

**Minutes of the
CANNON BEACH PLANNING COMMISSION
Thursday, June 24, 2021**

Present: Chair Daryl Johnson & 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: Kerr moved to approve the agenda as presented; Bennett seconded the motion.

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

(2) Consideration of the Minutes for the Planning Commission Meeting of May 27, 2021

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

Vote: Kerr, Newton, Knop, Bernt, Patrick and Chair Johnson voted AYE; Bennett abstained because he was not at the last meeting; the motion passed.

(3) Public Hearing and Consideration of ZO 21-01, Will Rasmussen request, on behalf of Haystack Rock LLC, for a zoning ordinance text amendment regarding notice requirements for development and conditional use permitting of new roads or driveways utilizing public rights-of-way.

Will Rasmussen on behalf of Haystack Rock LLC, for a text amendment regarding notice and procedural requirements for conditional use permitting when extending access and utilization of public rights-of-way located in oceanfront management and wetland overlay areas. The request will be reviewed against the criteria of the Municipal Code, Section 17.86.070.A, 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.

Adams reminded people to take the transportation survey on the TSP website. He then read his staff report (see staff report in packet for full details). The zoning amendment proposal changes the extension of roads or driveways in oceanfront or wetlands areas from a development permit to a conditional use. Adams noted that one of the comments received said that this should be quasi-judicial. He disagreed with this and showed a map demonstrating all the areas that would be affected by the change. There are many areas and properties that would be affected. This change would trigger public notice and a Planning Commission hearing where conditions could be placed on roadway development in the oceanfront and wetland areas.

Kerr asked for clarification if what was written in the letter about this applying to a particular lot was true.

Kabeiseman said that it appears to apply in a significant portion of the City.

It was noted that a request for continuance was in the comment submitted.

Chair Johnson said he would have Rasmussen make his statement and then go from there.

Rasmussen pointed out that in most districts he works in they do not let you put a highway in a wetland or oceanfront overlay area without some sort of process. He said that he submitted a narrower proposal and staff suggested making it broader by incorporating wetlands. Rasmussen welcomed the input from MR. Stamp and the Roberts and went over some of the comments from Mr. Stamp's letter. He said that this does not apply to a specific property, so it is not quasi-judicial. He noted that there are no wetlands on the Roberts property, so it does not affect their property. Rasmussen brought up the gold post rule and said that it does not apply in this case since the Roberts do not currently have a land use application submitted.

Kerr agreed that most jurisdictions in Oregon have a rule like this. She said that it seems like a no brainer to her, it is bringing their code up to snuff.

Newton asked if Kabeiseman had concerns about anything brought up on the letter or the timing of any applications.

Kabeiseman said that they should hear from citizens who have comment, but he saw no issues. He went over the gold post rule which says that any application filed before a zoning change is not affected by that change.

Patrick said that she was uncomfortable with the way it was presented and the rush to get it completed.

Kabeiseman said she has the right to continue or oppose it. He suggested not focusing on the fight between the neighbors, but rather what is better for the City. Is this good policy for the City? Is it what we want to see? Kabeiseman urged the Commission not to think of it as neighbors feuding and pointed out that the City has an obligation to review the application that has come in.

Newton asked about the Code Audit.

Adams said that was a discussion item for the end of the meeting. He went over the 2-track process. Track 1 items will start immediately, with the full code audit being a 9-month process with joint meetings potentially starting in August.

Mr. Stamp, the attorney representing the Roberts, spoke next. He said that the timing of this application is suspicious, and that the proposal is made by the neighbors that are feuding with the Roberts. He said that it looks like Cannon Beach good old boys helping each other out. He said that the fact that they did not get notice confirms that. He said that this is not about the notice but more about conditional use criteria. Once you make something a conditional use you can deny it. You can decide by discretionary criteria to deny access and therefore development rights. He said that the applicants do not care about notice, they want to stop development on tax lot 600. Stamp said that he does not think that most areas do this. He knows of this for new roads, but not existing right of ways that are platted. If access is denied on Nenana, they would have a right to seek a way of necessity. He noted that maybe that is better. He said that the Roberts want to put a private drive on Nenana and that there is no other lot that needs access. He noted that a hiking road could be accommodated in the future. He emphasized that denying a conditional use would deny access and affect the property. He spoke to the gold post rule, noting that 3 applications were submitted. Two of these applications were tabled and only one was processed. He also said that they will submit a new application before this is passed. Stamp asked for a continuance so that they could do research about what other jurisdictions do. They only found out about the application the night before the hearing. He thought this would be quasi-judicial but will have to look at it more closely.

Rasmussen said that the suggestion that he is a Cannon Beach good old boy warms his heart. He said that a few applications ago he was the bad guy. He noted that if the PC recommends this there will be time to comment when it goes to City Council. Rasmussen asked the PC to weight the proposal on its merits.

Adams responded to the suggestion that there was collusion between the City and the applicant. He pointed out that he initially suggested tabling the application and reviewing it during the code audit. He then worked with the applicant to broaden the scope in case the Planning Commission did decide to take it up immediately. Adams welcomed Stamp to look back on all this in the record. Additionally, Adams pointed out that the Roberts can get notice from the newspaper, the City's website or posted agendas.

Kabeiseman said that Haystack Rock was free to submit this and that, just as with any other application, the PC is required to hold a public hearing when an application comes in. If approved, it goes to the City Council, and they can choose to hold a hearing or not.

Motion: Kerr moved to forward the amendments to the City Council; Knop seconded the motion.

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

Johnson stated the proposal is approved.

(4) Public Hearing and Consideration of SR 21-04, James Adams & Kerry Burg, property owners of 264 W. Kenai Street, for a Setback Reduction of the rear-yard setback requirement for an accessory structure at an existing single-family residence.

James Adams & Kerry Burg, application to allow a setback reduction to reduce the rear yard setback from the required 15 feet to 7 feet to rebuild the existing garage/shed, according to chapter 17.12 Residential Moderate Density Zone of the Municipal Code. The property is located at 264 W. Kenai St. (Tax Lot 06901, Map 41006BC) in the Residential Moderate Density (R1) 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). Adams highlighted that the application is in relation to an existing non-conforming structure. The structure was likely in existence prior to the zoning code. Any change increasing the non-conformity of a structure requires a hearing. Adams went over the criteria. He said that he did not think that the proposed changes negatively affected any views, traffic hazards, or the privacy of abutting properties. Adams recommended approval. He also highlighted public comment that asked about if the height of the structure would be increased. His understanding was that there would be no change to the elevation of the structure or the turret. Adams noted that the structure is in a unique area, he did a site visit and recommends preserving the historic structure.

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.

James Adams. PO Box 91 Tolovana Park. James said that the shed was there when they bought the property and noted that it was much cuter than the rest of the property. He said that there is a view corridor between the houses that all the neighbors enjoy. All the neighbors hoped they could keep the shed where it is so that it does not affect their ocean view. He said that they want to make it a little wider to park a car there, but that they do not want to make it look different. Did not realize when they bought it that it was non-conforming.

Johnson asked what direction the structure would be expanded into.

James Adams explained that they will be expanding to the east by less than 2 feet.

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

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

There was no further response from staff.

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

Chair Johnson closed the hearing.

Motion: Bennet moved to approve the request; Patrick seconded the motion.

Vote: Newton, Bennett, Knop, Patrick and Chair Johnson voted AYE; Bernt voted NAY (Kerr had to leave early and did not vote on this application). The motion passed.

Johnson stated the project is approved.

Authorization to Sign the Appropriate Orders

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

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

INFORMATIONAL ITEMS

(8) Tree Report

No comments.

(9) Ongoing Planning Items

Adams gave a Code Audit Update. He said that the City is in the middle of negotiating and signing the contract with the applicant. The applicant is Urbsworks. He will put their proposal in the next packet. The applicant has proposed doing 3-4 joint meetings with the Planning Commission, Design Review Board and City Council. He said there is major concern in the community about housing sizes (maximizing Lot Coverage and FAR), the combining of lots, and planned developments. These concerns are so pressing that they are proposing a two-track process. One for the most pressing concerns, that would be at the earliest possible time, and one for the rest of the code audit. The full code audit will take around 9 months to complete.

Bernt asked where the input is.

Adams went over the joint sessions and their dates.

Bernt asked who would be drafting the amendments.

Adams said that he would be drafting them and that he will offer three options to address each issue. He will bring these to a work session where they can discuss and decide what approach they would like to choose. Adams noted that items in the two-track process can also be tweaked or changed in the full code audit process. Adams asked for thoughts or questions.

Newton asked if the consultant group would be present in the works sessions.

Adams said yes, they would, and hopefully in person.

Newton asked for an update on the Nicholson PUD. He wanted clarification on if a homeowner's association was a requirement.

Adams said that the original decision did not require a homeowner's association.

Newton asked what happened with the discussion between homeowners in the area about creating one.

Adams said that he emailed them today for an update. He said that the last time he spoke with them it was on hold because of the Najimi LUBA case. Adams noted that the recent LUBA decision said that the Najimis must remove the turret and that the City cannot go back and look at other issues established in the PUD.

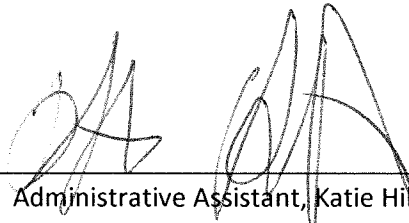
Newton asked for an update on the living wall.

Adams said that the last he spoke with them they were getting more plants. He also requested an inspection so he can update the PC.

(10) Good of the Order

ADJOURNMENT

The meeting adjourned at 7:04 pm.



Administrative Assistant, Katie Hillenhagen