

CITY OF FLORENCE PLANNING COMMISSION

RESOLUTION PC 21 32 CUP 03

AN REQUEST FOR A CONDITIONAL USE PERMIT ALLOWING SINGLE-FAMILY RESIDENTIAL DEVELOPMENT IN THE COMMERCIAL DISTRICT AT 5439 HWY 126, ASSESSOR'S MAP 18-12-26-31 TAX LOT 02300.

WHEREAS, application was made by Don Saxon, owner, for a Conditional Use Permit as required by FCC 10-1-1-4, FCC 10-1-1-6-3, and FCC 10-4-4; and

WHEREAS, the Planning Commission/Design Review Board met in a duly-advertised public hearing on January 25, 2022, as outlined in Florence City Code 10-1-1-6-3, to consider the application, evidence in the record, and testimony received; and

WHEREAS, the Planning Commission/Design Review Board of the City of Florence, after review of the application, testimony and evidence in the record, finds that the application meets the applicable criteria through compliance with certain Conditions of Approval; and

WHEREAS, the Planning Commission/Design/Review Board of the City of Florence finds, based on the Findings of Fact, staff recommendation, evidence and testimony presented to them, that the application meets the applicable criteria per FCC 10-4-10.

NOW THEREFORE BE IT RESOLVED that the Planning Commission of the City of Florence finds, based on the Findings of Fact and the evidence in record that:

The request for a conditional use permit allowing single family residential development in the Commercial District located at 5439 Highway 126, as shown Assessor's Map 18-12-26-31, Tax Lot 02300 meets the applicable criteria in Florence City Code and the Florence Realization 2020 Comprehensive Plan with conditions of approval as follows:

Conditions of Approval:

The application, as presented, meets or can meet applicable City codes and requirements, provided that the following conditions of approval are met.

Approval shall be shown on conditions of approval as supported by the following record:

"A"	Findings of Fact (Revised)
"B"	Revised Proposal and Materials
"C"	Image of Northern Property Line
"D"	Continuance Request

Findings of Fact attached as Exhibit "A" are incorporated by reference and adopted in support of this decision.

1. Any modifications to the approved plans or changes of use, except those changes relating to Building Codes, will require approval by the Community Development Director or Planning Commission/Design Review Board.
2. Regardless of the content of material presented, including application text and exhibits, staff reports, testimony and/or discussions, the applicant agrees to comply with all regulations and requirements of the Florence City Code which are current on this date, EXCEPT where variance or deviation from such regulations and requirements has been specifically approved by formal Planning Commission action as documented by the records of this decision and/or the associated Conditions of Approval. The applicant shall submit to the Community Development Department a signed "Agreement of Acceptance" of all conditions of approval prior to issuance of a building permit.
3. Upon encountering any cultural or historic resources during construction, the applicant shall immediately contact the State Historic Preservation Office and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians. Construction shall cease immediately and shall not continue until permitted by either a SHPO or CTCLUSI representative.
4. The applicant shall either meet the requirements for street improvements per FCC 10-35 and FCC 10-36 as applicable or submit application for a modification from street requirements to be reviewed and approved by the Planning Commission.
5. A maximum of five (5) residential lots shall be allowed providing they are located on the northern half of the subject property.
6. The maximum height allowed per residential unit shall be thirty (30') feet.
7. The applicant shall apply and obtain approval of a detailed landscaping and irrigation plan prior to issuance of building permits. Such plan shall provide a 10' wide buffer between Highway 126 and the commercial portion of the property.
8. The authorization for a Conditional Use Permit shall be void after January 26, 2023 unless a building permit has been issued and substantial construction has taken place

ADOPTED BY THE FLORENCE PLANNING COMMISSION/DESIGN REVIEW BOARD
the 25th day of January, 2022



Phil Tarvin, Chairperson
Florence Planning Commission

1/25/2022

Date



City of Florence

250 Hwy 101, Florence, OR 97439

www.ci.florence.or.us

April 14, 2023

L & B Development LLC
c/o : Robert Leturno
2033 24th St
Florence, OR 97439

Dear Mr. Leturno,

Enclosed is a signed copy of the Resolution and Findings of Fact for your review. **Please sign and return Agreement of Acceptance** to the City of Florence, Community Development Department at 250 Hwy 101, Florence, OR 97439.

Please be advised that the decision may be appealed to the City Council pursuant to Florence City Code, Section 10-1-1-7. A copy of this letter is being sent to those who submitted written and verbal testimony who also have standing for an appeal. A notice of intent to appeal must be filed with the Community Development Department within twelve (12) calendar days after the notice of decision was rendered by Planning Staff, otherwise the decision shall be final. The decision is "rendered" with the mailing of this letter. In this case, the appeal period will end on **April 26, 2023**.

If you have any questions, please feel free to contact me at (541) 997-8237 or at planningdepartment@ci.florence.or.us

Best Regards,

Clare Kurth

Clare Kurth
Assistant Planner

Enclosures: Resolution with Approved Exhibits
Agreement of Acceptance

Cc: Land-Use File PC 23 03 EAP 02 and PC 21 32 CUP 03
Terry Duman
Mike and Deb Shaw

Public Works
2675 Kingwood St.
(541) 997-4106

**City Manager /
City Recorder**
900 Greenwood St.
(541) 997-3437

**Community Development:
Planning & Building**
2675 Kingwood St.
(541) 997-8237

**Finance /
Utility Billing**
2675 Kingwood St.
(541) 997-3436

Justice Center
900 Greenwood St.
(541) 997-3515

Florence Events Center
715 Quince St.
(541) 997-1994



AGREEMENT OF ACCEPTANCE

City of Florence

PROJECT: **RESOLUTION PC 23 03 EAP 02-5439 Hwy 126 -Request for Extension**
Applicant requests a one-year extension of a Conditional Use Permit originally approved by the Florence Planning Commission on January 25, 2022 for a single-family residential development and improvements to Vine St. within the Commercial District. Property is shown on Assessor's Map #18-12-26-31, Tax Lot 02300 and contains 1.15-acres located at 5439 Hwy 126, approximately 450 ft. SW of the intersection of Hwy 126 and Xylo St. The Commercial District is regulated by Florence City Code Title 10, Chapter 15 and Conditional Uses regulated by FCC Title 10, Chapter 4. The initial resolution is effective for one calendar year.

LOCATION: 5439 Hwy 126
Tax Assessor's Map 18-12-26-31, Tax Lot 02300
Approximately 450 ft. SW of the intersection of Hwy 126 and Xylo St.

DECISION: **RESOLUTION PC 23 03 EAP 02-5439 Hwy 126 -Request for Extension**

APPLICANT: D & B Development LLC
2033 24th St
Florence, OR 97439

As the applicant for the project described above, I have read and accept the findings for **RESOLUTION PC 23 03 EAP 02-5439 Hwy 126 -Request for Extension.**

I understand that written evidence of agreement with all conditions of this approval is required before this project approval shall become effective.

D & B Development LLC. Applicant / Owner

Date

Duman Inc. Applicant / Owner

Date

Please return to:
City of Florence
Community Development Department
250 Highway 101
Florence, Oregon 97439

**CITY OF FLORENCE
PLANNING COMMISSION**

RESOLUTION PC 23 03 EAP 02

A REQUEST BY ROBERT LETURNO, ON BEHALF OF L & B DEVELOPMENT, LLC AND DUMAN, INC. FOR AN EXTENSION OF APPROVAL OF PC 21 32 CUP 03 ALLOWING SINGLE-FAMILY RESIDENTIAL DEVELOPMENT IN THE COMMERCIAL DISTRICT ON 1.15 ACRES LOCATED AT 5439 HIGHWAY 126 FLORENCE, OREGON, ASSESSOR'S MAP # 18-12-26-31, TL 02800.

WHEREAS, application was made by Robert Leturno, on behalf of L & B Development, LLC and Duman, Inc for an extension of approval of PC 21 32 CUP 03, a Conditional Use Permit allowing single-family residential development in a Commercial District as required by FCC 10-1-1-4, FCC 10-1-1-6-3, and FCC 10-4, and

WHEREAS, the Planning Commission met in a duly-advertised public hearing on April 11, 2023, as outlined in Florence City Code 10-1-1-6-3, to consider the application, evidence in the record, and testimony received; and

WHEREAS, the Planning Commission of the City of Florence, per FCC 10-1-1-4, FCC 10-1-1-6-3, and FCC 10-4, finds, based on the Findings of Fact, application, staff recommendation, evidence, and testimony presented to them, that the application meets the applicable criteria through compliance with certain Conditions of Approval.

NOW THEREFORE BE IT RESOLVED that the Planning Commission of the City of Florence finds, based on the Findings of Fact and the evidence in record that:

The request for the extension of PC 21 32 CUP 03 meets the applicable criteria in Florence City Code with the conditions of approval as listed below.

Conditions of Approval:

The application, as presented, meets or can meet applicable City codes and requirements, provided that the following conditions of approval are met.

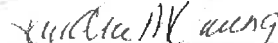
Approval shall be shown on conditions of approval as supported by the following record:

"A"	Findings of Fact
"B"	Land Use Application and Extension Request
"C"	Resolution PC 22 32 CUP 03 <i>(without exhibits)</i>
"D"	Public Testimony- Shaw
"E"	Findings for PC 22 32 CUP 03 <i>(without exhibits)</i>

Findings of Fact attached as Exhibit "A" are incorporated by reference and adopted in support of this decision.

1. Any modifications to the approved plans or changes of use, except those changes relating to Building Codes, will require approval by the Community Development Director or Planning Commission/Design Review Board.
2. Regardless of the content of material presented, including application text and exhibits, staff reports, testimony and/or discussions, the applicant agrees to comply with all regulations and requirements of the Florence City Code which are current on this date, EXCEPT where variance or deviation from such regulations and requirements has been specifically approved by formal Planning Commission action as documented by the records of this decision and/or the associated Conditions of Approval. The applicant shall submit to the Community Development Department a signed "Agreement of Acceptance" of all conditions of approval prior to issuance of a building permit.
3. The applicant shall abide by the conditions of approval of Resolution PC 21 32 CUP 03.
4. This extension of approval shall expire April 12, 2024.

ADOPTED BY THE FLORENCE PLANNING COMMISSION/DESIGN REVIEW BOARD the 11th day of April, 2023.



Sandra Young, Chairperson
Florence Planning Commission

4/11/2023

DATE



**(Proposed) FINDINGS OF FACT
FLORENCE PLANNING COMMISSION
Exhibit "A"**

Public Hearing Date:

April 11, 2023

Planner: Roxanne Johnston

Application:

PC 23 03 EAP 02

I. PROPOSAL DESCRIPTION

Proposal: An application for an extension of a Conditional Use Permit approved under PC 21 32 CUP 03 allowing single-family residential development in a Commercial District containing 1.15 acres and improvements to Vine Street.

Applicant: Robert Leturno

Property Owners: L & B Development, LLC & Duman, Inc.

Location: 5439 Highway 126, Florence, Oregon

Site: Florence, Map #. 18-12-26-31 Lot 02300

Comprehensive Plan Map Designation: Commercial

Zone Map Classification: Commercial District

Surrounding Land Use / Zoning:

	Use(s)	Zoning	Comp. Plan Designation	Streets / TSP Classification
Site	Vacant	Commercial District	Commercial	US Hwy 126: Major Arterial; Undeveloped Vine and Willow Streets; Local
North	Single-Family Residences	Medium and High Density Residential	Medium Density	N/A
South	Retail/Vacant	Commercial District	Commercial	N/A
East	Vacant	Commercial District	Commercial	N/A

West	Single-Family Residences and Vacant	Medium Density Residential	Medium Density Residential	N/A
-------------	-------------------------------------	----------------------------	----------------------------	-----

II. NARRATIVE:

On January 25, 2022, Resolution 21 31 CUP 03 was conditionally approved by the Planning Commission (Exhibit C). This approval allowed single family residential uses in the Commercial District on the subject property. This approval expired as of January 26th of this year.

The applicant submitted an application for an extension on March 9, 2023, slightly after the expiration date thinking he had already submitted the application. Although the CUP has technically expired, the question of whether going through the approval process when nothing has changed within the codes and in area's zoning would serve the best interest of the public, including staff's preparation of materials and the Planning Commission's time in re-reviewing essentially the same materials.

The site plan concept submitted with the initial approval includes residential lots and one commercial lot accessible from Highway 126 by a new cul-de-sac connected to an undeveloped segment of Vine Street which does have direct access from the highway. Since the initial approval, the property was purchased by the previous applicant from the owner and has added another partner. The new applicant responded to this Conditional Use Permit approval by hiring a surveyor to lay out the property as approved and submitted a Type II administrative tentative subdivision plan application, accordingly. Shortly before Planning staff rendered their conditional approval and decision on this plan, the applicant voiced concerns with technical setback issues which are noted in the extension application (Exhibit B). He also conveyed to staff that unless all 5 residential properties were constructed, the development of half of Vine Street would not be cost-effective as there were many challenges related to the fact that the highway curves at the Vine Street intersection and creates what he believes would be a safety hazard. He thereby opted to change the layout of the property by reducing the number of residential lots and to create an internal street with direct access off Highway 126 instead of Vine Street which will require prior approval by the Oregon Department of Transportation. Staff will require this approval during the next tentative subdivision plan application review process.

Regardless of the number of residential lots to be developed, the approved resolution does not limit the number of residences; however, the zoning setbacks, which mirror the Medium Density Residential District, do limit the number of lots, given the size of the property, which contains 1.15 acres. Should the applicant seek to reduce the residential impact on the property and not add residential lots, the original Conditional Use Permit under Resolution PC 21 31 CUP 03 would continue to be valid pending approval of this one-year extension request. At any time, staff believes the Planning Commission will need to review the new proposal, they reserve the right, per FCC10-1-1-2-B and C to process the application as a Type III quasi-judicial application requiring final Planning Commission approval:

***B. Type II (Administrative) Decisions are based upon clear compliance with specific standards. Such decisions include, but are not limited to the following:
[...]***

12. Subdivisions, tentative plans, not utilizing Title 11 Chapter 7.

[...]

C. The Director may refer a request for administrative review to the Planning Commission/for decision. If such a referral is made, the request shall be scheduled on the next available Planning Commission agenda, providing that time allows and subject to proper notice requirements.

Lastly, in the event the property changes ownership and a new development plan is proposed, the original CUP approval would continue to stand, as well, until its expiration.

III. NOTICES & REFERRALS:

Notice: On March 22, 2023, notice was mailed to surrounding property owners within 301 feet of the property and a sign was posted on the property on the same date. Notice was also published in the Siuslaw News on March 31, 2023.

As of the writing of these Findings, the city received one correspondence by Mike and Deb Shaw (Exhibit D) as written testimony on the application. Concerns expressed by the Shaws speak mainly to the original approved proposal; specifically, the proposed street access routes off of Highway 126 and how overall development could negatively impact the existing dune (and established vegetation root system) situated immediately north of the subject property given the heavy equipment used during such construction. They also share a statement saying that housing is not a good fit for the property.

Referrals: Referrals were sent for the original application. No additional referrals were sent or deemed necessary as there are no proposed modifications to the previously approved plans or Conditions of Approval.

IV. APPLICABLE REVIEW CRITERIA

Florence City Code, Title 10:

(accessed at: <http://www.ci.florence.or.us/council/title-10-zoning-regulations>)

Chapter 1: Zoning Administration, Sections 1-1-6-3

Chapter 4: Conditional Uses, Section 10-4-8

V. FINDINGS

FLORENCE CITY CODE

TITLE 10: CHAPTER 1: ZONING ADMINISTRATION

10-1-1-6-3: TYPE III REVIEWS – QUASI-JUDICIAL LAND USE HEARINGS:

A. Hearings are required for Type III (quasi-judicial) land use matters requiring Planning Commission review. Type III applications include, but are not limited to:

[...]

7. Conditional Use Permits.

[...]

This CUP application has been processed as a Type III quasi-judicial review because such review is not allowable under an administrative Type II procedure. This criterion is met.

B. Notification of Hearing:

1. **At least twenty (20) days prior to a Type III (quasi-judicial) hearing, notice of hearing shall be posted on the subject property and shall be provided to the applicant and to all owners of record of property within 100 feet of the subject property, except in the case of hearings for Conditional Use Permits, Variance, Planned Unit Development and Zone Change, which notice shall be sent to all owners of record of property within 300 feet of the subject property.**
2. **Prior to a Type III (quasi-judicial) hearing, notice shall be published one (1) time in a newspaper of general circulation. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.**

Notice of the public hearing was mailed to property owners within 301 feet on March 22, 2023. Notice of the public hearing was posted on the subject property on March 24, 2023. Notice was also published within the Siuslaw News one time on March 31, 2023. These criteria are met.

C. Notice Mailed to Surrounding Property Owners - Information provided:

1. **The notice shall:**
 - a. **Explain the nature of the application and the proposed use or uses which could be authorized;**
 - b. **List the applicable criteria from the ordinance and the plan that apply to the application at issue;**
 - c. **Set forth the street address or other easily understood geographical reference to the subject property;**
 - d. **State the date, time and location of the hearing;**
 - e. **State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes further appeal based on that issue;**

- f. **State that application and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;**
- g. **State that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing and will be provided at reasonable cost;**
- h. **Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.**
- i. **Include the name of a local government representative to contact and the telephone number where additional information may be obtained.**

The provided notice contained all information listed in FCC 10-1-1-6-3-C. These criteria are met.

D. Hearing Procedure: All Type III hearings shall conform to the procedures of Florence City Code Title 2, Chapters 3 and 10.

E. Action by the Planning Commission:

- 1. **At the public hearing, the Planning Commission shall receive all evidence deemed relevant to the issue. It shall then set forth in the record what it found to be the facts supported by reliable, probative and substantive evidence.**
- 2. **Conclusions drawn from the facts shall state whether the ordinance requirements were met, whether the Comprehensive Plan was complied with and whether the requirements of the State law were met.**

[...]

- 4. **There is no duty upon the Planning Commission to elicit or require evidence. The burden to provide evidence to support the application is upon the applicant. If the Planning Commission determines there is not sufficient evidence supporting the major requirements, then the burden has not been met and approval shall be denied.**

The Planning Commission held a public hearing on April 11, 2023 which met the standards of FCC 2-3 and FCC 2-10. The Planning Commission received all materials provided by the applicant. The Findings (Exhibit A) state whether the application criteria were met or not. These criteria are met.

TITLE 10: CHAPTER 4: CONDITIONAL USE PERMITS

10-4-8: EXPIRATION OF CONDITIONAL USE PERMIT:

- A. Authorization of a conditional use permit shall be void one (1) year after the date of approval of a conditional use application, unless a building permit has been issued and substantial construction pursuant thereto has taken place. Substantial construction shall be considered to be completion of a building foundation.**

The applicant may apply to the Planning Commission for a one-time extension of one (1) year maximum duration based on compliance with the following criteria:

- 1. The request for an extension is made in writing prior to expiration of the original approval.**
- 2. There are special or unusual circumstances that exist which warrant an extension.**

Prior to submitting an extension request application, the applicant had applied for a tentative plan which was reviewed under a Type II administrative process. While designing the construction plans, it was revealed that the setbacks required through the CUP approval were not amiable to the development, so the developer decided to reduce the number of residential lots and relocated the internal street as discussed earlier. This change in plan has no bearing on the original approval nor this extension request as it does not set out the number of residential lots the applicant is allowed to develop.

After contacting staff on the new site plan with fewer residential lots, the applicant then submitted a request for an extension in writing after expiration of the original approval as explained above, again posing the question of whether going through the approval process again when the request, which is to allow residential development in the Commercial District, is the central theme of Resolution 21 32 CUP 03. The applicant and his new partner continue to evaluate the development challenges around utility obstructions in the Vine St. right-of-way, and flood plain inundation, and power line and utility encroachments onto the proposed commercial lot (no easements). They are working with a professional land use planner Metro Planning, engineer, and their surveyor to identify a development layout that avoids the identified obstructions.

- 3. No material changes of surrounding land uses or zoning has occurred.**

No new material changes in surrounding land uses or zoning occurred since the approval of Resolution PC 21 32 CUP 03. This criterion is met.

- B. The discontinuance of a conditional use for twelve (12) consecutive months shall constitute expiration of that conditional use. The use occupying the premises thereafter shall conform to the regulations of the zoning district in which it is located.**

VI. CONCLUSION – The requested extension meets the requirements of City Code subject to conditions providing the Planning Commission is agreeable to hearing the request given expiration of the original Resolution. Moving forward, any modification to the CUP outside of what was approved through Resolution PC 21 32 CUP 03 outside of any Building Code change would require an amendment to the CUP, which would require a Type III quasi-judicial hearing by the Planning Commission. Additionally, a new Type II administrative process would be required for the future tentative subdivision plan which will reflect any new changes.

VII. EXHIBITS

"A" Findings of Fact
"B" Application and Extension Request
"C" Resolution PC 21 34 CUP 03 (<i>without exhibits</i>)
"D" Public Testimony - Shaw
"E" Approved Findings for PC 21 34 CUP 03 (<i>without exhibits</i>)

EXHIBIT

B

FILE #

PC2303EAP02

APPROVED

City of Florence

Planning Commission



Hwy 126-Siuslaw
Valley View
(Butter Clam Det.)
PC 2303 EAP 02

City of Florence

Community Development Department

250 Highway 101

Florence, OR 97439

Phone: (541) 997-8237

Fax: (541) 997-4109

www.ci.florence.or.us

Type of Request

☐ Type I ☐ Type II ☐ Type III ☐ Type IV
Proposal:

THIS SECTION FOR OFFICE USE ONLY

Applicant Information

Name: Robert Leturno

Phone 1: 541-991-2618

E-mail Address: Marcus Leturno@yahoo.com

Phone 2:

Address: 2033 24th Street Florence or 97439

Signature:

Date: 1-10-23

Applicant's Representative (if any):

Property Owner Information

Name: L3D development + Duman Inc

Phone 1: 541-991-2618

E-mail Address: Marcus Leturno@yahoo.com

Phone 2:

Address: 2033 24th Street

Signature:

Date:

Applicant's Representative (if any):

NOTE: If applicant and property owner are not the same individual, a signed letter of authorization from the property owner which allows the applicant to act as the agent for the property owner must be submitted to the City along with this application. The property owner agrees to allow the Planning Staff and the Planning Commission onto the property. Please inform Planning Staff if prior notification or special arrangements are necessary.

For Office Use Only:



Approved

Exhibit

Property Description

Site Address: _____

General Description: _____

Assessor's Map No.: 17-12-26-31

Tax lot(s): 2300

Zoning District: Neighborhood Commercial

Conditions & land uses within 300 feet of the proposed site that is one-acre or larger and within 100 feet of the site that is less than an acre OR add this information to the off-site conditions map

(FCC 10-1-1-4-B-3): _____

Project Description

Square feet of new: _____

Square feet of existing: _____

Hours of operation: _____

Existing parking spaces: _____

Is any project phasing anticipated? (Check One): Yes ☐ No ☐

Timetable of proposed improvements: 1 year ish

Will there be impacts such as noise, dust, or outdoor storage? Yes ☐ No ☐

If yes, please describe: _____

Proposal: (Describe the project in detail, what is being proposed, size, objectives, and what is desired by the project. Attach additional sheets as necessary)

Extend The Current Conditional Use permit
for another year Because of the Set Backs we
have had with The site

For Office Use Only:

Date Submitted: _____

Fee: _____

Paid

Received by: _____

SB

**CITY OF FLORENCE
PLANNING COMMISSION**

RESOLUTION PC 21 32 CUP 03

AN REQUEST FOR A CONDITIONAL USE PERMIT ALLOWING SINGLE-FAMILY RESIDENTIAL DEVELOPMENT IN THE COMMERCIAL DISTRICT AT 5439 HWY 126, ASSESSOR'S MAP 18-12-26-31 TAX LOT 02300.

WHEREAS, application was made by Don Saxon, owner, for a Conditional Use Permit as required by FCC 10-1-1-4, FCC 10-1-1-6-3, and FCC 10-4-4; and

WHEREAS, the Planning Commission/Design Review Board met in a duly-advertised public hearing on January 25, 2022, as outlined in Florence City Code 10-1-1-6-3, to consider the application, evidence in the record, and testimony received; and

WHEREAS, the Planning Commission/Design Review Board of the City of Florence, after review of the application, testimony and evidence in the record, finds that the application meets the applicable criteria through compliance with certain Conditions of Approval; and

WHEREAS, the Planning Commission/Design/Review Board of the City of Florence finds, based on the Findings of Fact, staff recommendation, evidence and testimony presented to them, that the application meets the applicable criteria per FCC 10-4-10.

NOW THEREFORE BE IT RESOLVED that the Planning Commission of the City of Florence finds, based on the Findings of Fact and the evidence in record that:

The request for a conditional use permit allowing single family residential development in the Commercial District located at 5439 Highway 126, as shown Assessor's Map 18-12-26-31, Tax Lot 02300 meets the applicable criteria in Florence City Code and the Florence Realization 2020 Comprehensive Plan with conditions of approval as follows:

Conditions of Approval:

The application, as presented, meets or can meet applicable City codes and requirements, provided that the following conditions of approval are met.

Approval shall be shown on conditions of approval as supported by the following record:

"A"	Findings of Fact (Revised)
"B"	Revised Proposal and Materials
"C"	Image of Northern Property Line
"D"	Continuance Request

Findings of Fact attached as Exhibit "A" are incorporated by reference and adopted in support of this decision.

1. Any modifications to the approved plans or changes of use, except those changes relating to Building Codes, will require approval by the Community Development Director or Planning Commission/Design Review Board.
2. Regardless of the content of material presented, including application text and exhibits, staff reports, testimony and/or discussions, the applicant agrees to comply with all regulations and requirements of the Florence City Code which are current on this date, EXCEPT where variance or deviation from such regulations and requirements has been specifically approved by formal Planning Commission action as documented by the records of this decision and/or the associated Conditions of Approval. The applicant shall submit to the Community Development Department a signed "Agreement of Acceptance" of all conditions of approval prior to issuance of a building permit.
3. Upon encountering any cultural or historic resources during construction, the applicant shall immediately contact the State Historic Preservation Office and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians. Construction shall cease immediately and shall not continue until permitted by either a SHPO or CTCLUSI representative.
4. The applicant shall either meet the requirements for street improvements per FCC 10-35 and FCC 10-36 as applicable or submit application for a modification from street requirements to be reviewed and approved by the Planning Commission.
5. A maximum of five (5) residential lots shall be allowed providing they are located on the northern half of the subject property.
6. The maximum height allowed per residential unit shall be thirty (30') feet.
7. The applicant shall apply and obtain approval of a detailed landscaping and irrigation plan prior to issuance of building permits. Such plan shall provide a 10' wide buffer between Highway 126 and the commercial portion of the property.
8. The authorization for a Conditional Use Permit shall be void after January 26, 2023 unless a building permit has been issued and substantial construction has taken place

ADOPTED BY THE FLORENCE PLANNING COMMISSION/DESIGN REVIEW BOARD
the 25th day of January, 2022



Phil Tarvin, Chairperson
Florence Planning Commission

1/25/2022

Date

EXHIBIT

D

FILE #

PC2303EAPDZ

APPROVED

City of Florence

Planning Commission

SB

Mike and Deb Shaw

Florence, OR 97439

March 29, 2023

We are writing about concerns for the proposed changes to Vine St. to accommodate the proposed Butter Clam Court development.

Continuing the street between 11th Street and the proposed development would require a great deal of work that will have a very negative impact on the stability of our home and the one next to us. Our home is at the east end of 10th Street. The new road would be built at the base of the dune that our home is built on. Since we bought the house we have fought with erosion of the dune, much of which was caused years ago when a duplex was built next door and the dune was partially cut back. In addition to spending \$30,000 for Terra Firma to stabilize the foundation of our home, we have planted many large shrubs and trees to create root systems to help shore up the side of the dune. But we really depend on the health and root systems of many existing trees. These trees would be in danger if a road was to be built at the base of the dune. Not only do the big and medium size trees serve as structural support for the dune, but they are also windbreaks and greenbelts for the neighborhood. Many, if not most, of these trees will be in harms way if a road is built in this area.

We are very concerned about the stability of the dune and how it would react to the amount of work needed to build a road in this area, and the huge number of big trucks and heavy equipment that would travel the road in order to prepare the lot for building. The lot where the proposed housing is being considered is basically a lake when it rains. Most of it is currently below the level of Hwy 126. The amount of work and amounts of fill required before the houses can even be built will be huge. This means this new road, if built, will not only be used for traffic to and from the houses, but also for all heavy equipment, dump trucks, etc. during the preparation and construction phases.

During the original planning meetings certain specifics for the development were not completely addressed. These included access for emergency vehicles, multiple exits from the development, etc. Have these items been addressed on any new plans for the proposed development? Also, based on our understanding from the previous meeting re: this development, part of the overall tract is zoned commercial. Since ODOT has denied access from the highway, are we to assume the commercial section is also to be accessed by this back road entrance?

Currently across the highway from this proposed development are three large, empty business buildings, 2 of which have been empty for several years. This is the main, only entrance to Florence from the east, it is the gateway and the first impression of our city. It seems a better use of time and money in this area of town would be to work with the owners of these buildings and not let that side of Hwy 126 continue to be a ghost town.

In general, this lot is not a good fit for housing, especially if it requires a new road to be placed in an area that will have a very negative effect of the stability of established homes.

Thank you for your consideration,

Mike and Deb Shaw

**FINDINGS OF FACT
FLORENCE PLANNING COMMISSION
EXHIBIT "A"**

Hearing Date: January 25, 2022

Planner: Roxanne Johnston

Application: PC 21 32 CUP 03

I. PROPOSAL DESCRIPTION

Proposal: A request for a conditional use permit for a single-family detached residential development in the Commercial District.

Applicant — Don Saxon

Property Owner — Donald and Norma Saxon

Property Representative — Jim Hoberg

Location: 5439 Hwy 126
Map 18-12-26-31, TL 02300

Comprehensive Plan Map Designation: Commercial

Zoning Map Classification: Commercial District

Surrounding Land Use/Zoning:

Site: Vacant / Commercial
North: Single-Family Residences / Medium & High Density Residential
South: Retail / Commercial
East: Vacant / Commercial
West: Single-Family Residence & Vacant / Medium Density Residential

Streets/ Classification:

Highway 126 – Major Arterial, Undeveloped Vine St., Local, Undeveloped Willow St., Local

II. NARRATIVE

On December 14, 2021, the Planning Commission heard a staff report pertaining to the subject property. The request at that time was to allow 9 single-family residential lots with an interior street that connected to what is currently a segment of unimproved Vine St. The Planning Commission voted to continue the public hearing to January 25, 2022 at the request of the applicant in order to have more time to review new materials that had been submitted (Exhibit D). The

original applicant retracted the request, however a revised request was resumed by the property owner, Don Saxon. Mr. Saxon submitted an updated concept packet which is shown in Exhibit B. The new proposal requests approval for 5 single-family detached housing units on larger lots located at the north end of the property. As with the earlier request, access to the houses would be via a new street that connects with the unimproved south portion of Vine St. Retaining a commercial use in the southern portion of the lot would serve to provide a buffer between most of the lots and the highway. Also supplied with the new packet is an elevation concept showing a 2- story house with a height of 29.'5". The overall property contains 1.15-acre. Emergency service turnaround would be provided through use of a "T". Although the proposed is a concept, design-wise, adjustments would need to be made in order to accommodate the required 60' ROW width for the new street since it is too narrow, as proposed. Extra street space could be created by shortening four of the proposed lots to the north, which currently show as 100' in depth, to a depth of 80' which represents the minimum lot depth requirements for all single-family detached residential lots.

Review

The site is located on the north side of Highway 126, immediately east to an undeveloped segment of Vine St. The site is undeveloped and lies south of a steep dune. In 2020, a home was constructed adjacent to the NW corner of the subject property within the Medium Density District. The applicant requests a conditional use permit to allow a single-family detached development in the Commercial District, a request that requiring a Conditional Use Permit obtained by the Planning Commission through a Type III quasi-judicial review.

In comparing Commercial District to Medium Density Residential, which this proposal most closely resembles (and the district which abuts this proposal), the minimum lot area for a single-family detached dwelling in Medium Density Residential is 5,000 sq. ft. The revised proposal shows that the smallest lot contains 5,200 sq ft (0.11-acre) and the largest 5,425 sq. ft, (0.12-acre), which is over the minimum allowed lot area that would be allowed in MDR.

The Commercial District, allows a minimum lot area of 2,500 square feet. The Commercial District allows duplexes, single family residential and duets with a conditional use permit, while these uses are permitted outright in the MDR. Residential units in conjunction with a commercial use are permitted outright in the Commercial District. The Planning Commission is tasked with identifying a residential use and conditions that will create a successful development in a commercial zoning district and whether or not the proposal is in line with the intent of the Florence Realization 2020 Comprehensive Plan. The Plan leans more towards commercial development along the highway corridor near the city's east gateway and the Commercial District zoning. However, the revised plan with this proposal has demonstrated only a portion of one lot would abut Hwy 126 ROW (not the highway itself) whereas the former proposal demonstrated 1 lot set back similarly to the current proposal, but 2 additional lots and a cul-de-sac much

**FINDINGS OF FACT
FLORENCE PLANNING COMMISSION
EXHIBIT "A"**

APPROVED
City of Florence
Community Development
Department
A PC 21 32 CUP 03
Exhibit File Number

Hearing Date: January 25, 2022

Planner: Roxanne Johnston

Application: PC 21 32 CUP 03

I. PROPOSAL DESCRIPTION

Proposal: A request for a conditional use permit for a single-family detached residential development in the Commercial District.

Applicant — Don Saxon

Property Owner — Donald and Norma Saxon

Property Representative — Jim Hoberg

Location: 5439 Hwy 126
Map 18-12-26-31, TL 02300

Comprehensive Plan Map Designation: Commercial

Zoning Map Classification: Commercial District

Surrounding Land Use/Zoning:

Site: Vacant / Commercial
North: Single-Family Residences / Medium & High Density Residential
South: Retail / Commercial
East: Vacant / Commercial
West: Single-Family Residence & Vacant / Medium Density Residential

Streets/ Classification:

Highway 126 – Major Arterial, Undeveloped Vine St., Local, Undeveloped Willow St., Local

II. NARRATIVE

On December 14, 2021, the Planning Commission heard a staff report pertaining to the subject property. The request at that time was to allow 9 single-family residential lots with an interior street that connected to what is currently a segment of unimproved Vine St. The Planning Commission voted to continue the public hearing to January 25, 2022 at the request of the applicant in order to have more time to review new materials that had been submitted (Exhibit D). The

original applicant retracted the request, however a revised request was resumed by the property owner, Don Saxon. Mr. Saxon submitted an updated concept packet which is shown in Exhibit B. The new proposal requests approval for 5 single-family detached housing units on larger lots located at the north end of the property. As with the earlier request, access to the houses would be via a new street that connects with the unimproved south portion of Vine St. Retaining a commercial use in the southern portion of the lot would serve to provide a buffer between most of the lots and the highway. Also supplied with the new packet is an elevation concept showing a 2- story house with a height of 29.'5". The overall property contains 1.15-acre. Emergency service turnaround would be provided through use of a "T". Although the proposed is a concept, design-wise, adjustments would need to be made in order to accommodate the required 60' ROW width for the new street since it is too narrow, as proposed. Extra street space could be created by shortening four of the proposed lots to the north, which currently show as 100' in depth, to a depth of 80' which represents the minimum lot depth requirements for all single-family detached residential lots.

Review

The site is located on the north side of Highway 126, immediately east to an undeveloped segment of Vine St. The site is undeveloped and lies south of a steep dune. In 2020, a home was constructed adjacent to the NW corner of the subject property within the Medium Density District. The applicant requests a conditional use permit to allow a single-family detached development in the Commercial District, a request that requiring a Conditional Use Permit obtained by the Planning Commission through a Type III quasi-judicial review.

In comparing Commercial District to Medium Density Residential, which this proposal most closely resembles (and the district which abuts this proposal), the minimum lot area for a single-family detached dwelling in Medium Density Residential is 5,000 sq. ft. The revised proposal shows that the smallest lot contains 5,200 sq ft (0.11-acre) and the largest 5,425 sq. ft, (0.12-acre), which is over the minimum allowed lot area that would be allowed in MDR.

The Commercial District, allows a minimum lot area of 2,500 square feet. The Commercial District allows duplexes, single family residential and duets with a conditional use permit, while these uses are permitted outright in the MDR. Residential units in conjunction with a commercial use are permitted outright in the Commercial District. The Planning Commission is tasked with identifying a residential use and conditions that will create a successful development in a commercial zoning district and whether or not the proposal is in line with the intent of the Florence Realization 2020 Comprehensive Plan. The Plan leans more towards commercial development along the highway corridor near the city's east gateway and the Commercial District zoning. However, the revised plan with this proposal has demonstrated only a portion of one lot would abut Hwy 126 ROW (not the highway itself) whereas the former proposal demonstrated 1 lot set back similarly to the current proposal, but 2 additional lots and a cul-de-sac much

nearer the highway pavement. The purpose of this comparison is to demonstrate that the applicant has made an effort to create a neighborhood more in keeping with those nearby while proposing building pads set farther away (northward) from the highway. Should the Planning Commission determine that the current proposal is amiable to the area, placing a minimum setback restriction on one or more of the lots, in addition to a landscape buffer along the highway could be beneficial in creating a more secluded new neighborhood with buffering from Highway related nuisances.

III. PUBLIC NOTICE AND REFERRALS

Notice: Notice was sent to surrounding property owners within 300 feet of the property and a sign was posted on the property on November 24, 2021. Notice was published in the Siuslaw News on December 4, 2021.

Public Testimony: Testimony was received by the following below, when the proposal included a total of 7 residences. All Testimony is contained in the exhibits listed under Attachment 2 of the AIS.

Referrals: Referrals were sent to Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, Florence Building Department, Florence Public Works, Siuslaw Valley Fire and Rescue, and Western Lane Ambulance District, and Oregon Department of Transportation.

Referrals are contained in their respective exhibits listed under Attachment 2 of the AIS.

IV. APPLICABLE REVIEW CRITERIA

Florence City Code (FCC) Title 10

FCC 10-1: Zoning Administration, Section 1-6-3

FCC 10-4: Conditional Uses, Sections 3 through 11

FCC 10-15: Commercial District, Sections-3 through 6

Florence Realization 2020 Comprehensive Plan

V. REVIEW OF APPLICABLE CRITERIA

The criteria are listed in bold followed by the findings of fact.

VI. FINDINGS OF FACT

FLORENCE CITY CODE

TITLE 10: CHAPTER 1: ZONING ADMINISTRATION

10-1-1-6-3: TYPE III REVIEWS – QUASI-JUDICIAL LAND USE HEARINGS:

PC 21 32 CUP 03

Residential Uses in Commercial on Hwy 126

Page 3 of 14

A. Hearings are required for Type III (quasi-judicial) land use matters requiring Planning Commission review. Type III applications include, but are not limited to:

7. Conditional Use Permits

B. Notification of Hearing:

- 1. At least twenty (20) days prior to a Type III (quasi-judicial) hearing, notice of hearing shall be posted on the subject property and shall be provided to the applicant and to all owners of record of property within 100 feet of the subject property, except in the case of hearings for Conditional Use Permits, Variance, Planned Unit Development and Zone Change, which notice shall be sent to all owners of record of property within 300 feet of the subject property.**
 - a. Notice shall also be provided to the airport as required by ORS 227.175 and FCC 10-21-2-4 and any governmental agency that is entitled to notice under an intergovernmental agreement with the City or that is potentially affected by the proposal. For proposals located adjacent to a state roadway or where proposals are expected to have an impact on a state transportation facility, notice of the hearing shall be sent to the Oregon Department of Transportation.**
 - b. For a zone change application with two or more evidentiary hearings, notice of hearing shall be mailed no less than ten (10) days prior to the date of the Planning Commission hearing and no less than ten (10) days prior to the date of the City Council hearing.**
 - c. For an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.186 and ORS 227.175(8).**
 - d. Notice shall be mailed to any person who submits a written request to receive notice.**
 - e. For appeals, the appellant and all persons who provided testimony in the original decision.**
- 2. Prior to a Type III (quasi-judicial) hearing, notice shall be published one (1) time in a newspaper of general circulation. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.**

Finding: Notice of the public hearing was posted on the subject property on November 24, 2021 and mailed to all property owners within 300 feet of the property. Notice was also published within the Siuslaw News one time on December 4, 2021. These criteria are met.

C. Notice Mailed to Surrounding Property Owners - Information provided:

- 1. The notice shall:**
 - a. Explain the nature of the application and the proposed use or uses which could be authorized;**
 - b. List the applicable criteria from the ordinance and the plan that apply to the application at issue;**
 - c. Set forth the street address or other easily understood geographical reference to the subject property;**
 - d. State the date, time and location of the hearing;**
 - e. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes further appeal based on that issue;**
 - f. State that application and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;**

Finding: The provided notice contained all of the information listed in FCC 10-1-1-6-3-C. These criteria are met.

D. Hearing Procedure: All Type III hearings shall conform to the procedures of Florence City Code Title 2, Chapters 3 and 10.

E. Action by the Planning Commission:

- 1. At the public hearing, the Planning Commission shall receive all evidence deemed relevant to the issue. It shall then set forth in the record what it found to be the facts supported by reliable, probative and substantive evidence.**
- 2. Conclusions drawn from the facts shall state whether the ordinance requirements were met, whether the Comprehensive Plan was complied with and whether the requirements of the State law were met.**
- 3. In the case of a rezoning request, it shall additionally be shown that a public need exists; and that the need will be best served by changing the zoning of the parcel of land in question.**
- 4. There is no duty upon the Planning Commission to elicit or require evidence. The burden to provide evidence to support the application is upon the applicant. If the Planning Commission determines there is not sufficient evidence supporting the major requirements, then the burden has not been met and approval shall be denied.**

Finding: The applicant's proposal was scheduled for the December 14, 2021 Planning Commission hearing, and then continued to January 25, 2022 which meets the

standards of FCC 2-3 and FCC 2-10. Findings of Fact and other evidence was provided in support of the review by the Planning Commission. These criteria are met.

TITLE 10: CHAPTER 4: CONDITIONAL USES

10-4-10: GENERAL CRITERIA: A conditional use permit may be granted only if the proposal conforms to all the following general criteria: (Ord. 669, 5-17-82)

- A. Conformity with the Florence Comprehensive Plan.**
- B. Compliance with special conditions established by the Planning Commission to carry out the purpose of this Chapter.**

Finding: FCC 10-4-11, below, lists design elements the Planning Commission can assign conditions for to ensure the compliance with code and conformity with the Comp Plan.

- C. Findings that adequate land is available for uses which are permitted outright in the district where the conditional use is proposed. Available land can be either vacant land or land which could be converted from another use within the applicable zoning district. Land needs for permitted uses may be determined through projections contained in the Florence Comprehensive Plan or other special studies.**

Finding: The 2018 Housing Needs Analysis and Economic Opportunity Analysis identifies 16 privately owned acres of vacant land zoned Commercial District out of 370.2 acres total of privately owned vacant properties within the City. (Excerpt from p. 63, *Housing Needs Analysis and Economic Opportunities Analysis, Vol. 1 Summary Report, shown below*). The Planning Commission may determine whether or not this is adequate amount of commercially zoned land for the future of Florence for the planning period.

from the highway in the Highway District, measured from the center line, are 100 feet and a 20' barrier with a height of 6' is required along the highway. Clearly, the intent written into the City Code is to protect the interest of residents that live in that zoning district. Conditioning such a setback and/or buffer from the highway ROW will impact the design as proposed, which has been provided in order to request 5 lots but will also be in keeping with the existing residences including those in the MDR District.

The subject property lies east of one of five existing or proposed transportation gateways into the community. Chapter 12, p. XII-7 of the *Florence Realization 2020 Comprehensive Plan* specifically identifies Highway 126 as the "East Highway 126 Gateway." Additionally, on p.II-12, this same document comments:

"The third area designated Commercial are lands north and south of Highway 126 and east of Quince Street. These lands were designated Highway Commercial in the 1988 Comprehensive Plan Map and zoned for commercial use by Lane County. Retail and service commercial professional offices, lodging and restaurant establishments are appropriate for this area. Upper story residences are encouraged where they can be protected from highway impacts."

This Comprehensive Plan language supports commercial uses and residential only with protections from the highway and limits residential encroachment of the land base available for commercial uses. Conditioning the limitation on the number of residences, setbacks from the highway and a vegetated buffer.

- D. Conditional uses are subject to design review under the provisions of Chapter 6 of this Title, except single family and duplex residential use. (Ord. 625, 6-30-80) See Code Section 10-6-3 for Design Review requirements.**

Finding: Since this request entails single-family development, no design review is required. The criterion does not apply.

- E. Adequacy of public facilities, public services and utilities to service the proposed development.**

Finding: Developers are responsible for financing infrastructure to support their proposals. Referral comments have not been provided from Public Works as of the writing of these findings.

- F. Adequacy of vehicle and pedestrian access to the site, including access by fire, police and other vehicles necessary to protect public health and safety. (Ord. 669, 5-17-82).**

Finding: The proposed concept includes access to Vine St. from Hwy 126. Vine St.'s right-of-way width is 60', which meets the minimum street width requirement. The

proposed interior street off of Vine does not currently fit the minimum street width requirement. Meeting the street requirements, including the turn-around, would likely change the layout of the proposed site plan which could effectively decrease the number of buildable area. As proposed the plan can meet the criteria with conditions as it relates to FCC 10-4-10-F. The applicant shall either meet the requirements for street improvements per FCC 10- 35 and FCC 10-36 as applicable or submit application for a modification from street requirements to be reviewed and approved by the Planning Commission. **[Condition 4]**

10-4-11: GENERAL CONDITIONS: The Planning Commission may require any of the following conditions it deems necessary to secure the purpose of this Chapter. Where a proposed conditional use is permitted in another district, the Planning Commission may apply the relevant development standards from the other district. In addition, conditions may be required by the Planning Commission. Such conditions may include:

- A. Regulation of uses, special yard setbacks, coverage and height.**
- B. Requiring fences, walls, screens and landscaping plus their maintenance.**
- C. Regulation and control of points of vehicular ingress and egress.**
- D. Regulation of noise, vibration, odors, and sightliness.**
- E. Requiring surfacing of parking areas.**
- F. Requiring rehabilitation plans.**
- G. Regulation of hours of operation and duration of use or operation.**
- H. Requiring a time period within which the proposed use shall be developed.**
- I. Requiring bonds to insure performance of special conditions.**
- J. Regulation of tree and vegetation removal to maintain soil stability, preserve natural habitat, protect riparian vegetation, buffer conflicting uses, and maintain scenic qualities.**
- K. Such other conditions as will make possible the development of the City in an orderly and efficient manner and in conformity with the intent and purpose of the Florence Comprehensive Plan.**

Finding: In reviewing this CUP request, the above code section provides the Planning Commission the authority to place conditions that may not otherwise be allowed outright with other applications. For example, although the Commercial District allows a height of 35 feet for commercial developments. With a conditional use permit request,

however, the Commission is able to require a lesser height; however, the argument brought up in testimony that views of the river would be impeded by two-story residences does not take into consideration the fact the commercial uses, by right, could place structures up to 35' which would have the same effect on the neighbors' views. The new proposal provides an elevation of 29.5' instead of 35' in height. Additionally, the PC could require specific screening, buffering, and landscaping features (and maintenance) to ensure the above listed criteria are addressed.

The Planning Commission may also limit the number of residential lots for the proposed development. As proposed, larger residential lot sizes situated to the north coupled with the presence of a commercial element on the south side of the subject property is more desirable than the previous proposal. A maximum of five (5) residential lots shall be allowed providing they are located on the northern half of the subject property.
[Condition 5]

TITLE 10: CHAPTER 15: COMMERCIAL DISTRICT

10-15-1: PURPOSE: The Commercial District is intended to preserve and enhance areas within which a wide range of retail sales and businesses will occur.

10-15-3: BUILDINGS AND USES PERMITTED CONDITIONALLY: The Planning Commission, subject to the procedures and conditions set forth in Chapters 1 and 4 of this Title, may grant a conditional use permit for the following:

Single-Family, duet, and duplex dwellings

Finding: This proposal to construct a single-family detached subdivision in the Commercial District is only allowed through approval of a conditional use permit. The criteria for conditional uses are addressed in FCC 10-4-10. This criterion is met.

10-15-4: LOT AND YARD REQUIREMENTS:

A. Minimum Lot Dimensions: The minimum lot width shall be twenty five feet (25').

Finding: The dimensions of the existing property currently meet all minimum lot and yard requirements. As proposed, the minimum lot widths shown in the subdivision concept plan (Exhibit B) measure more than 25' in width with the narrowest lot width being 52'.

B. Minimum Lot Area: The minimum lot area shall be two thousand five hundred (2,500) square feet.

Finding: All proposed lots fit the minimum lot area as it relates to the Commercial District. The smallest lot contains 5,200 sq ft, and if the proposal is compared to the Medium Density Residential District zoning requirements, the minimum lot area for MDR

is 5,000 sq. feet – therefore, all proposed residential lot areas would be met by MDR requirements.

C. Lot Coverage: Eighty-five percent (85%) lot coverage, unless a preservation credit is achieved in accordance with FCC 10-34-2-4.

Finding: The applicant did not supply specific information illustrating coverage for each lot. There is no vegetation in which to request a preservation credit. The percentage of lot coverage may be conditioned by the Planning Commission per FCC 10-4-11A because the minimum lot coverage in the Medium Density Residential District is 75%.

D. Yard Regulations:

- 1. Front yards are not required except where setbacks have been established for road widening or other purposes.**
- 2. Side and rear yards are not required except:**
 - a. Where setbacks have been established for road widening or other purposes.**
 - b. Where the commercial use abuts a residential use, see FCC 10-34-3-7-D.**

Finding: Since the request is for a conditional use permit to allow a residential development in a Commercial District, the Planning Commission may condition all yard regulations and also condition for buffers between other uses per FCC 10-4-11A and K to be similar to requirements in MDR or other zoning districts, such as the Highway District as previously discussed.

10-15-5: SITE AND DEVELOPMENT PROVISIONS:

A. Building or Structural Height Limitations: The maximum building or structural height shall be thirty-five feet (35'). Residential dwellings and their associated structures refer to Section 10-10-5 of this Title for requirements.

Finding: In the applicant's narrative (Exhibit B) the applicant proposes both single and two-story development. The most eastern lot would contain a residence that could be conditioned to be set back further to the north than the remaining four. The Planning Commission can require specific height limitations per FCC 10-4-11 A. From the most recent topographic study for a house constructed at the NW intersection of Vine and Vinca Ln, the dune bank at the north end of the subject property appears to be up to 31 feet in height. Of course, the bank varies in height throughout the remainder of the adjoining lots to the east of the newly constructed residence and north of the subject property. Again, as previously discussed, would limiting height make an impact given that if a commercial development were to go in, the height limitation is 35 feet. Low

Density Residential also allows up to 35 ft in height outright. Exhibits B and C contain images of the northern property line. These images indicate that the neighboring bank does not encroach significantly onto the subject property.

During the Planning Commission hearing of December 14, 2021, Commissioner Young shared that she would like to see a survey done that reflects the positioning of the subject property along the north side against the bank. Staff visited the site with the owner/applicant on January 14, 2022 and took a photo of the northern property line, (Exhibit C). Exhibit B also contains a photo, as discussed above, demonstrating the north property line location in relation to the neighboring sand bank.

FCC 10-10- 5 referenced above applies mainly to residential building or structural height limitations:

“Primary Structures: The maximum building or structural height shall be thirty-five feet (35’). Excepting High Density District which shall permit forty feet (40’), limited to three stories.”

Exhibit B shows an elevation drawing that shows the top of the structure at a height of 29.9’.” As discussed in the narrative of these findings, the current development proposal resembles Medium Density Residential development given the lot areas and widths. A decision point for the Planning Commission is if the proposed new lot sizes and density is in keeping with the intent of the Commercial District and the Florence Realization 2020 Comprehensive Plan.

As mentioned earlier, there was public testimony was submitted voicing concerns that the proposal will block the north and west neighboring views of the Siuslaw River. This could be the case also with a permitted commercial or mixed use. But with a conditional use the PC can impose more restrictions. The maximum height allowed per residential unit shall be thirty (30’) feet. [Condition 6]

B. Fences, Hedges, Walls and Landscaping: Refer to 10-34 of this Title for requirements.

Finding: Landscape buffers have been proposed. The landscaping and buffering requirements of FCC 10-34 do not apply to single-family dwellings; however, as previously discussed, the Planning Commission can require these features per FCC 10-4-11 B. The applicant shall apply and obtain approval of a detailed landscaping and irrigation plan prior to the issuance of building permits. Such plan shall provide a 10’ wide buffer between Highway 126 and the commercial portion of the property. [Condition 7]

C. Parking and Loading Space: Refer to Chapter 3 of this Title for specific parking requirements.

- D. Vision Clearance:** Refer to Section 10-2-13 and 10-35-2-14 of this Title for definitions, and requirements.
- E. Signs** shall be in accordance with Title 4, Chapter 7 of this Code. (Ord. 4, 2011)
- F. Access and circulation:** Refer to Section 10-35 of this Title for requirements.
- G. Public Facilities:** Refer to Section 10-36 of this Title for requirements.
- H. Open Space** is required for residential housing developments of 4 or more units as follows:
 - 1. An area on the site measuring a minimum of 100 square feet per dwelling unit shall be designated and permanently reserved as common open space.
 - 2. In meeting the open space standard, the multiple family development shall contain one or more of the following: outdoor recreation area, protection of sensitive lands (e.g., trees or bank vegetation preserved), play fields, outdoor playgrounds, outdoor sports courts, swimming pools, walking fitness courses, pedestrian amenities, or similar open space amenities for residents.
 - 3. To receive credit under this section, a common open space area shall have an average length that is not less than twenty feet (20').
 - 4. Any common areas shall be owned as common property and maintained by a homeowners association or other legal entity. A copy of any applicable covenants, restrictions and conditions shall be recorded and provided to the city prior to building permit approval.

I. Lighting: Refer to Section 10-37 of this Title for requirements.

J. Residential and mixed-use development refer to Section 10-6-5-2 of this title for requirements. However, a conditionally approved use may require application of the relevant development standards from a district where the use is permitted outright to include but not limited to setbacks and lot coverage. The more restrictive standards would apply.

Lighting, parking, vision clearance, signage, and public facilities would be reviewed with subsequent applications for subdivision and building permits. No information or narrative to suggest intended compliance with these criteria was provided. Item J

restates the earlier criteria that offers the PC the opportunity to permit a conditional use by applying the criteria from the zone where the use is permitted outright. The abutting zoning is Medium Density. Given the abutting highway location and concern for protecting future residents and adjacent commercial uses Medium Density standards would be appropriate if a CUP was granted in whole or part. However, the Planning Commission may impose stricter conditions should they decide they are warranted.

10-15-6: GENERAL PROVISIONS:

- A. Yards and open areas shall not be used for the storage, display or sale of used building materials, scrap or salvage.**
- B. Where there is manufacturing, compounding, processing or treatment of products for wholesale, the front twenty five feet (25') of the building's ground floor facing the principal commercial street shall be used for commercial sales, business or professional offices.**
- C. Any use allowed must not cause unreasonable odor, dust, smoke, noise, vibration or appearance.**

Finding: FCC 10-15-6 A through C do not generally apply to the nature of single-family residential development and are more applicable with commercial development.

VI. CONCLUSION

The request for a Conditional Use Permit to construct a single-family residential development as proposed can meet the intent of the underlying Commercial zoning district and the intent of the Florence Realization 2020 Comprehensive Plan with conditions as outlined in Resolution PC 21 32 CUP 03.

VII. EXHIBITS & ATTACHMENTS

- A. Finding of Fact
- B. Revised Proposal and Materials
- C. Image of Northern Property Line
- D. Continuance Request

Attachment 1: Exhibits A through E 2 (of Original Request) and D6 & D7, Saxon & Wise Testimony and original proposed resolution.