

TILLAMOOK COUNTY PLANNING COMMISSION

MINUTES

SEPTEMBER 12, 2002

I. CALL TO ORDER:

The meeting was called to order at 7:00p.m. by Chairperson Don LaFrance. Other members present were Gale Ousele, Anne Price, Joan Marti, and Scott Hill. Staff present were Lisa Phipps, Wes Greenwood, Bill Holmstrom, and Tim Franz.

Planning Commission members absent were Kurt Heckeroth and Charlie Swan.

II. APPROVAL OF MINUTES: For July 11, 2002.

References were made to pages 3, 4, 6, and 7 regarding typos.

Gale made a motion to approve the minutes of July 11, 2002 with corrections and Anne seconded it. The motion was carried .

III. OLD BUSINESS:

None.

IV. NEW BUSINESS:

AP-NCMJ-02-02: An appeal of the Director's Decision to approve a Non-Conforming Major Review to allow the expansion of an existing structure and maintain the existing front setback. The property is zoned Rural Residential (RR), Section 3.010 of the Tillamook County Land Use Ordinance. The subject parcel is located in the community of Cape Meares, and is designated as Tax Lot 2800 of Section 7CA, Township 1 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon. The property owners, David and Eden Toner, Applicant, Don Hahn, and appellants Mary Jo and Barton Rice and Herb and Patti Book.

Don read the oral statement regarding Quasi-Judicial public hearing procedures.

There was no challenge to the jurisdiction of the Planning Commission to hear this item. There was no conflict of interest of personal biases

declared by a commission member. Regarding exparte contact, Scott noted that he had visited the subject site. Bill passed out copies of the applicable criteria to those in the audience.

At this time, Lisa submitted a copy of the assessor's map to the members for their review as well as an aerial map. Lisa explained that this is an appeal of a non conforming major review for an expansion of an existing structure located in Cape Meares. She then identified the site on the display map. The project site is located on Pacific Avenue and two blocks from the ocean.

Lisa stated that the applicant applied for a Non-Conforming Major Review for a structure that has been in existence since 1936, and has not been significantly altered since that time. She continued by saying the proposal was to maintain the front of the structure, expand towards the rear, and increase the height as well. In maintaining the front of the house, Lisa said this would mean the front yard setback would range from 2' to 4' and this is what causes the structure to be considered non-conforming.

Lisa said staff felt the applicants had satisfied the criteria, not only for a Minor Review, but for the major review as well. Therefore, staff approved the application. She went on to say that the criteria to be considered are to determine what the differences would be from the existing structure and the proposed structure, as far as impacts to the area are concerned. She noted that some of these impacts might be noise, more traffic, dust, glare as well as visual impact, but she also noted that this is not an increase in "use" situation.

Lisa said the applicant satisfied that criteria and indicated that the structure will be maintained as a single-family dwelling. She added that the other criteria to be considered are the number of trips that would be made to the structure and the visual impact. Pertaining to the number of trips to the site, the applicant plans to eventually make this their permanent home and will be going to the site on a daily basis. Lisa said that as far as the visual impact is concerned, the front of the structure will be maintained to preserve the historic characteristic that the area now has.

Regarding the height, Lisa continued by saying the height of the structure will be below the maximum height limit of 35 feet and the setback requirements will be maintained along the other property lines. The proposed second story begins at about 19 feet from the front property line.

Pertaining to the Major Review, Lisa read from the staff report the criteria that had to be addressed: “..The applicant must demonstrate that bringing the structure or use into compliance is either physically impracticable or financially onerous, and that mitigation will be implemented and maintained which will substantially offset the impact(s) to neighboring property owners.”

Lisa said the problem with coming into compliance with the front yard setback is that a new septic system will have to be installed. She added that in this case, the approved septic system plan actually allowed reduced setbacks than what is normally maintained for this type of system. She noted that it would be impracticable to move the house back because it would eliminate the possibility to use the required septic system.

In conclusion, Lisa stated that the reason for the appeal is that the appellant feels the applicant did not sufficiently address all the criteria for a Major Review. She said staff determined that the applicant had addressed all criteria and recommends denial of the appeal and approval of the application.

Lisa stated that Wes Greenwood, On-site Sanitation, was present to answer any questions regarding the septic system.

Herb Book, 10440 S.W Susquehanna Drive, Tualatin, OR, introduced himself as appellant and representing Barton and Mary Jo Rice, as well as Patti Book. He displayed a diagram of the subject site on the easel for the benefit of all present. This display was submitted and made a part of the record.

Mr. Book began by saying that whenever a Non-Conforming structure is substantially demolished, it must be brought into compliance when rebuilt, and that is the purpose of the Major Review. Mr. Book said that in this case, he does not feel there has been any attempt to demonstrate compliance with regards to setbacks. He added that he felt there has been opportunity to achieve compliance at no additional cost to the applicant.

Mr. Book stated that prior to this appeal, the only reason given for applying for an exception to the building requirement is historical preservation, personal reasons and anticipation of updating the structure. He then asked the Commission to separate the relevant information from the non-relevant as it pertains to this issue. He used as an example the fact there may be testimony this evening pertaining to what was

appropriate years ago in the community compared to the present. Mr. Book said he did not believe the past should be relevant .

Mr. Book went on to say he is pleased to see the property being improved, and felt it will be a benefit to the neighborhood as well as have a positive impact on the value of the surrounding property. He added that there are numerous properties in the neighborhood that are non-conforming, but the economics suggest that the house in question be demolished and rebuilt.

Mr. Book stated that he is being affected by the decision of the Commission and he said he felt the applicant should comply with county codes. He then referred to the packet and asked the members to look again at the photos of the site and surrounding parcels as well as the exhibits. He then identified the photos, described the present construction of the subject residence, the setbacks, septic and drain field area, accessory structure, the probable cost of adding the proposed addition, additional traffic, setbacks of surrounding properties, and landscaping. Mr. Book also explained how he felt the subject house could be brought into compliance without being onerous.

Mr. Book also noted that he had been the subject of vandalism by way of destruction of landscaping on his property and in the public right-of-way. He added that another neighbor, a friend of the applicant had retaliated against him as well. Mr. Book added that one of the persons was one who had never read the staff report or knew what the issue was about, and this led him to believe that the application has affected the community in a negative way.

Mr. Book then referred to his display of a plot plan of the subject site and using cutout rectangles, identified where the house, septic system and drain field and accessory structure would be if the application was approved. He then moved the cutouts to indicate how the structures and drain field could be situated so it would be in compliance and would be of no cost to the applicant.

Again, Mr. Book asked the members not to consider the past, but to focus on the issues as they are now. He added that this is the reason planning laws are developed.

In conclusion, Mr. Book thanked the Commission for the opportunity to participate.

Scott asked Mr. Book how long he has owned his property, and Mr. Book answered he has had it for 20 years, and all necessary permits had been obtained.

Eden Toner, 7526 30th Avenue, Seattle, Washington, 89115, applicant, told the members that she felt the criteria had been met. She added that she had not received Mr. Book's material until the day before and therefore did not have much of a chance to review it.

Mrs. Toner stated that she had no idea there had been retaliations against Mr. Book and had no knowledge about such incidences. She noted that she had applied for a septic system some years ago and it had been approved.

Regarding Mr. Book's comments pertaining to the theory that if something else can be done regarding the proposed plan, it should be, she said she disagreed. She added that that is the purpose of the Non Conforming Ordinance which allows changes. She said she felt the property would be improved in many ways with the proposed plan.

Mrs. Toner referred to Mr. Book's comment regarding the reason for the appeal as being impact on air space (page 2 or 3): picture taken from Book's upstairs window (page 2) Mrs. Toner explained that the proposed plan will actually be less of an impact than the 40% that Mr. Book suggested.

Mrs. Toner did not agree with Mr. Book's display suggestions regarding moving the house and drain field. She added that staff had visited the site and approved the proposed plan. Mrs. Toner went on to say she was not interested in making money from the property and it will be used as a vacation residence for some time to come. She also noted that it is possible that a sewer system will be installed in the future, meaning there is no way of telling what the future will bring.

Mrs. Toner reiterated that the purpose is to expand the cabin, not replace it, and the County Ordinance permits this activity. She said again that she felt all criteria had been met.

Mrs. Toner asked if all testimony will be part of the record. Don told her that the meeting is on tape and there will also be minutes of the meeting as well.

There were no questions from the Commission members.

There was no other testimony.

Mr. Book wanted to make it clear he did not want to imply Mr. and Mrs. Toner had any knowledge of the retribution he had mentioned earlier in the hearing.

Mr. Book added that there are planning laws that say if a property can be brought into compliance, it should be unless it is financially impossible to do so. He did not believe that was the case in this situation, meaning he felt there was an alternative.

Mr. Book also discussed the 14-foot setback that will be encroached upon if the application was approved. He said he thought the house could be improved upon within the laws that are dictated by the county. He added that he wants the Toner's to have their house, but he wants it to be within the law.

Mr. Book asked the members if they were aware of the 14-foot setback regulation (front yard averaging). They acknowledged they were. Mr. Book then elaborated on the setback rules. He added that he is trying to help with this application situation, not hurt it.

Mrs. Toner stated that the Non Conforming Use Ordinance was created for just this type of situation.

Wes Greenwood introduced himself as the Environmental Program Manager for Tillamook County in charge of on-site regulations for DEQ for septic systems. He mentioned that he is not a Sanitarian per se, but he is a registered professional geologist and has the authority to work with septic systems.

Wes began by saying the subject site has a two to three percent slope that angles toward the shed. Wes referred to the easel display and said that drain field trenches have to be on level ground, and the original septic plans indicated the trenches would be level and straight. The current plan shows the trenches at an angle which means the drain field will take up more space than the display map shows.

Wes referred to OAR 340, Division 071 and 073 which describes all the rules and regulations pertaining to septic systems including septic tank and drain field setbacks. Wes then outlined the setback requirements from tank to drain field, tank to house, and system from the property line. He also noted that properties must have a "repair area" for a future drain field site. Wes also touched on the possibility of a sand filter system, but this property did not require that type of system.

Wes wanted to make it clear that he has not seen a more recent septic plan than the one he has on file dated January 25, 2002 which was submitted by Tom Leonnig for a repair permit for this site.

Mrs. Toner had mentioned earlier in the meeting that had the threshold market value not been exceeded by 100 percent, they could have built an expansion without going through this formal procedure. At this time, Lisa agreed with Mrs. Toner's remark.

Lisa then touched on issues such as that the county does not require a property owner to tear down a structure that is reasonably sound. That decision would be entirely up to the property owner; None of the other setbacks will be encroached upon; the applicant needs to only show they either comply with Section 4.005 or that coming into compliance is physically impracticable or a financial burden; staff feels it is physically impracticable to consider an alternative of moving the structure further back on the lot.

Don closed the hearing to public testimony.

Don asked if in the future, the cabin portion was damaged, would it give the applicant the authority to build on the present footprint, or would they have to comply with current setback regulations. Lisa answered that if the cabin was destroyed by fire, the applicant could rebuild in the same footprint. She added that if they choose to tear it down and rebuild, they would have to comply with current rules. Don then asked if the structure could be built higher if it was rebuilt in the same footprint as long as they go no higher than 35 feet. Lisa answered that it could.

Scott asked what the setback will be from the western corner of the proposed upper structure to the property line. Lisa answered that it will be approximately 19 feet, according to Exhibit II(a). Mrs. Toner interjected that it could be closer to 10 feet to the property line, but 19 feet to the street. A short discussion followed pertaining to this setback, and Mr. Book stated that the setback is 10 feet from one corner of the house and 8 feet from the other to the property line.

There were no questions of staff by the members.

Don closed the hearing to testimony.

Joan said she felt the only issue pertaining to Section 4.005 of Article IV would be number 8: "...to ensure that pleasing views are neither unreasonably obstructed nor obtained.." She thought the key word is "unreasonably", but admitted it is really a judgement issue. She added

that she felt this request is not unreasonable. Joan added that the septic system could not be altered and no other options are available.

Scott made a motion to deny Appeal AP-NCMJ-02-02 and uphold the Planning Director's decision based on the staff report, testimony, and criteria regarding this issue.

The motion was seconded by Gale and carried unanimously.

V. AUTHORIZATION FOR CHAIR TO SIGN APPROPRIATE ORDERS, IF NECESSARY.

Gale made a motion for the chair to sign the appropriate orders, if necessary. The motion was seconded and carried unanimously.

VI. DISCUSSION ITEMS:

ADMINISTRATIVE DECISIONS: AR-02-11, CU-02-12(a), CU-02-18(a), CU-02-19(a), DP-02-10, EX-02-07, GH-02-10 Correction, GH-02-11, GH-02-12, GH-02-13 and MP-00-02, Mailed August 8, 2002, AR-02-05, AR-02-06, AR-02-07, AR-02-08, AR-02-09, AR-02-10, CU-02-09(a), CU-02-11(a), CU-02-14(a), CU-02-15(a), CU-02-16(a), CU-02-17(a), DP-02-03, DP-02-08, EX-02-05, MP-02-02, MP-02-03, NCMJ-02-02 and NCMN-02-03.

Referring to Conditional Use Request CU-02-11(a) pertaining to an expansion of an existing golf course, Don asked if it would take land from farm land. Lisa said that it would be expanding on farmland extending to Old Latimer Road and would run the length of the present golf course. She added that impacts to neighboring parcels were minimized. Don noted that he was surprised this issue was handled administratively due to the controversy surrounding the original conditional use for the golf course. Lisa said she did not write the report, but thought the expansion was on the same tax lot, and that may have been one of the reasons for the approval of the request.

VII. DEPARTMENT OF COMMUNITY DEVELOPMENT REPORT

Lisa announced that this meeting will be the last one for which she will be giving the "Director's" report. She said Bill Campbell has been hired as Director and began work September 9. He will be attending the next

meeting. Lisa added that Mr. Campbell will be here two days a week until October 1, when he will be here full time.

Lisa went on to say that the Commission will be facing some interesting issues in the next few months.

The Department has been dealing with some challenging violations of late, which she is sure some of the Commission members will hear about. She added that these include riparian violations, some old and some new.

Don asked about the Hathaway appeal which went to LUBA. Lisa answered that LUBA accepted the appeal, but she has heard nothing since.

Lisa said that several issues have come up with the golf course proposal in Sand Lake and the time frame for application has been pushed back a few times.

Lisa stated that at the October meeting, the Commission will be dealing with the task of removing some community boundaries that were created for Cape Meares, Falcon Cove, and Tierra del Mar. Since these will be legislative decisions, the members will be making recommendations to the Board to approve these Ordinance Amendments. A short discussion followed.

VIII ANNOUNCEMENTS:

Don said he had spoken to Mr. Campbell and had outlined the Planning Commission member selection process as well as discussed the Commission's strengths. Don said he felt the Commission had been fortunate in that there has been very good members through the years.

Don then announced that next month will be his last Planning Commission meeting because he is moving out of state to Massachusetts. Don has been on the Commission for approximately 21 years.

IV ADJOURNMENT

There being no further business, Don adjourned the meeting at 8:46 p.m.

Don LaFrance, Chair

Barbara Legoo, Acting Recording Secretary

Date