

Chairperson Cary Johnson called the Clatsop County Planning Commission meeting to order at 10:04 a.m. Planning Commissioners (PC) present: Mike Autio (after the lunch break), Christine Bridgens, Cary Johnson, Clarke W. Powers, and Brian Pogue.
Excused: Mike Autio (prior to lunch break)

Staff present: Blair Henningsgaard, County Counsel, Michael J. Weston II, Planner, Julia Decker, Planner, Will Caplinger, Development Services Manager and Ed Wegner, Director, Transportation and Development Services

Election of Officers

PC Pogue moved and PC Bridgens seconded the nomination of Cary Johnson as Chairperson. Motion approved unanimously.

PC Bridgens moved and PC Harper-Vellutini seconded the nomination of Brian Pogue as Vice-Chairperson. Motion approved unanimously.

Business from the Public

No one from the public asked to speak.

Minutes

PC Bridgens moved and PC Pogue seconded to approve the March 9, 2010 planning commission meeting minutes as presented. Motion approved unanimously.

Public Hearings

Dahl Variance and Non-Conforming Use Replacement/Expansion request for a 25-foot variance to the 60 foot street side setback on the site described as Township 6N, Range 07W, Section 35, Tax Lot 701.

No ex parte contacts or conflicts of interest were reported.

Michael J Weston II, Planner, presented the staff report. In January 2010, Ms. Dahl's home burned down and she would like to place a mobile home on the same site. The variance and expansion request is three-fold: 1) the applicant's request for a 35' variance to the 60' street side setback, 2) a request for a variance to the 20% expansion limitation detailed in Section 5.610 2(A), and 3) a request for authorization to replace a destroyed non-conforming use structure. He explained the complexity of the application was due to the underlying zoning. He stated that it was probably intended for the property to be zoned AF, but due to some inaccuracies in lot boundaries and survey adjustments that did not carry over in the zoning maps, the structure is in the OPR zone,

1 thus the non-conforming use. In addition, the original cabin was only about 600 square
2 feet in size.

3
4 Mr. Weston's report included the following criteria for the variance:

- 5
- 6 ▪ due to lot size and a stream running through it, the only place to put a structure
- 7 is where the old one was
- 8 ▪ not likely to be injurious to the neighborhood or community
- 9 ▪ relief from the 20% requirement is requested due to the exceptionally small size
- 10 of previous dwelling
- 11 ▪ Ms. Dahl's hardship is lack of a home. Without variance, it would be almost
- 12 impossible to construct or place a home.
- 13 ▪ forcing applicant to adhere to the 60' setback would result in loss of habitat and
- 14 encroachment of Oregon Forest Lands; the logical solution is to grant the
- 15 variance so the applicant can reconstruct in the pre-existing footprint of the
- 16 destroyed home.
- 17 ▪ there are no violations on the property
- 18 ▪ the applicant does not own land adjacent to the subject property
- 19

20 Following a question from PC Pogue, Mr. Weston responded that the zoning could be
21 handled by the correction of a map. The applicant would not need to request a zone
22 change.

23
24 No public comments were received and Chairperson Johnson closed public testimony.

25
26 **PC Pogue moved and PC Bridgens seconded to accept staff's**
27 **recommendation and approve the applicant's request for the two**
28 **variances and authorization to replace a destroyed non-conforming use**
29 **structure. Motion passed unanimously.**

30
31 **PC Pogue moved and PC Johnson seconded to direct staff to review the**
32 **zone issue and get back to the planning commission with**
33 **recommendations. Motion passed unanimously.**

34
35 **Debnath variance request for a 15 foot variance to 20 foot street side setback and**
36 **7 foot variance to 26 foot height limit** for property described as Township 4N, Range
37 10W, Section 6CC, Tax Lot 900.

38
39 No ex parte contacts or conflicts of interest reported.

40
41 Mr. Weston presented the staff report. Prior to purchasing this property within the Silver
42 Point Terrace subdivision, located south of Cannon Beach on east side of Hwy 101 on a
43 hillside, applicant began consulting with planning staff to determine the buildability of the
44 lot. Some constraints to the lot are the slope, access to the highway, geologic concerns
45 of the area, smaller than typical lot size in Coast Residential Zone, potential septic
46 location and issues with storm water drainage.

47
48 Mr. Weston included the following review of criteria for the variance:
49

- 1 ▪ slopes on the property are consistently in excess of 30% whereas 0-12% is ideal;
2 the lot is substandard in size and has natural constraints that the applicant has
3 no control over; applicant is proposing to site the septic on neighboring property
- 4 ▪ not likely to be injurious to the neighborhood or community
- 5 ▪ single family dwelling is permitted in the ordinance
- 6 ▪ four hardship reasons listed on application: topographical constraints, geological
7 hazard concerns, creating sufficient room for ingress and egress, and storm
8 water drainage
- 9 ▪ the 7-foot height variance request is not the minimum required for the reasonable
10 use of land
- 11 ▪ no violations on the property
- 12 ▪ applicants do not own property adjacent to subject property

13
14 Mr. Weston recommended conditional approval with a change from the application to a 4
15 foot height variance, the minimum necessary to accomplish the purpose of the variance.
16 He further encouraged the applicant to consider building a green roof to help with
17 drainage concerns and alleviate the potential for a geological event.

18
19 PCs Pogue and Bridgens and Chairperson Johnson expressed concerns about green
20 roofs, wondering if they're any better than a flat roof.

21
22 Goutam Debnath, applicant, 19797 SW Serah St, Beaverton, OR presented a slide show
23 showing the orientation of the house on the property. He stated that he needed garage
24 access off Vista Drive; Mr. Tom Butori has granted him a permanent easement for
25 access to Hwy 101.

26
27 Tom Butori, 925 Ave S, Apt 1, Seaside reported that the house, with the variance, would
28 not hinder anyone else's view or present any drainage problems and that any type of
29 roof could be used.

30
31 Linda Tolan and her husband Tim, property owners adjacent to the subject property,
32 expressed her opposition to the granting of the variance, reading a letter into the record.
33 Some of the points made are as follows:

- 34 ▪ the house can be accessed via Vista Drive with standard set back
- 35 ▪ the Tolans, as adjacent owners, have had to comply with height
36 restrictions and setbacks in the design and planning of their own home
- 37 ▪ Cannon Beach Fire Dept is opposed to the variance; Ms. Tolan stated
38 that this part of Vista Drive is a fire lane
- 39 ▪ these issues could be resolved without the need of a variance

40
41 PCs Harper-Vellutini, Pogue and Chairperson Johnson reviewed the letter from Cannon
42 Beach Fire Dept., noting no specific reasons they oppose the variance. Chairperson
43 Johnson stated he thought the fire department issue would be resolved at the point of
44 building permit application. If the fire department doesn't sign off, no permits will be
45 issued.

46
47 Following a discussion regarding the height and average grade, PC discussed off-street
48 parking. Public testimony was closed.

49
50 **Motion by PC Harper-Vellutini and seconded by PC Bridgens to approve**
51 **variance as requested by the applicant. Motion passed unanimously.**

1
2 PC Pogue stated that in future, it would be nice to have the fire departments present at
3 these hearings if they've sent a letter so they can answer questions.
4

5 Chairperson Johnson recessed the commission at 1159 for a lunch break.
6

7 The meeting reconvened at 1258.
8

9 **Malkowski/West Highland Properties LLC request for a conditional use permit for**
10 **10-unit inn and restaurant** located on property described as Township 4N Range 10W
11 Section 30BB Tax Lot 00402.
12

13 No ex parte contacts or conflicts of interest were reported.
14

15 Julia Decker, Planner, presented the staff report. Subject property started out as St
16 Bernard's Bed and Breakfast in the early 1990s. A condition for a left hand turn lane
17 was dropped and an amended conditional use permit (CUP) was issued, Type IIA.
18 Today's request is for a conditional use permit for a 10-unit inn and restaurant from a 7-
19 unit bed and breakfast. As Development Services Manager Will Caplinger distributed a
20 packet of comments received since the commission agenda packet was mailed, Exhibit
21 M-1, Ms. Decker described her site visit with accompanying slide show and some of her
22 recommendations were as follows:
23

- 24 • subject property needs a parking plan; original application was for a 200
25 s.f. restaurant; current restaurant is approximately 600 s.f.
- 26 • county engineer recommended that the road be improved to A-20 road
27 standard prior to occupation; road is narrow; one car at a time
- 28 • proof of adequate water supply to be provided
- 29 • currently operating as a 10-unit inn and restaurant in violation of the
30 current CUP
- 31 • deed restriction to operate as a bed and breakfast
32

33 Chairperson Johnson opened the public testimony at 1325.
34

35 Debra Birkby, 79829 Gelinsky, Arch Cape, representing the Citizens Advisory
36 Committee, presented a letter from the committee and voiced her objections to the
37 application, recommending the planning commission not approve it. She described some
38 of the acrimony in the community following a question from PC Pogue. She stated that
39 the inn started out as a three-unit bed and breakfast and now is much larger, causing
40 dangerous access and heavy truck traffic. In order to make property owners comply with
41 the law, a complaint had to be made.
42

43 Thomas Merrell, 32065 E Shingle Mill Ln, Arch Cape, representing the water and
44 sanitary districts, stated that water and sewer are available and adequate. They want to
45 assess new systems development charges based on the current methodology for the
46 additional rooms and larger restaurant.
47

48 Patrick Wingard, 1475 5th Street, Astoria, the applicant's representative and land use
49 consultant, stated that the application was not reactionary in nature and not aware of any
50 complaint at the time they filed on 1-29-10. He stated there have been no concerns from

1 the fire department, no concerns from ODOT, and no outside changes to the footprint of
2 the building. The conditions of approval must be proportional. He went on to describe the
3 impacts of the larger restaurant and three additional guest rooms, with 20 additional trips
4 per day; one additional trip per hour. The A-20 standard can't be built within the current
5 20' easement: the drive is intended to be narrow and quaint. Mr. Wingard requested
6 staff condition one be struck and condition two be removed.

7
8 Stephen Malkowski, owner/applicant, 31970 East Ocean Ln, Arch Cape, stated that he
9 purchased the Arch Cape Inn and Retreat about two years ago and began actual
10 operation in June 2008. He and his wife discussed how to make it a sustainable
11 business within the current structure and wanted to use all 10 rooms (7-unit bed and
12 breakfast and 3-unit dwelling/short term rental), which he felt was within the boundaries
13 of the CUP. They decided to expand into the conservatory and experimented with a
14 dinner service, open to the public but reservations required. He said he discussed the
15 issue of the easement with Fire Chief Cleeve Rooper, who Mr. Malkowski said told him
16 that although it would be nice to expand the road, it would not be required at this time.
17 Mr. Malkowski went on to comment on the semi-trucks; it is a rare occurrence, perhaps
18 two per week, and this problem could be solved by asking vendors to use smaller
19 delivery trucks when making deliveries.

20
21 Following a question from PC Pogue regarding the road easement, Mr. Wingard stated
22 that it's an agreement between two private parties.

23
24 Thomas Merrell, 31219 E. Shingle Mill Lane, Arch Cape, stated that he has the same
25 language in his easement as Mr. Malkowski.

26
27 In answer to a question from PC Pogue, Ms. Decker stated that there is language in the
28 deed, restricting the use of the property. Regarding condition one, County counsel
29 advised that the application can either be deemed incomplete or the applicant could
30 prove they had legal access, or a condition could be a requirement. To answer another
31 question from PC Pogue, Ms. Decker stated that an easement becomes a public road
32 when it's deeded to the public.

33
34 George Cerelli, 31906 Ocean View, Arch Cape, stated that if Mr. Malkowski wanted to
35 expand, it needs to go through Arch Cape's design review process.

36
37 Tevis Dooley, 31972 E Ocean Ln, Arch Cape, read a letter into the record opposing the
38 expansion of subject property. He was concerned about the highway approach, the
39 increase in traffic, the big trucks backing up on Hwy 101, and ingress and egress onto
40 the property. He suggested that the NW corner be used instead.

41
42 Steve Hill, 31880 Ocean View, Arch Cape, expressed his concern that the design review
43 process with citizen involvement was bypassed.

44
45 Darr Tindall, 16255 SW Ludwig, Beaverton, stated that the expanded inn and restaurant
46 had been operating for a period of time, with an increased use of water and increased
47 traffic that has impacted the residents in Arch Cape. The complaint was filed in January
48 2010 and she feels like the community is being held hostage.

49

1 Following a question from Chairperson Johnson, Ms. Tindall responded that the business
2 should be run under the CUP that is currently in place, a three to seven unit bed and
3 breakfast, and that Mr. Malkowski is here to get permission after the fact.

4
5 Linda Murray, 79836 Gelinsky Rd, Arch Cape, stated that she strongly felt this should
6 have gone through design review and the access road issue should have been handled
7 before approval.

8
9 Following a question from PC Pogue, Ms. Murray responded that she feels there would
10 have been a negotiated agreement if Mr. Malkowski had gone through design review.

11
12 Judith Lally, 31972 E Ocean Ln, Arch Cape, stated her concerns for safety, specifically
13 pedestrians from the inn, trucks pulling in, visibility, the width of the road area, and
14 congestion.

15
16 Debra Birkby, 79829 Gelinsky, Arch Cape, stated her concerns about having a
17 commercial piece of property within a rural area.

18
19 Mike Manzulli, 80285 Woodland Heights Road, Arch Cape, objected to the CUP for the
20 following reasons:

- 21 • the planning commission has no authority
- 22 • this is not the correct venue
- 23 • the planning commission is setting up Clatsop County for appeal
- 24 • Mr. Caplinger decided this issue didn't require design review
- 25 • this should be processed the same way as original application, which went
26 through design review
- 27 • this is a complete change of use

28 Mr. Manzulli urged the planning commission to not vote on this issue.

29
30 John Wickman, 31964 E Ocean Ln, Arch Cape, expressed his concerns regarding
31 increased traffic. He stated that there needed to be room for two vehicles to pass.

32
33 Robert Tarr, 31942 W Ocean Ln, Arch Cape, stated that the traffic is higher than
34 hypothesized by Mr. Wingard and that the reason there is acrimony in Arch Cape is
35 because Mr. Malkowski knowingly violated the original CUP and now wants permission
36 to make it legal.

37
38 Mr. Wingard rebutted Mr. Tarr's statement, stating that Mr. Malkowski has not violated
39 any laws and this has to do with his constitutional right to make a living. He repeated his
40 request that staff recommended conditions one and two be removed.

41
42 Mr. Malkowski stated that the survival of his business is at stake. Furthermore:

- 43 • Out of 350 lots, six are commercial, with three businesses operating
- 44 • Current easement runs through two commercial lots
- 45 • Takes exception to the idea that he was limited to seven rooms with the
46 original CUP; he believes that the original CUP authorizes him to run a
47 seven room inn and the three room dwelling as a short term rental
- 48 • The design review board are not in favor of any kind of change
- 49 • He sits on the citizens' advisory committee and was unaware that the
50 other members were sending a letter opposing this CUP

- 1 • He believes he is entitled to develop according to the zoning
- 2 • There have been no other complaints that haven't been addressed
- 3 • He will tell the vendors not to bring a semi-truck for deliveries
- 4 • Cannon Beach Fire Department told him it would be nice to have a wider
- 5 road, but it's not a requirement

6
7 In response to Mr. Malkowski's statements, PC Harper-Vellutini didn't see a big change
8 in impact. Mr. Malkowski went on to describe the guest cycle.

9
10 Deborah Birkby responded to Mr. Malkowski that he didn't know about the letter from the
11 citizen advisory board because he wasn't present at the meeting.

12
13 Ms. Decker described the notification procedure. Regarding concerns about the water,
14 the original bed and breakfast did not have water units four through seven, but the water
15 district is able to serve them now. In addition, the application for a CUP was received
16 after the inn was already operating. Public health issued a permit for the restaurant but
17 the planning department was not notified. The project meets the criteria for the
18 conditional use.

19
20 PC Autio suggested that conditions one and two be revised to read: 1) applicant shall
21 provide proof of legal access, and 2) required widening of road to satisfaction of county
22 engineer. In response, Ms. Decker stated that the county engineer required road
23 standard to A-20. Chairperson Johnson suggested that the applicant be required to
24 maximize the easement. Mr. Malkowski responded that there has been zero net effect
25 to the traffic, and he would not be opposed to widening the road as much as practical.

26
27 Mr. Caplinger clarified the criteria that require design review, including expansions
28 exceeding 20% or new construction/development. The modifications by applicant did not
29 approach that, he said.

30
31 PCs Powers, Harper-Vellutini and Pogue expressed their concerns about traffic and
32 safety.

33
34 At 1540 Chairperson Johnson closed the public testimony.

35
36 **PC Autio moved and PC Pogue seconded to approve the application**
37 **subject to the conditions recommended by staff with the exception**
38 **that condition number one would be changed to state that the applicant**
39 **shall provide proof of legal access to the property and condition number**
40 **two would state that the existing easement from E Ocean should be**
41 **improved to the maximum width possible within the existing legal**
42 **easement and the improved easement must be inspected and approved**
43 **by the county engineer. The other conditions are as presented [by staff].**
44 **Motion passed unanimously.**

45
46 A brief recess is called at 1542 by Chairperson Johnson.

47
48 Meeting reconvened at 1552.

49

1 **McGinnis application for a conditional use permit** to establish a mixed commercial
2 residential use at property described as Township 8 north, Range 8 West, Section 22A,
3 Tax Lot 02400.

4
5 No ex parte contact or conflicts of interest reported.

6
7 No public agency or applicant comments. Mr. Weston presented the staff report,
8 recommending approval.

9
10 **PC Powers moved and PC Harper-Vellutini seconded to approve the**
11 **conditional use permit as per staff's report. Motion passed unanimously.**

12
13 **Fisk and Bartholomew request for 30 foot variance to** resource zone setback on
14 property described at Township 8 north, Range 10 west, Section 28, Quarter Section C,
15 Quarter-Quarter Section A, Tax Lot 00100.

16
17 No ex parte contact or conflicts of interest reported. No public agency or applicant
18 comments. Mr. Weston presented the staff report, recommending approval.

19
20 **PC Powers moved and PC Harper-Vellutini seconded to approve the**
21 **variance request as presented by staff. Motion passed unanimously.**

22
23 As there was no other business, Chairperson Johnson adjourned the meeting at 1602.

24
25
26 Respectfully submitted,

27
28
29 **SIGNED ORIGINAL ON FILE**

30
31 _____
32 Cary Johnson
33 Chairperson - Planning Commission