

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR TILLAMOOK COUNTY, OREGON

FILED
APR 19 2010
TASSI O'NEIL
COUNTY CLERK

In the matter of an appeal of a Director's Determination/Interpretation regarding the permissible amount of living space in a dwelling on a sub-standard sized lot in the County's Residential Oceanside (ROS) zone - BP #05-3245R (Raphael).

AP-AP-NCMN-05-01
FINDINGS AND DECISION

This matter came before the Tillamook County Board of Commissioners as an appeal from Kathryn Norris and Theodore and Mary Raphael (two separate appeals) concerning the property at 1650 Sunset Drive in Oceanside (TL 11100, Sec 25AA, Twp 1 S, Range 11 W, W.M.) and building permit #05-3245R.

The Board of County Commissioners being fully apprised by staff and the parties, the record and files herein, the various staff reports, the Director's June 26, 2007 decision, the Planning Commission's September 10, 2007 decision, the submissions of the applicants (the Raphaels), the appeals and supporting documentation, written comments from other interested parties and testimony received at a October 24, 2007 public hearing, finds as follows:

I. The Property, Applicable Approval Criteria and Procedural History:

The Raphaels own the subject property - an approximately 1,306.8 sf parcel of land, zoned Residential Oceanside (ROS) and located at 1650 Sunset Drive in Oceanside. The Raphaels obtained a building permit (#05-3245R) for certain renovations of the existing single-family dwelling on their property. The Planning Director subsequently initiated a code interpretation/ determination and issued a written decision on June 26, 2007, which among other things determined that the home the Raphaels were building/renovating on the property exceeded the maximum amount of living space allowable on the lot. In particular, Section 5.100 of the Tillamook County Land Use Ordinance (TCLUO) provides as follows:

SECTION 5.100: GENERAL EXCEPTION TO LOT SIZE REQUIREMENTS

A lot or parcel, as recorded in the office of the County Clerk prior to the adoption of this Ordinance, which complies with the standards then in effect, but which does not now meet the dimensional lot standards of the zone in which the property is located, may nevertheless be occupied by a one-family dwelling if the lot or parcel meets all other applicable Ordinance requirements, including setbacks, provided that lots smaller than 3,000 square feet meet the following additional requirements.

\* \* \*

(6) The permitted living space as determined by the Building Official shall be no more than 50% of the square footage of the lot or 1,200 square feet, whichever is larger. Additionally, up to 600 square feet is permitted for an enclosed garage or storage area. This garage or storage area may be enlarged if there is an equivalent reduction in living space.

The Director determined that, since the Raphaels' lot was substandard (smaller than 3,000 sf), it was subject to the limitation in TCLUO §5.100(6) on the maximum amount of living space. Since the building plans that were then on file with the County showed more than 1,200 sf of living space, the Director determined that the Raphaels were required to either change their building plans to conform with this requirement or obtain a variance.

Instead, the Raphaels appealed the Director's Determination to the Planning Commission, which held a public hearing on August 23, 2007. The Planning Commission voted to over-turn the Director's decision in a September 10, 2007 written decision. A neighboring property owner (Kathryn Norris) timely appealed the Planning Commission's decision to the Board of County Commissioners, as did the Raphaels. The County duly noticed a public hearing on the appeals and the Board of Commissioners held a public hearing on October 24, 2007, at which time the Board received written memoranda and oral argument from attorneys for the Raphaels and Ms Norris. At the conclusion of the October 24, 2007 hearing, the Board closed the public record, deliberated and voted 2:1 to allow the appeal, over-turn the Planning Commission decision and to affirm the Director's June 26, 2007 determination/interpretation.

## **II. Discussion:**

The meaning and import of TCLUO §5.100(6) is relatively clear and uncontested. While the Raphaels obtained verification from the County that the height of the home on their property was nonconforming, that determination did not extend to any other aspect of the property or the dwelling. The Board takes official notice of the fact that the Raphaels' property in Oceanside is substandard, being smaller than 3,000 sf. As such, TCLUO §5.100(6) limits the amount of living space for a dwelling on that lot to "no more than 50% of the square footage of the lot or 1,200 square feet, whichever is larger." It is relatively clear to us that the set of building plans for the Raphaels' house, upon which their building permit was reviewed and approved on November 2, 2005, exceeds 1,200 sf of living space. The primary question for us to determine is whether the County, in approving the Raphaels' building permit, reviewed and implicitly approved their building plans, including the amount of living space. If the County did, then is it too late for the County to go back, as the Planning Director apparently did in his June 26, 2007 letter, and readdress the issue of compliance with TCLUO §5.100(6)?

We find that TCLUO §5.100(6) applies and imposes a maximum size on living space on the Raphaels' house renovation/replacement. We find that the Raphaels must comply with that limitation. We find that the County did not explicitly or implicitly approve an exceedance of that living space maximum when it approved the Raphaels' building plans and permit in 2005. To the extent that a County official can be said to have approved such an exceedance or waived compliance with TCLUO §5.100(6), that action was not authorized and does not bind the County or prevent it from requiring compliance with TCLUO §5.100(6). We find that the building plans that are the subject of this appeal exceed the maximum living space allowed by TCLUO §5.100(6). As such, the Raphaels cannot proceed to construct, reconstruct or rebuild their home using those plans. They must either revise their building plans to comply with the living space requirement in TCLUO §5.100(6), or they must obtain a variance from that dimensional limitation.

During the course of this proceeding, it became apparent that, regardless of how we resolve these appeals relative to the Director's determination and building permit #05-3245R, the Raphaels' need an amended or new building permit to reflect needed

changes to their home design. That new or amended building permit will need to be applied for and processed by the County in the normal course, and as part of that review, the County will undertake a new application and interpretation of TCLUO §5.100(6). We trust that the Raphaels and the County reviewers will pay close attention to the living space depicted on those new/amended building plans and that the requirements of TCLUO §5.100(6) will be met.

**III. Conclusion and Decision:**

Based on the foregoing, the Board accepts and allows the appeal of Kathryn Norris, and on that basis overturns the decision of the Planning Commission, affirming the Director's June 26, 2007 determination/interpretation. The Board also rejects as moot the Raphaels' appeal of the Planning Commission's decision.

IT IS SO ORDERED this 14 day of April, 2010.

**THE BOARD OF COMMISSIONERS  
FOR TILLAMOOK COUNTY, OREGON**

	Yes	No	Abstain/absent
<u>Mark Labhart</u> Mark Labhart, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Charles J. Hurliman</u> Charles J. Hurliman, Vice-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Tim Josi</u> Tim Josi, Commissioner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**ATTEST:**

By: Jason Overell  
County Clerk

**APPROVED AS TO FORM:**

William K. Sargent  
William K. Sargent,  
County Counsel

