



BEFORE THE CITY OF CANNON BEACH

IN THE MATTER OF A DEVELOPMENT)	FINDINGS OF FACT,
PERMIT FOR TAXLOT# <u>51031AA00600</u>)	CONCLUSIONS, AND
FOR CONSTRUCTION OF A NEW SINGLE-FAMILY)	ORDER DP# 20-04
RESIDENCE IN CONJUNCTION WITH A BUILDING PERMIT)	

IN ZONE: RL/OM

APPLICANT: Stanley A. Roberts
925 Lake St., # 201
Kirkland, WA 98033

The above-named applicant applied to the City for review and approval of a type I development permit in conjunction with a building permit for the development of a new residence and accompanying road development under the provisions of Chapter 17.92.010 of the Cannon Beach Municipal Code. The Community Development Director considered the above entitled matter and approved, with conditions, the development permit on 09/04/2020 as consistent with the City's land use regulations. 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 09/04/2020

Jeffrey S. Adams, PhD
Community Development Director



Attachment “A”
FINDINGS OF FACT
ROBERTS – DP#20-04

PROPERTY DESCRIPTION: Taxlot# 51031AA00600

PROPERTY LOCATION: Hemlock & Nenana

SUMMARY: Applicant, Stanley Roberts, is requesting to construct a new single-family residential structure, with a roadway extension of Nenana Avenue to service the residence. Tax lot 51031AA00600 abuts the oceanshore and requires an oceanfront setback line to locate the oceanyard and appropriate building envelope. The development permit reviews the application’s compliance with Title 17 of the Cannon Beach Municipal Code and also conditionally authorizes the development of the roadway and tree removal permits for the property.

CRITERIA:

Chapter 17.42 OCEANFRONT MANAGEMENT OVERLAY (OM) ZONE

17.42.050 General standards.

A. *The uses and activities permitted in all areas contained in the OM zone are subject to the following:*

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6. Oceanfront Setback. For all lots abutting the oceanshore, the ocean yard shall be determined by the oceanfront setback line.

a. The location of the oceanfront setback line for a given lot depends on the location of buildings on lots abutting the oceanshore in the vicinity of the proposed building site and upon the location and orientation of the Oregon Coordinate Line.

b. For the purpose of determining the oceanfront setback line, the term “building” refers to the residential or commercial structures on a lot. The term “building” does not include accessory structures.

c. The oceanfront setback line for a parcel is determined as follows:



- i. Determine the affected buildings; the affected buildings are those located one hundred feet north and one hundred feet south of the parcel's side lot lines.*
- ii. Determine the setback from the Oregon Coordinate Line for each building identified in subsection (A)(6)(c)(i) of this section.*
- iii. Calculate the average of the setbacks of each of the buildings identified in subsection (A)(6)(c)(ii) of this section.*
- d. If there are no buildings identified by subsection (A)(6)(c)(i) of this section, then the oceanfront setback line shall be determined by buildings that are located two hundred feet north and two hundred feet south of the parcel's side lot lines.*
- e. Where a building identified by either subsection (A)(6)(c)(i) of this section or subsection (A)(6)(d) of this section extends beyond one hundred feet of the lot in question, only that portion of the building within one hundred feet of the lot in question is used to calculate the oceanfront setback.*
- f. The setback from the Oregon Coordinate Line is measured from the most oceanward point of a building which is thirty inches or higher above the grade at the point being measured. Projections into yards, which conform to Section 17.90.070, shall not be incorporated into the required measurements.*
- g. The oceanfront setback line shall be parallel with the Oregon Coordinate Line and measurements from buildings shall be perpendicular to the Oregon Coordinate Line.*
- h. The minimum ocean yard setback shall be fifteen feet.*
- i. Notwithstanding the above provisions, the building official may require a greater oceanfront setback where information in a geologic site investigation report indicates a greater setback is required to protect the building from erosion hazard.*
- j. As part of the approval of a subdivision, the city may approve the oceanfront setback for the lots contained in the subdivision. At the time of building construction, the oceanfront setback for such a lot shall be the setback established by the approved subdivision and not the oceanfront setback as it would be determined by subsections (A)(6)(a) through (i) of this section. Before granting a building permit, the building official shall receive assurance satisfactory to such official that the location of the oceanfront setback for said lot has been specified at the required location on the plat or has been incorporated into the deed restriction against the lot.*

Applicant has provided plans adhering to the base zoning setbacks, treating the property at the corner of unimproved Ocean Ave. and Nenana St., as a lot not abutting an oceanshore. The applicant has submitted arguments that the lot is not subject to the oceanfront setback, but the City concludes otherwise. The applicant has stated that the Ocean Ave. platted right-of-way is a 'buildable' lot, when it has historically never been interpreted in that manner by the City of Cannon Beach. This is also supported by context elsewhere in Chapter 17.42 where it refers to "lots or right-of-way" as distinct areas. In addition, the City's records reflect that the City has required other property owners, including properties fronting on Ocean Avenue between W.



Harrison and W. Adams Streets, to comply with the oceanfront setback requirements.

As discussed above, this property is subject to the oceanfront setback, but the application did not include a survey indicating the oceanfront setback line, as required by CBMC 17.42.050(A)(6). Nonetheless, it appears that it may be possible to comply with the oceanfront setback, or that the development may comply with the applicable setback through an approved setback reduction granted by the Planning Commission under CBMC 17.64.

Chapter 17.70 TREE REMOVAL AND PROTECTION

17.70.030 Additional requirements.

A. Where an applicant identifies the necessity to remove a tree pursuant to Section 17.70.020(A) or (B) the application shall include a complete ISA Tree Hazard Evaluation Form prepared by a certified arborist with the tree removal application. An ISA Tree Hazard Evaluation Form prepared by a certified arborist is not required where a tree removal permit proposes the removal of a dead tree pursuant to subsection C of this section, or where a tree removal permit proposes the removal of a tree pursuant to subsection F. Where an applicant identifies the necessity to remove a tree pursuant to Section 17.70.020(F), a certified arborist shall provide a report certifying the need to remove the tree for the health and vigor of surrounding trees.

B. For actions which require the issuance of a building permit, tree removal shall occur only after a building permit has been issued for the structure requiring the removal of the tree(s).

C. An application for the removal of a dead tree does not require an ISA Tree Hazard Evaluation Form prepared by a certified arborist.

D. The retention of trees shall be considered in the design of partitions, subdivisions or planned developments; placement of roads and utilities shall preserve trees wherever possible. The need to remove trees shall be considered in the review process for partitions, subdivisions or planned developments.

E. The preservation of trees shall provide a basis for consideration of a setback reduction or variance.

F. If the condition of a tree presents an immediate danger of collapse and if such potential collapse represents a clear and present hazard to persons or property, a tree removal permit is not required prior to tree removal. However, within seven days after the tree removal, the tree owner shall make application for an after-the-fact permit. Where a tree presents an immediate danger of collapse, a complete ISA Tree Hazard Evaluation Form prepared by a certified arborist is not required. Where a safety hazard exists, as defined by this subsection, the city may require the tree's removal. If the tree has not been removed after forty-eight hours, the city may remove the tree and charge the costs to the owner.

G. The city may require the replanting of trees to replace those being removed. Tree replanting shall be in conformance with the city's tree replacement policy, Section 17.70.040.

H. Decisions on the issuance of a tree removal permit may be appealed to the planning commission in accordance with Section 17.88.140(A).

I. For tree removal requests of trees located in a street right-of-way, or on property owned by the city, property owners within one hundred feet of the tree(s) requested for removal shall be notified of the proposed



action. The notification shall also be posted on the city's website, and on the bulletin board at City Hall, and at the Post Office. In making its decision on such a tree removal request, the city shall consider comments received within ten days of the date of the mailing of the property owner notification. To be considered, comments must address the tree removal criteria of Section 17.70.020. Any person who has commented on the tree removal request shall be notified of the city's decision and may appeal that decision in accordance with subsection H.

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Q. An application for a tree removal permit under Section 17.70.020(D), submitted under the direction of a certified tree arborist for removal of a tree(s) to construct a structure or development, must include the following:

- 1. A site plan showing the location of the tree(s) proposed for removal, the location of the proposed structure or development, and the location of any other trees six-inch DBH or larger on the subject property or off site (in the adjoining right-of-way or on adjacent property) whose root structure might be impacted by excavation associated with the proposed structure, or by soil compaction caused by vehicular traffic or storage of materials.*
- 2. Measures to be taken to avoid damaging trees not proposed for removal, both on the subject property and off site (in the adjoining right-of-way or on adjacent property).*
- 3. The area where a tree's root structure might be impacted by excavation, or where soil compaction caused by vehicular traffic or storage of materials might affect a tree's health, shall be known as a tree protection zone (TPZ).*
- 4. Prior to construction the TPZ shall be delineated by hi-visibility fencing a minimum of three and one-half feet tall, which shall be retained in place until completion of construction. Vehicular traffic, excavation and storage of materials shall be prohibited within the TPZ. (Ord. 19-3 § 1; Ord. 17-3 § 1; Ord. 14-4 §§ 6—12; Ord. 08-8 § 2; Ord. 98-22 §§ 2, 3; Ord. 97-30 § 1; Ord. 96-18 § 1; Ord. 90-10 § 1 (Appx. A § 42); Ord. 89-3 § 1; Ord. 79-4 § 1 (4.600) (3))*

The Cannon Beach Public Works Department will issue the tree removal permit for those trees located in the Cannon Beach right-of-way areas. The applicant has identified numerous trees for removal and those to be protected by construction fencing on the subject property, yet the exact number of trees, identified per section 17.70.030(Q) on the property and location of replacement trees per section 17.70.030(G) will be a condition of approval.

Chapter 17.92 ADMINISTRATIVE PROVISIONS

17.92.010 Development permits.

A. Permit Required.

1. A development permit is required for:

a. The construction, enlargement, alteration, repair, moving, improvement, removal, conversion or demolition of any structure or building which requires a building permit pursuant to either the State of Oregon, One and Two Family Dwelling Code, or the State of Oregon, Structural Specialty Code. (For the purpose of this section, these are referred to as Type 1 development permits.); or



b. An activity or structure specifically listed in this title as requiring a development permit. (For the purpose of this section, these are referred to as Type 2 or Type 3 development permits.)

2. In the case of a structure or building requiring a building permit, the development permit may be part of the building permit.

B. Application. A property owner or their designated representative may initiate a request for a development permit by filing an application with the city using forms provided by the city.

C. Administrative Review of Development Permits.

1. Administrative Review of Type 1 Development Permits. The building official shall issue a development permit to the applicant if the building official finds that the work described in an application for a development permit and the plans, specifications, and other data filed with the application conform to the requirements of this title, and any conditions imposed by a reviewing authority. A decision of the building official may be appealed to the planning commission in accordance with Section 17.88.140.

CONCLUSIONS

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

CONDITIONS

1. Prior to the issuance of a building permit, applicant shall provide a Tree Replacement Plan for the trees removed from the private property, as specified in Chapter 17.70.040 per 17.70.030(G).
2. Prior to the issuance of a building permit, the applicant shall provide Oceanfront Setback Survey confirming that all proposed structures conform to Chapter 17.42.050(A)(6), or a Setback Reduction approval from the Cannon Beach Planning Commission, under Chapter 17.64 authorizing a setback reduction for the structures on the site.
3. Prior to the issuance of a building permit, the applicant shall obtain a Right-of-Way Permit for construction staging and accessing the property through the City of Cannon Beach Director of Public Works.
4. Prior to the issuance of a building permit, the applicant shall obtain a Right-of-Way Permit for an approved Roadway for the extension of W. Nenana or acceptable access easement through the City of Cannon Beach Director of Public Works.
5. An approved building permit through the City of Cannon Beach Building Official.
6. No site disturbance, including grading, excavation, tree removal, or any other activity will be permitted on W. Nenana or the subject property prior to the issuance of a Right-of-Way permit.