

Canby Planning Commission
Regular Meeting
March 23, 1987

MEMBERS PRESENT: Chairman Fred Kahut, Commissioners Jim McKibbin, Pat Harmon, Burt Lindsay, Wes Nicholson, and Kurt Schrader

MEMBER ABSENT: Commissioner Phil Seale

OTHERS PRESENT: City Administrator Stephan Lashbrook, Secretary Virginia Shirley, Martin Clark, Clyde Powell, Dr. Edmund Davies, Ronald Tatone, Bob Kacalek, and others

The minutes of the March 9, 1987, meeting were approved as presented.

Item #1: Request for a lot size variance on property located approximately 200 feet north of N.E. Tenth Avenue on North Juniper Street and described as follows: The east 145 feet of Tax Lot 2200, Section 33BA, T3S, R1E. The variance is necessary in order to build a duplex on the property. The applicant is Martin Clark. REMANDED BY CITY COUNCIL. City Administrator Lashbrook reviewed the public hearing held by the Planning Commission on March 9, 1987. Mr. Lashbrook explained further that the City Council being unable to make a decision with the information at hand, remanded the application back to the Commission. This is to be a public hearing on all five criteria required for an application for a variance to be approved.

Commissioner Harmon explained that the residence next door which he had for sale was sold. This being the case he did not feel a conflict of interest any longer existed. Chairman Kahut polled the Commission and they did not feel he had a conflict of interest. Chairman Kahut next asked the audience if any of them had a problem with Commissioner Harmon hearing this item. Dr. Davies stated that a conflict of interest no longer existed. Dr. Davies did question if Commissioner McKibbin should remain on the panel, since he noted a possible conflict at the prior meeting and would still be selling a new pool to the Powells for their new home. Chairman Kahut asked Commissioner McKibbin about the conflict of interest. Commissioner McKibbin stated that he was not sure any conflict existed. Chairman Kahut asked Commissioner McKibbin to take a seat in the audience during this hearing, at which point Commissioner McKibbin left the podium. Commissioner Lindsay informed the Commission and audience that he had viewed the property in question, but had not talked to anyone concerning this application. Commissioner Nicholson mentioned the letter that had been sent to the Council regarding a remark made by the Chairman at the previous hearing. Chairman Kahut stated that he felt he could act objectively. Commissioner Nicholson stated that he had not been influenced by Chairman Kahut's statement.

City Administrator Lashbrook listed all the information contained in their packet concerning the requested lot size variance. Commissioner Nicholson asked if they should consider the testimony from people who spoke at the last meeting. City Administrator Lashbrook stated "yes."

Chairman Kahut asked the applicant to make his presentation. Mr. Clark addressed the Commission. Mr. Clark stated that twice he had asked the public works department if he could build a duplex on that lot, and they had answered yes. Mr. Clark said he had been to Portland to see Mr. Jim

Sitzman of L.C.D.C. The Planning Commission approved a lot size variance for a duplex within the last year on N. Locust and N.E. 4th Avenue from 7,500 to 7,000 square feet. Mr. Clark presented pictures of several duplexes in single family zoned areas. He stated that most people don't even know they exist. They are not a distraction to the neighborhood. Mr. Clark submitted written findings which have been made a part of the record. The pictures have also been made a part of the record. Next Mr. Clark read numerous excerpts from the city's Comprehensive Plan. These concerned: Citizen Involvement/Need for housing opportunities; Increased Efficiency; Controlled Growth, City and County Plan; Development of Land; Land Use Element; Higher Density Use, Encourage Increased Density and Intensity; Supply and Condition of Local Housing; Cost of Land; Market Restraints; and Lot Size Averaging. Mr. Clark stated that Mr. Sitzman told him that in the 26 cities under his jurisdiction, Canby is the only one to exclude the driveway portion of flag lot when figuring square feet of the lot. Mr. Clark said he could build a larger single family dwelling on the lot without a variance. Commissioner Harmon asked if they can build on the back of all the lots in the neighborhood. Mr. Clark stated that all he had looked at was lot size. He did not take setbacks into consideration. Chairman Kahut asked about the person who prefers larger lots. Where will they be found?

The Chairman opened the public hearing portion of the meeting, and called for proponents.

Bob Kacalek, 489 S.W. First Avenue, stated that he was not familiar with the past history of this application. He stated that there was a need for duplexes in single family residential zones. The pride of ownership and life style of the investor make all the difference. Senior Citizens often want to supplement income, have a small yard, and have someone close by if needed. Mr. Kacalek stated that what he is describing doesn't seem to be what Canby wants. He feels that the city possibly needs to change its mind, consider looking at a life-style change. Kay Larro stated that the need existed for multiple housing. Older citizens want this type of housing - majority must change their attitude - we must either integrate the housing needs or use more land. Clyde Powell stated that at the present time he is living in a rental neighborhood, which is a bad neighborhood. Mr. Powell further stated that he had never had any problem in keeping up with his neighbors, but these people speak of ifs, ands, and buts.

There being no further proponents, the Chairman called for opponents.

Morrie Cederquist stated that he had read many pages of the Comprehensive Plan and it says that 14,000 square feet are needed for a duplex. If the Commission is not going to require the 14,000 square feet, they should throw the ordinance out. What the applicant is asking for should require an ordinance change. Mr. Cederquist stated that he wanted to see single family residences on large lots. Andrew Orr, 1170 N. Juniper, stated that the backyard was no place for a duplex. The windows from the duplex would be looking into the backyard of others. Canby does not have the problems of Watts and Harlem who have density. Morrie Cederquist stated that if there is a shortage of lots, we need to annex property to provide for the housing needs - we don't want to be crowded in. Dr. Edmund Davies stated that the Comprehensive Plan was drawn up in 1984 and recommended new development - not development in

already settled areas. "Vicinity" means a close area - people who received notices of this hearing. Value is going down on my property because of population growth. He spent many years on the local school board and has questions on where figures come from to show the growth. Dr. Davies read the five criteria for granting a variance and stated that in his opinion the applicant had not met one of the five. Ron Tatone, read a letter to the Commission that he had submitted earlier - this letter has become a part of the permanent record of this application.

Martin Clark stated in rebuttal, the City is going to review the Comprehensive Plan for changes, but what do developers go by presently? This duplex will help the area.

There being no further opponents, Chairman Kahut closed the public hearing portion of the meeting.

Commissioner Schrader stated he would like to set the record straight from his perspective and what the Planning Commission's goal is. Neither the opponents nor proponents remember the issue is: what do the rules for a variance allow the City of Canby Planning Commission to rule on at this time? The Planning Commission is not an elective body, but is a quasi-judicial body. All decisions must be based on the "law," ordinances and Comprehensive Plan, as they exist to date. As a quasi-judicial body, we are not allowed to change policies - this is the business of the City Council. We are allowed to make our rulings based upon our interpretations of the law based upon whether or not this particular property fits the criteria for a variance. This is done based upon the testimony, feelings, and what comes to us in the staff reports. Mr. Schrader stated that he personally did not have a problem with duplexes, the Comprehensive Plan provides for an influx of people in the community. Feels it is important for the people of the community to realize the way this Comprehensive Plan was developed that it specifically does provide for an increase in density in the community over a period of time. There seems to be a misconception on the part of the public concerning the status of the Comprehensive Plan. The land use comprehensive plan is superior to the ordinances. The ordinances are developed through the land use comprehensive plan. Over the years as both sides have testified, a history of large lot sizes have existed in Canby. Large lots and wide streets made it difficult for developers to develop in Canby. In recent years, the street width requirements have been less and the comprehensive plan as developed and adopted had much to do with that. The Planning Commission must interpret requests by the Comprehensive Plan as developed and the ordinances to implement the comprehensive plan are a direct result of the pressure that has been exerted in the last ten years in the City of Canby. Lot sizes were generally decreased to make them more saleable/affordable to people, the streets were decreased in size from the old right-of-way width - there are plans for further reductions, because it is too costly for the city to maintain and too costly for the developer to build. Setbacks were changed because other communities in the area didn't require as much open space between dwelling units. These are just some of the changes that have taken place, and it is important that people understand the Comprehensive Plan has many more changes that have been approved by L.C.D.C. that will increase density. This is not a function of liking or disliking anyone, it is a function of the ordinances. Mr. Clark alluded to duplexes on much smaller lot sizes. This is correct in an R-

2 zone according to the ordinance. The density should be increased, but not at the quality of life. Solar access allows for greater density, if that is what the developer wants. These are big improvements in the ordinance for Canby. We have made numerous decisions which were unpopular with the neighborhoods - not the least of which was the mobile home park on S. Elm Street. The ordinances adopted, the way Canby has worked to improve our density bonus without resorting to highrise apartment dwellings was to make fairly liberal concessions compared to any other community in our area. The placement of mobile homes in our area was done in such a way as to keep the neighborhood looking good. Regardless of how they have done, the ordinance has left very little room to maneuver. The neighborhood was against the mobile home park, but the ordinance and Comprehensive Plan were explicit in what actions we were to take. This Commission has approved many flag lots in the last few years, in some cases it is the only way to develop. In a general way, the speakers have referred to a problem with the ordinance, a problem with the Comprehensive Plan as it exists to date. Some changes should be made and we have been and will continue tonight to discuss some needed changes in the ordinance. During Mr. Morse's application for a zone change, I called Jim Sitzman and asked him what we could do because the neighbors were so upset and he stated that you could not change the plan during an application. We must interpret the ordinance the way it is at this time. Mr. Schrader stated that the above were his comments to help people in the audience and the applicant understand why the Commission acts in the manner it does.

Commissioner Nicholson commented on Mr. Clark's suggestion that the ordinances were in conflict with the Comprehensive Plan. The ordinances were reviewed by L.C.D.C. and found to be in agreement and concurrence with the Comprehensive Plan. If we are enforcing the ordinances, we are in concurrence with the Comprehensive Plan - not in conflict. Commissioner Nicholson went on to say that all the Commission heard about was increases in density, the Comprehensive Plan also recognizes that we have several lots in the city that were going to be hard to develop to meet the density criteria that is called for in the plan. On these small lots it was recognized that they would not achieve the density because the size or location would prevent it. The Commission by partitioning this lot has actually achieved the density called for in the Comprehensive Plan.

Commissioner Harmon stated the speaking of exceptional or extraordinary circumstances that in this case they seem to have been created by Mr. Clark. Mr. Harmon noted that he has no personal problem with the development of duplexes. Commissioner Harmon went on to say that the lot to the north can not be divided because of the location of the house on the front of the property. The lots across the street have the houses placed in the center of the frontage which will not allow for additional lots to be made as they can't meet setback requirements and place a road to the rear lot. The opportunity does not seem to exist for other property owners to make the same use of their property.

Chairman Kahut stated that whether the Commission approves or disapproves of this particular variance, it still must meet all five of the criteria. Commissioner Schrader asked the Chairman if they could discuss the five criteria and possibly come up with findings in that manner. Chairman Kahut stated that was acceptable to him.

Commissioner Schrader stated that in regard to the first criteria to be met, the tract size, shape or topography were not a result of the applicant's development. They apply to other lots in the vicinity as well. What is to be classified as vicinity? Maybe should be addressed in the ordinance. Commissioner Nicholson stated that he didn't see any exceptional or extraordinary circumstances applying to this property based on the fact that it was recently purchased and size and shape were known at the time. Chairman Kahut stated that the Commission was not talking about a parcel that already had a dwelling located on it, but a vacant lot to be developed.

Chairman Kahut read the second criteria to be met - a preservation of a property right substantially the same as others in the neighborhood possess. Commissioner Schrader stated that generally people in the same area can't build that same type of flag lot development, and that means that approval of this application would be taking away a right from the neighbors. The other people have bought their property and lived there, and the preservation of their property right was to keep the large lots. Commissioner Nicholson stated that a variance was not needed in this case to preserve a property right. Agrees with what Commissioner Schrader had stated previously.

Commissioner Lindsay asked for an interpretation of criteria No. 2. City Administrator Lashbrook stated that his interpretation of ". . . property right same as others . . ." means other properties in the general area of similar size and shape have a property right to do this type of development, and only through this variance can the applicant do the same. City Administrator Lashbrook stated this is why he felt Mr. Clark had met this burden of proof on review. Commissioner Harmon stated this property is substantially the same as other properties in the area and they can't divide theirs because of inadequate frontage for house and driveway. Mr. Clark is actually getting more from his lot by having two lots, compared to the others.

Chairman Kahut read criteria no. 3. Commissioner Schrader stated this application meets this condition in several area. This would be a very nice home and a good looking duplex would fit very nicely into the area. It has been mentioned several times that the duplex is not going to be "that bad" for lowering property values in the neighborhood. Especially the type of project being envisioned for this lot, regardless of who is living in it. The application does follow the goals and guidelines of the Comprehensive Plan. The proposed variance is more than adequate. Commissioner Nicholson expressed the feeling that No. 3 had been met in that duplexes do not materially effect the surrounding areas. Agrees with Commissioner Schrader that it is in general conformance with the Plan. Commissioner Lindsay stated agreement that No. 3 meets the criteria. Commissioner Harmon stated that it meets the Comprehensive Plan and all setbacks.

Chairman Kahut read No. 4 of the criteria required. Commissioner Schrader felt it was hard to determine what the hardship was in this instance. If the hardship is the long, deep lot with small frontage, this would be a good way to develop the lot to increase the density in an orderly manner. Chairman Kahut stated that it was hard to determine the hardship, since there was no presently existing building on the property. City Administrator Lashbrook stated that in this case you have to look at the fact that it is the minimum amount of reduction in

the lot area requirement that will allow him to place a duplex on the lot. Should the front lot have less footage in order for him to accomplish his goal - should the driveway be shorter? The question to be addressed here is lot area. Commissioner Schrader stated that he is close. Commissioner Nicholson expressed the feeling that at the first hearing where they had heard the variance first, the context was not met. The reduction in the front lot plus the additional square footage from the driveway made such a combination that it was not the minimum variance he could have asked for. Since the partition has been approved, however the current variance request we are hearing is the minimum request.

Chairman Kahut read the fifth and final criteria to be met. City Administrator Lashbrook stressed that the Commission had not seen or heard any testimony that would indicate that this was a deliberate action on the part of the applicant. Commissioner Schrader stated that he did not have a problem with No. 5. Commissioner Nicholson stated that he did not have a problem.

Chairman Kahut reviewed the findings and stated that findings No. 1 and 2 were not met. The people around this lot like large lots and the other people have property rights. The applicant has the right to build either one or two single family dwelling units on this property. Commissioner Nicholson interrupted the Chairman to say, that Mr. Clark has submitted a list of lots 80' x 275' all in the same vicinity, and if someone else had a lot of his size they could partition the land into two pieces - but if they wanted to build a single family on one and duplex on the other they would have to come before the Commission for a variance. There isn't any way that anyone else could build the same project on the same piece of property without a variance, so there isn't a guaranteed right to build on that size and shape of lot.

Commissioner Schrader commented that although this application does not appear to meet criteria no 1 and 2, it does seem to meet 3, 4, and 5. Further stated that he would like some guidance from the City Council and would like to see this appealed without further cost to the applicant. City Administrator Lashbrook stated that he had already made such a commitment to the applicant because the original appeal was never actually heard.

*Commissioner Schrader moved to deny the lot size variance for property located on the east of N. Juniper north of N.E. Tenth Avenue applied for by Mr. Clark based on the testimony submitted at this meeting, the record, communications both written and oral, and the following findings of fact. Motion for denial based on the fact the application does not meet criteria of finding No. 1 as there are no exceptional circumstances regarding this property that do not apply to other properties in the vicinity, since this property was recently purchased and circumstances of the property was known to applicant at the time of purchase; No. 2 the variance is not necessary for the preservation of a property right of the applicant as the testimony tonight was for large lots, an open feeling, and if this variance was granted the applicant would have property rights that others within the area do not have. Criteria No. 3 is very readily met in that the variance would go along with the Comprehensive Plan and Ordinances and would encourage density and an orderly and efficient use of the land. Duplexes are approved of in the Comprehensive Plan and this type of project would not be detrimental to

the area. The application appears to meet criteria No. 4, lot size and area. It does appear that Mr. Clark attempted to make the back lot for the duplex larger and minimum alteration to allow that type of development. Since the land has already been partitioned, this indicates that it is the minimum variance at this time. Criteria No. 5, Mr. Clark is not responsible for the conditions of the property or the general shape. Neither he nor his employees or relatives or parties he represents had anything to do with the way this property was partitioned originally. The motion was seconded by Commissioner Nicholson and passed unanimously with the Chairman voting and Commissioner McKibbin abstaining.

The Chairman called a recess at 9:45 p.m., and called the meeting back to order at 9:57 p.m.

Item #2: Written findings on proposed amendments to Land Use and Development Ordinance (#740). City Administrator Lashbrook addressed the Commission and informed them he had proposed findings of act on legislative amendments to the text of the Land Development and Planning Ordinance. There are four different kinds of ordinance amendments. They are: flood areas, width of sidewalks in commercial zones, setbacks for awnings, and clarification of wording in the ordinance. On the bottom of page 4, the numbers that have been filled in are \$9.60 a linear foot to \$7.60 a linear foot for sidewalk costs. Mr. Lashbrook pointed out three more typographical errors. The staff also contacted other cities for information regarding sidewalk requirements, and we received information back from two of them (Beaverton and Wilsonville). None of the people contacted had an eight-foot requirement. Commissioner Schrader stated that he had contacted Oregon City and West Linn. Oregon City said it depended upon the project and the parking for the project. Commissioner McKibbin stated that the State standard is five foot. Commissioner Schrader stated that if we are writing an amendment to the ordinance, five foot in commercial zones other than C-1, Downtown Commercial, would be acceptable; but, at the same time, you would need to specify no angle parking be allowed where we have five foot sidewalks. Something should be added to the C-2, Highway Commercial, C/R, Commercial - Residential, CC, Convenience/Commercial, and C/M, Commercial - Manufacturing, zones that no angle parking where five foot sidewalks are placed. The Commission went into discussion of Beaverton and Wilsonville's sidewalk requirements. City Administrator informed the Commission that the City is in need of a sidewalk plan. Commissioner Schrader proposed a sidewalk plan started immediately to be ready when the Comprehensive Plan is reviewed. He further stated that he was willing to volunteer to be part of the committee. Commissioner Lindsay stated he would like to volunteer to be on the committee also. Commissioner Nicholson asked if there was any urgency to change the sidewalk portion of the ordinance. City Administrator Lashbrook stated that the City had several developers waiting to see how wide a sidewalk they would have to build. Commissioner Lindsay asked the timeframe for putting together a sidewalk plan. City Administrator Lashbrook stated approximately one year as the City needs to have a Capital Improvement Plan first. Chairman Kahut stated that his worry is that if the sidewalk is put adjacent to curb without a strip between the sidewalk and highway we will get young people on bicycles, and he is not sure the sidewalk would be adequate. Commissioner Harmon stated that there would have to be exceptions to a five foot sidewalk, especially along the highway a planting strip would be necessary. Chairman Kahut suggested

that the highway be addressed exclusive of other areas. Commissioner McKibbin expressed this should be done within the sidewalk plan. He further stated that in his instance, the state engineer told him that he would overrule any eight foot sidewalk in front of his place. City Administrator Lashbrook expressed the thought that the State did not have the ability to dictate sidewalk width along the highway. At the time the change in sidewalk width was made, the eight foot width was primarily for the downtown area. Mr. Lashbrook questioned the need at the time. The Commission should pass this item on to the Council with either a pass or no-pass recommendation.

Commissioner Schrader stated that he did not have any problems with the rest of the proposed amendments. Commissioner Nicholson asked Mr. Lashbrook if the wording on 16.44.010 has received the appropriate verbage after the Commission's discussion. City Administrator Lashbrook stated that it had been taken care of.

Commissioner Schrader moved to adopt five foot sidewalks in the CC, C-2 and C/M zones, excepting frontage on 99-E. With the realization that the sidewalk plan to be developed in the future might change the requirements. No angular parking to be allowed in areas where the sidewalk is only five feet in width. The motion was seconded by Commissioner Lindsay and passed with five yeas, no nays, and one abstention - Commissioner McKibbin. The Chairman voted.

Commissioner Nicholson moved based on the findings of fact that we recommend approval of the ordinance changes dealing with the development of the flood plain area. The motion was seconded by Commissioner Schrader and passed unanimously with the Chairman voting.

Commissioner Schrader moved the setbacks for awnings and related findings of fact, as recommended by staff be recommended for approval by City Council. The motion was seconded by Commissioner Lindsay and passed unanimously with the Chairman voting.

Commissioner Schrader moved to recommend approval to the clarifications, corrections to the text, and the findings of fact that staff presented. The motion was seconded by Commissioner Nicholson and passed unanimously with the Chairman voting.

Item No. 3: Final plat of Phase I of Morse Addition. City Administrator Lashbrook informed the Commission that the City was in receipt of a blueline of the first phase of the Morse Addition. Mr. Lashbrook asked the project engineer (Ronald Tatone) about the lack of easements on N.E. Territorial. Mr. Tatone stated that he had spoken with Canby Telephone who did not need easements along Territorial. City Administrator Lashbrook said that in this instance it would be acceptable to disregard the easements along N.E. Territorial Road unless the Planning Commission felt that they were absolutely necessary..

Commissioner Schrader moved to approve the final plat of Phase I of Morse Addition bordering Territorial and N. Locust Street as presented at the March 23, 1987, meeting, in that it conforms to all the findings and conditions as set by the Planning Commission at the February 20, 1987, meeting. Any development of phase II would necessitate demonstration by the applicant that all the engineering has been worked out in advance and that solar access issues have been discussed with

staff. The motion was seconded by Commissioner McKibbin and passed with five yeas, no nays and one abstention, Commissioner Nicholson.

Commissioner Nicholson expressed a concern that, based on recent public testimony, Canby did not have enough lots for sale. When he asked if the City went out and actively annexed property, he was informed they did not. Further, stated that he would like to see a recommendation from the Commission that we actively seek annexations. City Administrator Lashbrook reminded him of the Chairman's previous remark regarding annexation fees as a real factor. The Commission should consider whether they want to make a recommendation to the City Council to drop the annexation fee. Ronald Tatone stated that he has had a subdivision for sale for a year and has not sold any lots. Mr. Tatone did not feel there was a shortage of lots in Canby. Commissioner Nicholson requested that a discussion of annexation procedures be put on the next agenda. Chairman Kahut requested the staff to get reports from other cities on their annexation fees. Commissioner McKibbin requested that we also ask about master plans for sidewalks.

The meeting was adjourned at 11:10 p.m.

This meeting has been recorded on tape.

Respectfully submitted,



Virginia Shirley, Secretary
Canby Planning Commission