

Canby Planning Commission
Regular Meeting
April 9, 1980

Members Present: Chairman Kahut, Commissioners Baller, MacKenzie, Davis, Sowles, Hart, and Cutsforth

Others Present: City Attorney R. Roger Reif, City Planner Stephan Lashbrook, Secretary Virginia Shirley, Ted Rennacker, Lois Cromwell, Stohr, Lester Gahler, Ted Rennacker, Derald Anderson, Eleanor Devlin, Irwin Winter, and others.

Chairman Kahut opened the meeting at 7:58 p.m. The minutes of the Planning Commission meeting of February 13, 1980, were approved as presented.

Item No. 1: Interpretation of Zoning Ordinance. City Planner Lashbrook explained to the Commission this item was a request for a retail/wholesale Filbert Nut Processing operation at the former site of C.M.R. Electronics. Commissioner Sowles, declaring a conflict of interest as owner of the building, stepped down from his seat on the Commission and asked the businessman (Mr. Lester Gahler) proposing this enterprise to explain his operation to the Commission. Chairman Kahut clarified that what was needed was an interpretation of this use within a C-1 zone. Lester Gahler came forward and showed the Commission two different types of containers of Filberts - one a jar of salted Filberts and the other a round plastic container containing several different types of coatings for Filberts. He also plans on having blanched nuts for wholesale thru United Parcel Service which will be about 75 percent of the business. Chairman Kahut asked about noise and truck traffic problems - how will the Filberts arrive. Mr. Gahler answered they would either come in a pick-up or station wagon - they will not come by heavy truck. He indicated the business does have a back entry. Commissioner Baller asked if it would be both a retail and wholesale business and Mr. Gahler stated he would like to keep it as much retail as was possible. Wholesaling will be in the slack part of the year. Commissioner Hart asked about stoves for processing - Mr. Gahler stated there would be an electric stove to melt different coatings for the nuts. He has already spoken to the Fire Marshal and states there are no problems. Commissioner Baller asked if this was only an interpretation of the zoning ordinance. City Attorney Reif assured the Commission that what was being sought was a determination if this is similar commercial use outright in a C-1 zone. "They are trying to show you the reasons why they feel this is like other similar uses allowed in the zone. If you agree, then you should make a finding it is a similar type use and then they can go ahead." Commission Baller and Chairman Kahut both expressed the opinion that this business was similar to a bakery, which is an allowed use in a C-1 zone. *Commissioner MacKenzie moved the requested be granted as this proposed use is similar to other uses allowed within a C-1 zone. The motion was seconded by Commissioner Cutsforth and passed unaimously.

Item No. 2: A request for a Minor Land Partition from one lot to two lots and a variance for lot width on property located on the northeast corner of S. W. 6th Avenue and S. Elm Street, and described as Tax Lot 6400, Section 4BA, T4S, R1E. The applicant is the Estate of Augusta W. Brusch. Planner Lashbrook showed the location of the property on a map and explained that one large house is existing

on the property. The variance requested is to allow the smaller of the two parcels proposed to have an average width of approximately 65 feet. Because the action is on both a variance and minor partition, technically the action should be considered separately to a certain extent. If people wish to present testimony on one and not the other you should honor that, and you may well be able to make findings for one and not the other. There are different required findings for a variance than for a partition. Planner Lashbrook went over the findings for a variance, and then went over the findings required for a partition. He further explained that there was considerable variation in lot sizes within the area. He stressed the importance of acting on the variance prior to acting on the partition. The Commission may deny the variance and approve a modified form of the partition, but you can not approve the partition without doing something with the variance first. Variance question arises because of the landscaping of the large existing residence. A lot width variance is the most minor kind of variance granted, as it does not affect setbacks. The staff recommendation is for approval of both the variance and partition and there are four conditions of approval recommended in the staff report. Mr. Lashbrook added a fifth condition: No structures would be constructed within five (5) feet of the eastern property line. Commissioner Hart questioned the need for a ten (10) foot dedication on Elm Street, and Planner Lashbrook informed him that part of Elm Street is only forty (40) feet in width. The eventual width of S. Elm Street is to be sixty (60) feet. This is an opportunity to get part of the dedication required for the future. Discussion followed regarding the shape, frontage, width, and size of lots. The public hearing was opened and Mr. Ted Rennacker, representing the Brusck Estate, stated the existing house is 35 years old and the landscaping (includes apple trees, camellias, other fruit trees) is also the same vintage. There is one big beautiful fir tree almost on the property line of these two lots and a big red cedar that would be right on the property line, if they had not adjusted it the way they have. The buyer of the lot (Mr. Winter) has guaranteed that he will not cut either of these two trees or any other fruit trees, except for one fruit tree in the middle of the lot. Asked the Commission to consider the value of the landscaping and presented some pictures for viewing. (These were made part of the record and are in the file.) The buyer of the proposed lot has designed a home to meet the setback requirements of the narrowing lot. At this point, he answered the five criteria for granting a variance by reading from his letter addressed to the Commission on March 18, 1980, which outlined the reasons for granting a variance. Commissioner Sowles asked if the proposed buyers would be occupying the existing and proposed home. Mr. Rennacker answered in the affirmative. Commissioner Sowles asked about moving the proposed line to the west. It was pointed out to do this would put the landscaping right on the property line. The question of the condition of the existing house was brought up, and it was stated that it was in very good condition. Chairman Kahut asked for any other proponents. Mr. Derald Anderson, purchaser, stated he was in favor of it. Eleanor Devlin, 487 S. Fir Street, spoke in favor of the division of the property. Irwin Winter, has made an offer on the lot and obviously is in favor of the partition. He stated further that it was their intention to maintain the large trees and the shrubs. Lois Cromwell, 499 S. W. 5th Avenue, is in favor of the partition and new residence as long as they are not apartments. There being no further proponents, the Chairman asked for opponents. There being no opponents, the public hearing was closed.

Commissioner Hart asked if the corner of the property had been cut off in order to make room for the lift station. Planner Lashbrook stated that the property corner was ten (10) feet behind the curb. Commissioner Baller had no objections to the variance as long as the setbacks can be met. Commissioner MacKenzie stated he had no objections, as did Commissioners Davis, Hart, and Cutsforth. Commissioner Sowles stated he would be happy to have it occupied and the landscaping cared for. *Commissioner Sowles moved to approve the variance on the Augusta Brusch Estate property according to the required findings of fact: 1) Exceptional and extraordinary conditions do apply to the property in that the lot size is larger than is required in the City, the landscaping will be preserved; 2) That the variance is necessary for the preservation of a property right of the applicant as neighbors are in agreement with the variance, and this lot will be larger than many in the area; 3) The authorization of the variance will not be materially detrimental or injurious, two neighbors present are proponents of the application and the in-fill pattern of development rather than expansion, plus the landscaping agreement between the buyers; 4) The variance requested is the minimum variance from the provisions and standards of this ordinance which will alleviate the hardship; and, 5) The exceptional or unique conditions of the property which necessitate the issuance of a variance were not caused by the applicant. The variance is to be approved subject to the following conditions: 1) The approval of the variance to be for a period of only six (6) months, within which the partition process must be completed; 2) Owners to dedicate ten (10) feet of property for street right-of-way purposes along S. Elm Street. Owners to be responsible for all costs associated with this dedication including the cost of title insurance meeting the requirements of the City Attorney; 3) Owners to sign and record a waiver of the right to remonstrate against any future public improvements to either S. Elm Street or S. W. 6th Avenue. Such waiver to meet the requirements of the City Attorney. 4) Utility easements are to be provided to the satisfaction of the Canby Telephone Association; and, 5) No structures are to be constructed within five (5) feet of the eastern property line. The motion was seconded by Commissioner Cutsforth and passed unanimous vote. *Commissioner Sowles moved to approve the minor land partition with the following findings of fact: 1) Conforms with the adopted plan; 2) Complies with applicable Statewide Planning Goals; and, 3) Now that the variance has been approved, the minor partition meets design criteria and conforms with zoning and subdivision ordinance requirements. The conditions of approval which apply to the variance will also apply to the minor partition. The motion was seconded by Commissioner Cutsforth and passed unanimously.

The Chairman called for a recess at 9:05 p.m. and reconvened the meeting at 9:16 p.m.

Item No. 3: A request for a minor land partition from one lot to two lots on property located on the southwest corner of N. E. 10th Avenue and N. Pine Street and described as Tax Lot 1300, Section 33AD, T3S, R1E. The applicants are Robert L. and Carol J. Warren. Planner Lashbrook reminded the Commission of a minor partition which involved this property about one year ago. The original parcel was made into three parcels at that time, leaving the large lot on the north side. The existing house on this parcel sets at an angle making it difficult to work with, along with the fact that it is a long spread-out type house. The things to be considered are the overall design, conformity with the comprehensive plan, conformity with the City's zoning and subdivision ordinances, and compliance with the state-wide planning goals. The real issues with this from the staff's perspective is

the shape of the parcel proposed and the lot width issue. If this application is approved in this form with the setback requirements we have, Lashbrook questioned whether the angle on the west property line from northeast 10th Avenue could be approved as drawn because it is within ten (10) feet of the existing house. A survey would be required to be certain. Considering all things, the staff's recommendation on this application is denial for two reasons: 1) It does not comply with intent of the 75 foot corner-lot width requirement; and, 2) The design of the partition in terms of neighboring development, while it is not a major issue, would be more appropriate as a variance item. This would require a different kind of application and different findings. The ordinance calls for an average width of 75 feet, and even the way this is drawn does not really supply an average lot width of 75 feet. Commissioner Cutsforth expressed the feeling that since it is a corner lot, it does make a difference. Commissioner Baller stated that if the back was squared off it definitely would not average. Chairman Kahut stated that if the lot does not meet the design criteria, we required the previous applicant to have a variance; it seems this application should have a variance to even be heard. Planner Lashbrook informed the Commission they would need to complete the process in terms of listening to the applicant. Chairman Kahut felt the Commission would be unable to approve the application anyway. Planner Lashbrook pointed out that it could be approved only if the Commission feels it does meet the intent of the ordinance and that there is in fact an average of 75 feet. Commissioner Hart expressed the feeling that it was not the intent of the ordinance to zigzag the lines to conform to the average. Commissioner Sowles stated the ordinance says the lines should be at right angles as far as practical, obviously you can't get that here. Chairman Kahut stated that was the reason for a variance. The Chairman asked the City Attorney for advise on how to handle this application. City Attorney Reif stated they should hear the applicant to see if he can convince you that a minor land partition is the appropriate action to take. You can then vote on the minor land partition. If you agree that he hasn't convinced you, and you agree that a variance application is the appropriate action to take, you can deny the minor land partition and request him to return with a variance application and hold a public hearing on the variance application. Mr. William Stohr, representing Mr. and Mrs. Robert Warren, came forth to speak for the applicant. Although the size of the lot adds to the value of the house, it is only lawn area and adds a burden to caring for the property. There is a buyer for the lot. Mr. Stohr stated he was a professional designer and could design a house to fit on the lot, even as narrow as it is. The house will be about 1,300 square feet. He doesn't see any problem with the lot except that it does fall under the City code for 75 feet average width on corner lots. The tail-end was just added to bring it up to the required average width, it is really unnecessary to the lot itself. The only reason for the angle is because the way the other house is positioned on the lot. Commissioner Baller asked the age of the existing house and was informed it was from 15 to 18 years old. Mr. Stohr stated it was a good house, presently valued at about \$100,000. It is too good to tear down or to move. It is such a long house that from the western boundary line it actually extends that far into the lot. It will create one more lot within the City. Some discussion followed as to how to handle this lot. Chairman Kahut asked if any of the Commissioners had any further questions of the applicant. Commissioner Sowles asked why they had requested a minor land partition rather than a variance? Mr. Stohr stated it had always been his understanding the lot widths in the City were judged by the setback line. The Chairman closed the public hearing. The Commission dis-

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cussed different ways the lot could be designed aesthetically and could be approved with a variance. City Attorney Reif cautioned the Commission that if they were to approve a corner lot with less than a 75 foot width, that it could establish a precedence for other parts of the City. *Commissioner Hart moved to deny the application for a minor land partition at this time and request the applicant to apply for a variance and a minor land partition, for the following reasons: 1) The design of this partition is not appropriate in view of the existing development patterns of the surrounding neighborhood; 2) The application fails to meet the intent of the Zoning Ordinance requirement that corner lots in an R-1 zone have a minimum average width of 75 feet; and, 3) Approval of this application, as submitted, could establish an adverse precedent in terms of future residential lot designs. The motion was seconded by Commissioner MacKenzie and passed unanimously.

City Planner Lashbrook informed the Commission that Mayor Rapp has set workshops for the Comprehensive Plan on April 21 and 23. May 12th has been tentatively set for a Public Hearing. These meetings will start at 7:30 p.m.

He also spoke to them on an Oregon Court of Appeals decision regarding forest or farm land within the city limits. The Commission must now consider L.C.D.C. Goals 3 and 4, when considering any forest or farm land.

He also informed the Commission the City Council had held the first reading of the Condominium Ordinance, with the second reading scheduled for May 7.

The Chairman closed the meeting at 10:30 p.m.

This meeting has been recorded on tape.

Respectfully submitted,


Virginia J. Shirley, Secretary
Canby Planning Commission