

**Minutes of the
CANNON BEACH PLANNING COMMISSION**
Thursday, April 27, 2023

Present: Chair Clay Newton and Commissioners Anna Moritz, Mike Bates, Les Sinclair, Erik Ostrander, Dorian Farrow, and Aaron Matusick via Zoom

Excused: None

Staff: Land Use Attorney Bill Kabeiseman, City Manager Bruce St. Denis, City Planner Robert St. Clair, and Community Development Administrative Assistant Emily Bare

CALL TO ORDER

Chair Newton called the meeting to order at 6:02 p.m.

Chair Newton explained to the group that Action Item (4) SR 23-05 and VAC 23-01 would be continued until May 2023. The city has taken into consideration the public comments made and would like to take this opportunity to reassess the plans needed for this project to move forward in a way that everyone would be satisfied, and citizens' concerns could be reassured. Anyone who would like to make a public comment who will not be available for the May 2023 meeting shall be afforded the opportunity to express their concerns tonight.

ACTION ITEMS

(1) Approval of Agenda

Motion: Commissioner Sinclair moved to approve the amended agenda as presented with changes made to Action Item (4) SR 23-05 and VAC 23-01 which will be continued until May 2023. Commissioner Farrow seconded the motion to amend the agenda for discussion.

Vote: Sinclair, Matusick, Bates, Moritz, Bennett, Ostrander, and Chair Newton voted AYE; the motion passed

(2) Consideration of the Minutes for the Planning Commission Meeting of March 23, 2023

Motion: Commissioner Bates moved to approve the minutes; Commissioner Farrow seconded the motion.

Vote: Sinclair, Bates, Moritz, Matusick, Farrow, Ostrander, and Chair Newton voted AYE; the motion passed

(3) **Public Hearing and Consideration of AA#23-02, Mike Bates for an administrative appeal of the City's approval of Development Permit DP#23-10.**

AA#23-02, Mike Bates administrative appeal of the City's approval of a development permit, DP#23-10, for the construction of a mixed-use building at the intersection of First and Spruce Streets, Tax lot# 51030AA04402, a Limited Commercial (C1) zoned property. The appeal will be reviewed pursuant to Municipal Code section 17.88.180, Review Consisting of Additional Evidence or De Novo Review and applicable sections of the zoning ordinance.

Site Visits were made by Farrow, Sinclair, Ostrander, and Moritz.

Robert St. Clair Read the staff report.

Public Testimony

Applicant:

Mike Bates
PO Box 820
Cannon Beach, OR 97110

Bates presented a summary of claims to show the commission why he thought it was important to bring issues forward. Specifically, MC 17.22.050 (a) what is a common drive and a common street. Bates also spoke to MC 17.92.01(a) development permits (DP). DP may be part of the building permit, and in administrative language, the type one DP is an administrative land use decision that applies to projects with a binding building permit and not a building permit itself.

Lot coverage and full ratio requirements as described in the subject property zoning classification standards were questioned with a 51-48% difference claimed by Bates. Exhibit C-13 did not have enough information to determine the approval of the permit by the City of Cannon Beach.

Chair Newton asked Bates if it would make him feel better that the units were to be rented naturally because they would not qualify as short-term rentals. Commissioner Moritz explained that the mix use development could not be used for short term rentals.

Proponent:

Jan Siebert-Wahrmund

Siebert-Wahrmund expressed her support for the appeal and requested clarification for the 120-day rule dates for the Spruce and First Streets development. She requested confirmation on the dates that the appeal was received, deemed complete, what date the DP was submitted and appealed. Regarding the DRB and their decision concerning the development, the city must complete their review by June 8, 2023. Does the Planning Commission need to decide on this matter tonight?

Dave Doering
PO Box 276
Cannon Beach, OR 97110

Doering spoke to the committee and spoke about the outcome from the Design Review Board (DRB). The DRB continued this item because of exterior lighting issues, the landscape plan footprint was off as well as reservations about the Eastern elevation of the building.

Opponent:

Mike Morgan
PO Box 132
Cannon Beach, OR 97110

Morgan believes that St. Clair and Adams before him have put a lot of thought into this proposal. As a professional Planner, Morgan believes that this is a smoke screen being used to delay this project until a new wetland code can be written with a 50-foot buffer which would make this project unbuildable.

Chair Newton asked Morgan as a former planner how he feels about the landscape plan. Morgan spoke to the willows in the rear of the building which is largely on City property right-of-way.

David Vonada
PO Box 563
Cannon Beach, OR 97110

Representative of David Pietka, addressing the concerns of the DRB Chairman, we are in the process of updating the tree report which will be presented at next month's DRB Meeting.

Vonada spoke of his several years of experience in designing mixed use buildings in the same corridor of First and Spruce Streets. He has worked as an architect in Cannon Beach for over twenty years as well as working for several city planners. The code has not changed since the Ecola Square project was completed several years ago, directly to the west of the proposed structure. The code is being applied in the same way as before. He believes that Bates is delving into code that does not apply to this site.

Staff response: No

Mike Bates
PO Box 820
Cannon Beach, OR 97110

Bates stated that he wants to get passed the point in this city where a disagreement with the staff is a personal issue. Where disagreement with staff is being taken to a personal level. Bates requested an apology from Morgan as he has a way of insulting everyone. Bates went on to state that his motivations are heartfelt, and he is interested in protecting the wetland.

We needed affordable housing and when asked to put pencil to paper the developer backed down.

Public Record Closed 6:55pm

Commissioner Moritz complemented St. Clair and his job well done. Moritz asked Kabeiseman requesting clarification on separating the building and land use decisions. Moritz asked if at any time did the calculations ever exceeded 50% and no it did not.

Chair Newton inquired about Siebert-Wahrmund's questions regarding the timing and the 120-day rule as it applies to this appeal. St. Clair explained that there are two separate applications in effect. One is the application for the development permit which we are in the appeal process. The second application that was being referenced is that of the Design Review Board which is getting close to the 120-day process which the June 8, 2023, date is correct.

Sinclair asked about the timeframe of the 120 days. Is there a clock on the Planning Commission? Kabeiseman explained that this is a Land Use decision, it is a little fuzzy. Sinclair explained his thoughts with the common area. Moritz explained the methodology that the staff report as well as that of the architect which was reasonable to her. Moritz expressed her agreement with the driveway and parking areas.

Sinclair asked for clarification as to the process and significance of the development permit, building permit and DRB application and how it affects the Planning Commission. For example, if the appeal had not been filed, the Planning Commission never would have known about the situation. Kabeiseman explained that if changes to the application are made, and are significant enough, the applicant may have to submit a different/new application showing the extent of the changes. Example if the applicant is seeking an outcome from one committee or board which is inconsistent with the commission, a new application or amendment will be required.

Ostrander asked about the timing of when the numbers were calculated and when the appeal was submitted. The commission discussed the common area and how it is defined and split.

Motion: Commissioner Moritz made a motion that having considered the evidence on record, she moved to affirm the administrative decision to approve development permit DP 23-10 with regards to the Bates appeal AA 23-02. Sinclair seconded the motion.

Vote: Sinclair, Moritz, Matusick, Ostrander and Chair Newton voted AYE; the motion passed.

(4) **Public Hearing and Consideration of SR 23-05 and VAC 23-01, CIDA request on behalf of the City of Cannon Beach for a Setback Reduction and Street Vacation in conjunction with the Cannon Beach Elementary School rejuvenation project at 268 Beaver Ave.**

SR#23-05 and VAC 23-01 CIDA request on behalf of the City of Cannon Beach for a Setback Reduction and Street Vacation for the purpose of reducing the required setback to construct a covered entrance canopy and provide space for required off-street parking. The property is located at 268 Beaver Ave. (Tax Lots 4000, 4100, 4101, 4200, and 4301, Map 51020CB) in an Institutional (IN) zone. The request will be reviewed under Municipal Code section 17.64.010, Setback Reduction, and section 12.32, Street and Alley Vacation, provisions established.

Opponents:

Robert Mahoney
1930 S River
Portland, OR 97201

The City Manager and personnel have been very courteous to work with. Mahoney as well as his neighbor's property share a drive on Beaver and Antler Streets. His main concern is that the school and gym were abandoned because of the tsunami risk. He is concerned about the safety of pulling out into the one-way street. There are additional concerns about the availability of emergency personnel and vehicles having access.

Public Comment: None

No staff response.

Public Record Was Not Closed

(5) **Public Hearing and Consideration of ZO# 23-01, Jeffrey Moon request for a Comprehensive Plan Amendment & Zone Change at Tax lot# 51032BC00400.**

ZO#23-01, Jeffrey Moon proposed Comprehensive Plan Amendment & Zone Change for Taxlot 51032BC00400, an undeveloped property north of the intersection of East Surfcrest Ave. and U.S. Highway 101. The property is currently zoned (RVL) Residential Very Low Density, and the request is to change the zoning classification to (R2) Residential Medium Density. The request will be reviewed under Municipal Code section 17.86, Amendments, provisions established.

Site Visits by Commissioners Ostrander, St. Clair, Bates, Moritz and Chair Newton

St. Clair read the staff Report.

Additional correspondence by listed in Exhibit.

Public Comment:

Proponents:

Jeff Moon
220 Ogden Dr
Oregon City, OR 97045

Originally bought land in 2020 to have a residential plus cottage industry where they could build a new home for their mother, brother John Moon and operate their family's towing business; this request was denied in 2020. The family business will be closing in June 2023 and the business property at 280 Hemlock will be sold. The property in question is adjacent to his brother Steven's property. The reason for this designation request

is to move his mother to a smaller home which will be easier for her to manage. Moon is seeking rezoning to R2 because this designation coincides best with the grade and the slope of the property based on the geological reports that have a property R2 (residential medium density). The city's comprehensive plan and the State of Oregon's required continued growth of properties to provide permanent housing which this amendment aligns with. County tax records show adjacent neighbors on E Sustina St and E Chisana St have seventeen homes on those two streets, thirteen of which have owners with an address outside of Clatsop County. ODOT has approved the request for the property entrance to and from the property onto the highway and there will be a very limited amount of traffic. ODOT approved and is not concerned with the impact onto the highway traffic.

Farrow asked who would live in the third house. Moon explained that his brother John will be utilizing the third home. Farrow expressed his concern with traffic turning left off the highway and stopping traffic. Moon informed Farrow that there is room to put turn lanes in if ODOT felt it necessary because of the amount of space allowed for road widening.

Moritz asked why not ask for RL which would allow for four lots when all you are wanting is three. Moon expressed that he did not want to add his property as a subdivision. The city wanted to put the street so that access was on the very northwest side of the property. This process would affect the wetlands, requiring larger roads, sidewalks, and cul-de-sac. It would also effect getting sewer and other utility access from the west side.

Bates asked a zoning question. Moon spoke to the slope of the land. Ostrander asked questions regarding how the utilities will be placed, Moon explained that they will be going through his brother's property. The lawyer is currently working on the easements.

Proponents:

Steve Moon
PO Box 162
Cannon Beach, OR 97110

Moon expressed his support for his brother's request. He wanted to express his concern over some of the public comments received prior to the public hearing. Moon explained that any trees removed from the property were danger trees that were looked at and approved by two different arborists. Moon reiterated that the family just wants to continue to live in the city that they love and grew up in.

Staff support the approval with conditions as read by St. Clair.

Ostrander asked about possible additional tree removal, it appears that most of the trees are danger trees. The Moon brothers explained that the design and spacing of the homes was done in such a way to save as many trees as possible.

The Public Hearing closed at 8:08 pm.

Committee discussion

Moritz asked about why not rezone to RL to be consistent with what's across the west of the highway, which is zoned RL and R1. When you read the code MC 17.100.10 talks about RL for 20 to 31% slopes on the property.

Newton asked Kabeiseman regarding the letter submitted by the Fair Housing Administration. Have been very active in the last several years HLA, you need to allow more zoning with housing options. Kabeiseman spoke about spot zoning, and whether we can approve something that they did not request.

Motion: Commissioner Bates moves to reject the application based on the inappropriateness of the R2 zone requested. The commission urges the applicant to come back with a more appropriate zone request (RL). Commissioner Farrow seconded the motion.

Vote: Sinclair, Ostrander, Bates, Moritz, Matusick, Farrow, and Moritz and voted AYE; Chair Newton voted no. The motion passed 5:1.

WORK SESSION ITEMS

(6) Public Hearing and Continuation of SR#23-01, Mike Morgan request on behalf of Jeff and Miriam Taylor for a Setback Reduction for a porch addition to allow emergency access at 1956 S. Hemlock St.

SR 23-01, Mike Morgan, on behalf of Jeff and Miriam Taylor, application to allow a setback reduction to reduce the back yard setback from the required 15'0" to 5' to build a small porch of 72 square feet to be used as an emergency access. The property is located at 1956 S. Hemlock. (Tax Lot 04300, Map 51030DD), and in a Residential Low Density (RL) Zone. The request will be reviewed against the Municipal Code, section 17.64.010, Setback Reduction, provisions established.

Site visit: Farrow and Moritz

St. Clair read the staff report.

No additional Comments

Applicant presentation

Mike Morgan
PO Box 132
Cannon Beach, OR 97110

The goal is to save the trees both to the north, to the south and to the west. The homeowner is looking to build on the existing footprint which is right up against the retaining wall. The owners have decided that they could live with a six-foot six-inch setback reduction. There would be a very small intrusion into the setback and the post/supports for the porch rest on top of the retaining wall which means that there is no intrusion into the right-of-way (ROW). The Public Works Dept has issues with their ability to work in the City's ROW with a new seismic valve being placed along designated parts of the city's water system.

Moritz asked if the new house would meet the 15-foot setback. Morgan asked to defer to Vonada. Newton asked about the Geotech report.

Jeff and Miriam Taylor

The homeowners would prefer the fifteen-foot setback to save the trees, however they will do what they can to save the trees from the twelve-foot setback. The existing stairs are only six to seven feet tall, so they are of no use for the emergency exit but will not be removed as they are part of the existing retaining wall. A geological survey was completed and there might be a way to change the classification of it to get them to testify that the further we move down the hill the riskier the house building will become.

Sinclair wanted to verify that the space near the stairway wouldn't turn into a parking space. The door would be used to take walks and more than just an emergency exit. Once the house is built there will be a driveway that can be utilized for additional parking. That space is not meant to be permanent parking or overnight parking.

David Vonada
PO Box 563
Cannon Beach, OR 97110

The stairway currently on site would only be able to serve the second floor, because of that the homeowners are asking for a porch off the top floor.

There is a Geotech report and Vonada spoke to that report furthest east and closest to the retaining wall is the most stable, it will have a state-of-the-art foundation system.

Farrow asked if there was any legal requirement to have an emergency exit from a third floor, Vonada explained that an egress window is required, but the prudent thing to do is to have an easier way to vacate the home.

Proponents: None

Opponents:

Karen LaBonte
City Of Cannon Beach
Public Works Director

LaBonte reminded the committee that the fire chief signed the letter requesting that this setback be denied, and if a fire egress was truly an issue, he would have addressed such concerns.

Setbacks are there for a reason, not just for the safety of staff and staging equipment. Hemlock is a main thoroughfare, it used to be highway 101. This area still operates like a highway, people speed, there is an incline in the road, there is a blind factor in that space. When staff are there and working, the city tries to always keep one lane of traffic open, so people are not pushed out onto the highway, but their safety is first and foremost. When you look at OSHA's requirements, we need to have staging areas and open up as much space available. Setbacks and Right-of-Way spaces are there for multiple reasons.

LaBonte expressed her concerns regarding the parking issue on Hemlock in front of this residence. Morgan specifically calling out the desire to park there, he had a photograph of a vehicle parked there as a future desire. Just a few feet down the road at the Ninth Pinnacle home there is a house that we receive three to

four complaints a month for people parking, we send those calls straight over to the police department and code enforcement.

Bates asked if the reduction in the setback footage makes a difference. La Bonte explained that her biggest concern is the safety of her staff, and illegal parking effects that safety issue.

Chair Newton asked how this change will affect what is already a problem, LaBonte explained that because this house is not currently occupied that the problem hasn't been amplified.

No additional staff comments.

Morgan responded with comments regarding the possibility of fencing. And that the Taylor's are wanting to play ball with the city and not do that.

Taylor expressed his concerns and spoke to the attachment that was sent, Exhibit A-6 which speaks to the setback that they are requesting.

Morgan attempted to explain the change in setback of the house, he mis-spoke.

LaBonte explained that she has no concern with anything on the west side of the retaining wall.

Farrow asked if the stairs can be filled in, Taylor said that they could be used, but are not sure at this point. If they aren't utilized they will be filled in somehow. Newton asked who completed the Geotech.

Public hearing closed at 9:34

Committee Discussion

Farrow addressed his concerns that there are so many inconsistencies with this property. The stairs have different numbers. Moritz agreed with the same being the case with the footprint of the house and setbacks. Chair Newton is concerned that they haven't seen the Geotech report.

Bates believes that there has been a good compromise, however there is a non-conforming issue. The deck is in a different situation. Moritz would appreciate a tree report rather than say we will go forward and see if the tree survives.

Public Record re-opened at 9:50

Motion: Commissioner Moritz moved to continue application until Thursday May 25 at 6 pm for 90 days with a written submission of an arborist report, Geotech report and the plans that show the actual footprint including the east wall. On or about July 27, 2023. Bates seconded the motion.

Action: The Taylors will have twenty-one days to submit the additional information, the commission will meet in thirty days to hear it, and thirty days for an appeal to City Council if necessary, and a thirty day buffer. Kabeiseman explained the 777 rule.

- (7) **Public Hearing and Consideration of SR#23-03 and V#23-02, Mike Morgan request on behalf of Brett and Jennifer Tanzer for a Setback Reduction and request to exceed Floor Area Ratio limitations in conjunction with an Accessory Dwelling Unit at 663 Ocean Ave.**

SR#23-03 & V#23-02, Mike Morgan, on behalf of Brett and Jennifer Tanzer, requesting a setback reduction for the side and rear yard setbacks and a variance to exceed the floor area ratio limitations. The purpose of these applications is to allow for structural modifications to a pre-existing non-conforming detached garage and the addition of an Accessory Dwelling Unit. The property is in the Residential Medium Density (R2) zoning district. The request will be reviewed under Municipal Code section 17.64.010, Setback Reduction, and section 17.84, Variances, provisions established.

St. Clair read the staff report.

Public Testimony

Applicant Presentation

Mike Morgan
PO Box 132
Cannon Beach, OR 97110

The height of the ADU would rise 6 feet not 4 feet. The garage was built in the 1940's before there were zoning requirements in Cannon Beach. The garage will go down to 1 car garage, an ADU will be added on top of the garage. The tree will be saved, the ADU will be used for long term housing.

Moritz mentioned that the main house is a short-term rental, and Ostrander looked up the permit and verified that the STR permit is good until sometime in 2024.

Farrow asked some questions regarding set back reduction. The setbacks will stay the same, but it is required to go through the setback reduction.

Morgan explained that there isn't an arborist report, however they are giving the tree a larger footprint.

Proponent

Brett Tanzer
It is there intention to use the ADU as a long term rental

Opponent

Sara Charhon
15441 SE 164 PL
Trenton, WA

As of October, did have a view of Seal Rock and Ecola. She is concerned that they will have a wall of a house that will take away privacy and sunlight. The garage sits one foot seven inches from their property which

means that they will have a wall of a house that will sit on their property line. There is a window that faces their house that also gives them concern.

Chair Newton asked if the smaller footprint would help or be a tradeoff. Sara stated no, especially since there will be a tenant and it will be higher than 6 foot above the highest peak. There is great concern that there will be a tenant looking down in their backyard.

Staff Response approval with conditions

Brett Tanzer
3041 106th Ave SE
Bellevue, WA 98004

The intention is to rent the ADU as a long-term rental to supplement their retirement income.

Public Record Closed at 10:32 pm

Commission Discussion

Ostrander has concerns that the ADU will get rented along with the house as is often the case even though it is not allowed.

Bates and Newton discussed legal language and Farrow spoke to setbacks. Bates spoke about changing the window overlooking the neighbor's yard. We need affordable housing but acknowledge neighbors' concerns.

Motion SR 23-03: Commissioner Bates moved to approve application with conditions as listed . Farrow seconded.

Motion V23-02: Bates moved to approve variance Farrow seconded. Subject to all the conditions

Vote: Ostrander, Matusick, Moritz, Sinclair, Bates, Farrow, and Chair Newton voted AYE; the motion passed.

(8) Public Hearing and Consideration of SR#23-04, Brent Burton request for a Setback Reduction in conjunction with a new Single-Family Dwelling at Taxlot# 51030DD04302 on S. Hemlock St.

SR#23-04, Brent Burton application requesting a setback reduction to reduce the required front and side yard setbacks to construct a single-family dwelling on an undeveloped lot located near the intersection of S. Hemlock and Center Streets. The subject property (Tax Lot 04302, Map 51030DD) is in a Residential Low Density (RL) zone. The request will be reviewed under Municipal Code section 17.64.010, Setback Reduction, provisions established.

St. Clair read the Staff Report

Site visit: Moritz, Ostrander and Newton

Presentation by applicant

Brent Burton

PO Box 1938
North Plaines, OR 97133

The Burton's have owned property for over 10 years, they are looking to build a retirement home. Trying to build on the flattest part of the property. There will be an issue with parking. They will need a driveway so that people are not backing out on to Hemlock. If the set back is granted, there will no longer be an issue with parking. They would like to receive a setback reduction prior to the design of the building.

Bradley Cooley
85162 McBeth Rd
Eugene, OR 97405

Want to build SFR which will be owner occupied need setback for fifteen to five feet. No negative impacts on the street. Solar impacts would help the neighbors from the north. Will not exceed the forty five percent lot coverage, and do not want to build on the site slope. No negative impact on the neighboring views, right-of-way, privacy, and fire protection should not be affected by this build.

Sinclair asked how they envisioned accessing the property if not from Hemlock access. Burton explained that they will be utilizing access from center street. They plan on using a driveway that runs from the west side of the Taylor residence. They will be utilizing an underground driveway onto the slope of the property.

Proponent

Opponent

Karen LaBonte
City of Cannon Beach
Public Works Director

LaBonte expressed her concerns that a shared driveway may force the Taylor's to utilize parking on Hemlock that was discussed earlier in the meeting. The commission needs to be aware of this possibility.

Staff Response recommends approval with conditions.

Public Hearing closed at: 11:15pm

Commission Discussion

Bates and Moritz spoke to the lack of plans and/or footprint.

Motion: Commissioner Farrow moves to deny this application sinclair seconded the motion.

Vote: Commissioners Sinclair, Farrow, Bates, Moritz, Ostrander, Matusick and Chair Newton. All in favor said AYE.

Motion of orders

(7) Wetlands Discussion

No Items to discuss tonight.

INFORMATIONAL ITEMS

(8) Tree Report

St. Clair went over the March/April tree numbers utilizing the Public Notice Page of the City's website.

(9) Ongoing Planning Items

St. Dennis spoke to the ongoing recruitment for the Community Development Director

(10) Good of The Order

Conversation on leading discussions and bringing a voice to issues that are important to our community.
How the committee can be involved in driving the communication of hot topics in our community.

(11) Adjournment

ADJOURNMENT

The meeting adjourned at 11:15 pm.

Emily Bare
Community Development
Administrative Assistant