

CITY OF FLORENCE PLANNING COMMISSION
November 22, 2011 ** MEETING MINUTES**

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 Bare (excused) and Commissioner Muilenburg (excused). Also present: Community Development Director (CDD) Sandra Belson, Building Official (BO) Dependahl and Contract Planner (CP) Melissa Anderson.

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.*

There were no public comments.

3. PUBLIC HEARING

These proceedings will be recorded. These hearings will be held in accordance with the land use procedures required by the City and the State of Oregon.

Prior to the hearing 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 the City and parties involved an opportunity to respond to the issue, would preclude an appeal based on that issue. Prior to the conclusion of this initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application.

Any proponent, opponent, or other party interested in a land use matter to be heard by the Planning Commission may challenge the qualification of any Commissioner to participate in such hearing and decision. Such challenge must state facts relied upon by the party relating to a Commissioner's bias, prejudgment, 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 opened the first public hearing at 7:03 pm.

Resolution PC 11 12 EAP 02 Request for a six month extension to the approved Preliminary Planned Unit Development for Cannery Station, a 17-acre mixed use development, located at 87344 Highway 101, Assessors Map # 18-12-14-20 Tax lot 700 (Original File # PC 08 09 PUD 01).

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 said no.

Chairperson Nieberlein asked if any member of the public wished to challenge a Commissioner's impartiality and no one spoke.

PRESENTATION OF STAFF REPORT

CP Anderson said the application to allow the extension is allowed by City Code 10-23-11, which allows the Planning Commission (PC) to grant a one-time six-month extension to preliminary PUD's. Preliminary approval was granted November 12, 2008. A year after the economic downturn, the City Council gave a blanket two-year extension to all open preliminary subdivisions, PUD's, design reviews and conditional use permits (CUPs). She said that extended the Cannery Station Preliminary PUD permit to November 19, 2011. CP Anderson said the applicant had submitted a request for an extension prior to November 19th. She stated that the criteria for this decision are Florence City Code (FCC) 10-1: Zoning Administration which relates to the process. She said they sent out notification to surrounding property owners that it was a public hearing and posted the property. FCC 10-23: Planned Unit Developments does not give any specific criteria in terms of how to evaluate this request to extend it. She does point out in the staff report that they did submit this prior to the permit expiring, there has been difficult economic times and there have been no material changes to the surrounding land uses or the zoning since this was approved in 2008. The Conditions of Approval also remain in effect. CP Anderson said the PC can approve the extension, deny the extension, or modify the proposed findings of fact and approve the request as modified.

Staff recommended that the PC approve the request for a six-month extension of the approved Cannery Station Preliminary PUD.

Commissioner Wise asked if the six-month time frame was state or city mandated. CP Anderson responded it was in the FCC.

Commissioner Peters questioned whether it had actually expired previously by the applicant not having submitted a final plan before six-months after it was approved. CP Anderson responded that it was her understanding the applicant had one year from that approval to file the final PUD. She said the original resolution specified it was going to be a phased development, with final PUD application to be submitted within 1 year of the preliminary PUD approval, making it still active.

TESTIMONY OF PROPONENTS

Theresa Bishow – Arlie & Company representative

Ms. Bishow said she wanted to give an update on progress achieved during the last two years. She handed out a memorandum with the final PUD site plan, as well as the conceptual subdivision plan. Ms. Bishow stated that it is a large site, 17 acres, with a variety of land uses

proposed which has contributed to the complexity of getting the final PUD submitted. She said one of the conditions of approval was a requirement to submit to the appropriate agencies a wetlands mitigation plan and to have received a permit for doing any development that would impact a wetland. She said that has been challenging due to having to deal with two government agencies as well as a private property owner. Ms. Bishow said a joint permit application was prepared with wetland mitigation and potential stormwater drainage issues addressed except that Lane County and ODOT had significant concerns because they were doing onsite mitigation. She said they had to start over. Ms. Bishow said they do have a place, Wilbur Island, where they could purchase wetland bank mitigation credits. She said ODOT permits were obtained for a new 47th Street and a couple of extensions had been received and the latest expires April 2012. She said Arlie & Co. was pleased with the progress of the Spruce St. Local Improvement District (LID). She said the economy has been very tough and obtaining bank financing had been difficult. She reiterated their commitment to the project. Ms. Bishow said the size and complexity of the project should be considered in their extension request. Having to make it compatible with two different land uses was also challenging. She recommended asking the Council to change the code to allow extensions longer than six months.

Chairperson Nieberlein asked if any proponents or opponents wanted to testify and none came forward.

Chairperson Nieberlein asked if anyone neutral wanted to comment.

BO Dependahl said as long as the applicant wanted to keep at the project, and taking into account all the work that was put in, it would be a shame to not grant the extension.

STAFF RESPONSE AND RECOMMENDATION

CP Anderson said staff recommended approving the six-month extension.

Chairperson Nieberlein closed the hearing at 7:30 pm.

DELIBERATION

Commissioner Wise said it seemed pretty clear that the City Council wants to enable the investment of this and other developers not to lapse because of factors outside of their control. He said he felt the PC should follow that direction unless there was a compelling reason not to.

Commissioner Tilton stated the adjacent land uses had not changed and he felt the applicants had done an excellent job and it was a great project. He supported giving an extension.

Commissioner Hoile said she hoped six months was long enough and that it was a great project.

Chairperson Nieberlein said she would also hate to see that work go down the drain.

Commissioner Tilton moved for approval of Resolution PC 11 12 EAP 02 for a six month extension to the approved Preliminary Planned Unit Development for Cannery Station, a 17-acre mixed use development, located at 87344 Highway 101, Assessors Map # 18-12-14-20

Tax lot 700 (Original File # PC 08 09 PUD 01). Commissioner Hoile seconded the motion. Commissioner Peters commented he had only been on the PC for a year and having come from Eugene, he had concerns with Arlie & Co. He said he deferred to the Commissioners who had been involved in the dialogue. He said he didn't think the PC could amend the code by allowing the phased approach to the project. He said he would, however, be voting in favor of the extension and hoping it turned to be an achievement for Arlie & Co.

The motion passed by unanimous vote.

Commissioner Wise asked if the PC should be planning now for some of these projects that will not be able to get started within the six-month timeframe. He said they should check and see whether Council wanted any statutes to be reviewed or if it should be addressed by a resolution. He said he wasn't sure how to give the Council that feedback. CDD Belson said the Council was holding a goal setting session and that anything the PC wanted communicated to the Council could be done in the form of a motion and then CDD Belson could relay that information. Commissioner Wise said he would draft something and bring it back to the PC.

4. **Resolution PC 11 13 CUP 03: Request for Conditional Use Permit to construct a single-family replacement dwelling in a commercial zone; located at 1738 20th Street, Assessors Map #18-12-26-22 Tax lot 2800. The proposal replaces a single-family dwelling that was destroyed by a fire.**

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 said they had done a site visit.

Chairperson Nieberlein asked if any member of the public wished to challenge a Commissioner's impartiality and no one spoke.

Chairperson Nieberlein opened the public hearing at 7:39 pm.

PRESENTATION OF STAFF REPORT

CP Anderson went through the staff report and a PowerPoint presentation summarizing the project as well as staff conclusion and recommendation (see attachment 1).

Commissioner Wise asked if the applicant provided all the materials recommended by staff. CP Anderson said to her knowledge yes. Commissioner Wise said he wanted to call to attention to the bottom of Page 2 of the application (Exhibit D), where the applicant wrote the following disclaimer: "Application made under time constraint and disagreement with requirement for conditional use. Reserve rights to challenge later." He asked if applications with disclaimers were normally accepted. CDD Belson said there is no basis to reject an application, all they can do is check whether it is complete or not. Commissioner Wise asked what the disagreement was about. CDD Belson said the applicant disagreed with staff's interpretation whether a CUP was required in this case. She said the City's Attorney was consulted and he had agreed with CDD Belson. The applicant requested a copy of the attorney's response, which CDD Belson said was privileged information. The applicant challenged that at the County level and the District Attorney confirmed that the City did not have to release the correspondence with the City Attorney. Commissioner Wise asked about

the time constraint the applicant was referring to. CDD Belson said FCC allows a house that was burned down to be replaced within six months. Because the proposed house is much bigger than the previous one, it was determined a CUP would be required.

Commissioner Wise asked if the applicant was filing under the non-conforming use statute or the conditional use statute. CDD Belson said there are no findings in terms of complying with the non-conforming section; it is a conditional use.

Commissioner Wise referred to the last paragraph on page 2 of the findings of fact. He asked what the circumstances were for not applying the residential district rules on those seven projects. CP Anderson said she didn't research the minutes on those particular projects. She said these were just examples where the City had not automatically requiring the residential single-family standards. Commissioner Wise said he was asking because he wanted to know what the circumstances would be for not granting the CUP. CDD Belson said a CUP provides an opportunity for the PC to look at the particular circumstances surrounding each property. She said there is no hardship requirement in CUP's. She noted that if it is important to the PC to have more information regarding the other cases, it could be researched and brought back to them. Commissioner Wise said he is of the opinion that just because CUP's had been granted in the past, doesn't mean he should do it now. He said he was trying to understand what the circumstances were in those previous cases.

Commissioner Wise referred to the Applicable Review Criteria (Page 4 of the Findings of Fact). He said the City Code is cited in the Findings of Fact and he thinks if they are cited, they have to be applicable review criteria. He said FCC 10-6, 10-8 and 10-11 were also cited and should have been listed in the Applicable Review Criteria.

Commissioner Wise referred to page 9 of the Findings of Fact. He quotes the statement "The proposal is a replacement dwelling for a single-family home that was destroyed in a fire, and the zoning code allows structures to be rebuilt in the event of a disaster (FCC 10-8-4)." He noted that isn't what FCC actually says. Commissioner Wise said FCC 10-8-4 states structures could be "restored". He said the significance of that is the applicant would be allowed to put back a 902 square-foot building under non-conforming uses, not that they get to put anything back there. He said also under non-conforming structures they would be allowed to apply for an extension. CP Anderson said if the proposed building exceeds 25% of the original building size, a CUP is required per FCC.

Commissioner Wise asked if the applicant has given any indication on how they were going to handle roof drainage. CP Anderson said she would have the applicant address that. CDD Belson said Title 9 Chapter 5 covers stormwater requirements, which states that single-family homes are exempt from having to do a drainage plan. They just need to comply with erosion prevention and sediment control practices for single-family residences.

Commissioner Tilton asked if an adjacent property owner had a stormwater problem after the project is completed, would there be redress for that property owner. CDD Belson said if they were causing flooding or other problems to their neighbors, it would be a code violation.

Commissioner Peters asked for clarification on the driveway size. CP Anderson said a condition of approval is included in the staff report, which requires the driveway be no more than 24-feet wide.

TESTIMONY OF APPLICANTS

Roger Center – Applicant representative – Florence, OR

Bob Carroll – Project Designer – Mapleton, OR

Chairperson Nieberlein asked if Mr. Center and Mr. Carroll understood the conditions of approval and they both responded yes.

Commissioner Wise asked about why the rendering did not match the site plan. Mr. Carroll responded that it was a function of the software. Mr. Center said that was not the final set of plans that the building official would receive and Mr. Carroll said it was a preliminary proposal.

Commissioner Wise asked about the storage and workplace proposed for the property owner. He asked if at some point were there plans to rent it. Mr. Center it could become a rental unit for storage. Commissioner Wise asked if separate electrical supplies would be put in for that and Mr. Center responded yes.

Commissioner Wise noted the application stated the home and garage total 1,435 square feet. He said he found that figure disingenuous because the total project (home and garage and RV barn) is larger than that. Mr. Carroll said that number refers to the living area portion of the project.

Commissioner Wise commented that because the applicants were applying for a CUP rather than restoring the building that was destroyed, what used to be on that lot had no relevance to their application, despite repeated references to the destroyed building in their application.

Commissioner Wise asked what potential problems could be faced if the PC required the building to be moved one-foot to the east. Mr. Center said they had it that way originally, but they had been encouraged to move it further away from the residence next door and that there were some issues about the Fire Code.

Chairperson Nieberlein asked if any proponents or opponents wanted to testify and none came forward.

Chairperson Nieberlein asked for anyone neutral wanted to comment.

STAFF RESPONSE AND RECOMMENDATION

CDD Belson said that if the PC is considering going forward with approving the resolution, they might want to consider removing item "D" under condition one. She said the approval would then only be for the site plan and the elevations and illustrations. She also asked if they wanted that site plan marked up or revised to take care of the discrepancies brought up by Commissioner Wise earlier. Commissioner Wise said he was OK with those being conceptual.

Commissioner Wise said he had concerns with the stormwater. BO Dependahl said during construction they would ask that there be no added flow to any adjacent property.

Commissioner Peters said because they were trying to put a residential building in a Commercial zone, he saw no reason why they couldn't apply commercial standards to the stormwater issue. CO Dependahl said his experience with Mr. Center is he looks at the entire picture and builds a quality project. Commissioner Peters asked if they could add dealing with the stormwater as a condition of approval. CDD Belson said yes but she added that the applicants were applying for a single-family use. If they did switch the building to a commercial use other requirements would come into play, including stormwater.

Commissioner Tilton asked if there are any requirements that downspout water be channeled underground for dispersement. BO Dependahl said that is not a code requirement.

Commissioner Wise said, based on feedback from Public Works Director Mike Miller, he thought one condition of approval should be added to require the applicant to replace the asbestos pipe sewer cleanout with a new one located at the property line prior to the sewer lateral. BO Dependahl said that type of asbestos pipe is still an approved product that can be used within the City. He said it poses no health hazard to anyone and could be left safely in place. He said costs to dispose of the asbestos material could be substantial and there is little or no hazard if it is buried under ground.

Commissioner Wise moved for approval of Resolution PC 11 13 CUP 03 a Conditional Use Permit to construct a single-family replacement dwelling in a commercial zone; located at 1738 20th Street, Assessors Map #18-12-26-22 Tax lot 2800, striking Condition of Approval 1-D. Commissioner Peters seconded the motion. The motion passed by unanimous vote.

5. Planning Commission Discussion Items

Chairperson Nieberlein said the PC had received a letter regarding the Fire Station sign. Commissioner Tilton said he has some real concerns with it. He said it appeared there were no attempts to meet FCC. He said CDD Belson said the PC could draft a letter to the Council regarding its opinion of the sign. Chairperson Nieberlein said one of the Commissioners could also attend the meeting and speak on behalf of the PC. The Commissioners discussed their concerns with the sign. CDD Belson said Assistant Planner Michelle Pezley had e-mailed the Fire Chief the application to apply for an adjustment and she had also asked him to comply with the sign code until they had received the adjustment. Chairperson Nieberlein said she was concerned that a public entity was doing something the general public would not be allowed to do. CDD Belson said once they receive an application for adjustment, then a public hearing before the City Council would be scheduled. Commissioner Tilton said he would volunteer to attend the public hearing on behalf of the PC. Chairperson Nieberlein requested Commissioners bring back their thoughts to the next PC meeting.

Commissioner Tilton asked about Commissioner's thoughts on the streets vs. roads video the PC watched at their last meeting. Chairperson Nieberlein said she thought they should watch the video again when they start the TSP update. Commissioner Tilton said he thought they needed to be looking at lower cost things they could do, such as accommodating more bicycle riders, improving Rhododendron Drive, etc.

6. DIRECTORS REPORT

CDD Belson said the Lane County Board of Commissioners that day held a public hearing on the reconsideration of annexation policy #1 in Chapter 14 of the Florence 2020 Comprehensive Plan. She said the board had continued the public hearing until January 31st, 2012 at 7 pm in the City Council Chambers.


7. CALENDAR

Tuesday, December 13, 2011 at 7:00 pm – Regular Meeting
Tuesday, January 10, 2012 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 9:15 pm.

APPROVED BY THE FLORENCE PLANNING COMMISSION ON THE 14 DAY OF February 2011. 2012


JAN NIEBERLEIN, CHAIRPERSON
FLORENCE PLANNING COMMISSION