

**Minutes of the  
CANNON BEACH PLANNING COMMISSION  
Tuesday, November 23, 2021**

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

Excused:

Staff: Director of Community Development Jeff Adams, Land Use Attorney Bill Kabeiseman, and Administrative Assistant Katie Hillenhagen

CALL TO ORDER

Chair Johnson called the meeting to order at 6:00 p.m.

ACTION ITEMS

**(1) Approval of Agenda**

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

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

**(2) Consideration of the Minutes for the Planning Commission Meeting of October 28, 2021**

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

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

**(3) Continuation and Consideration of ZO# 21-02, City of Cannon Beach request, for Subdivision and Zoning Ordinance Text Amendments.**

ZO 21-02, City of Cannon Beach is requesting Subdivision & Zoning Ordinance text amendments. The proposed amendments revise language restricting lot combinations, limiting single-family residential dwelling size, and further restricting lot coverage and floor area ratios for all residential districts, while repealing planned development language. The request will be reviewed under Cannon Beach Municipal Code 17.86.070 Amendments Criteria.

No one objected to the jurisdiction of the Planning Commission to hear this matter at this time. Chair Johnson asked if any Commissioner had any conflict of interest. There were none. Chair Johnson asked if any Commissioner had personal bias to declare. There were none. Chair Johnson asked if any

commissioner had any ex parte contacts to declare. There were none. The commissioners declared their site visits.

Adams read his staff report (see full staff report in the packet for details). Adams thanked everyone for bearing with the technical difficulties during the last meeting. He said that the Planning Commission had asked him to bring back language to make the current preexisting and nonconforming language consistent. The current nonconforming structure language does not allow a structure that is destroyed by a fire, or any force outside the owner's power, to be rebuilt as it was prior to that destruction. The proposed language would allow an owner in such a circumstance to build back the existing (nonconforming) structure. Adams noted that there had been some discussion as to why 3,500SF was picked as the max size for structures. He noted that an option was brought before the PC for scaling from 5,000 down to 3,000. The PC decided to go with one cap for all residences and came to agreement at 3,500SF. Adams also noted a request from Jan Siebert-Wahrmund to speak during public testimony.

Kerr thought they should clarify floor area vs gross floor area in the new language.

Adams said that the language was referring to the structure that was already there. Adams said that when they make a recommendation to the City Council, they can add gross in front of floor area.

Kerr asked if fair market value included the land as well as the structure.

Adams said that it was only for the structure.

Kerr thought that should be clarified in the language as well.

Newton asked for clarification on what would happen if a building that did not conform to the setbacks burned down or was similarly destroyed. Would the owner be able to be built it back where it was?

Adams clarified that yes, they would be able to.

Chair Johnson called for public testimony.

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

Chair Johnson asked if anyone had additional concerns.

Kerr reiterated wanting clarification of fair market value of the building and gross floor area.

Jan Siebert-Wahrmund, PO Box 778 Cannon Beach. Seibert-Wahrmund read a letter from herself and her husband, Wes (the full letter is attached at the end of these minutes for reference). The letter stated that they support the prohibition of the combining or recombining of lots. They also support getting rid of Planned Developments. They felt that the FAR should be limited to 2,000SF, including accessory structures, for lots of 6,499SF or less with grading up to 2,500 SF for lots larger than 6,499SF. They felt these limits would allow more trees to be preserved in the community.

Chair Johnson called for comments from the Planning Commission.

Kerr said that she is in agreement with Seibert-Wahrmund but she thinks that she is in the minority. She thinks that 3,500SF is very big.

Bernt said that it depends on what the FAR includes. He said that if it includes the garage that will jack the SF up pretty high. He thought 3,500SF might be more than necessary, but not that much more than necessary. He noted that at one point garages did not count against square footage. He said that he thought the rules they had were effective.

Newton said that one of the questions is scale. He looks at these changes as a placeholder that they can look at dealing with more effectively during the code audit. He thinks that a larger home would not look out of place in scale in some places, such as a large lot on the other side of 101. He thinks that they can come up with something more equitable later.

Kerr said she could accept that train of thought as making a lot of sense.

Johnson said that there seemed to be agreement with the Council in the joint session.

Newton said he thought he heard lower numbers at the joint session, but that this issue needs a deeper dive.

Kabeiseman clarified this is not a moratorium but a measure that can be fine-tuned in the future.

Newton noted that they have professionals to work with.

Patrick asked if they the current FAR includes garages.

Adams said that it does.

Patrick was concerned that people will opt not to build a garage to maximize their square footage.

Adams pointed out that whether or not they have a garage they will be required to have two parking spaces on their property.

Kerr did not think that people would do that because they use garages for various reasons.

Patrick said that she would rather see people use their garages as parking spaces than see cars in the driveway.

Bernt said that the Planning Commission is dealing with a lot of the current issues by not allowing people to combine lots.

Newton still had concerns about the preexisting language and asked for clarification. He thought the word *prior* could be broadly interpreted.

They discussed the proposed language and clarified that a structure that is destroyed could be rebuilt to the setbacks and FAR that existed prior to the structure being destroyed.

Chair Johnson asked if anyone would like to make a motion.

Newton asked how someone would make a motion to show that this is something that they wanted to revisit.

Kabeiseman suggested that if the PC is not comfortable with the proposed language they should continue it to the next meeting.

Motion: Kerr moved to recommend the proposed language to City Council with changes to include the word *gross* before *floor area* and to clarify fair market value by stating 'fair market value of the structure'; Bennett seconded the motion.

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

Johnson stated that it is passed on to the City Council.

**(4) Continuation and Consideration of AA# 21-01, Greg Hathaway request, on behalf of Jeff & Jennifer Harrison, for an Appeal of an Administrative Decision to approve a building/development permit.**

**AA 21-01**, Jeff and Jennifer Harrison appeal of the City's approval to issue a development/building permit for 544 N Laurel Street. The property is located at 544 N Laurel Street (Tax Lot 07000, Map 51019AD), and in a Residential Medium Density (R2) zone. The request will be reviewed pursuant to Municipal Code, Section 17.88.160, Review consisting of additional evidence or de novo review and applicable sections of the zoning ordinance, conditions of approval of the Cannon Beach Preservation Planned Development Subdivision and approved plat.

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

Adams read his staff report (see staff report in packet for full detail). Adams noted that there were comments received after the deadline, however, staff did not recommend reopening the record. Adams reminded the PC that they have the option to request tentative findings if they wish to review them. He also asked them to point out anything they would like to have addressed specifically in the findings.

Patrick asked if the Harding garage was originally approved.

Adams said that it was approved after the PUD was approved.

Johnson said that the heart of the discussion is if the loft of the garage is counted as finished. He said that from the pictures he has seen it looks like a finished loft area. He wanted to know how everyone else feels about that.

Kerr said that she agreed. She cannot imagine a storage space for a loft that is as nice as this one. She said that they mention it as potential office space in an add to sell the house.

Johnson said he had a loft in Portland that did not look as nice as this.

Kerr said that she thought that it was approved because once someone starts building something it is hard to go back. She thinks it is habitable and counts towards FAR. She thinks the appeal has merit. She also agreed that the singular language related to garages limited the property to one garage.

Newton said that he agreed. He thought the space was clearly finished. He voiced a concern with making sure that they are being equitable and not frustrating the building process for Mr. Najimi.

Kerr said she feels very objective about this. She thought the appeal arguments made complete sense. She is not sure how this will affect the people involved. She thinks that this is their chance to apply the conditions.

Kerr did not think that the threat of a lawsuit should come into their consideration. She thought that the Council made the decision that they did in the past under fear of a lawsuit.

Newton said that he hoped to provide a path forward and asked if the building permit could be approved if the garage was taken out.

Adams said that it could.

Newton asked Kabeiseman if there was a way to word their decision to provide a path forward and include conditions under which it could be approved. He suggested saying something like if garage is removed then it can be built.

Kabeiseman said he had concerns about saying if you do this then it is approved. He suggested that if they have issues with it, they should clearly state what is wrong. He believes that that provides a path without saying if you do this then it is approved. He noted that whoever does not win here will likely appeal the decision.

Patrick said that that is an excellent suggestion.

Kabeiseman suggested looking at the motion wording that Adams provided and using that when making a motion.

Motion: Patrick moved to tentatively reverse the administrative decision to approve a Development/Building Permit for 544 N. Laurel St.; Kerr seconded the motion.

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

**(5) Public Hearing and Consideration of AA# 21-02, Haystack Rock LLC request, for an Appeal of an Administrative Decision to approve a development permit.**

**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 Nenana Ave (Tax Lot 00600, Map 51031AA), and is in a Residential Lower Density (RL) zone. The appeal will be reviewed pursuant to Municipal Code, Section 17.92.010, Development Permits, Section 17.62 Grading, Erosion and Sedimentation Control, Section 17.50 Development Requirements for Potential Geologic Hazard Areas and Section 17.88.180, Review Consisting of Additional Evidence or de Novo Review and applicable sections of the zoning ordinance.

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

Adams read his staff report (see staff report in packet for full details). Adams noted that there was a request for a continuance from Mr. Rasmussen. He noted that Kabeiseman recommended hearing testimony from those who are here tonight and then continuing with written comments only or allowing testimony at the next meeting. He said that they can alter the 7-7-7 rule to accommodate the Thanksgiving Holiday.

Patrick asked when 120 days would be up. They will be up on February 2, 2022.

Adams noted that this lot is not a wetland lot of record.

Chair Johnson called for public testimony.

Chair Johnson stated that the pertinent criteria were listed in the staff report and criteria sheets next to the west door; testimony, arguments and evidence must be directed toward those criteria; failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal based on that issue; prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional testimony,

arguments or evidence regarding the application. The Planning Commission shall grant such requests by continuing the public hearing or leaving the record open for additional written testimony, arguments or evidence; persons who testify shall first receive recognition from the Chair, state their full name and mailing address, and if appearing in a representative capacity, identify whom they represent.

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

Fred Wilson with Kellington Law Group representing Stan and Rebecca Roberts. Wilson said that the Roberts wanted to build a 2,700SF house. The denial of the building permit for that house has been brought before LUBA, where the City's decision was upheld. That decision has been appealed. He noted that this permit is only for the stability beam and not the driveway or the house. If they build the "tiny house" (a smaller house for which a second set of plans has been submitted) the stability beam would be west of the house and would be completely separate. If they are not able to build at all the stability beam will still support the property. Wilson said that this is not a way to try to get approval for the house. He discussed the Geo Hazard Reports and noted that the standards have been met. Wilson said that most of the arguments raised in the appeal do not address these criteria and so are not relevant. He noted that they do not need to build a driveway to put in a stability beam. All they need for the stability beam is a right-of-way permit. Wilson offered to answer any questions.

Kerr said the house in the second application is about 1300 SF. She asked why they keep referring to it as tiny house. She said that international residential code defines a tiny house as 400-600 SF and a small house as 600-1000 SF.

Wilson agreed and said that it was referenced as that in the application, but he should probably call it the smaller house.

Newton asked what kind of right-of way permits they would need if the driveway were being developed.

Wilson said that he was not sure, he would probably have to have his engineers come in and talk about that. He reiterated that for the stability beam they would need a standard right-of way permit to remove the guardrail and use the existing driveway. Wilson commented on the continuance of the hearing and said that they would prefer that the record was left open for written comment, without another hearing. He said they would support it being open for a longer period of time because of the holiday.

Johnson said that using a 10-7-7 model would work.

Kabeiseman suggested getting input from other people throughout the meeting.

Chair Johnson called for opponents of the request.

Will Rasmussen. Rasmussen commented on the continuance stating that 10-7-7 sounded good to him with a potential option for brief 3-5min arguments at the next meeting.

Johnson said he would allow oral no longer than 10min.

Rasmussen said stability is part and partial to the house and should be treated as such. He noted that the location of the stability beam is in conjunction with the larger house they have planned and hope to build. He also noted that the Roberts have told the City and the press that they have no intention of building a smaller house. He read from an article in the Astorian where Mr. Roberts says he does not want to build a smaller house. Rasmussen said that the PC should consider that the primary purpose of this application is to build a house that has been denied. He said that access and staging needs to be part of the approval and needs to be considered by City Council because the proposed work affects unimproved Nenana Ave. He also said that if they decide to move forward, as staff suggests, they should attach conditions including the conditions that the stability beam should not be approved until the impacts on Nenana are considered and that no structure should be attached to the stability beam.

Chair Johnson asked for other opponents. There were none.

Chair Johnson asked for a last statement from the applicant.

Wilson reiterated that the only way they would use the stability beam for the larger house is if the Court of Appeals reverses the LUBA decision. He also reiterated that the arguments in the appeal do not have to do with the criteria for the development permit.

Chair Johnson asked for further staff response.

Adams suggested that conditions for approval could require that they do not attach to the stability beam in the oceanfront setback. In relation to Rasmussen's comments that the guardrail removal go before City Council, Adams said that was not his understanding but he and Kabeiseman will look at that. He noted that the City uses that same access to work on drainage in the area. Adams reiterated that this is only access to put in the stability beam, but not for the driveway.

Johnson asked if the stability beam can be put in the Oceanfront Setback.

Adams said that it could because it is not above 30".

Kabeiseman outlined the dates for written comment related to AA21-02. The first ten days for comment will end on Friday Dec 3<sup>rd</sup> and are for any party to submit. Seven days from that is Friday, Dec. 10<sup>th</sup> at 5pm, and this period is for rebuttal to new evidence. The last seven days are for the applicant to submit final argument, that period ends on Friday Dec 17<sup>th</sup>. On December 21<sup>st</sup> the PC will hear limited oral arguments limited to 10min for each party.

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

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



zone. The request will be reviewed against the Municipal Code, Section 17.64.010, Setback Reduction, Provisions established.

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

Adams read his staff report (see staff report in packet for full details). He noted that many homes on Forest Lawn have received setback reductions in the past. He said that the proposed work does not seem to affect any views and should not have an impact on solar access. Adams said that he had a question about why the staircase is necessary and said that Vonada could speak to that.

Chair Johnson asked if there was any additional correspondence. There was none, there were many commends, but they are all included in the material that the Commissioners have received.

Chair Johnson called for public testimony.

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

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

David Vonada PO Box 648 Tolovana Park. Vonada said that he is representing the Henrys. He reiterated the points Adams made in his Staff Report. Vonada said that this property is really sandwiched between Forest Lawn and Hemlock. It is fronted on Hemlock and would be better served being accessed from Forest lawn. Vonada said that the Henrys use Forest Lawn as access to the beach and would like to improve that access. He noted that they have received several letters of approval from neighbors. He also noted that the ROW is off center to the street, providing more buffer space around the property in addition to the setback. He spoke to Adams' question about alternatives. He said that if they cannot add a stair, they would likely opt not to reduce the size of the deck. He thought that a reasonable alternative would be to not have a stair in order to retain a reasonable sized deck. He said that that is an alternative, but one that is less desirable. Vonada reiterated that there is no significant impact on the neighborhood and asked if there were any questions.

Johnson asked when the house was built.

Adams said it was built in 1991.

Johnson asked what the square footage of the deck was.

Vonada said the deck is about 11 x 11.

Johnson said the deck looked very small. He asked what the pressing need for a larger deck is if they have lived with it for this long.

Vonada said that safety is an issue and the only place for this stair is on the west side.

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

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

No further response from staff.

Chair Johnson closed the hearing and moved to consideration.

Bennett said that it sounded like a reasonable request for safety purposes since it would allow them to get out of the house from the second floor.

Kerr wished the application was more fleshed out. She did not see criteria F addressed in the application. She thought that they should not rely on the fact that other people do it but should rely on the criteria.

Johnson thought they were hopping on to the fact that the PC has been lenient in this area.

Knop said that she thought the safety issue was a reason they should accept it.

Johnson said there are other ways to address that, he has a collapsible ladder.

Kerr just wished that had been fleshed out more.

Adams asked if she would entertain a continuance for more information on that.

Kerr said that she would. She suggested a continuance so that criteria F could be fleshed out.

Kabeiseman asked if they would prefer it be continued in writing or to a hearing.

They decided to continue the hearing to the next meeting on Tuesday, Dec. 21<sup>st</sup>.

#### INFORMATIONAL ITEMS

- (8) Tree Report**  
No comments.

**(9) Ongoing Planning Items**

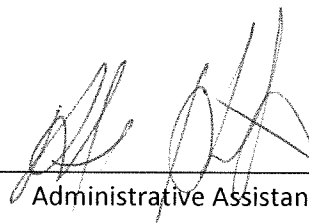
Adams said that the Code Audit will begin in January. The TSP will also be moving into the third phase so more should be out on that next year (@ [www.cannonbeachtsp.com](http://www.cannonbeachtsp.com)).

**(10) Good of the Order**

Johnson noted the commissioner terms that will be coming to an end next year. There will be several members who will be reaching the end of their term. He encouraged people to keep an eye out for possible replacements in the community.

**ADJOURNMENT**

The meeting adjourned at 7:52 pm.

A handwritten signature in black ink, appearing to read 'Katie Hillenhagen', is written over a horizontal line.

Administrative Assistant, Katie Hillenhagen