

Minutes of March 9, 2010
Clatsop County Planning Commission **Regular** Session
Room 430, Public Services Building 800
800 Exchange Street
Astoria, Oregon 97103

Chairperson Cary Johnson called the Clatsop County Planning Commission meeting to order at 10:02 a.m. Planning Commissioners (PC) present: Mike Autio, Christine Bridgens, Cary Johnson, and Clarke Powers. Excused: Marcia Harper-Vellutini and Brian Pogue.

Staff present: Blair Henningsgaard, County Counsel; Michael J. Weston II, Planner, and Will Caplinger, Development Services Manager.

Election of Officers

PC Powers moved and PC Bridgens seconded to postpone the election of officers. Motion approved unanimously.

Business from the Public

No one from the public asked to speak.

Minutes

PC Bridgens moved and PC Autio seconded to approve the January 12, 2010 planning commission meeting minutes as presented. Motion approved unanimously.

Public Hearings

Appeal of a code compliance determination

Due to an opinion issued by county counsel Blair Henningsgaard, the first item on the agenda was withdrawn. Mr. Henningsgaard stated that according to the county's code compliance ordinance, enforcement actions are between the responsible party (violator) and the county. Third parties have no right to participate or appeal the county's decision.

Variance request by Edward & Nadine Basha & Don Tankersley Construction for a 24-foot variance to Ocean Front Setback for property described as T4N, R10W, Sect 18BA, Tax Lot 1503.

No ex parte interest or conflicts of interest were reported.

Mike Weston, Planner, presented the staff finding for this variance request. The subject parcel is limited by geological hazards to the west, and the septic easement to the east. In addition, this is an ocean front lot and is subject to the 18-foot height limit required in the zone. All of these combined reduces the buildable area significantly. In addition, the subdivision Arcadia Sands was approved in 2004 without mention of Section S3.015 and a residence to the south of the subject property was permitted in violation of Section

S3.015. This does not alleviate staff's responsibility to follow the rules as established, hence the variance application citing constraints to the buildable area on the site.

Mr. Weston cited the following reasons for his findings:

- geological hazards to the west
- topography (natural drainage)
- septic easement to the east
- south neighbor is ok with building
- applicant had no knowledge of this issue
- lot would not be buildable without this variance
- proposal is not likely to be injurious to the neighborhood or community
- reasonable use of the land; single family property
- applicant does not own any adjacent property
- no violations on the property

Mike described the hardship criteria as being met by the combination of three circumstances; first being the septic easement, second being the topography, third being the geological hazards, and he felt that it should be conditionally approved.

Chairperson Johnson asked for any public comments. No one asked to speak. Following a question from PC Bridgens, Mr. Weston explained that there is another property to the south of the Bashas that is similar and will probably need a variance to build on it.

Chairperson Johnson closed public testimony.

PC Powers moved and PC Autio seconded to adopt the staff findings as presented and approve the variance request. The motion was approved unanimously.

Remand – request for 20-foot variance to the resource zone by Neal Uskoski

No ex parte or conflicts of interest were reported.

Mr. Weston entered pictures taken during a recent site visit as exhibit U-1. On the day Mr. Weston visited the site, the property was marked with both 50-ft setbacks and 30-ft setbacks.

First brought before the PC on October 13, 2009, this variance was conditionally approved. Following an appeal from the Oregon Dept of Forestry to the Board of Commissioners, the variance application request was remanded back to the PC.

Mr. Weston's staff report included the following:

- ◆ Property has changed ownership since the original application
- ◆ 2 acres of property; significant area to build on and a circumstance that he couldn't get around when he looked at extraordinary circumstances of the property
- ◆ Wetland area is a drainage area that is not a habitat or fish-bearing area, more a function of the subdivision that could be rerouted

- ◆ When lines were drawn for the subdivision, the 50-ft setbacks were identified, making it hard to justify the hardship criteria
- ◆ Difficult to justify geology or topography that would render this lot unbuildable
- ◆ Could not find anything that would require a 20-ft variance in order to build a home on the lot
- ◆ Showed several potential locations for a home on the property without need of a variance

Following a question from PC Powers, county counsel Blair Henningsgaard clarified this process. The County Board of Commissioners asked the PC Commissioner to reopen the hearing, complete the record, and send it back to the Board. The PC can keep the same findings, have new findings, or change their decision.

Chairperson Johnson and PC Bridgens expressed concern about cutting into the toe of the slope and potential injury to the property. Mr. Weston responded that there is an ancient slide in the area, but they wouldn't necessarily have to cut into the slope to build on the lot. The property has been staked/flagged by the owner for both the 50-foot setback and the 30-foot setback and the house fits in either case.

Following a question from PC Autio, Mr. Weston directs the PC to pg 138-139 of the packet which shows the utility easement, road placement, storm water easement, drain field, etc. Pages 149 & 150 show potential home site locations. One of the sites would require some modification of the lot as it is in a wet area.

Mr. Weston stated that the site the applicant wants to build the house on is probably the ideal spot due to the view, but didn't think it met the criteria for a variance. PC Johnson agreed that the other building sites have potential, but due to safety concerns about cutting into the bank and drainage issues, it's possible but perhaps not realistic. PC Bridgens expressed her concerns about cutting into the toe of a slope and the potential danger for more slides if you have the weight of a house on top of it. PC Autio questioned the criteria of "reasonable use of the land."

Chairperson Johnson opened the public testimony at 10:52.

Oregon Department of Forestry representative Ron Zilli, Assistant District Forester and State Forest Operations Manager, 92219 Hwy 202, Astoria, Oregon concurred with the findings that the planning department established in their written staff report.

Mr. Zilli requested the PC consider the following:

- ◆ Mr. Uskoski had full knowledge of the 50-ft setbacks when these lots were established
- ◆ There are no additional exceptional circumstances that would deny reasonable use of the land; cutting of the toe is presumptuous at this point
- ◆ No proof of significant hardship (as expressed in the staff report) and a variance is not necessary for reasonable use of the land
- ◆ He met with the new landowner personally and assured him that when the homesite is developed (with the 50-ft setback) the dept of forestry will go in, do a site-specific evaluation, remove any trees that could be

hazardous to his structure and replant with young trees, providing a 40-50 year time period with a lower hazard

Mr. Zilli stated it was his understanding that all of the criteria for a variance had to be met for a variance to be granted, not some of the criteria. Since he felt not all of the criteria for a variance had been met, he recommended that the applicant's request for a variance be denied.

Responding to a question from PC Bridgens, Mr. Zilli explained that the department of forestry would still be able to maintain active operations on that property and that it's very important from a forestry perspective that variances [setbacks] be maintained. He continued that he doesn't feel that 50 feet is even adequate to provide for public safety over time; it should be 125 feet to accommodate a tree of maturity. However, he wants to make every reasonable effort to accommodate this specific situation, as an effort of good faith to a neighbor. Even with a 50-ft setback, he emphasized that there is a strong potential hazard for a tree to hit this house, or other houses built within the subdivision, at some point.

Following a brief discussion of a possible "hold harmless" agreement being contained within the deed to the properties, county counsel Mr. Henningsgaard stated that it would be very unusual to have a deed with this restriction and it would likely have no binding obligation on future property owners. Mr. Zilli commented that the opinion of the Department of Justice was that a deed restriction was irrelevant.

In response to a question from Chairperson Johnson, PC Autio explained that the hardship criteria was not a state requirement and the county would be changing the ordinance. Will Caplinger briefly discussed the progress of the new ordinance provisions; the provisions taking out the hardship criteria would apply everywhere except Arch Cape, but they will not take effect until at least July 2010.

Responding to a question from PC Powers, Mr. Zilli stated that the evidence presented orally by staff at the initial hearing was inconsistent with the written staff report and reiterated that clearly, to them, the criteria for granting of a variance had not been met, based on that written staff report. The Dept of Forestry has reviewed the written material and feel strongly that at least 3 of the criteria has not been satisfied. Following a question from Chairperson Johnson, Mr. Zilli acknowledged that the Dept of Forestry's role was not to manage the property on behalf of the county.

Chairperson Johnson stated that he agreed with the Dept of Forestry's position that they want to grow trees right up to their property line, but it shouldn't deny someone else's ability to have reasonable use of their property and should be able to build relatively close to their property line, that there should be some flexibility.

During the discussion of the individual items listed on Exhibit A on page 123 of the packet, Mr. Zilli requested a continuance if the commission planned to modify these findings and approve the variance today, as he didn't think the amount of input Oregon Dept of Forestry had was sufficient to produce a collaborative report.

Responding to a question from PC Autio, Mr. Weston stated that the commission is at the point to either approve or deny the application for a variance. Mr. Henningsgaard

stated that regardless of the PC decision, it will be back before the County Board of Commissioners on appeal, unless both parties agree that they are happy with it.

Planning commissioners and planning staff Mr. Weston discuss revising the criteria on Exhibit A, specifically items A, D, E and H. Mr. Weston questioned what the hardship was by not being able to build within the 50 foot setback. PC Powers stated that he had reservations regarding the hardship; reading the criteria, he didn't see the hardship.

Following further discussion, Chairperson Johnson felt they were very close to being able to grant the variance. PC Autio stated that he didn't think we had enough information to approve the variance. Chairperson Johnson responded that the planning commission had already approved the variance and did they have enough evidence to reject the application at this time.

Mr. Weston stated that he started from the beginning, completed a site visit and drafted the staff report that stated the three criteria, which have not been met. After further discussion amongst the planning commissioners, Mr. Weston suggested language to revise the following criteria:

A) Extraordinary circumstances existing on the property consist of topographical, drainage and geologic concerns on the lot

D) Topography presents a situation where the applicant would face a significant hardship; the other potential building sites are inferior due to topographical constraints and drainage issues present on the lot. The strict application of the 50-foot setback prevents the owner from building on the most reasonable site available.

E) Changing the setback from fifty feet to thirty feet is necessary to reasonably construct a house on the lot.

Mr. Zilli commented that prior to approving the findings he wanted to make it clear that the original findings were presented to the Board of Commissioners as collaborative and he wanted it clear that in no way does the Dept of Forestry endorse these revised findings. In his opinion they are based on speculation and undefined criteria and not with a basis in fact.

Chairperson Johnson responded to a question by stating that the planning commission can amend findings.

PC Bridgens responded to Mr. Zilli's comments regarding the planning commission's use of topography to support the criteria.

At 12:04 the public testimony was closed.

PC Powers moved to document discussion on Appendix A of the original order where A, D and E were talked about and that the revised order be resubmitted to the Board of Commissioners per their direct order with the deletion of H. Motion died due to lack of a second.

PC Powers moved and PC Bridgens seconded to approve the variance application and adopt the findings of fact contained in Exhibit A to the previous resolution with the modifications made by Mr. Weston in the meeting here and the deletion of paragraph H. Motion approved unanimously.

Other Business

Development Services Managers Oral Report

Will Caplinger reported some staff changes in the planning department; Andrea Neys is a new casual staff assistant; Pat Getchell, code compliance, is retiring as of March 31, 2010. An internal recruitment for a new fulltime planner will be floated by the end of this month, and the plan is for the planners to be covering code compliance vs. having a code compliance technician. In future, there may be a need to hire another casual specifically to handle code compliance. Peter Livingston of Schwabe, Williams, and Wyatt has been hired as the new public hearings officer. The Board of Commissioners specifically wanted a hearings officer brought in to hear the LNG projects. There are 4 public hearings in April scheduled at the present time.

Mr. Caplinger reported that the preliminary budgets have been submitted and will be going to Duane Cole, County Manager, by April 15th.

PC Autio asks about HB2229. He would like Clatsop County to review it and be involved.

Chairperson Johnson and PC Bridgens thanked the staff for working on the Uskoski matter.

As there was no further business, Chairperson adjourned the meeting at 12:21 pm.

Respectfully submitted,

SIGNED ORIGINAL ON FILE

Cary Johnson
Chairperson - Planning Commission