Minutes of the  
CANNON BEACH PLANNING COMMISSION  
Thursday, August 25, 2016

Present: Chair Robert Lundy; Commissioners Joseph Bernt, Charles Bennett, Lisa Kerr, Janet Patrick, and Robin Risley

Excused: Commissioner Hank Johnson

Staff: City Planner Mark Barnes and Administrative Assistant Alisha Gregory

CALL TO ORDER

Chair Lundy called the meeting to order at 5:58 p.m.

Lundy stated that after last month’s meeting, he did research on whether or not the Chair may second a motion. It appears it is allowed, however, it is frowned upon. It is also not necessary for the Chair to vote unless it is to break a tie. Lundy would like to follow these suggestions for future meetings.

ACTION ITEMS

(1) Approval of Agenda

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

Vote: Bennett, Bernt, Kerr, Patrick, and Risley voted AYE; the vote was 5/0 in favor and the motion passed.

(2) Consideration of the Minutes for the Planning Commission Meetings of July 21, 2016 and July 28, 2016

Lundy noted a correction on the July 28, 2016 minutes. On page three, paragraph six, it should be corrected to state Jan Siebert-Wahrmund “requested that the application not be approved…”.

Motion: Patrick moved to approve the minutes of July 21, 2016 as presented and July 28, 2016 as amended; Bernt seconded the motion.

Vote: Bennett, Bernt, Kerr, Patrick, and Risley voted AYE; the vote was 5/0 in favor and the motion passed.

(3) Continuation of the Public Hearing and Consideration of CP16-01: Housekeeping Amendments, Zoning Ordinance and Comprehensive Plan

Chair Lundy introduced the item, stating this hearing has been continued from the July 28, 2016 Planning Commission meeting.

Barnes summarized his staff report noting the suspension of the 5-yr transient lottery was removed from the City’s Strategic Plan, and asked the Planning Commission to remove it from the proposed amendments to the short-term rental ordinance. Moving the short-term rental chapter out of the zoning ordinance and into chapter 4 is still in consideration; and based on recommendations from City attorneys. Barnes reviewed the appeal process for land use items, noting that short-term rental permits coincide with business licenses and are not really considered land use items. Barnes reviewed the appeal process for non-land use items. Commissioners and Barnes discussed, at length, whether or not short-term rental permits should be considered land use.

Chair Lundy asked if there was additional correspondence. There was no additional correspondence for this item.
Chair Lundy 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 Lundy called for proponents of the request.

Jan Siebert-Wahrmund, PO Box 778, Cannon Beach OR 97110, representing Cannon Beach Friends of Trees, noted testimony given at the July 21, 2016 public hearing, adding the following requests: 1) under 17.70.030.i, second sentence “in making it’s decision on such a tree removal request, the city shall consider comments received within 10 days of the date of the mailing of the property owner notification.” Take out “property owner” before “comments”; this would clarify that any person of the community could comment on the request. This would be consistent with change noting any person that comments on removal will be a notified party of record and could appeal the decision. 2) That all tree removal permits be posted on the City’s website once they are received. A written copy of Siebert-Wahrmund’s testimony may be found in the meeting record file.

Chair Lundy called for opponents of the request.

Herb Florer, PO Box 546, Cannon Beach OR 97110, gave testimony regarding moving the short-term rental ordinance out of Chapter 17. He stated concerns with potential consequences of such a change, noting it may be debatable whether or not this is a land use issue. He believes the change is unnecessary and may remove the local process for short-term rental dwelling owners.

Frank Patrick, 255 NW Torryview Dr., Portland, OR 97229, gave testimony regarding the consideration to shorten the appeal period from 20 to 15 days. He questioned what the goal of this change is for the City, noting the appeal period is calendar days that includes weekends and holidays. He noted appeal periods for most litigation is 30 days. This allows time for due process.

Chair Lundy called for discussion of the proposed amendments. Barnes noted that the Commissioners may choose to close the hearing on some items and keep the hearing open on others. He also noted that the hearing may also be reopened on some items if necessary.

Chair Lundy closed the public hearing for the proposed shot-term rental amendment.

Motion: Kerr moved to recommend the City Council keep the short-term rental ordinance in Chapter 17 and not move it to Chapter 4; Patrick seconded the motion.

Kerr stated she believes moving the short-term rental ordinance from Chapter 17 may have a serious adverse effect on the due process rights of citizens on what is a very important issue. Risley and Patrick echoed Kerr’s concerns.

Vote: Bennett, Bernt, Kerr, Patrick, and Risley voted AYE; the vote was 5/0 in favor and the motion passed.

Chair Lundy closed the public hearing for the proposed dark sky ordinance amendments.

Motion: Bennett moved to recommend the City Council adopt the proposed amendments to the dark sky ordinance as presented; Bernt seconded the motion.

Vote: Bennett, Bernt, Kerr, Patrick, and Risley voted AYE; the vote was 5/0 in favor and the motion passed.
Chair Lundy closed the oral portion of the public hearing and kept the public hearing open for written testimony only for the proposed slope/density amendments. Kerr noted that Commissioner Johnson may have additional comments for this item.

Chair Lundy closed the public hearing for the proposed appeal period amendment.

Motion: Bernt moved to recommend the City Council keep the appeal period time at 20 days; Patrick seconded the motion.

Risley recommended the appeal period be lengthened and not shortened. Patrick noted a large percentage of second home owners that do not live in town and may not receive decision documents in a timely manner. The Commissioners discussed the 120-day decision deadline for the City on land-use applications. In response to discussion Barnes noted that larger jurisdictions may hold multiple monthly meetings in order to meet the 120-day deadline; larger jurisdictions may also hire a hearings officer instead of waiting for the application to go before the Planning Commission. The Commissioners discussed this in detail.

Vote: Bennett, Bernt, Kerr, Patrick, and Risley voted AYE; the vote was 5/0 in favor and the motion passed.

Chair Lundy closed the public hearing for the proposed government structures/schools amendment.

Motion: Bernt moved to recommend the City Council adopt the proposed amendment regarding government structures/schools as presented; Bennett seconded the motion.

Vote: Bennett, Bernt, Kerr, Patrick, and Risley voted AYE; the vote was 5/0 in favor and the motion passed.

Chair Lundy requested additional detail on the proposed Comprehensive Plan amendment regarding the Cannon Beach Elementary School site. Barnes reviewed the change in detail, noting that some policies refer to the school as if it were still operating.

Chair Lundy closed the public hearing for the proposed Cannon Beach Elementary School site amendment.

Motion: Kerr moved to recommend the City Council adopt the proposed amendment regarding the former Cannon Beach Elementary School as presented; Bernt seconded the motion.

Vote: Bennett, Bernt, Kerr, Patrick, and Risley voted AYE; the vote was 5/0 in favor and the motion passed.

Chair Lundy closed the oral portion of the public hearing and kept the public hearing open for written testimony only for the proposed hardscape/softscape amendments. Kerr noted that Johnson may have additional consideration for this item.

Chair Lundy recommended a change to the proposed amendment regarding PODS/storage containers. Lundy requested the amendment state that storage containers are allowed onsite to store contractor’s materials and equipment during construction. Chair Lundy closed the oral portion of the public hearing and kept the public hearing open for written testimony only for the proposed PODS/storage containers amendment.

Chair Lundy closed the public hearing for the proposed Planned Development amendments. The Commissioners discussed the proposed amendment. Barnes noted that the City Council asked for staff to make the changes in response to the City’s land use attorney’s recommendations, however, the City Council also asked the Commissioners consider the option of removing the Planned Development section completely. Kerr stated concerns voting on eliminating this section all together without the public having more input. She noted that the hearing notice did not make it clear that eliminating this section would be considered. Kerr expressed concern that the City Council does not take the Planning Commission’s recommendations seriously. Barnes stated that the City Council takes the Planning Commission’s recommendations into consideration on all matters and asks him to give a detailed summary of the reasons for the Planning Commission’s recommendations.
In response to discussion Chair Lundy reopened the public hearing for the proposed Planned Development amendments for both oral and written testimony.

Motion: Risley moved to re-notify all property owners within Cannon Beach of the proposed Planned Development amendments.

There was no second and the motion failed.

Motion: Kerr moved to continue the public hearing to the September 22, 2016 meeting and make the proposed Planned Development amendments a separate item on the agenda; noting the consideration to delete this section from the Zoning Ordinance; Patrick seconded the motion.

Frank Patrick, 255 NW Torryview Dr., Portland, OR 97229, stated that he believes a Comprehensive Plan amendment may be needed if the City is considering the deletion of the Planned Development chapter.

Barnes stated that he communicated with several property owners about the possible deletion and has not received any written or oral testimony in support or against this proposed amendment. Commissioner Patrick noted that the Planned Development chapter may be useful when considering affordable housing options.

Vote: Bennett, Bernt, Kerr, Patrick, and Risley voted AYE; the vote was 5/0 in favor and the motion passed.

Chair Lundy recommended the public hearing be left open for the proposed tree removal ordinance amendments, requesting that Siebert-Wahrmund’s recommendations be incorporated into the draft amendments for consideration at the September 22, 2016 meeting. The Commissioners all agreed to this recommendation.

Continuation of the Public Hearing and Consideration of SR 16-01, Request by David Gemma for a Front-yard Setback Reduction in Conjunction with the Replacement of an Existing Deck at 150 N Larch Street

-and-

Public Hearing and Consideration of V 16-04, Request by David Gemma for a Variance to the Maximum Allowed Lot Coverage in Conjunction with the Replacement of an Existing Deck at 150 N Larch Street

Chair Lundy introduced the item, noting the setback reduction request will be reviewed against the criteria of the Municipal Code, Chapter 17.64, Setback Reduction. The variance request will be reviewed against the criteria of Municipal Code, Chapter 17.84, Variances. Chair Lundy noted that the hearing for the setback reduction request has been continued from the July 28, 2016 Planning Commission meeting.

No one objected to the jurisdiction of the Planning Commission to hear this matter at this time. Chair Lundy asked if any Commissioner had any conflict of interest. There were none. Chair Lundy asked if any Commissioners had any personal bias to declare. There were none. Chair Lundy asked if any Commissioner had any ex parte contacts. There were none. Chair Lundy asked if any Commissioner had made a site visit. Site visits were declared.

Barnes summarized his staff report noting the substance of the setback reduction requests remains the same as last month. Barnes noted site plan modifications that can be found in the Commissioner’s packets. Regarding the variance request, Barnes stated that when the original setback reduction application was filed the lot coverage issue was not yet known. Barnes reviewed the application in detail. He noted if the Commissioners reach a decision tonight they can vote for both applications with one motion, or two separate motions.

Chair Lundy asked if there was additional correspondence. Barnes stated there is no additional correspondence.

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

David Gemma, 2843 SE Evelyn Pl, Gresham OR 97080, presented his application. Gemma summarized a meeting with Barnes regarding the application, noting the uniqueness of the lot. In response to Commissioners’ recommendation to install grasscrete to meet the lot coverage requirements, Gemma stated he researched several landscape companies and concluded that it would be an expensive project and not affordable. He noted the installation of grasscrete would double the cost of the proposed deck replacement project. Gemma gave a history of the property and the unique cul de sac. Gemma responded to submitted written testimony from neighbors, stating they are sensitive to their requests. Gemma is able to comply with all the neighbors’ requests but one. Gemma noted that a solid railing to hide the deck from public view, which is the existing railing, contributed to the rotting of the joists and therefore he prefers to not use solid railing.

In response to a question from Lundy, Gemma stated that grasscrete or hardy grass would not be appropriate planting as the garbage company serves five homes on that street and utilize the cul de sac to do so; along with emergency vehicle access. It would be impossible to maintain plantings at that location. Gemma reiterated the difficulty for this lot to meet planning code due to the lot’s uniqueness.

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

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

Chair Lundy asked for a staff response. Barnes had no additional comments.

Chair Lundy asked if the applicant wished to make any additional statements. The applicant did not.

Bernt noted concerns with the size of the lot coverage variance being requested. In response to additional concerns from Bernt, Gemma noted that it is not the grasscrete that would cause an issue with the garbage truck accessing the cul de sac, it is the weight of the trucks that would break up the concrete blocks. Bennett noted that additional plantings by the applicant will offset the lot coverage of the remodeled deck. Kerr noted that the application brings the lot coverage from 71% to 61%, therefore, it will at least be an improvement. Gemma stated that he is willing to mitigate any issues the neighbors may have. In response to discussion, Bernt stated that he is in support of the request.

Motion: Bennett moved to approve the variance request and the setback reduction request; Kerr seconded the motion.

Vote: Bennett, Bernt, Kerr, Patrick, and Risley voted AYE; the vote was 5/0 in favor and the motion passed.

Public Hearing and Consideration of SR 16-03, Request by Jan Ferguson-Bresee for a Front-yard and East Side-yard Setback Reduction in Conjunction with the Renovation of a Nonconforming Structure at 164 W Van Buren Street

Chair Lundy introduced the item, noting that this request will be reviewed against the criteria of the Municipal Code, Chapter 17.64, Setback Reduction.

No one objected to the jurisdiction of the Planning Commission to hear this matter at this time. Chair Lundy asked if any Commissioner had any conflict of interest. There were none. Chair Lundy asked if any Commissioners had any personal bias to declare. There were none. Chair Lundy asked if any Commissioner had any ex parte contacts. Chair Lundy stated during site visit he ran into a neighbor and discussed the application; he
Chair Lundy asked if any Commissioner had made a site visit. Site visits were declared.

Barnes summarized his staff report noting the current structure is run down, therefore the proposed improvements bring the application above the 50% structure value threshold to allow an administrative decision. Barnes noted that if the Commission would like to request additional detailed design drawings from the applicant they may ask the applicants to provide that information and continue the hearing to the September 22, 2016 meeting. In response to a question from Bennett, Barnes stated that the proposed application does not change the current setbacks.

Chair Lundy asked if there was additional correspondence. Barnes noted additional correspondence located at the dais.

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

Jan Ferguson-Bresee, 13723 SE Portland View Pl, Happy Valley OR 97086, presented her application. Ferguson-Bresee noted that the setback reduction is for the front-yard setback only, not the east side-yard as indicated in the staff report. She further noted the history of the property, stating her parents originally owned the property then sold it to absentee owners. Through negotiations she was able to buy back the property for her family. She stated that the northeast addition of the dwelling will be removed. She further stated that neighboring property will not be negatively impacted by this application. In response to Commissioners’ questions regarding the single-story and two-story options presented, Ferguson-Bresee stated that she was advised to ask for any potential building scenario, however, they plan on only building a single-story dwelling. Family may want to build a second story in the future.

In response to a question from Kerr, Ferguson-Bresee stated that the structure will be in conformance to all other code requirements. Bernt stated concern that a second story would impact solar access to the abutting McBee Hotel. Kerr noted that the front-yard setback would not affect the McBee Hotel and the property owner has the right to build a second story. Ferguson-Bresee noted that a future second story would be built to the back of the dwelling and not to the front-yard setback. Risley stated that she would like to see building plans for the dwelling prior to voting. Patrick and Kerr both stated the it may be difficult for the applicant to provide building plans given the scenario and not knowing if the front-yard setback reduction would be granted. Bennett noted the two letters from neighboring property owners in support of the application. In response to a question from Lundy regarding a future generation wanting to a build a second story, Barnes stated that if the setback reduction is granted, the applicant would need to apply for a building permit within one year. Risley stated concerns granting a possibly larger structure on this property.

Ferguson-Bresee stated that they would take the two-story option out of the request and only request a one-story option since a building permit will be required within one year.

Chair Lundy called for proponents of the request.

Joe Fritsch, 174 W Van Buren, 3810 SE 142nd Court, Vancouver, WA 98683, gave testimony in support of the application, stating he was overjoyed to meet the applicants, and extremely happy that they wish to maintain family heritage in the property.

Chair Lundy called for opponents of the request. There were none.
Chair Lundy asked for a staff response. Barnes noted that he instructed the applicants to provide multiple building scenarios.

Chair Lundy asked if the applicant wished to make any additional statements. The applicant did not.

Motion: Bernt moved to approve the setback reduction provided the remodel is for a one-story dwelling; Bennett seconded the motion.

Vote: Bennett, Bernt, Kerr, Patrick, and Risley voted AYE; the vote was 5/0 in favor and the motion passed.

Motion: Bernt moved to authorize the chair to sign the appropriate orders; Bennett seconded the motion.

Vote: Bennett, Bernt, Kerr, Patrick, and Risley voted AYE; the vote was 5/0 in favor and the motion passed.

INFORMATIONAL ITEMS

(7) Ongoing Planning Items

Barnes distributed a handout to the Commissioners regarding training. He stated the City will cover the cost and requested the Commissioners let staff know by September 1, 2016 if they are interested in attending. Staff will complete the registration for them. Risley stated that Clatsop County Commissioners will be attending.

(8) Good of the Order

Bennett will not be at the September 22, 2016 meeting.

ADJOURNMENT

The meeting adjourned at 8:27 p.m.

_________________________________
Administrative Assistant, Alisha Gregory