

Minutes of the  
**CANNON BEACH PLANNING COMMISSION**

Thursday, August 27, 2009  
Council Chambers

Present: Commissioners Larry Peters, John Holden, Malcolm Reed, Herb Florer, Ron Logan, Brandon Ogilvie, and Les Wierson

Excused: None

Staff: City Attorney Tamara Herdener, City Planner Rainmar Bartl and Administrative Assistant Brandy Brien

**CALL TO ORDER AND APPROVAL OF AGENDA**

Chair Logan called the meeting to order at 7:00 p.m.

Motion: Peters moved to approve the agenda; Holden seconded the motion.

Vote: Peters, Holden, Reed, Wierson, Ogilvie, Logan, and Florer voted AYE; the vote was 7/0 in favor and the motion passed unanimously.

**(1) Consideration of the Minutes of the Planning Commission Meeting of July 23, 2009.**

Motion: Holden moved to approve the minutes of the Planning Commission meeting of June 25, 2009 as presented; Wierson seconded the motion.

Vote: Peters, Holden, Reed, Wierson and Florer voted AYE; the vote was 5/0 in favor and the motion passed unanimously. (Ogilvie and Logan abstained since they were not present at the meeting.)

**(2) Public Hearing and Consideration of SR 09-03, Cordill Setback Reduction to Permit the Modification of the Roof Line of an Existing Single-Family Dwelling, Permitting a 10 Foot Front Yard Setback and a 4.25 Foot Side Yard Setback in Conjunction with that Roof Modification.**

No one objected to the jurisdiction of the Planning Commission to hear this matter at this time. No Commissioner stated a conflict of interest or bias. As ex parte contacts, Commissioners indicated they had visited the site.

Bartl summarized his staff report, noting that staff is recommending approval.

Chair Logan opened the public hearing and 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 or other criteria of the Comprehensive Plan or Municipal Code which the person testifying believes to apply to the decision; failure to raise an issue accompanied by statements or evidence sufficient to afford the decision-makers and 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.

It was noted that there was no additional correspondence.

Chair Logan called for presentation by the applicant.

John Nelson, Coaster Construction, P.O. Box 122, Cannon Beach, Cordill's Contractor, stated that he is available

for questions. He noted that the project is a minor modification to the existing structure intended to increase interior ceiling heights.

Chair Logan called for testimony from proponents. There was none.

Chair Logan called for testimony from opponents. There was no testimony.

Chair Logan asked for staff response. There was none. Chair Logan closed the public hearing.

Motion: Peters moved to approve the setback reduction request as presented by staff; Holden seconded the motion.

Vote: Peters, Holden, Reed, Wierson, Ogilvie, Logan, and Florer voted AYE; the vote was 7/0 in favor and the motion passed unanimously.

**(3) Public Hearing and Consideration of CU 09-04, Gorsuch Conditional Use for an Artist's Studio in Conjunction with a Dwelling.**

No one objected to the jurisdiction of the Planning Commission to hear this matter at this time. No Commissioner stated a conflict of interest or bias. As ex parte contacts, Commissioners indicated they had visited the site.

Bartl summarized his staff report. He noted that Cannon Beach has taken a number of actions over the years to help support local artists; one of these is to permit artist studios in an R-2 Zone.

Bartl reviewed the information obtained from Harry Greaver, one of the owners of the Greaver Gallery, on visitation to his gallery and the conclusions he has made from this information.

Bartl recommended that the Planning Commission consider requiring the following conditions if the permit is approved, limiting the hours of operation and disallowing "openings" or similar events to avoid a significant number of gallery visitors at a given time.

Bartl referred to the correspondence from the Cannon Beach Rural Fire District and the Building Official. He clarified that the Building Official makes the Fire and Life Safety determinations pursuant to the Building Code. He noted that the City's Building Official, Mark Brien, determined that this request does not require any alterations to the dwelling to conform to Fire and Life Safety standards. Bartl also noted that Mr. Brien had confirmed his finding with the State of Oregon Building Codes Division.

In response to a question from Holden, Bartl replied that the conditional use would be specific to the Gorsuchs and the applicant is proposing to place a permanent 1 square foot sign.

Chair Logan opened the public hearing and 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 or other criteria of the Comprehensive Plan or Municipal Code which the person testifying believes to apply to the decision; failure to raise an issue accompanied by statements or evidence sufficient to afford the decision-makers and 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.

It was noted that there was no additional correspondence.

Chair Logan called for presentation by the applicant.

Bonny Gorsuch, P.O. Box 1219, Canon Beach, OR, 97110, thanked City staff for their assistance throughout the

process. She noted that she and her husband are not opposed to limited hours and do not plan any gala openings, nor to advertise their studio. She also noted that the majority of gallery visitors would be by appointment.

In response to a question from Holden, Gorsuch agreed that 18 hours a week or daylight hours would be sufficient and acceptable.

In response to a question from Ogilvie, Gorsuch stated that if there is sufficient room, she is not opposed to an additional parking space as a condition of the approval.

Chair Logan called for testimony from proponents. There was none.

Chair Logan called for testimony from opponents. There was no testimony.

Chair Logan asked for additional staff response. Bartl recommended that the Commission implement conditions with regard to limiting visitation. Bartl stated that the site has sufficient room for an additional parking space, but creating such a space would result in a significantly larger gravel area in front of the dwelling.

Chair Logan closed the public hearing.

Motion: Peters moved to approve the conditional use request subject to the following conditions: 1) “openings” or similar events are prohibited and 2) applicable Building Code standards are complied with. Wierson seconded the motion.

Holden noted concerns based on the correspondence from the Fire Marshal that indicates that he does not endorse the request. Logan stated that it is unusual for the Fire Marshal and the Building Official to disagree. However, the Building Official determines the Fire and Life Safety requirements pursuant to the Building Code standards.

Logan stated that he is generally opposed to permitting commercial activities in residential zones, but he that he supports this proposal.

Florer stated that he is concerned with the traffic and parking and he would like to see a condition regarding hours of operation, limiting hours of operation to daytime.

Holden suggested perhaps limiting the hours of operation to four hours a day. In response to a question from Logan, Bartl stated that if there are specific hours of operation, for example from 8 a.m. – 5 p.m., and there is a complaint, there would be a basis for review and action. If the standard for example, four hours a day, that would be more difficult to enforce.

Commissioners discussed the hours of operation; Logan asked if Commissioners had a consensus. Holden asked that a motion be made to specify that the hours of operation be daylight hours.

Motion: Holden moved to request that Peters amend his motion to specify that the hours of operation be from 10:00 a.m. to 4:00 p.m.

Vote: Peters, Holden, Wierson, Ogilvie, Logan, and Florer voted AYE; Reed voted NAY; the vote was 6/1 in favor and the motion passed.

Motion: Peters moved to amend his motion to approve the conditional use request subject to the condition that “openings” or similar events are prohibited, that the applicable Building Code standards are complied with and the hours of operation are from 10:00 a.m. to 4:00 p.m. Wierson seconded the amended motion.

Vote: Peters, Holden, Wierson, Ogilvie, Logan, and Florer voted AYE; Reed voted NAY; the vote was 6/1 in favor and the motion passed.

**(4) Limited Public Hearing and Consideration of CU 09-03, City of Cannon Beach Request for a Conditional Use Permit to Construct a Pedestrian Trail from E. Second Street to E. Monroe Street, at Elm Street.**

Bartl summarized his staff report, noting that due to an error in the City's database, several property owners were not notified of the July 23, 2009, hearing. Those owners have been notified and are going to be afforded an opportunity to provide the Planning Commission will testimony regarding the City's application for a pedestrian trail.

Chair Logan noted that there were two Planning Commissioners not in attendance at the July 23, 2009, meeting. He noted that City rules permit these Planning Commissioners to participate in a reopened public hearing if they have reviewed the record and if they have determined they have the information necessary to participate in the consideration of the matter. Chair Logan indicated he is going to participate in the hearing and consideration of the matter. Commissioner Ogilvie also indicated he would participate in the reopened public hearing.

Chair Logan re-opened the public hearing, enumerating the seven individuals who would be permitted to testify.

No one objected to the jurisdiction of the Planning Commission to hear this matter at this time. Peters and Wierson indicated that they have a conflict of interest since they are members of the Trail Committee and based on this conflict removed themselves from consideration of the matter. No other Commissioner had a conflict of interest or bias to declare. As ex parte contacts, Commissioners indicated they had visited the site.

Chair Logan 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 or other criteria of the Comprehensive Plan or Municipal Code which the person testifying believes to apply to the decision; failure to raise an issue accompanied by statements or evidence sufficient to afford the decision-makers and 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.

Kathryn Labadie, 280 E. Monroe, Cannon Beach, thanked the Commission for the opportunity to speak. She submitted and read her written testimony.

In conclusion, Labadie stated that she submits this statement of opposition into the record and she is submitting an additional statement of opposition that represents 29 households and 48 property owners who signed a petition. She noted that this brings the total number opponents to 40 households and 62 property owners. Labadie read the statement provided with the petition.

Patty Paulson, 239 E Monroe, Cannon Beach, OR, stated that she represents Don and Patty Paulson. She distributed materials to the Commission and stated that she wanted to bring to the attention of the Planning Commission this is an unusual situation with regard to re-opening a hearing to only the property owners who did not receive notification. Paulson cited ORS197.763 (7), stating her opinion this statute required that if the City reopens the public hearing, any person should be able to participate in the reopened public hearing. Paulson asked Chair Logan if the Commission wanted to abide by ORS197.763. (7). Logan deferred to the City Attorney. Herdener replied that City staff has researched this matter and it has been determined that the appropriate remedy is to re-open the hearing for those property owners that were not notified 20 days prior to the initial hearing on July 23, 2009.

Paulson proceeded to read her correspondence to Planning Commission. In response to a question from Holden, Paulson confirmed that the preliminary map of the overall proposed trail is mostly on city streets.

Camille Brusaschetti, 332 E. Monroe, Cannon Beach, OR, stated that she is the second house east of the proposed trailhead. Brusaschetti read from a prepared statement submitted to the Commission.

Brusaschetti concluded that comments regarding the public process. She stated that at a July 21, 2009 meeting with Rich Mays, Mr. Mays described the process that lead to the development of the proposed trail system. She stated this process was inadequate. Brusaschetti suggested that the City clearly define the complete path and uses of the linear path, notify property owners formerly before proceeding with the trail, and request the opinion of Fire Marshal on the proposed trail. She also asked that the Commission take the same approach as with the Gorsuch application and thoroughly assess the impact on the neighborhoods before making a final decision. In such a reevaluation, she believes that the Commission will find that there is just not enough parking for the trail.

Jerry Brusaschetti, 332 E. Monroe, Cannon Beach, OR, read from prepared remarks. He urged the Planning Commission to deny the application and thanked the Commission for the opportunity to speak.

Chair Logan asked if there was a staff response.

In his staff rebuttal remarks, Bartl stated the following:

- 1) The staff report does not address the portion of the trail in the Elm Street right-of-way given that street improvements such as a pedestrian path are not regulated by the Zoning Code. Even if it were, Elm Street is zoned R-2 and public recreation uses such as a trail is an outright use.
- 2) With regard to demand, he reviewed a number of factors that provide a basis for a determination that there is a demand for an additional walking trail in the community.
- 3) Alternative trail locations. He noted that trails outside this community cannot meet the goal of a north/south trail within the City. The ocean beach and Hemlock Street do provide north/south routes. However, there existence does not limit the City from the development of an additional route. This particular trail section provides unique amenities for pedestrians including, the wetlands, the bird watching at the sewer pond, and the Sitka Spruce Reserve. Those opportunities cannot be found on the beach or along Hemlock Street.
- 4) With regard to criteria #2, the criterion states, "the use will not create excessive traffic congestion on nearby streets." Bartl noted this is a very low standard to meet as it permits traffic congestion, just not excessive traffic congestion. He reviewed some traffic generation data to demonstrate that the proposed trail will not create excess traffic congestion. He concluded by saying that a traffic study was not warranted.
- 5) With regard criterion #6, the criterion is not that the use is compatible, it is that the building and site design ensures that it will be compatible. A six-foot pedestrian path can be found to be compatible with the surrounding area.
- 6) With regard to the concern that the application is not clear that the trail extends all the way through the Sitka Spruce Reserve to Monroe Street, Bartl confirmed that the staff report clearly states that 100 feet of the trail is in the Elm Street right-of-way and its terminus is on Monroe Street. It is just that trail segment does not require a conditional use.
- 7) With regard to Comprehensive Plan Housing Policy #7, neighbors have stated they support the development of a trail system, just not in their neighborhood. If a pedestrian trail is generally compatible in one neighborhood, given the same factors, it should be compatible in others. In fact, this trail will create a limited amount of traffic disruptions and noise.
- 8) With regard to Comprehensive Plan Bike Policy #1, the proposal is not for a bike trail it is a pedestrian trail.
- 9) With regard to Comprehensive Plan Citizen Involvement Policy #1, the conditional use does not require a specific public involvement process leading up to a conditional use application.
- 10) He stated that in his opinion, the pedestrian trail and elk use of the area can be compatible.

In response to questions from Florer, Bartl referred the questions with regard to the proposed signage along Monroe Street to the applicant and confirmed that the Planning Commission can apply conditions of approval to ensure the application meets the applicable criteria.

Holden asked whether the 40 persons who signed the petition presented by Mrs. Labadie would now become parties of record. Bartl stated that he will consult with the City Attorney on this matter.

In response to a question from Holden regarding a Spruce Street trailhead, Bartl stated that the applicant could

submit a modified application that had such a configuration. Bartl noted that there may be issues with respect to creating a trail that meets ADA accessibility standards at this location.

Chair Logan asked if the applicant wished to provide any rebuttal statements.

Rich Mays, City Manager, reiterated that a pedestrian trail system has been discussed and has been in planning for several years. It has also been a priority of the City Council for several years. Materials were distributed to the Commission regarding Comprehensive Plan references and studies related to the safety of trails and their effect on property values. He reviewed the materials, citing several portions of the Comprehensive Plan that refer to promoting trails and alternative transportation. He reviewed the key findings of several studies regarding the impact of trails on property values and crime, noting they conclude they do not result in higher levels of crime and increase rather than decrease property values. He reviewed Gearhart's experience with its Ridge Path; concluding by stating that it is a community asset.

He also noted that the City's Sustainability Committee has established the development of a comprehensive walking and biking trails system as one of its objectives.

Mays stated his judgment that very few trail users will drive to the trail.

Mays noted, with regard to public notice of the proposed trail, that property owners were notified within 250 feet of the proposal. This is the public input process required for a conditional use. In response to Mrs. Paulson's comments regarding a lack of publicity, there were numerous City committee meetings, as well as publicized presentations at local community potlucks and newspaper articles.

The proposed trail segment is a good starting point given the aesthetic values of the surrounding area as provided by the Sitka Spruce Reserve and the wetlands.

Mays stated concurrence with Bartl's statements regarding the demand for the trail.

He referred to a letter to the editor of the Cannon Beach Gazette from David Robinson in which it was noted that a trail system was included on a community survey of desired recreational improvements.

Mays noted that at the appropriate time, the City will make application for a right-of way permit.

He also noted that when a City Public Works crewmember had on-site contact with Ms. Labadie early on in the site design process. She stated that she agreed with the prospect of a trail.

Mays added that the Trail Committee had looked at many alternative routes including some recommended by the opponents. It was determined the proposal represented the best route for Phase I.

He noted that the Council, through the budget process, has determined the project's benefits was worth the cost.

Mays noted that the alternative hiking opportunities mentioned cannot replace a trail system in the City, particularly one that is flat and user friendly. The others are more vigorous and not suitable for smaller children

He stated that with respect to the alternative of sidewalks on Spruce, it is estimated the cost would be into the six figures and that the Spruce Street sidewalks could not provide ADA access.

Additionally, Mays added that the proposed trail provides an alternative tsunami evacuation route for the downtown area, including the Cannon Beach Elementary School.

In response to a question from Florer regarding vehicular traffic associated with the trail, Mays stated that if there were a problem, the City would work on addressing those issues.

Chair Logan closed the public hearing.

Motion: Holden moved to, tentatively, approve the request subject to the conditions in the staff report and subject to preparation of final findings of fact; Florer seconded the motion.

Vote: Holden, Reed, Ogilvie, Logan and Florer voted AYE; the vote was 5/0 in favor and the motion passed unanimously.

Bartl stated that the September meeting has been moved to Monday, October 5, 2009 at 7:00 p.m. and that final findings will be considered at that time.

**(5) Authorization for the Chair to Sign the Appropriate Orders.**

Motion: Holden moved to authorize the Chair to sign the appropriate orders; Florer seconded the motion.

Vote: Peters, Holden, Reed, Wierson, Ogilvie, Logan, and Florer voted AYE; the vote was 7/0 in favor and the motion passed unanimously.

**(6) Ongoing Planning Items**

Bartl reviewed recent matters before the City Council.

**(7) Good of the Order**

**ADJOURNMENT**

The meeting adjourned at 10:20 p.m.

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Administrative Assistant Brandy Brien