

ORDINANCE NO. 805

AN ORDINANCE AMENDING ORDINANCES NO. 802 AND 740, THE LAND DEVELOPMENT AND PLANNING ORDINANCE, AND DECLARING AN EMERGENCY.

WHEREAS, it has been determined that changes are needed to the text of the Land Development and Planning Ordinance; and

WHEREAS, the Canby Planning Commission conducted public hearings on July 13, and July 27, 1987, on these proposed amendments and heard a variety of testimony from proponents and opponents; and

WHEREAS, after concluding the public hearings the Planning Commission adopted findings of fact and made recommendations to the City Council regarding these amendments;

WHEREAS, after reviewing the record of the matter and the recommendations of the Planning Commission, the City Council adopted findings of fact in support of the following amendments.

NOW, THEREFORE, THE CANBY CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Section 16.04.666 is hereby added to the Canby Municipal Code as follows:

VICINITY. Nearby. Within the same neighborhood. It should be noted that in applying the criteria of this ordinance the term "vicinity" will be applied to a larger area when warranted by a large project or a project which is expected to have an impact on a large area.

Section 2. Section 16.22.010 (1) of the Canby Municipal Code is amended to read as follows:

1. Dwelling units incidental and attached to any use allowed in the C-1 Zone.

A. Dwelling units shall conform to the development standards of the R-2 Zone.

B. Existing dwelling units which are not incidental and attached to a use allowed in the C-1 Zone may be altered or expanded, provided that any such additions comply with the development standards for dwelling units in the R-2 Zone.

Section 3. Sections 16.52.010 through 16.52.070 of the Canby Municipal Code are amended as follows:

16.52.010 Continuation of Nonconforming Use or Structure: Subject to the provisions of this Section, a nonconforming structure or use may be continued, but shall not be altered, changed or extended except as provided herein. Other than those expansions specifically permitted by Section 16.52.035, below, the expansion of new conforming uses shall not be permitted.

16.52.020 Nonconforming Structure : A structure conforming as to use but nonconforming as to height, setback, or coverage may be altered or extended providing that the alteration or extension is in conformance with this ordinance. Any expansion of the structure must follow the procedures as set forth in Section 16.53.040 below

16.52.030 Discontinuance of a Nonconforming Use:

1. If a nonconforming use involving a structure is discontinued from use for a period of one year, further use of the property shall be as a conforming use.

2. If a nonconforming use not involving a structure is discontinued for a period of six months, further use of the property shall be for a conforming use.

16.52.035 Alteration or Expansion of Dwelling Units in C-1 Zone: The alteration or expansion of dwelling units in the C-1 Zone shall be permitted, subject to the specific requirements of that zone.

16.52.040 Expansion of Nonconforming Structure or Change of Use. Application required.

1. A request for an expansion of a nonconforming structure or change of nonconforming use may be initiated by a property owner or the owner's authorized agent by filing an application with the City Planner upon forms prescribed for the purpose. The application shall be accompanied by a site plan, drawn to scale, showing the dimensions and arrangement of the proposed development. If the application is for the expansion of a nonconforming structure, or change in use of a nonconforming use, the City Planner shall send to the owners of all property within 100 feet of the subject property a notice of application, informing them that they may request a public hearing before the Planning Commission on the application by filing a written request within ten (10) days. If no such request for hearing is received within the time limits, and if the staff determines that the application is of a minor nature, and will not constitute an expansion or intensification of a nonconforming use, the City Planner may authorize the necessary license or permits for change of use or structural expansion. In making the above determination the staff shall utilize the criteria set forth in Section 16.52.050, below.

2. If a request for a hearing is filed within the ten (10) day period, or if the staff determines that the application is not of a minor nature, the City Planner shall schedule the application for a public hearing before the Planning Commission. The Planning Commission may request other drawings or additional information essential to an understanding of the historic use of the site, or the proposed use and its relationship to the surrounding properties.

16.52.050 Authorization to Grant or Deny Expansion of Nonconforming Structure or Change of Nonconforming Use. An expansion of a nonconforming structure or a change from one nonconforming use to another shall be approved, conditionally approved, or denied in accordance with the standards and procedures of this section. In judging whether or not such applications shall be approved or denied, the Planning Commission shall weigh the proposal's positive and negative features and the public convenience or necessity to be served against any adverse condition that would result from authorizing the particular development at the location proposed and, to approve such expansion or change shall find that the following criteria are either met, can be met by observance of conditions, or are not applicable:

1. The proposal will be consistent with the policies of the Comprehensive Plan and the requirements of the Land Development and Planning Ordinance, other than those specific zoning standards to which the use or structure is nonconforming.

2. The characteristics of the site are suitable for the proposed use considering size, shape, design, location, topography, existence of improvements and natural features.

3. All required public facilities and services exist to adequately meet the needs of the proposed development.

4. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, or precludes the use of surrounding properties for the uses listed as permitted in the zone.

5. In considering whether to approve a change in use the commission shall compare the following characteristics of the historical use of the property with that proposed by the applicant in order to assure that the change will not constitute an expansion or intensification of the nonconforming use:

a) Traffic, including both volume and type (car, truck, foot, etc.)

- b) Noise
- c) Days and hours of operation
- d) Physical appearance
- e) Other environmental considerations (dust, vibration, glare, etc.)
- f) Type and size of equipment used

16.52.060 Destruction of a Nonconforming Use or Structure:

If a nonconforming structure or a structure containing a nonconforming use is destroyed by any cause to an extent exceeding 80 percent of the cost of replacement of the structure using new materials, as determined by the Building Official, the property owner may apply to the Planning Commission to restore the nonconforming use or structure. In judging whether or not the restoration of a nonconforming use or structure shall be approved or denied, the Planning Commission shall weigh the proposal's positive and negative features and the public convenience or necessity to be served against adverse conditions that would result from authorizing the particular restoration at the location proposed. In order to approve such restorations the Planning Commission shall find that the criteria as set forth in Section 16.52.050, above, are met, can be met by observance or conditions, or are not applicable.

16.52.070 Completion of Building: Nothing contained in this ordinance shall require any change in the plans, alteration, construction or designated use of a building upon which construction work has lawfully commenced prior to the adoption of this ordinance, except that if the designated use will be nonconforming it shall, for the purpose of Section 16.52.030, above, be a discontinued use if not in operation within one year of the date of issuance of the building permit.

Section 4. Section 16.88.150 (D) of the Canby Municipal Code is amended to read as follows:

Standards and Criteria. A variance may be granted only upon determination that all of the following conditions will be met:

1. Exceptional or extraordinary circumstances apply to this property which do not generally apply to other properties in the City and within the same zone. These exceptional or extraordinary circumstances result from tract size or shape, topography or other circumstances over which the owners of the property have no control; and
2. The variance is necessary to assure that the applicant maintains substantially the same property rights as are possessed by the owners of other property in the City and within the same zone; and

3. Granting of this variance will not be materially detrimental to the intent or purposes of the City's Comprehensive Plan or the Land Development and Planning Ordinance; and

4. Granting of this variance will not be materially detrimental to other property within the same vicinity; and

5. The variance requested is the minimum variance which will alleviate the hardship; and

6. The exceptional or unique conditions of the property which necessitate the issuance of a variance were not caused by the applicant, or the applicant's employees or relatives acting in deliberate violation of these or other City regulations.

Section 5. In that this Ordinance will have a direct bearing on developments now planned, an emergency is hereby declared to exist. This Ordinance will take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on September 16, 1987; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday October 7, 1987, commencing after the hour of 7:30 p.m., at the Council Meeting Chambers at the Canby City Hall in Canby, Oregon.

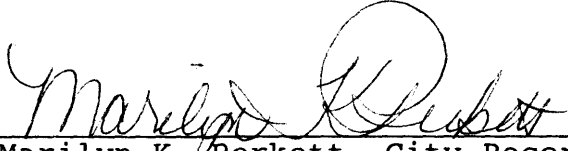

Marilyn K. Perkett, City Recorder

PASSED on final reading by the Canby City Council at a regular meeting thereof held on the 7th day of October, 1987, by the following vote:

YEAS 6 NAYS 0


William F. Pulver, Mayor

ATTEST:


Marilyn K. Perkett, City Recorder

Based upon the record of the Public Hearing conducted July 27, 1987, the Canby Planning Commission hereby adopts the following:

Findings of Fact

Section 3. Variance Standards and Criteria.

1. The proposal complies with all applicable Comprehensive Plan policies and requirements. As proposed, this section consists of only minor modifications intended to clarify the criteria for a variance. This should assist both applicants and City decision makers in the use of the ordinance. This amendment will help to implement Policy #2 of the Citizen Involvement Element of the local Comprehensive Plan in that it will "help to eliminate costly, confusing, and time consuming practices in the development review process."
2. The public need for the change was demonstrated by the recent confusion among members of the public and City decision makers when a recent variance application was filed. The City Council initiated this amendment after noting that the previous ordinance wording was unnecessarily ambiguous and had poor sentence structure.
3. The Planning Commission and City staff who work regularly with and must interpret the ordinance wording have spent considerable time discussing the wording contained here. After much review and discussion, the Planning Commission voted to accept and recommend adoption of this section as the best means of meeting the public need for the change.
4. Any impacts of this amendment on the health, safety, or general welfare of the citizens are expected to be negligible. There is no reason why this amendment will do less to preserve and protect these public interests than the prior ordinance wording.
5. None of the Statewide Planning Goals are deemed to be applicable to this amendment. In a very minor way it could be said that, by adding clarity to the previous ordinance, this amendment helps to implement the Statewide Goal for Citizen Involvement.

Conclusion

The Planning Commission found that all required criteria have been met and has voted to recommend that the City Council amend the Ordinance with the adoption of this section on variance standards and criteria.

Sections 4 and 5. Nonconforming Uses and Structures.

1. The proposal complies with all applicable policies and requirements of the Comprehensive Plan. This section modifies the City's system of dealing with nonconforming structures and nonconforming uses. If adopted, this section will preclude the expansion of nonconforming uses and will clarify the system of reviewing proposals to change from one nonconforming use to another. At the same time, however, existing homes in the City's downtown commercial area will be allowed to expand, subject to specified standards. These changes will help to implement Policy #1 of the Land Use Element of the Comprehensive Plan which states "Canby shall guide the course of growth and development so as to separate conflicting or incompatible uses while grouping compatible uses."

This section will also help to gradually reduce the number of nonconforming uses over time. In so doing, it will help to implement Policy #5 of the Land Use Element, "Canby shall utilize the Land Use Map as the basis of zoning and other planning or public facility decisions."

2. The public need for these changes was demonstrated by neighborhood concerns about recent proposals to expand nonconforming uses. In both cases (a proposed rock crusher in one and a furniture factory in the other) the neighbors submitted testimony about the damaging effects on residential neighborhoods where nonconforming uses are allowed to expand. The older homes in the downtown commercial district were identified as needing special treatment, however. Expansion of these homes will not prevent their eventual conversion to commercial use and will allow for improvements that will help to assure that the area does not become blighted and run down.
3. The Planning Commission and City staff spent considerable time discussing these sections. The Planning Commission made minor revisions to the wording before reaching the conclusion that these sections provide the best means of meeting the public need for changes.
4. Impacts of these changes on the health, safety, or general welfare of the citizens are expected to be minimal. By reducing commercial or industrial traffic in residential neighborhood, through the eventual elimination of nonconforming activities, these changes will help to preserve and protect these public interests.
5. The Statewide Planning Goals, considered in total, provide a framework for comprehensive planning. The ideas of gradually

eliminating nonconforming uses and further clarifying the text of local land use regulations are directly supportive of such planning.

Conclusion

The Planning Commission found that all required criteria have been met and has voted to recommend that the City Council amend the ordinance with the adoption of these sections dealing with nonconforming uses and structures.

Section 6. 10.1.20 (B) (Definitions) to be amended by the following additions:

VICINITY. Nearby. Within the same neighborhood. It should be noted that in applying the criteria of this ordinance the term "vicinity" will be applied to a larger area when warranted by a large project or a project which is expected to have an impact on a large area.

*Fred Kahut - Chairman
August 24, 1987*

Based upon the record of the Public Hearing conducted July 13, 1987, the Canby Planning Commission hereby adopts the following:

FINDINGS OF FACT

Section I - Area of Flag Lots


Section II - Permitting Duplexes in R-1 zone

1. The proposal complies with all applicable Comprehensive Plan policies and requirements. The City's Comprehensive Plan and the Statewide Housing Goal both favor a general increase in housing density of the sort that could be expected to result from this amendment.
2. A public need for the change has not been adequately demonstrated. Most of the testimony favored leaving the present ordinance wording unchanged. Testimony in favor of the change was received from a single property owner, that owner's attorney, and that owner's builder. The individuals who originally petitioned the City Council for the change did not attend the hearing and did not present any information in support of their position.
3. If a public need had been adequately shown, there was no evidence to support that the proposed change was necessarily the best means of meeting that need.
4. No evidence was submitted concerning whether the proposed amendment would or would not affect the health, safety, or general welfare of residents of the community.
5. The only one of the Statewide Planning Goals which relates to the proposed change concerns "Housing." It is addressed above under item #1.

CONCLUSIONS

The Planning Commission found that criteria numbers 2 and 3 have not been adequately supported by the record in this proceeding and has voted to recommend that the City Council leave the ordinance wording in its present form.

July 27, 1987



Chairman Fred Kahut
Canby Planning Commission

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