

CITY OF FLORENCE PLANNING COMMISSION
August 23, 2011 ** MEETING MINUTES DRAFT**

CALL TO ORDER - ROLL CALL - PLEDGE OF ALLEGIANCE

Chairperson Nieberlein opened the meeting at 7:00 pm. Roll call: All Commissioners were present except Commissioner Hoile (excused). Also present: Community Development Director (CDD) Sandra Belson, and Assistant Planner (AP) Michelle Pezley.

1. APPROVAL OF THE AGENDA

The agenda was approved as presented.

2. PUBLIC COMMENTS

Chairperson Nieberlein read the following into the record: *This is an opportunity for members of the audience to bring to the Planning Commission's attention, any items not otherwise listed on the Agenda. Comments will be limited to 3 minutes per person, with a maximum time of 15 minutes for all items.*

Ward Beck – 2502 Highland Dr. Eugene, OR 97405

Mr. Beck stated that he has a house located on Woahink Lake. He stated that about a month ago, he got a call from Mr. Wheeler who stated that they had a flood damage situation at their shop up North on Highway 101. He stated he owns a building that is vacant and he was more than willing to let Mr. Wheeler, on an emergency basis, move his business and the attached dog grooming business with the suggestion that it is run through the City's planning department. He stated that Mr. Wheeler was told by the City that this type of move of the businesses would not be allowed. He suggested the City look at its planning code for these types of emergencies so that this type of move is allowed on a temporary basis. He stated that because of the denial, Mr. Wheeler had to close his business for several months and this placed people out of work.

Chairperson Nieberlein thanked Mr. Beck for bringing this to the Planning Commission's attention and that she thinks this is something they should look into.

CDD Belson asked if Chairperson Nieberlein would like a response to Mr. Beck's comments and Chairperson Nieberlein said she would like a response.

CDD Belson stated that everything Mr. Beck said was true. The upholstery shop is an allowed use outright in the zoning district where the property is located but the dog grooming business is classified similar to the veterinarian clinic that is before the Commission tonight and requires a Conditional Use Permit. Conditional Uses require public notices and the timeline was such that in an emergency situation, one could not just move in.

3. PUBLIC HEARING - RESOLUTION PC 11 10 CUP 02

Chairperson Nieberlein read the following into the record: *This evening we have one public hearing and it is on an application for a Conditional Use Permit and design review to place an animal clinic in an existing building. The site is located east of Highway 101, north of Thorton's Café and south of the Department of Human Services, 3120 Highway 101, (Map No. 18-12-23-23 TL 3400) as applied by John Bachmann, DVM. This hearing will be held in accordance with the land use procedures required by the City and the State of Oregon. Prior to hearings tonight, staff will identify the applicable substantive criteria which have also been listed in the staff report. These are the criteria the Planning Commission must use in making its decision. All testimony and evidence must be directed toward these criteria or other criteria in the plan or land use regulations which you believe applies to the decision per ORS 197.763 (5). Failure to raise an issue accompanied by statements or evidence sufficient to afford the Planning Commission and parties involved an opportunity to respond to the issue would preclude an appeal based on that issue. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments, or testimony regarding the application. Failure of the applicant to raise Constitutional or other issues related to the proposed conditions of approval without sufficient specificity to allow the Planning Commission to respond to the issue precludes an action for damages in Circuit Court. Any proponent, opponent, or other party interested in the land use matter to be heard by the Planning Commission may challenge the qualifications of any Commissioner to participate in such hearings and decision. Such challenge must state facts relied upon by the party relating to a Commissioners bias, pre-judgment, personal interest, or other facts from which the party has concluded that the Commissioner will not make a decision in an impartial manner.*

Chairperson Nieberlein asked if there is any Commissioner who wishes to declare a conflict of interest, bias, ex-parte contact, or a site visit and all Commissioners stated that they had a site visit.

Chairperson Nieberlein opened the public hearing at 7:09 pm.

PRESENTATION OF STAFF REPORT

AP Pezley stated in her presentation, she will be going over the criteria Chairperson Nieberlein mentioned, the location and existing conditions of the site, the issues in the staff report, new exhibits that have been received, and the staff recommendations. She said the criteria for the public hearing is under Florence City Code Titles 10, Chapter 1 *Zoning and Administration*, Chapter 3 *Off Street Parking*, Chapter 4 *Conditional Uses*, Chapter 6 *Design Review*, Chapter 16 *Highway District*, Chapter 34 *Landscaping*, Chapter 35 *Access and Circulation*, the Florence Realization 2020 Comprehensive Plan Chapter 2.

AP Pezley presented Exhibit B which is a copy of the approved site plan which was a change of use to allow an automobile dealership in the year 1996. She stated the landscaping in the highway district requires a visual buffer between the parking lot and the highway to shield headlights from glaring onto the highway and because of this she recommends they install a visual barrier. To reduce noise it is recommended that the native landscaping remain. It is recommended also that the noxious weeds are removed.

AP Pezley presented Exhibit F which is a letter from Architectural Werks Inc. who specializes in veterinary clinics. They recommend as a condition of approval to have a sound test to make sure the sound from the building does not exceed what is required in the ordinance. Staff agrees and recommends a sound test be completed as a condition of approval.

AP Pezley entered into the record, Exhibit J which is an email from Kimberly Fleenor dated 08/19/2011 and Exhibit K which is an email from Jim and Karen Sievers dated 08/21/2011. Both of these letters are in support of granting the conditional use.

AP Pezley stated that staff recommends approval of the conditional use with conditions of approval.

Commissioner Muilenburg asked for clarification on the two fences that are required. After discussion, CDD Belson suggested changing condition number 8 to keep the first sentence "The applicant and/property owner shall install a fenced area to protect the dogs from running onto adjacent properties or onto the highway." And add that the fenced area for the dogs shall not be within the rear buffer area.

Commissioner Muilenburg asked for clarification between condition number 4 and condition number 12. AP Pezley explained that condition number 4 should state that a permit is necessary for work done in the right-of-way which requires a permit, and condition number 12 is for an access permit as applied through Oregon Department of Transportation (ODOT) as well. She also stated that there is a joint access agreement.

Commissioner Muilenburg asked if the applicant needs a permit for an approved building sign and AP Pezley stated that the applicant would need to apply for the sign.

Commissioner Wise spoke of condition number 5 and suggested that they include that failure of living up to the maintenance clause could result in the initiation of revocation of the conditional use permit.

TESTIMONY

Chairperson Nieberlein read the following into the record: *We will be taking testimony from the applicant, proponents, and opponents. Copies of the written comments received have been distributed to the Planning Commission.*

John Bachmann, DVM (Applicant) – 84845 S. Slough Road Westlake, OR 97493 and Ward Beck (Property Owner) – 3120 Hwy 101 Florence, OR 97439

Mr. Beck stated that they are in the process of negotiating a lease for Doctor Bachmann and that is why they are here tonight. He spoke regarding the history of the property. This was originally built as a ceramics store in the early 1980's. He purchased the property and ran it as the ceramic store until approximately 1995 when they changed to use to be an auto dealership. At this time, all of the landscaping was finished. Subsequent to this over the last 15 years, they had a fair amount of vandalism with people driving over the trees and bushes. The only reason the cherry trees are there is because they were too big to run over. He and Doctor Bachmann would both be comfortable with any landscaping conditions placed onto

this permit request. Additionally, he remembers having a joint access agreement as opposed to having an easement and he met with ODOT three years ago and they have all of the required permits.

Doctor Bachmann said he has been a practicing veterinarian for over 26 years. He left his position 2 years ago and his non-compete agreement is now expired which is why he is returning. He said he read the staff report and he does understand the conditions of approval as proposed.

Commissioner Muilenburg asked the applicant how many dogs are expected to stay over night and Doctor Bachmann responded they do not have any plans to board animals. Doctor Bachman stated as far as hospitalized cases, there may be occasional but he would not expect more than one or two on any given night.

Commissioner Muilenburg asked what the maximum number of beds are planned for the hospital and Doctor Bachmann stated he is anticipating on having five dog kennels for larger patients, there will be multiple cages, an isolation area, a dog ward and a cat ward for the smaller individuals, some of those will be there only for doing some testing, doing outpatient procedures, and the hospitalization will be for those patients that require intravenous fluids.

Commissioner Muilenburg stated that he asked these questions because he is concerned of the sound. Doctor Bachmann responded that they have agreed to use an acoustic engineer to minimize the sounds coming out of the building.

Commissioner Muilenburg said he would like to know how many animals Doctor Bachmann could have at one time and Doctor Bachmann responded that at the most, they would have 10 to 20 animals at any one time.

Commissioner Peters asked when Doctor Bachmann would like to open his business and Doctor Bachmann said he was hoping for November.

Bruce Jarvis (Proponent) – 2389 21st St. Florence, OR 97439

Mr. Jarvis said he comes here tonight in strong support of this conditional use permit. He stated he is a citizen who has pets and who has struggled to take care of those pets. He said the City needs this additional service and he would encourage the Commission to approve this matter tonight because there is an urgent need.

Betty Peterson (Proponent) – 69 Shoreline Dr. Florence, OR 97439

Ms. Peterson stated that she would strongly urge the Commission to allow Doctor Bachmann to open his office and clinic. He has been their veterinarian and has helped raise four Yorkie Terriers with two of them from puppyhood to adulthood. Dr. Bachmann is a superb veterinarian and we need additional veterinarian care in Florence.

Mary Ann Saunders (Proponent) – 1643 23rd St. Florence, OR 97439

Ms. Saunders stated that she owns the business Mary Ann's Natural Pet. Being in business, she hears a great many people speak of problems finding care for their pets. Because they

had the sudden closure of Oceanside Veterinary Clinic, many people have to go out of town. She also has a lot of people inquire about the veterinarian services while researching the possibility of moving to town. She urges the approval of this application.

Jennie Parlin (Proponent) – 1215 6th St. Florence, OR 97439

Ms. Parlin said she has had nine dogs total in her adult life and they need a veterinarian here desperately. She gave some examples of bad experiences with other veterinarians and stated that there is none better than Doctor Bachmann. Ms. Parlin requested this applicant be approved.

Donald Landstrom (Proponent) – 9700 Bernhardt Creek Rd. Mapleton, OR 97439

Mr. Landstrom said he has had Doctor Bachmann as a veterinarian for many years and the City needs him here in town.

Janet Ennis (Proponent) – 1060 Bay St. #2 Florence, OR 97439

Ms. Ennis stated she has lived in Florence for 6 ½ years and she has had dogs all of her life. She has never known a more compassionate, loving, caring veterinarian than Doctor Bachmann. It is not just that they need “a vet” we need Doctor Bachmann because he is the best and we need him as soon as possible in this town.

Donald Polito (Proponent) – 1706 31st St. Florence, OR 97439

Mr. Polito stated that he lives within a block from where Doctor Bachmann wants to practice and he wholeheartedly agrees with what everybody that they need Doctor Bachmann here as soon as possible.

Pamela Harrington (Proponent) – 1030 Alder St. Florence, OR 97439

Ms. Harrington said she has been a receptionist for another veterinarian for 13 years. She first met Doctor Bachmann about a year or two ago. He is interesting and personable. When he left his previous employer she could not believe how many calls she received at the office she was working at where people were wondering where Doctor Bachmann was. This town needs a doctor like him.

Chairperson Nieberlein asked if there was anyone who wishes to speak in general neither for nor against the project and no one spoke. She asked if there was anyone who wishes to speak against the project and no one spoke.

Chairperson Nieberlein closed the public hearing at 8:26 pm.

DELIBERATION

Commissioner Peters said he is considering a motion to require the applicant and/or property owner to submit a landscape plan subject to the terms of Florence City Code per provision 10-34-3-7-A for approval by this body. He feels this is important for discussion.

Commissioner Wise agreed with Commissioner Peters about the importance of advocating useful and attractive landscaping. As for the site plan, what was submitted was for a previous conditional use permit and he does not believe that those requirements or conditions carry over to the next conditional use permit. The law as he reads it indicates that they could have something as simple as a hedge of some evergreen type of material or they could in fact just install a small three foot high fence. Commissioner Peters thinks they should do everything possible to provide a condition that satisfies the needs of the Design Review Board for adequate landscaping but not something which will actually delay a motion on the resolution to approve the conditional use permit.

CDD Belson handed out a section of the Florence City Code. She said she wanted to point out under item FCC 10-1-1-6-B-7. This section of the code is the administrative review section and it describes what kinds of changes can be made to a landscaping plan for approval over the counter. She stated that the Commission has the option to require as a condition of approval, the landscape plan that staff reviews. There would be a charge \$150 for this to cover staff time. The Commissioners thought this approach would address their concerns.

Commissioner Wise stated that in the matter of application PC 11 10 DUP 02, which is the Planning Commission 11 10 Conditional Use Permit 02, which is an application for a Conditional Use Permit and Design Review to place an animal clinic in an existing building. This applicant being John Bachmann, Doctor of Veterinary Medicine, he moved approval of the resolution with the changes to conditions and findings of fact that have been identified during this meeting.

CDD Belson said to be clear, the Planning Commission did not come to a consensus on all of the suggested changes and perhaps Commissioner Wise could put into his motion exactly what he would like to propose.

Commissioner Muilenburg seconded the motion.

CDD Belson stated that they can begin with all of the mistakes in terms of references are corrected.

- Condition number 4 will state that the right of way permit is for any work within the ODOT right-of-way.
- Condition number 8 delete the second sentence and replace it with the fenced area for the dogs shall not encroach within the rear buffer (see condition number 10).
- Condition number 9 will read “120 days of notice of decision”.
- Condition number 10 will reference the City Code.
- Condition number 11; add the reference to FCC 10-3-8-L.
- Condition number 6; require a revised supplemental landscape plan that meets code requirements with particular focus on the buffer between the parking lot and Highway 101 that would be submitted to the Community and Development Director for review and approval.

The motion passed by unanimous vote.

Chairman Nieberlein called for a five minute recess and then reconvened the meeting.

4. PLANNING COMMISSION DISCUSSION ITEMS

Commissioner Wise stated that this is the second time that they have had an applicant come to them with “less than good” documentation, a good site plan, and a good landscaping plan. It was noted last time that the applicant wasted a lot of their time and he thinks that they need to have some way of either setting standards by adopting a policy resolution doing something that says “this is what it’s going to look like.” Right now they say what the content is but they do not say what it is going to look like. There are a lot of samples out there they could use and he would like to empower staff to say “no, you cannot go forward until you have this in this format.” They need to prevent these applicant issues.

Commissioner Muilenburg says they have empowered staff to require a complete application.

AP Pezley said when the property owner submitted the plans for landscaping; she asked the applicant if they were sure they wanted to submit that particular document because she felt it could become an issue. The applicant decided to use the plan. The applicant has the burden of proof and at any time during the process of incompleteness, the applicant can say they are complete regardless within the 30 day deadline.

CDD Belson said staff is empowered to say they will not send an application to the Planning Commission if they do not think it is complete but the applicant always has that trump card to say that they want it to go before the decision maker anyways. There are two timelines the City needs to follow with one being the applicant has 180 days from payment of the application to make the application complete. Once the application is complete then the City has 120 days to make a final decision which includes all appeals at the local level unless the applicant waives it. Most people would waive the 120 days to avoid denial.

Commissioner Peters stated that the applicant and property owners’ testimony was very helpful, but every other witness was totally inappropriate to what they were doing. It had nothing to do with the building or the buffer zone but it had the effect of putting pressure on them to make a rash and quick decision. There was not a single comment other than affirmation of Doctor Bachmann and this was not the issue.

Chairperson Nieberlein stated that this may seem like a waste of time but it is a public hearing and they are the public so they are allowed to give input.

CDD Belson included that they could make it clearer that the decision would be based on how they comply with the criteria and that the evidence they provide should be addressing the criteria.

5. DIRECTOR’S REPORT

CDD Belson stated that there is no Director’s Report because she was on vacation.

6. CALENDAR

Tuesday, September 13, 2011 at 7:00 pm – City Hall (Regular Meeting with a Public Hearing on Coast Village Zoning Code). Commissioner Peters will not be in attendance.

Wednesday, September 14, 2011 to Friday, September 16, 2011 – Oregon Planning Institute Conference.

Tuesday, September 27, 2011 at 7:00 pm – (Regular Meeting).

ADJOURNMENT

There being no further business to come before the Florence Planning Commission, Chairperson Nieberlein adjourned the meeting at 9:26 pm.

APPROVED BY THE FLORENCE PLANNING COMMISSION ON THE _____ DAY OF _____ 2011.

JAN NIEBERLEIN, CHAIRPERSON
FLORENCE PLANNING COMMISSION