050, and 17.42.060.

Owners have not received approval or even submitted legitimate applications for these projects (i.e., supported by building plans, construction details, and other basic application materials). Accordingly, the City cannot approve the work in the Applications that cannot occur until after the access and staging areas are approved.

¹⁴ Owners may claim that CBMC 15.04.030(B) excludes their work in Nenana Avenue from the requirement for a building permit because the structure is located in a “public way.” This exemption is not applicable, however, because Owners are not proposing a “public way” but a private access. This interpretation is consistent with the OSSC’s exemption. OSSC § 202 (“Public Way” definition: “A street, alley, other parcel of land * * * permanently appropriated to the public for *public use* * * *.”). And regardless, the proposed driveway is located, in part, on Owners’ private property.

- e. **The Applications cannot be approved without prior approval by City Council of the proposed use the Nenana Avenue right-of-way and construction of a staging area on the Inspiration Point land.**

Prior to even filing applications for the proposed Nenana Avenue driveway and temporary construction staging area, Owners must obtain approval from City Council for each improvement. State law controls how the governing body of a municipality may grant private property rights like the easement requested by Owners. ORS 271.300 through 271.445 authorizes and governs the “transfer, lease, donation, or use of public lands” by municipalities and other political subdivisions of the state. *Cty. of Clatsop v. Ehler*, 226 Or App 305, 310, 203 P3d 322 (2009) (“The county’s authority to transfer public lands is governed by ORS 271.300 through 271.445.”). ORS 271.310 states that “whenever any political subdivision possesses or controls real property not needed for public use, or whenever the public interest may be furthered, a political subdivision may sell, exchange, convey or lease for any period not exceeding 99 years *all or any part* of the political subdivision’s *interest in the property* to a governmental body or private individual or corporation.” (emphasis added). These powers, however, are vested exclusively in the “duly constituted governing body.” ORS 271.300(2). We contest whether the City can lawfully grant such an easement in the Nenana right of way, but in any event, the City Council has approved no such improvements.

Likewise, Owners must obtain permission from City Council prior to constructing a staging area on the Inspiration Point land. The proposed staging area and temporary access over this property is not merely a use of public land. Rather, Owners propose major alterations to the property, including clearing of vegetation, driving of pile, grading, and other significant changes. *See* Earth Engineers June 30, 2020, report (“Temporary Construction Staging Area Design Recommendations * * *”).

Permission for either improvement, however, is unavailable under applicable legal standards. As Oregon courts have repeatedly recognized, “[w]hen dedicated land is accepted, the governing body of a county or municipality becomes the trustee for the public to assure that the land is used for the dedicated purpose or purposes.” *Douglas Cty. v. Umpqua Valley Grange, Inc.*, 45 Or App 739, 743, 609 P2d 415 (1980). “A city has no legal right to surrender its platted streets to private persons, but on the contrary has a duty to remove public nuisances therefrom.” *City of Molalla v. Coover*, 192 Or 233, 252, 235 P2d 142 (1951). This rule is absolute. It does not matter if the municipality has declined to improve or use the land. *Umpqua Valley Grange*, 45 Or App at 742-44 (1980) (holding that nonuse is immaterial). Ms. Kellington herself highlights the basis for this rule: a city does not obtain fee to property through dedication. Pursuant to the Tolovana Park plat, the City holds Nenana Avenue in trust for “the public for its use as thoroughfares forever.” The City has no authority to allow the right-of-way to be used for a private driveway that blocks the thoroughfare for the public and abutting owners.¹⁵

¹⁵ This restriction is not changed by Owners’ unsupported statement that their private driveway can be converted to public use if the City desires to do so in the future. First, Owners provide no explanation on how this could be done, the costs to do so, or other relevant information. But even if they had, the point is irrelevant. The only other properties on Nenana Avenue are (1) owned by the City for preservation of the Inspiration Point land, and (2) the Oswald West Cabin historic property, owned by Haystack Rock, LLC, which already has safe access. To the extent

This rule applies with equal force to the Inspiration Point land. These parcels on the south side of unimproved Nenana Avenue were purchased by the City and private individuals for preservation of the land. Half the funds to acquire Inspiration Point were provided by the City and the other half were raised by private citizens of Cannon Beach. Granting permission to Owners to substantially disturb and alter this property is entirely inconsistent with the purpose of the City's ownership and grant by private citizens. As stated by the Oregon Supreme Court in *Hyland v. City of Eugene*, which concerned land dedicated to the City of Eugene for use as a park, "[w]hen such a grant has been made by a private owner, the municipality, by accepting the dedication, becomes a trustee to carry out the terms of the grant and it has no power to sell or lease the property for purposes foreign to the dedication. Tiffany on Real Property, 3d Ed., § 1113." 179 Or 567, 572-73, 173 P2d 464 (1946).

Finally, notwithstanding the foregoing, Oregon law provides for only limited circumstances in which a city is authorized to lease or convey a property interest in public land. ORS 271.310 provides that a conveyance of a right in public land is only allowed where the local government finds that there is no public need for the land or that the public interest may be furthered by making the transfer or lease. That is certainly not the case here. As evidenced by the private-public purchase of the lots to the immediate south of Nenana Avenue for the protection of Inspiration Point, there is a strong public need for the natural preservation of Nenana Avenue.

Regardless of City Council's ultimate decision, the City's zoning code is clear that written approval from Council is a prerequisite to review of an application for construction of the proposed driveway or staging area. CBMC 17.92.040(A) states that "[a]n application for an action or permit provided for by this title shall consist of: * * * 2. Proof that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has the consent of all partners in ownership of the affected property[.]"

Further, because the installation of the stability beam requires the use of the proposed access over Nenana Avenue and the staging area on the Inspiration Point conservation land, those properties are also affected by the Applications at issue here. Accordingly, in the absence of proof of consent from City Council for the driveway and staging area, the Applications must be denied.

4. Conclusion

As Staff has determined on multiple occasions, the WPSIS grade beam and piling system clearly appears to be connected to the Proposed Residence, and independent approval/construction of the stability system can only occur if Owners prove otherwise. They have not done so. In fact, past and recent statements unequivocally show that Owners still intend to construct the Proposed Residence, including the connection to the stability beam, if the court

that theoretical future development on the southeast corner of the Haystack Rock property could access from Nenana Avenue, the proposed elevated driveway would block that access. The primary public interest in unimproved Nenana Avenue is preservation of natural and historic resources. Owners' proposed private driveway is directly contrary to this public interest, prevents access to other abutting lots, and would only benefit Owners at public expense.

of appeals rules in their favor. For this reason, the Approval must be reversed and the Applications denied.

And even if the Applications could be reviewed apart from the Proposed Residence, they should still be denied because (a) Owners have not established compliance with all applicable zoning and building standards, (b) Owners have not obtained necessary state and federal permits, and (c) the City has not approved the access and staging areas needed for the stability work, and cannot do so until City Council legally approves the proposed private use of public land, something it may not do under applicable law.

C-1



BEFORE THE CITY OF CANNON BEACH

IN THE MATTER OF A TYPE 2 DEVELOPMENT PERMIT)
FOR TAXLOT# 51031AA00600 FOR STABILIZATION PINNING)
OF A GEOLOGICALLY HAZARDOUS AREA THROUGH)
CHAPTER 17.50 DEVELOPMENT REQUIREMENTS FOR)
POTENTIAL GEOLOGIC HAZARD AREAS AND CHAPTER 17.62)
GRADING, EROSION AND SEDIMENTATION CONTROL)

**FINDINGS OF FACT,
CONCLUSIONS, AND
ORDER DP# 21-20**

IN ZONE: RL
APPLICANT: Stanley A. Roberts
925 Lake St. S #201
Kirkland, WA 98033

The above-named applicant applied to the City for review and approval of a type 2 development permit described above under Chapter 17.62 Grading, Erosion and Sedimentation Control of the Cannon Beach Municipal Code. The Community Development Director considered the above entitled matter and conditionally approved the development permit on 9/21/2021. The City of Cannon Beach orders that this request for approval of a development permit is granted subject to conditions, and adopts the findings of fact, conclusions and conditions contained in attachment A.

This decision may be appealed to the Planning Commission by an affected party by filing an appeal with the City within fourteen days of this date.

DATED: 9/21/2021

Jeffrey S. Adams, PhD
Community Development Director



Attachment "A"
FINDINGS OF FACT
ROBERTS – DP#21-20

PROPERTY DESCRIPTION: Taxlot# 51031AA00600

PROPERTY LOCATION: Off S. Hemlock Rd, at the W. Nenana Right-of-Way

SUMMARY: Applicant, Stanley A. Roberts, is requesting to install a stability beam and its supporting micro-piles, as identified on the accompanying plans and reports. Cannon Beach Municipal Code permits geo-hazardous locations to be stabilized through Chapters 17.50 Development Requirements for Potential Geologic Hazard Areas and Chapter 17.62 Grading, Erosion and Sedimentation Control.

CRITERIA:

17.50.040 Reports and plans required.

A. Geologic Site Investigation Report.

- 1. A geologic site investigation report shall be prepared by a registered geologist or engineering geologist. The report is to be prepared in conformance with the city's site investigation report checklist.***
- 2. Where recommended by the geologic site investigation report, or required by the building official, an engineering report prepared by a registered civil engineer shall be prepared. The report shall discuss the engineering feasibility of the proposed development and include findings and conclusions for: the design and location of structures; the design and location of roads; the design and location of utilities; land grading practices, including excavation and filling; stormwater management; and vegetation removal and replanting.***
- 3. The burden of proof shall be upon the applicant to show construction feasibility. A proposed use will be permitted only where:***
 - a. The geologic site investigation report indicates that there is not a hazard to the use proposed on the site or to properties in the vicinity; or***
 - b. The geologic site investigation report and engineering report specifies engineering and construction methods which will eliminate the hazard, or will minimize the hazard to an acceptable level.***



4. *The standards and recommendations contained in the geologic site investigation and engineering report, upon acceptance by the building official, shall become requirements of any building permit that is issued.*
5. *The building official may have the geologic site investigation report, or the engineering report reviewed by an independent expert of his or her choosing. Such a review may address either the adequacy or completeness of the site investigation, or the construction methods recommended in the engineering report. The applicant shall pay for the cost of the review.*
6. *A geologic site investigation report shall remain valid for a period of not more than five years from the date of its preparation. The continued reliance on a geologic site investigation report that is more than five years old requires the following additional new information:*
 - a. *An on-site re-inspection of the site by a qualified individual to determine if there has been any change in circumstances.*
 - b. *If no change in circumstances is found, a short report noting or including:*
 - I. *A description of site conditions and any changes between the date of the original geologic site investigation report and the date of the re-inspection;*
 - II. *Any additional maps, aerial photographs or other documents consulted; and*
 - III. *Conclusions regarding the accuracy of the original geologic site investigation report.*
 - c. *If a change in circumstances is noted, the information in subsection (b) of this section shall be provided along with:*
 - I. *Additional field data needed to verify and document any change in the status of the area;*
 - II. *Revised mapping;*
 - III. *Data, documentation, and other information as needed to define the existing geologic condition of the property; and*
 - IV. *Revised recommendations and conclusions based on the changed circumstances applicable to the property.*

Applicant has provided plans that call for a stability beam and its supporting micro-piles to be placed to shore-up the slopes, protecting homesite.

The location of the work is depicted by Civil Engineering Plans drawn by Jason Morgan, PE, CE Morgan Civil Engineering, Inc. The structures are shown by Engineering Plans and Calculations prepared by Miller Consulting Engineers, Inc. A Plan Review is provided by Don Rondema, MS, PE, GE, Geotech Solutions.



All Right-of-Way work will be conditioned upon review and approval under the Public Works Director's Right-of-Way permitting criteria.

The stabilization, under 17.50.040(A.1) is recommended by Don Rondema, Geotechnical Engineer, MS, PE, Geotech Solutions. Plans are provided, under 17.50.040(A.2), by Jay Raskin Architect and Miller Consulting Engineers, Inc. Construction feasibility, under 17.50.040(A.3) is met through the letter submitted and attached, by Don Rondema, dated September 2, 2020, which states "we have reviewed the plans and they conform to our geotechnical analyses and report recommendations for the stability pile system." Mr. Rondema speaks to (A.3a) when he states, "these piles will also improve the stability of adjacent and upslope land, including the existing homes and infrastructure such as Hemlock Street and its associated utilities."

17.62.030 Grading and erosion control permit.

A. Development Permit Required.

1. *Persons proposing to clear, grade, excavate or fill land (regulated activities) shall obtain a development permit as prescribed by this chapter unless exempted by Section 17.62.040. A development permit is required where:*

a. The proposed clearing, grading, filling, or excavation is located within one hundred feet of a stream, watercourse or wetland; or

b. The proposed clearing, grading, filling, or excavation is located more than one hundred feet from a stream or watercourse or wetland and the affected area exceeds two hundred fifty square feet; or

c. The proposed volume of excavation, fill or any combination of excavation and fill exceeds ten cubic yards in a calendar year.

2. *A development permit for regulated activities in conjunction with a structure requiring a building permit shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(1).*

3. *A development permit for regulated activities in conjunction with a subdivision or partition shall be reviewed in conjunction with construction drawings as required by Section 16.04.260.*

4. *A development permit for regulated activities not in conjunction with building permit, subdivision, or partition shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(2). However, notice to adjacent property owners, as specified by Section 17.92.010(C)(2)(d), is not required.*

The grading for the stabilization structure will be within 100' of stream 49, as identified on the City of Cannon Beach's stream and wetlands study, under CBMC 17.62.030(a). It should be noted that the CB Wetlands study does not identify the property as a wetlands lot of record and does not require a wetlands delineation and as Mr. Watson, in his letter of August 18, 2020 states, "Based on the proposed location and the means to install the grade beam, we anticipate that there will be no regrading required at the site. We anticipate the construction to consist of excavating a trench, placing the grade beam per plans and then burying the grade beam with the soil from the excavation. All the information contained within the calculations and drawings dated August 2, 2021 remain in effect."



17.62.040 Grading standards.

A. *The review and approval of development permits involving grading shall be based on the conformance of the proposed development plans with the following standards. Conditions of approval may be imposed to assure that the development plan meets the appropriate standards.*

1. *Cuts.*

- a. *Designs shall minimize the need for cuts;*
- b. *The slope of cut surfaces shall not be steeper than is safe for the intended use and shall not be steeper than two horizontal to one vertical unless an engineering report finds that a cut at a steeper slope will be stable and not create a hazard to public or private property;*
- c. *Cuts shall not remove the toe of any slope where a potential land slide exists;*
- d. *Cuts shall be set back from property lines so as not to endanger or disturb adjoining property;*
- e. *Retaining walls shall be constructed in accordance with Section 2308(b) of the Oregon State Structural Specialty Code.*

2. *Fills.*

- a. *Designs shall minimize the need for fills;*
- b. *The slope of fill surfaces shall not be steeper than is safe for the intended use and shall not be steeper than two horizontal to one vertical unless an engineering report finds that a steeper slope will be stable and not create a hazard to public or private property. Fill slopes shall not be constructed on natural slopes steeper than two horizontal to one vertical;*
- c. *Fills shall be set back from property lines so as not to endanger or disturb adjoining property;*
- d. *The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, topsoil and other unsuitable materials, and scarifying to provide a bond with the new fill;*
- e. *Any structural fill shall be designed by a registered engineer, in accordance with standard engineering practices.*

3. *Drainage.*

- a. *Proposed grading shall not alter drainage patterns so that additional storm water is directed onto adjoining property;*
- b. *All cut and fill slopes shall be provided with subsurface drainage as necessary for stability. (Ord. 98-5 § 1)*

Plans indicate the grading of the site to place a fifty-foot stability grade beam, north-to-south across the site, anchored in place by a micro-piling system to ensure bank stability for a proposed foundation of a residential structure.



It should be noted that, as Mr. Rondema states in his plan review, “this pile system is not relied on by any building foundation system for structural support. It is strictly dedicated to improving the lot stability.” The applicant states, “As shown in the drawings on sheet S5.01, the stability grade beam is intended to be placed below the existing ground surface at the site.” The City has placed conditions on the approval that prohibit tree removal and grading.

Plans shall meet the standards of CBMC 17.62.040(A), with conditions of approval.

17.92.010 Development permits.

{...}

2. *Administrative review of Type 2 development permits shall follow the following procedure:*

a. *The development permit application shall be reviewed by planning department against the applicable standards contained in this title and the application shall either be approved, approved with conditions, or denied.*

b. *A decision shall be made within twenty days of the receipt of a complete application.*

c. *The decision of the planning department shall be by signed written order. The order shall comply with Section 17.88.110(B). The written order is the final decision on the matter and the date of the order is the date that it is signed. The order becomes effective on the expiration of the appeal period, unless an appeal has been filed.*

d. *The applicant shall be notified of the decision in accordance with the provisions of Section 17.88.130. Property owners within one hundred feet of the exterior boundary of the subject property shall likewise be notified.*

e. *A decision on the development permit may be appealed to the planning commission in accordance with Section 17.88.140.*

17.88.110 Decision.

Following the procedure described in Section 17.88.060, the hearing body shall approve, approve with conditions or deny the application or if the hearing is in the nature of an appeal, affirm, affirm with modifications or additional conditions, reverse or remand the decision that is on appeal.

A. *The decision of the hearing body shall be by a written order signed by the chair or designee.*

B. *The order shall incorporate finding of facts and conclusions that include:*

1. *A statement of the applicable criteria and standards against which the proposal was tested;*

2. *A statement of the facts which the hearing body relied upon in establishing compliance or noncompliance with each applicable criteria or standards and briefly state how those facts support the decision;*

3. *In the case of a denial, it shall be sufficient to address only those criteria upon which the applicant failed to carry the burden of proof or, when appropriate, the facts in the record that support denial.*



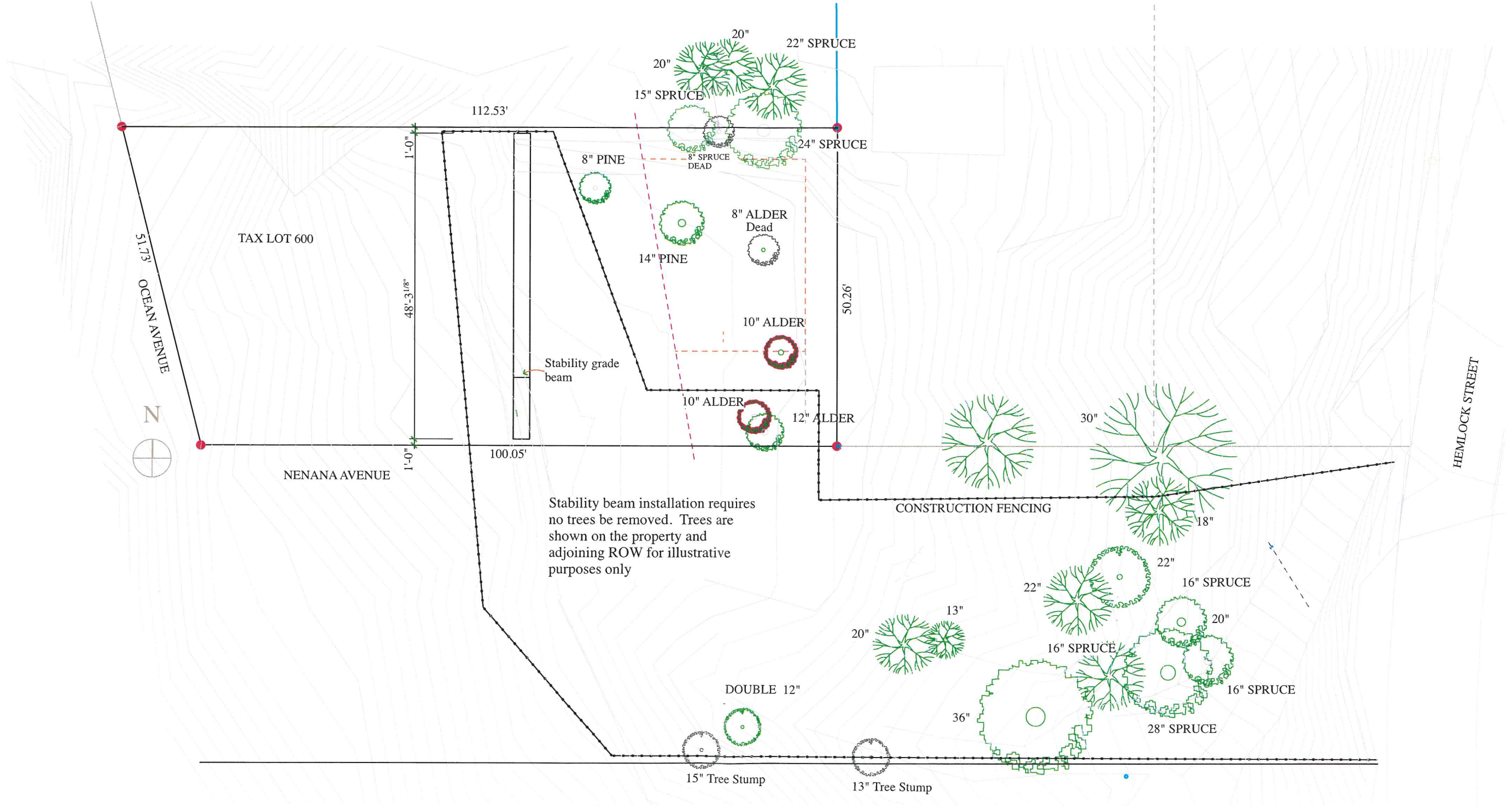
C. *The written order is the final decision on the matter and the date of the order is the date that it is signed. The order becomes effective on the expiration of the appeal period, unless an appeal has been filed*

CONCLUSIONS

The Community Development Department has reviewed the application, visited the site, and determined that the application meets the applicable criteria, upon the following conditions:

CONDITIONS

1. *The approval of this Development Permit is not dependent on any other permits, nor are any other permits dependent on this permit. This approval does not affect any other pending or future permits for other development, including in any way the pending permit for Nenana Road and/or any associated house plans. Should the construction of Nenana Road and/or the house not be approved or not go forward, The City will not be responsible for reimbursement for any work being performed under this permit. As it is the applicant's decision to seek these permits separately, each permit application will be reviewed and decided on its own merits;*
2. The Revised Sheet 1, of the Stability Grade Beam plans, dated September 15, 2021, by Jay Raskin Architect, states "Stability beam installation requires no trees be removed. Trees are shown on the property and adjoining ROW for illustrative purposes only." Applicant will notify City Public Works Department 24 hours prior to the commencement of work;
3. No tree removal or grading of city right-of-way is permitted as part of this development permit;
4. A site plan of the erosion control measures shall be approved by the Public Works Director prior to ground disturbance;
5. Work shall be completed as soon as possible and any ground disturbance of exposed surfaces during the wet season (November 1 through April 30) should be temporarily planted with grasses, or protected with erosion control blankets, hydro-mulch, or hand broadcast straw a minimum of 3 inches thick and punched into the soil;
6. Exposed sloped areas steeper than 3 horizontal-to-1 vertical should be protected with a straw erosion control blanket (North American Green S150, or equivalent) to provide erosion protection until permanent vegetation can be established. Erosion control blankets should be installed as per the manufacturer's recommendations;
7. The use of motorized equipment shall be limited to the hours between 7:00 AM and 7:00 PM per Municipal Code Section 8.1;
8. Existing city infrastructure shall not be disturbed and any damages shall be at the expense of the applicant;
9. A certified geo-tech should monitor the pile installation during construction to verify that the structure's design objectives have been achieved, and notice will be provided the City at least five days prior to site disturbance.





Cannon Beach Planning Commission

Staff Report:

PUBLIC HEARING AND CONSIDERATION OF **SR# 21-06**, DAVID VONADA APPLICATION, ON BEHALF OF PROPERTY OWNERS, JOHN AND BEVERLY HENRY, REQUESTING A SETBACK REDUCTION AT 1688 SOUTH HEMLOCK (TAXLOT 51030DA04103) FOR A REDUCTION OF THE REAR-YARD SETBACK OF 15 FEET TO 11 FEET AND 6 INCHES TO ALLOW FOR DECK - STAIRS FOR AN EXISTING RESIDENTIAL SINGLE-FAMILY STRUCTURE. THE PROPERTY IS IN THE RESIDENTIAL MEDIUM DENSITY (R2) ZONING DISTRICT. THE REQUEST WILL BE REVIEWED UNDER CANNON BEACH MUNICIPAL CODE, SECTION 17.64.010, SETBACK REDUCTION, PROVISIONS ESTABLISHED.

Agenda Date: November 23, 2021

Prepared By: Jeffrey S. Adams, PhD

GENERAL INFORMATION

NOTICE

Public notice for this November 23, 2021 Public Hearing is as follows:

- A. Notice was posted at area Post Offices on November 2, 2021;
- B. Notice was mailed on November 2, 2021 to surrounding landowners within 100' of the exterior boundaries of the property, Cannon Beach Rural Fire Department, Department of Land Conservation and Development;

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 October 19, 2021 unless otherwise noted.

"A" Exhibits – Application Materials

- A-1** Application packet, including **SR 21-06**, with attached narrative and site plan, dated October 15, 2021, received October 19, 2021;
- A-2** Lot Coverage Calculation, dated November 15, 2021;

"B" Exhibits – Agency Comments

None at the time of writing

"C" Exhibits – Cannon Beach Supplements

None at the time of writing

“D” Exhibits – Public Comment

- D-1** Dana and Matt Cardwell, email correspondence, dated November 4, 2021;
- D-2** Fil Alleva, email correspondence, dated November 5, 2021;
- D-3** Robert and Heidi Klonoff, email correspondence, dated November 6, 2021;
- D-4** Michael Tutmarc, Tutmarc Architects, Inc., email correspondence, dated November 7, 2021;
- D-5** Mike Bates, email correspondence, dated November 11, 2021;

BACKGROUND

David Vonada, on behalf of John Henry, is seeking a setback reduction of the rear-yard setback from 15 feet to 11 feet and six inches to allow for a new deck-stairs for an existing single-family residence, at 1688 S. Hemlock St., at taxlot# 51030DA04103.

The 5,717 square-foot (SF) Residential Medium Density Zoned (R2) lot is a through-lot accessed from S. Hemlock St., with rear-yard frontage along Forest Lawn.

The 2,882 SF existing residence, according to the Clatsop County Assessor’s Office records, was built in 1991.

As indicated on the CKI survey oceanfront setback survey from the Cannon Beach History By Location records (C-1), many of the homes and accessory structures located along this same stretch of Forest Lawn Rd. are non-conforming structures, placed well within the required yards adjacent to the Forest Lawn right-of-way, presumably due to the geological hazards presented by the sites along the oceanfront.

Many of the neighboring properties, including the recently approved Cardwell and Klonoff Properties at 1696 S. Hemlock and 1658 Forest Lawn, the new home at 1698 Forest Lawn and the homes at 1680 and 1740 Forest Lawn, have received setback reductions or variances over the past twenty years.

APPLICABLE CRITERIA

R2 Medium Density Residential Zoning District

17.14.040 Standards.

In an R2 zone, the following standards shall apply except as they may be modified through the design review process pursuant to Chapter 17.44:

A. Lot Size. Lot area shall be at least five thousand square feet, except that construction on lots of less than five thousand square feet is permitted subject to Section 17.82.020. The minimum lot size for a single-family dwelling shall be five thousand square feet. The minimum lot size for all uses, including single-family dwellings, shall be adjusted for average slope using the standards in Section 16.04.310(A).

B. Lot Dimensions.

- 1. Lot Width. Lot width shall be at least forty feet.*
- 2. Lot Depth. Lot depth shall be at least eighty feet.*
- 3. Front Yard. A front yard shall be at least fifteen feet.*
- 4. Side Yard. A side yard shall be at least five feet, except on a corner or through lot the minimum side yard from the street shall be fifteen feet.*
- 5. Rear Yard. A rear yard shall be at least fifteen feet, except on a corner or through lot it shall be a minimum of five feet, except where a rear lot line abuts a street, it shall be a minimum of fifteen feet.*

17.04.370 Lot, through.

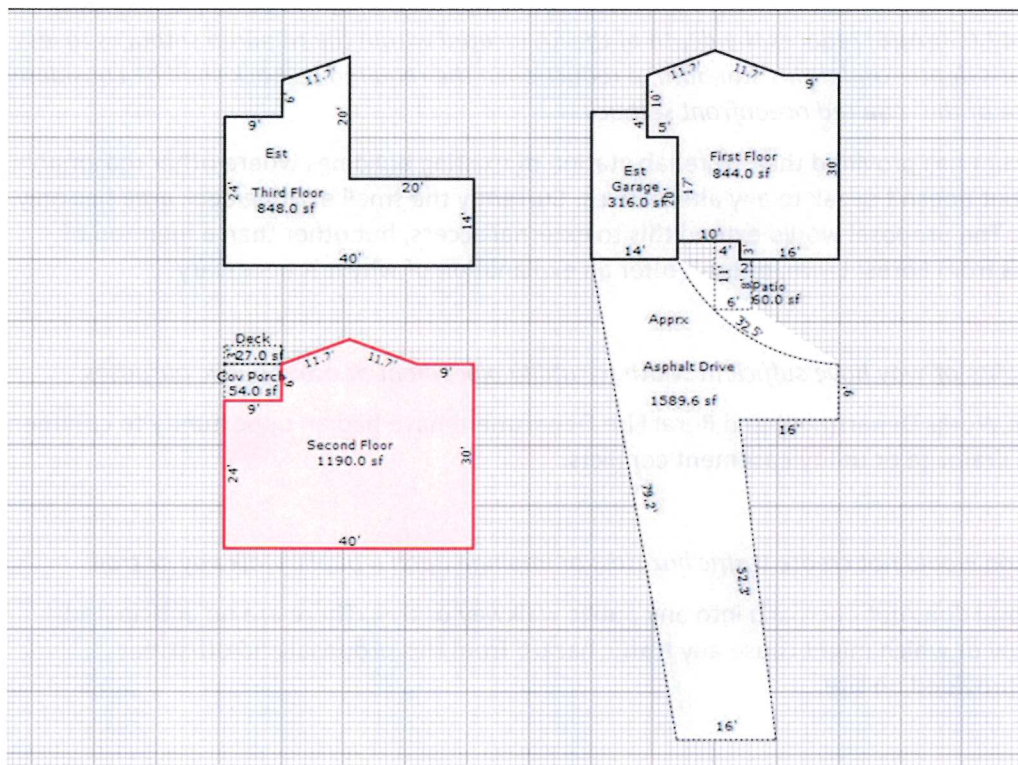
“Through lot” means a lot abutting two or more streets, other than an alley, that is not a corner lot.

Setback Reduction

17.64.010.A.1. Total building coverage shall not exceed forty percent.

Staff Comment: Total building coverage proposed is for 1,391 square-feet of a 5,717 square-foot lot, which would equate to 24% of the lot. The applicant has provided Lot Coverage calculations to show that the proposed addition would be well within the .5 requirement for the R22 district.

Floor Type	Sq Ft	Bedrooms	Bathrooms
First Floor	844	0	0.5
Second Floor	1190	0	1
Third Floor	848	0	1



17.64.010.A.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: The structure does not intrude into any viewsheds, as the structure depicted in the attached photos falls directly west of the existing residence and not within sightlines of any neighboring viewsheds. As of this writing we've had only proponents for the reduction from any neighbors that would be affected.

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

Staff Comment: Although no solar analysis has been provided, the solar impact to any adjoining properties should be negligible.

17.64.010.A.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 one 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 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.*

Staff Comment: The applicant has provided that '(f) rehabilitation of existing buildings where other reasonable alternatives do not exist,' but doesn't speak to any alternatives. Currently the small existing deck area has only an internal point of access. The proposal would extend this to external access, but other than a mention of improved fire/safety access from Forest Lawn, doesn't offer an explanation of why it is necessary.

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

Staff Comment: The Public Works Department and Rural Fire Department have had an opportunity to comment and there appear to be no drainage or utility easement conflicts.

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

Staff Comment: The proposal does not encroach into any public walkway or trail. There are no anticipated impacts to public traffic flow or which might cause any traffic hazard from this proposal and off-street residential parking will be provided on site.

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

Staff Comment: The extension west should have little impact on privacy to surrounding properties, but then again, that could be said of most setback reductions towards street-side yards. The impact will be to the public space of the Forest Lawn right-of-way.

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

Staff Comment: The nearest hydrants are within 150 feet from the subject property, accessible both north and south from S. Hemlock and Forest Lawn.

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 July 26, 2021; and determined to be complete on October 19, 2021. Based on this, the City must make a final decision before February 19, 2021.

The Planning Commission's November 23rd meeting will be the first evidentiary hearing on this revised 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 December 21, 2021.

PLANNING COMMISSION ACTION

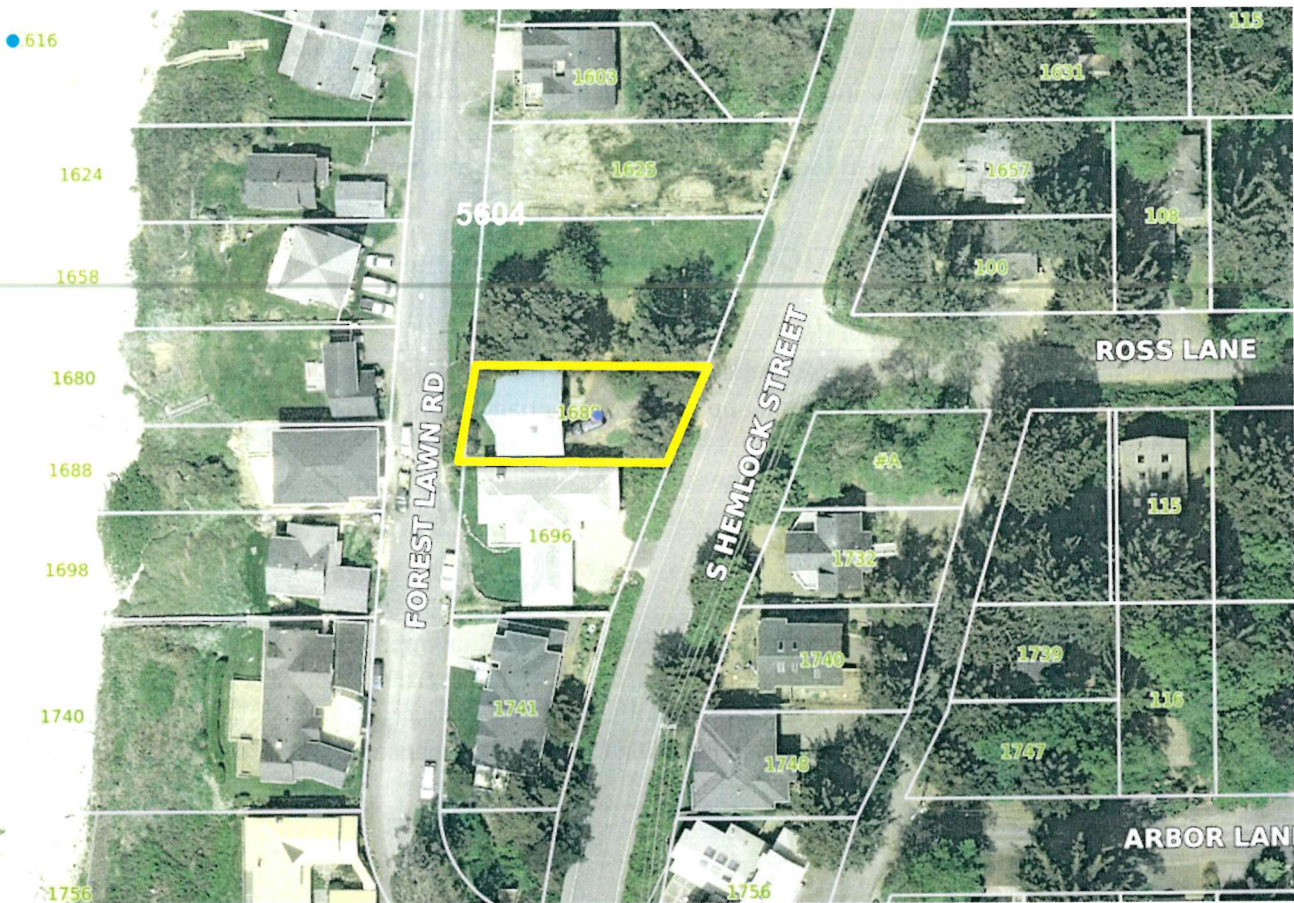
If the Commission wishes to review the Findings prior to final approval:

TENTATIVE MOTION: Having considered the evidence in the record, I move to *tentatively* (approve/approve with conditions/or deny) the David Vonada application, on behalf of John and Beverly Henry for a rear-yard setback reduction request of 15 feet to 11 feet and 6 inches, Cannon Beach Planning Commission application number **SR# 21-06**, as discussed (subject to the following conditions) and request staff to draft findings for review and adoption, at a special called meeting, next Thursday at 6PM, September 2nd at City Hall:

If the Commission does not wish to review the Findings prior to final approval:

MOTION: Having considered the evidence in the record, I move to (approve/approve with conditions/or deny) the David Vonada application, on behalf of John and Beverly Henry, for a rear-yard setback reduction request of 15 feet to 11 feet and 6 inches, Cannon Beach Planning Commission application number **SR# 21-06**, as discussed (subject to the following conditions):

Site Map:



Street View from S. Hemlock



Jeffrey Adams

From: Dana Cardwell <danacardwell@outlook.com>
Sent: Thursday, November 04, 2021 2:13 PM
To: Katie Hillenhagen; Jeffrey Adams
Cc: Matt Cardwell; David Vonada; JOHN HENRY
Subject: Setback Reduction Request for the Henry residence; 1688 S. Hemlock Street.

Follow Up Flag: Follow up
Flag Status: Flagged

My husband and I live next door to the Henry's and support their request for a set back reduction. Their project does not obstruct our views or reduce our privacy and will provide the Henry's with a safe entry and exit from the main living level of their house.

Dana & Matt Cardwell
1696 S. Hemlock St
Cannon Beach, OR 97110
303-941-9570

Jeffrey Adams

From: Fil Alleva <filalleva@hotmail.com>
Sent: Friday, November 05, 2021 9:00 AM
To: Katie Hillenhagen
Cc: Jeffrey Adams; David Vonada
Subject: Setback Reduction Request for the Henry residence; 1688 S. Hemlock Street

Follow Up Flag: Follow up
Flag Status: Flagged

To whom it concerns:

I am writing in support of the setback reduction request for the Henry residence backing onto Forest Lawn in order that they may install a stairway to enable egress/ingress from the west side of the house. As we understand it, the setback request is minimal and will have no impact on views or the use and enjoyment of our property.

-Fil
1680 Forest Lawn
Cannon Beach OR 97110

Jeffrey Adams

From: Heidi Klonoff <oliem@comcast.net>
Sent: Saturday, November 06, 2021 10:29 AM
To: Katie Hillenhagen
Cc: Jeffrey Adams; David Vonada; JOHN HENRY
Subject: John Henry Setback Application

Dear Friends,

We are writing to offer our support for John Henry's setback reduction application. We do not believe that the setback reduction will adversely affect the use and enjoyment by any other neighbor. In fact, we believe that the new exit stair will be an improvement to the reconstructed deck. Indeed, the new exit stair appears to be a necessary safety addition.

Sincerely,

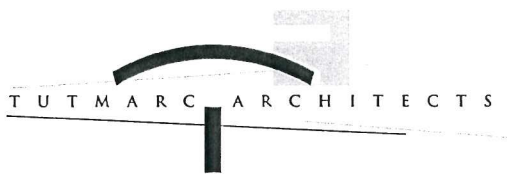
Robert and Heidi Klonoff
1658 Forest Lawn Rd.

Katie Hillenhagen

From: Michael Tutmarc <outlook_48A0C3F1E09301AF@outlook.com> on behalf of Michael Tutmarc <michael@tutmarc.com>
Sent: Sunday, November 7, 2021 8:53 AM
To: Katie Hillenhagen
Subject: SR 21-06

As owners of 1688 Forest Lawn Road, we do not have any objection to the setback reduction request of John Henry at 1688 S. Hemlock.

Thank you,
Michael Tutmarc
Tutmarc Architects Inc
Tutmarc Associates Inc



206-525-5502 office
206-459-9375 cell

Katie Hillenhagen

From: Mike Bates <mike.bates57@hotmail.com>
Sent: Thursday, November 11, 2021 11:58 AM
To: Katie Hillenhagen
Cc: David Vonada; Jeffrey Adams; johnhenry54@prodigy.net
Subject: Application for Setback Reduction SR21-06

My wife and I are owners and residents of the home at 1741 Forest Lawn Road, two houses south of the Henry residence. We have no objection to the proposed setback reduction to add a new entrance/exit stair on the reconstructed second floor deck of the Henry residence. The stairs will not affect views from or access to our property in any way whatsoever.

To be honest, I've often wondered why that house wasn't turned the proper direction to face West like most of the other houses on the street. The new steps will spare me the trouble of going around the house to the east facing entrance when I want to roust Mr. Henry out bed in the morning for a walk.

I kind of miss that fellow when he's not around.

Mike Bates

Sent from Mail for Windows



CITY OF CANNON BEACH

SETBACK REDUCTION APPLICATION

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

Applicant Name: David Vonada
 Email Address: david@tolanearchitects.com
 Mailing Address: P.O. Box 648 Tolana Park, Or. 97145
 Telephone: (503) 869-8688

Property-Owner Name: John Henry
 (if other than applicant)
 Mailing Address: 111 Repton Ln., Gilberts, IL. 60136
 Telephone: VS.
 Property Location: 1608 Lionlock St.
 (street address)
 Map No.: 51030 12A Tax Lot No.: 4103

SETBACK REDUCTION REQUEST:

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

Reduce the rear yard setback to add a new exit stair onto reconstructed second floor deck by 3'-6", from 15'-0" to 11'-6".

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

Construction of a new access stair as part of the remodel of the existing house for enhanced exiting from the second floor.

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;

Building coverage for the remodelled house to be 24% based on 1,391 sq. ft. footprint.

- (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;

There will be no significant views affected by this setback reduction

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

There will be no interference to solar access of adjoining buildings or properties by this setback reduction.

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

- Tree protection
- 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;

The improved portion of Forest Lawn is actually off-center to the west, away from the area reduced by this setback reduction.

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

This setback reduction will not create traffic hazards or impinge upon a public walkway or trail.

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

There will be no reduction in privacy to abutting properties.

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

The addition of the stair will enhance fire fighting access and exiting from the second floor of the house.

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: \$500.00

Applicant Signature: _____

David J. Jones

Date: _____

10/4/2021

Property Owner Signature: _____

David M. Jones

Date: _____

Oct 4, 2021

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: 10/19/2021

By: _____

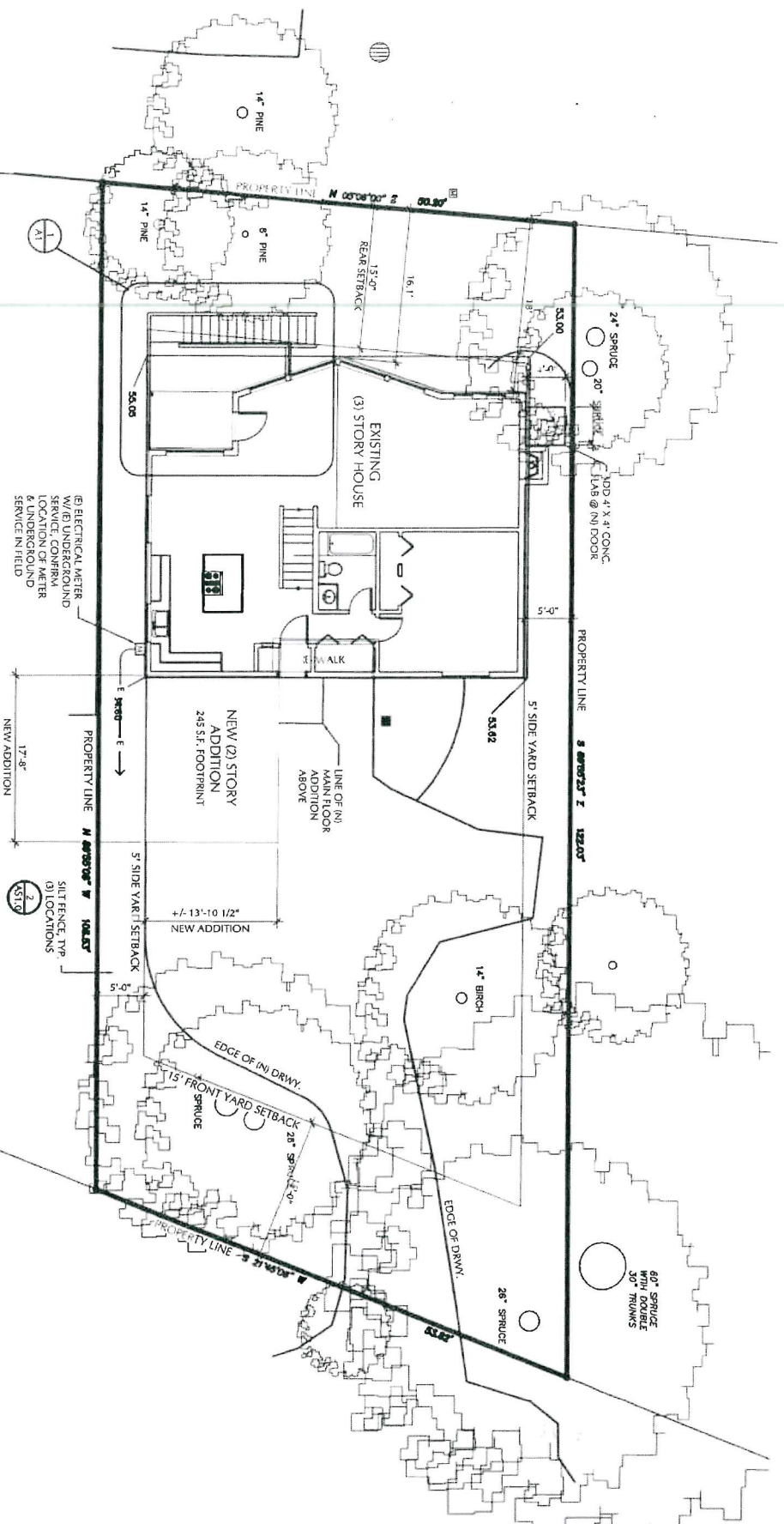
Fee Paid: _____

Receipt No: _____

(Last revised March 2021)


PAID






1 SITE PLAN
 1/8" = 1'-0"
 NTS.

SETBACK REDUCTION
HENRY RESIDENCE
 1688 HEMLOCK ST
 CANNON BEACH, OR 97110
 2021-10-15




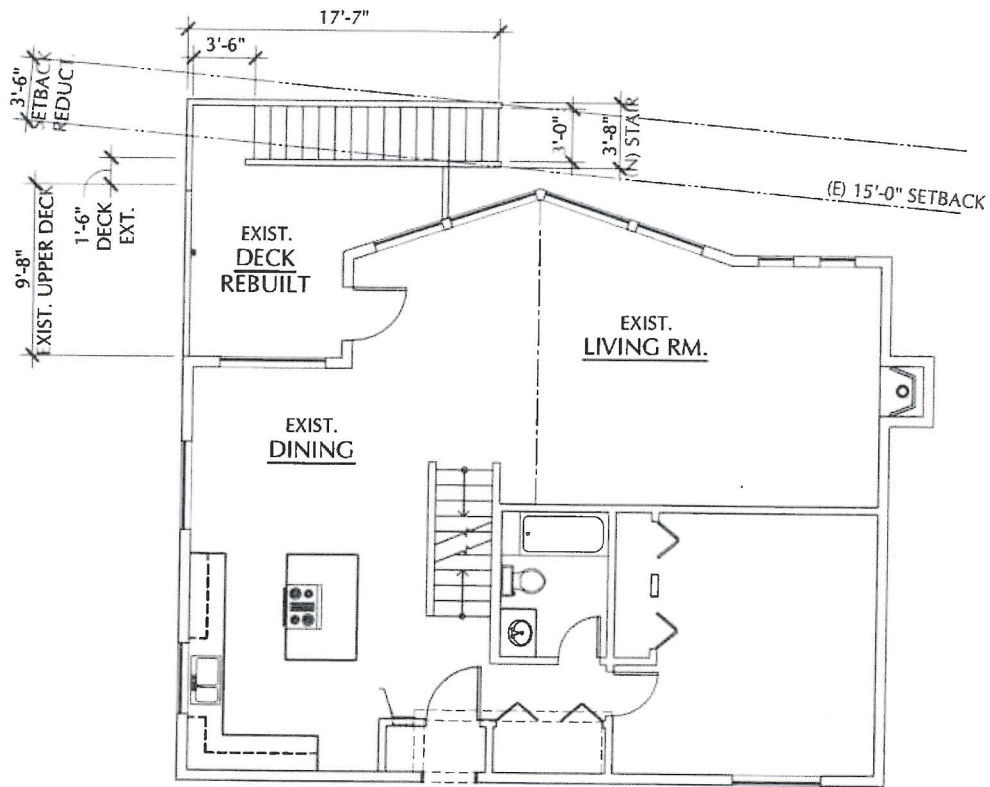
REF. N



Tolovana Architect LLC
 368 Elk Creek Rd. Suite 408
 Cannon Beach, Oregon 97110

COPYRIGHT
TOLOVANA ARCHITECTS, LLC
 2021





PROPOSED DECK STAIR

1/8" = 1'-0"

SETBACK REDUCTION
HENRY RESIDENCE
 1688 HEMLOCK ST
 CANNON BEACH, OR 97110
 2021-10-15



Tolovana Architect LLC
 368 Elk Creek Rd. Suite 408
 Cannon Beach, Oregon 97110

COPYRIGHT
 TOLOVANA ARCHITECTS, LLC
 2021



Worksheet – Lot Coverage

Lot Coverage: (Allowable lot coverage = lot size x .50)

D. Lot size:

5717 sq. ft. (D)

E. Lot Coverage:

1. Building Footprint Area:

House

844 sq. ft.~~Detached~~ Garage:316 sq. ft.

Accessory Structures:

sq. ft.

Total of Buildings:

1160 sq. ft. (E1)

2. Areas of structures over 30" above existing grade:

Porches:

sq. ft.

Decks: - NEW

84 sq. ft.

Stairways: - NEW

65 sq. ft.

Other:

sq. ft.

Total over 30":

149 sq. ft. (E2)

3. Paved or graveled area for required off-street parking:

324 sq. ft. (E3)

4a. Areas of improvements less than 30" above existing grade and graveled or paved areas other than required parking in 3 above.

Decks:

sq. ft.

Patios:

60 sq. ft.

Walks:

sq. ft.

Graveled/Paved: (minus E3)

1265 sq. ft.

Other:

sq. ft.

1589-324

Total under 30":

1325 sq. ft. (E4a)4b. Lot size (from D above):
x .50 x .25 =5717 sq. ft.
715 sq. ft. (E4b)

4c. If E4a is greater than E4b, then the remainder is counted:

E4a 1325 - E4b 715 = 610 (E4c)F. Add lines E1, E2, E3, and E4c and divide the total by line D.
If answer is .50 (50%) or less, the standard is met:E1: 1160 sq. ft.E2: 149 sq. ft.E3: 324 sq. ft.E4c: 610 sq. ft.Total: 2243 sq. ft.
(D): 5717 sq. ft.= 39 % Lot Coverage



CITY OF CANNON BEACH

November 2, 2021

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.

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 Katie Hillenhagen at (503) 436-8054 or email hillenhagen@ci.cannon-beach.or.us.

Sincerely,

Katie Hillenhagen
Administrative Assistant

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 23, 2021 at 6:00 p.m.** at City Hall, 163 E Gower Street, Cannon Beach, regarding the following:

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.

AA 21-02, 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 Nenena 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.

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.

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



Jeffrey C. Adams, PhD
Director of Community Development

Posted/Mailed: **November 2, 2021**



**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.

SR 21-06, Henry, 1688 S. Hemlock St.



SR21-06
1866 S Hemlock, Henry

TAXLOTKEY	SITUS_ADDR	OWNER_LINE	STREET_ADD	CITY	STATE	ZIP_CODE
51030DA11500	1724 View Point TER #A	Daniel Sullivan	3201 W 32nd Ave	Anchorage	AK	99517
51030DA11600	1732 View Point TER	Patricia Gonzalez	6501 113th Pl SE	Bellevue	WA	98006
51030DA04101		Ryan Snyder	PO Box 219	Cannon Beach	OR	97110
51030DA04102	1696 S Hemlock St	Dana Lynn Hartje Cardwell	171 Terrance Loop	Bozeman	MT	59718
51030DA04103	1688 Hemlock St	John Henry	111 Reston Ln	Gilberts	IL	60136
51030DA04105	1625 Forest Lawn Rd	Ryan & Stephanie Snyder	PO Box 219	Cannon Beach	OR	97110-0219
51030DA04500	1624 Forest Lawn Rd	Drake Nicholson	1802 Black Lake Blvd SW #301	Olympia	WA	98512
51030DA04600	1658 Forest Lawn Rd	Robert Klonoff	PO Box 902	Cannon Beach	OR	97110
51030DA04700	1680 Forest Lawn Rd	Fileno & Holly Alleva	28725 NE Tolt Hill Rd	Carnation	WA	98014
51030DA09100	100 Ross Ln	Sprague William B Jr Rev Trust 1/2	2915 Arbor Dr	West Linn	OR	97068-1107
51030DD00100	1688 Forest Lawn Rd	Michael Tutmarc	3857 45th Ave NE	Seattle	WA	98105-5450
51030DD00200	1698 Forest Lawn Rd	Steven Bruce Weed	11601 Holmes Point Dr NE	Kirkland	WA	98034
51030DD00300	1740 Forest Lawn Rd	Gregory & Teresa Hubert	3111 Hunts Point Cir	Hunts Point	WA	98004-1007
51030DD00402	1741 Forest Lawn Rd	Jay Michael Bates	PO Box 820	Cannon Beach	OR	97110
51030DD004800	1740 View Point TER	Diana McQuhae	714 Evergreen Rd	Lake Oswego	OR	97034

City of Cannon Beach

Building Codes Division

Tree Permit Applications

Month	2021
October	

[illegible]