

Canby Planning Commission
Regular Meeting
June 9, 1976

Present: Chairman Ross and Commissioners Cutsforth, Edgerton, Hulbert and Kahut

Absent: Commissioners Johnson and Shaw

Also Present: City Attorney Reif, Planning Consultant Edwards, Public Works Director Ferguson, Lloyd Clark, Martin Clark, Cliff Conrad, Mr. and Mrs. Davenport, Mr. Gagliardi, Pete Kelley, Maynard Nofziger and Ron Tatone

The meeting was called to order at 8:08 p.m.

Under correspondence, two notices were received from Clackamas County Planning Department advising the Canby Planning Commission of hearings for the purpose of zoning an area in Clackamas County generally described as being south of Canby and west of Molalla. The notices were for the following hearings:

A public hearing will be held by the Clackamas County Planning Commission on June 14, 1976, at the hour of 7:00 p.m., or shortly thereafter, in Court Room #2 of the Clackamas County Courthouse, Oregon City, Oregon, for the purpose of hearing remarks regarding the adoption of land use controls or zoning pursuant to the adopted Clackamas County Comprehensive Plan for the South of Canby area. Consideration shall be given to adopting the Exclusive Farm Use (EFU) zoning to currently unzoned lands and rezoning lands presently zoned Light Industrial (I-2), Community Commercial (C-2), General Use (GU), and Rural Agricultural one acre (RA-1), to Exclusive Farm Use (EFU).

A public hearing will be held by the Clackamas County Board of County Commissioners on July 19, 1976, at the hour of 10:00 a.m., in Room 201, of the Clackamas County Courthouse, Oregon City, Oregon, for the purpose of hearing remarks regarding the adoption of land use controls or zoning pursuant to the adopted Clackamas County Comprehensive Plan for the South of Canby area. Consideration shall be given to adopting the Exclusive Farm Use (EFU) zone to currently unzoned lands and re-zoning lands presently zoned Light Industrial (I-2), Community Commercial (C-2), General Use (GU), and Rural Agricultural one acre (RA-1), to Exclusive Farm Use (EFU).

Chairman Ross directed the secretary to make copies of both notices and send them out to all Commissioners right away so that they can familiarize themselves with the information before the date of the hearings.

Minutes: The minutes of the previous meeting, held May 26, 1976, were approved with two corrections. On page 1, under "John Arends, Juhr and Sons, zone variance...", the second paragraph, first sentence, read: "The Planning Commission received from Mr. Jack Fisher an agreement to sell a 25 foot wide strip of land, from Knights Bridge Road to the property where the apartment complex is to be located, as an emergency access to the project." This was changed to read: "The Planning Commission received from Mr. Jack Fisher an agreement to grant a 25 foot easement, a strip of land from Knights Bridge Road to the property where the apartment complex is to be located, as an emergency access to the project."

On page 3, the conditions for the granting of the variance for the apartment complex, the Commissioners felt that the fourth condition was not appropriate as stated and decided to strike the number 4 and add the word "action" after the first word of the sentence, so that now there are three conditions, then the sentence: "This action is based upon the intent of the applicant to build a project for elderly residents." There was also some question regarding the 34 foot turning radius mentioned on page 2, paragraph 3, line 4. Chairman Ross asked that Ken Ferguson, Public Works Director, check the turning radius with the Fire Department to be sure it will allow enough room.

City Attorney Reif then announced that the Subdivision Ordinance had been amended by the City Council on Monday, June 7. Ordinance #606 changes Section 26 as follows: under subsection (2), in the "Right-of-Way" column, the figure 90 for Arterial has been changed to 80; the figure 80 for Commercial and industrial street has been changed to 60; and under the "Roadway" column, the figure 50 for Commercial and industrial street has been changed to 40.

Clarence L. Davenport (represented by Maynard Nofziger, Brown Real Estate), 1059 N. Locust (Clackamas County Tax Map 3 IE 33 BA Tax Lot 1500) to be divided into two lots, one 95' x 275' and the other 65' x 275'. Eldon Edwards showed slides of the property and surrounding area and stated that the application is based on the section of the Zoning Ordinance which says that every lot must have 70 feet street frontage unless otherwise approved by the Planning Commission. It was feared that granting of the application might set a precedent for a 65' frontage instead of the required 70'; however, Mr. Edwards stated that there is a special problem involved here in that there is an existing improvement on the land (the concrete driveway) which the owners would prefer not to have to remove. There was also concern as to whether someone would come in in a year or two and want to divide the land in half the other way to open up the land in back of the lots, thus creating "flag lots". This question is related to the decision made recently in the application for a minor land partition of a piece of property on N. Locust by David Walkoski. The land in question is a long narrow strip which was to be divided into two lots with a narrow access easement providing access to the rear parcel. The Walkoski application was denied because: "There are three adjoining pieces of property with the same lot size with the same potential of providing 15 foot easements and selling off the rear property; because (the maker of the motion) does not like flag lots; and because (the maker of the motion) feels that if the property owners feel it is desirable to develop these lots, then they should get together and develop it." (The last statement had reference to providing right-of-way through the center of the large block from N.E. 9th to N.E. 4th Ave. to provide access to the rear of the long lots fronting on N. Locust and N. Juniper and some which are presently landlocked within the interior of the block.) It was also stated by some of the Commissioners voting to deny the application that one of the reasons for denial was the substandard lot frontage, and another was the objection to the creation of a "flag lot", although these points were not part of the motion. (See minutes of the regular meeting of April 28, 1976.) Attorney Reif pointed out at this point that there is an important distinction to be made here: In the Walkoski application, there was one long narrow lot to be divided into a flag lot; in the application being presented at this meeting, the request is not for the same thing - it would simply divide one large lot into two long narrow lots, both fronting on the street. If, in the future, the owners of both or either of the lots were to come in to ask for a minor land partition to divide the lots the other way and create flag lots, it would be handled as completely different applications and would probably be denied, as was the Walkoski application.

Chairman Ross stated that, after allowing for 10 foot setbacks to the sides of the property, as measured from the furthestmost projection of the structure to be built on the north lot, there would be 41 feet in which to build. Eldon Edwards was asked how wide the concrete drive is and stated that it looked to be about 10 feet wide, although he had not measured it. Maynard Nofziger stated that the drive is concrete all the way back from the street to the garage which it serves and that it is 13 feet wide. He said that Mr. Davenport has a whole acre which he is unable to take care of and wants to do something with it without disrupting things too much. It was suggested that another five feet be added to the smaller lot, giving it the required 70 foot frontage, which would leave 8 feet of the concrete drive still on the original lot. The owner then explained that the property line of the proposed lot is actually two feet north of the driveway, because the driveway is not even, being two feet from the property line in the front and only one foot at the rear. There would be about 40 feet from the existing garage to the proposed property line. If the property line were moved five feet to the south, there would still be about 10 feet of driveway to be used by the present owners.

**Commissioner Edgerton then moved to approve the application, providing that, instead of 65 feet, the lot dimensions read 70 feet and 90 feet on widths because there is room to maintain the 70 foot frontage. The motion was seconded by Commissioner Kahut and passed unanimously. The secretary was directed to write a letter to the applicant informing him of the action of the Planning Commission.

Mrs. Ellen J. Gagliardi, 204 N.E. 4th, (Clackamas County Tax Map 3 1E 33 CA Tax Lot 1400), to divide one lot into two. AND Martin Clark, 204 N.E. 4th, contingent upon Mrs. Gagliardi's minor land partition application, Mr. Clark wants to divide the west half of the present lot into three lots. Since these applications concerned the same piece of property, the two applications were considered at the same time, instead of being handled separately. Eldon Edwards pointed out that this application, too, is related to the Walkoski application, because the land which was discussed to be developed into a street would run through the center of this block from where Mrs. Gagliardi's lot is on N.E. 4th to N.E. 9th Ave. Mr. Edwards then gave his staff report, with a recommendation for denial because he felt that this concurrent set of applications is an apparent circumvention of the Subdivision Ordinance, since it would be creating four lots and any development of four lots or over must be handled as a subdivision.

City Attorney Reif quoted section 1, #15 of the Subdivision Ordinance, which defines subdividing of land as follows: "To partition a parcel of land into four or more parcels of less than five acres each for the purpose of transfer of ownership or building development, whether immediate or future, when such parcel exists as a unit or contiguous units under a single ownership as shown on the tax roll for the year preceding the partitioning." He stated that he saw this application as an obvious circumvention of the Subdivision Ordinance and that he did not feel that it could be approved as presented. He referred to the "bootstrap" principle - they are taking two steps to try to reach a conclusion, instead of taking the proper step from the beginning. By taking the two steps, they are circumventing the ordinance - the two steps, put together, are illegal.

Commissioner Hulbert asked how the owner of the land, Mrs. Gagliardi, could transfer ownership of property without having any frontage on the street. There would be only a driveway going back to the duplex. Lot 1 would have acceptable frontage, but Lots 2 and 3 would have none, only an easement for access.

Chairman Ross then asked the applicants if they would like to present their application, even though it could not be approved as they had submitted it. Pete Kelley, speaking for both applicants, stated that he had been to Salem that day to find out about the State law regarding this type of partitioning of land. He advised that the law states that one person shall not subdivide more than four parcels, but it does not say that one person cannot subdivide one parcel and then another person subdivide the other piece. He also stated that he was led to believe, by the City staff, that the way in which they submitted it was the proper way for it to be done. He said that the lot, as it is, is not generating any type of tax for the community, and that he felt it would be good for the community to put the lots in as presented. He also requested a letter from City Attorney Reif, stating the attorney's reasons for suggesting denial of the application. Mr. Reif told him that the reasons would be stated in a letter from the secretary of the Planning Commission and that the applicants could appeal the decision to the City Council.

The question of whether it is a subdivision or minor land partition is the most obvious question. Other than that, there is the question of providing access to lots 2 and 3. Mr. Kelley asked what the difference would be between breaking off the lots now or dividing it in half now and trying to divide one half into more lots later. Eldon Edwards replied that this, again, would relate to the decision made in the Walkoski application, because of the lack of street frontage and provision of access to the rear lots. Mr. Kelley drew attention to tax lots #1200 and 1300 on the same tax map as this property, and the fact that they do not have the required frontage and that one has only a narrow access drive fronting on the street. Chairman Ross answered that this condition was pre-existing to the ordinance.

**Commissioner Edgerton then said that, because of the way this thing is laid out, he has to say that the lots in the back not being able to present us with a 70 foot frontage onto a public street would be the main reason for denial. He then moved that the applications be denied, as presented. The motion was seconded by Commissioner Cutsforth.

During discussion which followed, Attorney Reif suggested that they go through the subdivision process. Someone suggested that, in a subdivision, perhaps a 40 foot street could be allowed. A planned unit development was also suggested, and the applicants were reminded that the property is zoned for multiple family use, which could also be considered. After discussion, the motion was voted on and passed, unanimously. The secretary was directed to write a letter to the applicant stating the decision of the Planning Commission and giving the reasons for denial, and also advising them that they have ten days in which to appeal in writing to the City Council.

Brooks Addition, Floyd L. Brooks and Zarosinski-Tatone Engineers, Inc. 717 N.E. Territorial (Clackamas County Tax Map 3 1E 28 DD Tax Lot #2500) preliminary plat.
Eldon Edwards gave his report, with a recommendation to approve the preliminary plat, contingent upon the addition of sidewalks and street improvements on Maple St. and Territorial Rd. This proposed subdivision includes a large flag lot. We cannot say that we absolutely will not allow any flag lots, as there are places in town where flag lots may be appropriate; however the Commission expressed a desire to see this development designed better, possibly with a cul-de-sac, open ended to the east, to allow for future development of the land between Maple and Pine. It was suggested that Mr. Tatone draw some alternative layouts for the land and bring them in for the next meeting, on June 23. A full street

would not be practical through such a small piece of land; however, it was felt that perhaps 40 foot paved curb to curb might be acceptable. It was felt that the width of the street was less important than the existence of a street to open up the land through to Pine. Commissioner Hulbert also requested that the applicant provide an area map which would give them a better idea of where it is located and what land is adjacent to it, particularly to the east and south. If a road should go through the property to allow for development to the east, a cul-de-sac probably would not be required at the end, as it would have to be changed when the land to the east developed.

**Commissioner Kahut moved that action on the plat be tabled to the next regular meeting which will be the 23rd of June, 1976. Commissioner Hulbert seconded the motion, which passed unanimously.

Otto Popp, Popp's Addition, located on S. Locust (Clackamas County Tax Map 3 TE 33 DD, Lots 1201 and 1303) Final Plat. Planning Consultant Edwards advised that he had received the final plat and had compared it with the preliminary plat which the Planning Commission had approved, and that it was in order. The only difference is that, after doing a boundary survey of the property, Mr. Tatone found that there is actually more ground than they had thought there was. A letter was received from the Canby Utility Board on June 9, with a copy of the plat which has been marked according to what the Utility Board will require.

**After brief discussion, Commissioner Edgerton moved that the final plat for Popp's Addition be approved. Commissioner Hulbert seconded the motion, which then passed unanimously.

There being no further business, the meeting adjourned at 9:55 p.m.

Respectfully submitted,

Merrie Dinteman

Merrie Dinteman, Secretary
Canby Planning Commission