

Canby Planning Commission  
Regular Meeting  
June 23, 1976

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

Absent: Commissioners Cutsforth and Johnson

Also Present: City Attorney Reif, Planning Consultant Edwards, Public Works Director Ferguson, Donald Strode, Ron Tatone, Tod DeKanter and other guests

The meeting was called to order by Chairman Ross. Due to the absence of the secretary, the minutes were recorded on audio tape.

The minutes of the previous meeting, held on June 9, 1976, were approved as presented.

City Attorney Reif then asked the Commissioners to sign an order which he had prepared regarding an appeal which has been made to the City Council, by Ellen Gagliardi and Martin Clark, asking them to reverse the decision of the Planning Commission on a double minor land partition application which was submitted by them at the last meeting. The hearing before the Council is to be held on July 6, 1976. Mr. Reif read the order to the Commissioners and asked them to sign it, because since it has been appealed to the City Council, he wants the Commission to have on record what their reasons were for denying the applications.

\*\*Commissioner Edgerton moved to accept the document as prepared. The motion was seconded by Commissioner Hulbert and passed unanimously.

Zone variance application submitted by Donald and Carol Strode, 493 N. Fir (Clackamas County Tax Map #3 1E 33 CB, #3500) to add one room, 10'9" x 9'10", which would be 17'6" from the N.W. 5th Street property line.

Planning Consultant Edwards presented his findings regarding the application, stating that the applicant wishes to add a bathroom onto an existing area which is already apparently a bathroom and which would be uniform with the rest of the present structure in appearance. He said that, since this addition will go no further into the setback than the previous building, the request generally fits the four requirements of the ordinance for applying for a variance. Mr. Edwards felt that the application would not be detrimental to the City's ordinances, policies or practices and should be approved. Chairman Ross asked for proponents. Mr. Strode stated that he had no further comments to make and that he had had no objections to it from his neighbors. Chairman Ross then asked for further proponents. There being none, he asked for opponents. There being none, he closed the public hearing.

\*\*Commissioner Edgerton then moved to approve the variance as requested. The motion was seconded by Commissioner Hulbert and passed unanimously. Chairman Ross directed the secretary to write a letter to the applicant notifying him of the approval of the Planning Commission. He also advised the applicant that he would have to work through the City building inspector. Commissioner Hulbert asked if the applicant has to show the letter from the Planning Commission to the building inspector before a building permit can be issued. Ken Ferguson explained that a copy of the letter would be sent to the building inspector.

Brooks Addition, Floyd 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 staff report, with the statement that he feels the access problems have been answered with the revised design and that it is appropriate to approve this plat with a 10 year payback of half of the street improvements. This would provide for a payback for ten years if anyone develops to the south and uses the sewer lines. People who have provided these extensions have been having trouble collecting anything from the other property owners to reimburse them for the cost of the extension. When asked about the sidewalks, the Commissioners were informed that the plan provides for sidewalk all the way around the subdivision, but that there is no sidewalk planned for the interior street. The east end of N.E. 17th would have the required right-of-way, but the west end would not. Then the intent is to have the land to the south contribute the rest of the right-of-way if it develops in the future. The radius on the south corner is ten feet out on Maple. The curb would be staked and sloped down to ground level - then later, when the additional right-of-way is requested on Maple, the radius could be completed at that time. Prior to the approval of the final plat, the City Attorney would advise the Commission of the ten-year payback on City utility easements.

\*\*Commissioner Edgerton moved to approve the preliminary plat of Brooks Addition, subject to all staff reports, with the ten year payback plan to be looked into by the City Attorney and the Commission will either add or detract at the time of final approval of the plat. Commissioner Shaw seconded the motion. During discussion which followed, some of the staff reports were reviewed. Chairman Ross read the report from Clackamas County which stated, in part, "The Entry requirements from lots in this subdivision to County maintained streets are the same as for subdivision lots in the jurisdiction of Clackamas County. These entry requirements are as follows:

"Installation of curb, surfacing and storm sewer facilities in the streets adjacent to the platted lots. The Clackamas County Planning Commission is also requiring sidewalks in subdivision developments such as this.

"We would like to review the street and drainage improvement plans of this project when they have been prepared. It appears that there may be a drainage problem along Maple Street near the southwest corner of the plat."

The Canby Fire Department requested that a fire hydrant be put on one corner of N. Maple and 17th. They had no preference as to which corner and would leave this up to the developer. Regarding the flag lot, Eldon Edwards stated that it would have a 25 foot setback on the 25 foot neck of the lot, and the balance of it would have ten foot setback. Also, maximum coverage would apply. Following discussion, the motion passed unanimously. The secretary was directed to write a letter to the applicant advising of the decision of the Planning Commission. Commissioner Edgerton questioned how the City is to remember, or how the adjacent property owner is to become aware, of the fact that this street is to continue through. Chairman Ross stated that there would be a lein recorded with the County which would show up in a title search.

Guest Hearing: Tod DeKanter, requests Planning Commission interpretation of Zoning Ordinance regarding a houseboat he proposes to place in an R-1 zone to be used as a residence. Country Club Estates, Annex #3, Lot #28 (corner of Maple and 34th Place.) Mr. DeKanter presented a model of the house and says it is licensed by the State as a boat and has certificate of title and call

numbers for it. He also has a disclosure statement regarding the possibility of flooding which reads: "Property is subject to temporary flooding during extremely high water of the Willamette River such as occurred in 1964. Reference is made to the high water profile as shown in Plate 17 of Flood Plane information as prepared for Clackamas County by the U.S. Army Engineering District in June of 1970." The site is on a completely improved street with sewer and water to it. The question is - is this a single family residence? He does plan to live in it. It observes the yard requirements, but his position is that it is a single family residence but it is not a structure. Our ordinance requires that a single family residence is defined as a structure designed to contain a habitat of one family. Then, according to the definition of a structure, a structure needs to be attached to the ground. Mr. DeKanter cannot attach this to the ground. What he intends to do is to put within the floor joists of the house 96 reconditioned 55-gallon drums in one section and 125 reconditioned 55-gallon drums in another section. The intent of this is that, if and when it does flood, he can open the weir up once the water level reaches a certain level to give him positive buoyancy. Then he can just lift off. This way he won't have the intermittent area where he is partially floating and partially still sitting in the weir. It would be drained out in the same way. He was not going to prepare any working drawings, because it is pretty clear in his mind. Chairman Ross asked, since a structure is permanently attached to the ground, what about the sewer connection to this house? Mr. DeKanter stated that it would be flexible and if the water raised over six feet, he would simply disconnect the sewer line and move out. Since it is not fixed to the site, it could float away.

Mr. DeKanter stated that the reason he has brought this before the Commission is because he does not want to have to get a building permit on the floats - the main flow and the tender. He has things inside the building which are not allowable by the building code. For instance, some of the room sizes and ceiling heights are less than the minimum requirements of the code. There are four bedrooms planned, and each is small; however, he has two children who will be leaving home. When the first child leaves, his bedroom and the one next to it will be made into one larger room. The same thing will happen when the other child leaves. It will then be a two-bedroom house. He stated that he had called Wade Bettis on it, and that Ken Ferguson was in power to make the decision, but that Ken felt that the Planning Commission should talk it over first.

City Attorney Reif stated that the word "location" in the zoning ordinance defines a site or place or designation of the boundaries of a particular piece of land. He was of the opinion that the intent in this case was to keep the building in a definite location. However, Mr. DeKanter explained to him that the plan had originally provided for four posts to maintain the location on the site. This was what Mr. Reif had seen. But he had since eliminated two posts from the plan, so that now he has a removable thing that fits completely around the posts that he will probably never open. But it will be built so that it can be opened so that his defense for the boat, why he has it licensed as a boat, are still valid. It could rain enough to be high enough and, if he had a couple of power boats out there, he could take it off station. Then he could put it back on station because the posts will be under water. When the posts are out of the water, they will be too far out to set the house back, so he must be able to get on station and grab back ahold of the posts. He was asked what he would do if the house floats off and the water recedes and leaves him "high and dry". He stated that he will be very careful to watch it closely and watch the water levels every day so that when the water level gets to the

proper point, he will be able to get back on. City Attorney Reif stated that he had looked for reasons, precedents, as to why this should not be allowed. After much searching, he came up with only one instance of a case that was decided last April in the Oregon State Supreme Court: Columbia County vs Kelly. The facts are a little different. Kelly purchased a mobile home and wanted to move into an R-1 zone. One thing that was giving them problems was its foundation, so he pulled the trailer out there, took jacks and jacked it up in the air, took the wheels off, laid the foundation under it, lowered it, put concrete blocks there and said he had a foundation which adheres to his frame. He took the wheels off and it is no longer portable. Therefore, he had a single family dwelling and it is no longer a mobile home. The Supreme Court stated that they could not allow Mr. Kelly's argument. The defendant cannot avoid the prohibitions of the zoning ordinance simply by placing his mobile home on blocks and jacks. But Mr. DeKanter says this is the exact opposite of his problem. Mr. Reif agreed. Mr. DeKanter then said that he will float the house. The Home Builders Association has some interest in this house and would like to have it demonstrated that it will float. This does not affect the City of Canby. He would have to make some kind of arrangements with the Fire Department to have them come out and fill up the weir so that it could be tested. It would only be for the test and would not be floating permanently. Attorney Reif asked how the electrical system is to be disconnected, and Mr. DeKanter replied that he had not worked that out, yet.

Chairman Ross stated that the only question that he had on the part of the Planning Commission is, what kind of precedent would the Commission be setting? Eldon Edwards asked what the property tax situation is on this compared to, for instance, mobile homes. Reif stated that it would be like real property. Mr. DeKanter said that he had talked to the tax assessor. If it is licensed for the road, it does not get taxed. If it is not licensed for the road it does get taxed. If the State takes a license fee out of it, the County cannot tax it. Eldon Edwards suggested that perhaps the Planning Commission has no choice in this matter. If a precedent is set, then, conceivably, whole subdivisions could be developed like this and avoid property taxes. He asked why the Home Owners Association is interested in it, and Mr. DeKanter said that it is because of all the land that is involved in the flood plain where they could conceivably provide a closed circuit sewer system. There is no way that you are going to get a building permit in the flood plain with a drain field - it has to be a closed circuit sewer system. Mr. Edwards said this is obviously a test case, and if we are going to avoid property taxes but still require the service, this puts the City in a bind. That way you are getting the services of school, Fire, Police, etc. without paying the taxes for it. Mr. DeKanter maintains that he will still be paying taxes on the flood water control weir, the garage and the land. The primary intent is not to have to get a building permit. He expects to have to pay taxes. The Planning Commission is apparently but in the position of deciding whether or not this is a structure. Chairman Ross stated that, in his opinion, this is a single family residence. He thinks the builder should be issued the building permit for it and should have to pay property taxes on it. It will be termed a residence.

Eldon Edwards quoted the definition of "structure" in the zoning ordinance: "An edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some manner and which requires a location on the ground, or which is attached to something having a location on the ground." Mr. Reif further defined a structure as being for the shelter or enclosure of persons, animals or chattels. Further, this house will require a location on the ground - it is attached to the posts, which have a location on the ground.



It was suggested that perhaps he could get variances on the room sizes; however, you cannot get a variance on the ordinance unless it states within that you can, and it does not state that you can get a variance on room sizes. The Building Board of Appeals is set up to deal with things like this. Mr. DeKanter stated that Ken Ferguson was empowered by the City Attorney to make the decision himself, but that he wanted to get the Planning Commission's opinion on it first. If the Planning Commission decides that it is a single family residence, then Ken has to make sure that they build it according to the Uniform Building Code. Mr. DeKanter said that he wanted the Planning Commission to recommend to Mr. Ferguson that it be considered a single family residence but also a boat. Chairman Ross said that, if the Planning Commission concurs, it is to be considered a structure, a single family residence which is on a lot and is attached to the City services. The only difference between this and any other structure is that it is not built to Code and it is not permanently attached. Mr. Ferguson stated that an R-1 zone allows a dwelling, and the Uniform Building Code was set up to make buildings conform, and he thinks the next step for him would be to get an interpretation of the Uniform Building Code. The intent is to build a single family dwelling in an R-1 zone and all buildings must conform to certain standards: the Uniform Building Code is one of them. The reason that it was brought to the Planning Commission is because it is unusual - it is not the type of building that usually goes in an R-1 zone. So the Planning Commission must make a decision as to whether this is an appropriate building for an R-1 zone. Commissioner Edgerton reminded the Planning Commission that they had just signed a statement regarding someone whom they felt was trying to circumvent one of the ordinances. Mr. DeKanter stated that he only wants permission to build a residence which is capable of floating that meets all the other ordinances and is in violation of only one word: "attached" to the ground. The building code part of it is between him and the building department. Mr. Reif stated that house is attached and that it is his recommendation that it be defined as a structure, it is a dwelling. That would be the Planning Commission's recommendation to Mr. Ferguson. Then it is up to Mr. Ferguson to then define what the building codes are, structurally. Mr. DeKanter stated that he felt the Planning Commission is outside its jurisdiction on this, but Chairman Ross stated that the Planning Commission is going to go on record as saying that it is a structure. Mr. DeKanter then asked if he would be allowed to construct it so that it would float and was told that this would be allowed, since it is a good solution to the flood plain problem.

Chairman Ross instructed the secretary to keep the tape from the meeting for future reference. The Planning Commission is not approving the scale model of a dwelling which would not be in conformance with the UBC. It is merely approving the idea of the "floating home" in an R-1 zone.

Eldon said that if this gets to the point where it must be dealt with again, he would like to see it come back to the Planning Commission with references to ordinances and clear-cut questions and requests. Commissioner Edgerton also would like to see staff reports from what the applicant has researched and also what the tax commission has to say on it.

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Guest Hearing: Ken Ferguson, Public Works Director, requests discussion of limiting parking on N.W. 6th, between Grant St. and the proposed Canby Village Apartments Complex recently approved by the Planning Commission, to the north side of N.W. 6th. The City has tried to obtain additional right-of-way on the south side of N.W. 6th, but the School District will not give any more right-of-way. The School District is now asking the City to restrict parking to the north side of the street. Mr. Wyman, City Administrator, suggested that the question be brought to the Planning Commission. There are a lot of children playing around that area and running out into the street. If parking is limited to the north side, it will help to minimize the danger of children running out from between the cars and getting hit by on-coming traffic. Chairman Ross stated, for the record, that, for the safety of the children, there should be no parking on the south side of N.W. 6th, adjacent to the playground areas.

There will be a curb there and also sidewalk and paving. People pull into the playing field now to park during ball games. Curbs and no parking on the south of N.W. 6th will force these people to park in front of people's houses on N.W. 6th or out on Grant Street.

Further Business: Ken Ferguson brought up the fact that Mercury Development is to bear the cost of paving Berg Parkway Avenue in front of the shopping center and adjacent to the shopping center, and the City will not have to pay for any of the cost.

There being no further business, the meeting was adjourned.

Respectfully submitted,

*Merrie Dinteman*  
Merrie Dinteman, Secretary  
Canby Planning Commission