

Canby Planning Commission
Regular Meeting
September 28, 1987

MEMBERS PRESENT: Chairman Kahut, Commissioners Seale, Harmon, Lindsay, Nicholson, and McKibbin

MEMBER ABSENT: Commissioner Schrader

OTHERS PRESENT: City Administrator Lashbrook, City Attorney Kelley, Secretary Virginia Shirley, George Irwin, Virginia and Larry Whitman, Mark Anderson, Doug Gingerich and others

The minutes of the meeting of September 14, 1987, were approved as presented.

Request for approval of the final plat of "Lillian's Meadow." Plat is located on the west side of N. Ash, north of Knights Bridge Road and described as part of Tax Lot 300, Section 32A, T3S, R1E. The applicants are Ronald G. Tatone and Gloria Ives. City Administrator Lashbrook explained the difference in lot size which allows the applicant to expand the area of the initial ten lots within the subdivision. Commissioner McKibbin asked if the change in lot size would change the conditions of approval. Mr. Lashbrook stated that this would not change the conditions of approval and that Mr. Tatone could still use the same alignment for North Ash Street which he had proposed in the tentative subdivision approval. The Commission questioned the pathway from N.W. 12th Avenue that is supposed to connect with North Ash Street. It was explained that since there is another owner involved, the walkway has not been completed. Staff will do whatever they can to achieve the needed dedication for the remainder of the pathway.

The Planning Commissioners were polled and it was the consensus of the Commission that no harm would come from placing larger lots in the first phase of "Lillian's Meadow" then had been shown on the preliminary plat.

Request for a Variance to allow a sign within the setback area to remain on property located on the west side of N. Grant Street between N.W. 4th Avenue and N.W. 6th Avenue and described as follows: Tax Lot 1400, Section 33CB, T3S, R1E. The applicant is Canby Elementary School District. Mr. Lashbrook gave the staff report on the requested variance. Mr. Lashbrook stated that he had spoken to the City Council and they were willing to consider granting a "revocable license" for that portion of the sign which is in the Grant Street right-of-way. Commissioner Harmon asked if approval of this sign would set a precedent. The City Attorney stated that approving this variance will not be setting a precedent, since no two circumstances are exactly the same. Attorney Kelley added that other developers seeking a setback variance for a sign could only base their argument on the precedent set with this application if the circumstances were identical in every respect. Doug Gingerich was present representing the school district

but he indicated that he had no testimony to add to what was included within the packet.

There being no further questions, the Chairman opened the public hearing portion of the meeting and called for proponents. There being no proponents, the Chairman called for opponents. When no opponents came forth, Chairman Kahut closed the public hearing portion of the meeting. Discussion turned to the standards and criteria and whether the variance could meet the requirements.

*Commissioner Seale moved to approve the variance for the sign at the Knight Elementary School based on the following findings: There wasn't any negative response from the neighbors who had been notified of this meeting; The Knight School building is presently at the setback line; It appears there is no reasonable location between the existing structure and the school building where the sign would fit; The intended purpose of the sign is to advertise school and community events, and for this reason needs to be as visible as possible; Schools are usually located in residential zones and an informational marquee is a typical structure used for school/community communication; The present location of the sign has been well received by residents of the neighborhood; The sign is not only an asset to the school but to other community events as well; The effectiveness of a marquee is its visibility and moving it from its present location would decrease visibility. This approval of the variance is contingent upon the condition that a revocable license be granted by the City Council and shall be subject to whatever conditions may be placed on that license. The motion was seconded by Commissioner McKibbin and passed unanimously with Chairman Kahut voting.

Request for a Zone Change from R-1, Low Density Residential, to R-1.5, Medium Density Residential, on property located east of N. Locust and north of N.E. Territorial Road and described as Tax Lot 900, Section 28DC, T3S, R1E. The parcel contains 7.13 acres. The applicant is Shirley C. McCarter. City Administrator Lashbrook read the staff report and Policy #6 from the Comprehensive Plan. Mr. Lashbrook explained the reasoning behind the higher density zoning along Territorial Road.

Chairman Kahut opened the public hearing portion of the meeting and called for proponents. When none came forth, he called for opponents. Mark Anderson, 530 N.E. Territorial Road, stated that he lived adjacent to the property to be rezoned. Mr. Anderson stated that he was in opposition as this zoning would allow for duplexes and triplexes, which would lower the value of his home, that the property at the current time was used for agricultural purposes and should not be taken out of agricultural use, that if the property is rezoned, it will be spot zoning and finally, in his opinion there is plenty of property already zoned for multi-family use. Mr. Lashbrook noted that the City can no longer consider such things as "public need" or agricultural use when reviewing a zone change. City Attorney John Kelley informed the Commission that case law shows that the only reasons for denying a zone change application are that facilities are inadequate to serve the property or the proposed change does not conform with the Comprehensive

Plan. Commissioner Nicholson asked if the Commission needed to place any conditions upon the zone change. Mr. Lashbrook stated that at this time it was not necessary as another application must be submitted before development takes place.

*Commissioner Nicholson moved to recommend to the City Council that a zone change from R-1, Low Density Residential, to R-1.5, Medium Density Residential, on Tax Lot 900, Section 28DC, T3S, R1E, consisting of 7.13 acres be approved as it is in conformance with the Comprehensive Plan and all public facilities and services are available. The motion was seconded by Commissioner Lindsay and the motion was approved unanimously with Chairman Kahut voting.

Appeal of Business License denial. Business License was denied to Larry Whitman on September 18, 1987, for towing, crane and auto repair on a parcel located on S. Elm Street, south of S.W. Sixth Avenue and described as Tax Lot 7400, Section 4BA, T4S, R1E. Commissioner Patrick Harmon stepped down from his seat on the Commission due to a conflict of interest. City Administrator Lashbrook gave the staff report noting that the R-1 zoning of the subject property was applied in May, 1963. By legal opinion of the City Attorney this meant that the intensity of the nonconforming use was to be based on activities at the site in May, 1963. Commissioner Nicholson asked if the application is approved, would the Commission continue to use the year of 1963, or after the change of ownership would the Commission use the year 1987. City Attorney Kelley stated that the new benchmark will be established in 1987 with the change in ownership and activity.

Mr. George Irwin read a list of projects in which the Irwin Construction Company had been involved during 1963. Activity listed for 1963 included several private dwelling units, commercial buildings and additions, repair and reroofing jobs, and dragline work. The Company had thirty employees with one to three men working at the building on S. Elm Street on a daily basis. Among the listed equipment was a D-4 cat, a backhoe and a crane. Mr. Kelley asked Mr. Irwin the operational hours in 1963. Mr. Irwin stated that they usually started about 6:30 a.m. and were through by 5:30 p.m., Monday through Friday. Mr. Irwin stated that not all thirty employees worked in the construction building on S. Elm. Four to six pieces of equipment were maintained at the building also. They made forms and pre-cut material for larger jobs. Commissioner Lindsay informed the Commission that Mr. Irwin was being very conservative about the amount of activity. At that time, the City Police had a door-knob rattling practice and Mr. Lindsay stated there was always somebody at the construction building the first two to three times they tried the door. Mr. Lashbrook asked Mr. Lindsay what position he held in the police department. Mr. Lindsay replied that he was a working Police Chief in 1963.

Commissioner McKibbin asked how many hours were spent each month on vehicle repair. Mr. Irwin stated that he was not sure but that many ten hour days had been spent fixing equipment. The City Attorney asked if this work was on the company vehicles. Mr. Irwin stated that it had been.

Larry Whitman stated that he had just received contracts from AllState Insurance and Montgomery Ward. Mr. Whitman went on to say that there are a lot of repossessions at this time and they need a large storage area. It is an expensive process to get rid of cars (in storage). Chairman Kahut asked if this was a commercial business. Mr. Whitman stated that the only commercial repairs would be on motor homes as it was the only building he could get them inside. The others would be only an overflow situation. Mr. Whitman stated that his mechanics only worked from 8:00 a.m. to 5:00 p.m. and would only be outside if there was no room inside the building. Mr. Whitman told the Commission that the Canby Inn wanted his lot between First and Second on S. Elm and were willing to trade for a lot across from his business on S.W. Second Avenue, behind the Dairy Queen.

The City Attorney stated that he had material from American Land Planning Law and read the Policy Considerations on the Change of Nonconforming Use (made a part of minutes). Chairman Kahut stated that in his opinion this would not be a substantial change in the use from what Mr. Irwin had used the property for. Commissioner Lindsay asked how many vehicles could be placed at the site. Mr. Whitman stated that he could place ninety on the property. Mr. Whitman stated that he could not smash cars, only a wrecking yard is allowed to smash cars. He added that they will need to put in a yard light to protect those stored in the yard. Mr. Whitman stated that they load and unload from the street. Commissioner Lindsay stated that it was against our ordinance to have any loading or unloading from the street, that it all needed to be done on the property in question. Commissioner McKibbin stated that this was only going to be a storage yard, and as such did not have a greater impact on the area than the previous non-conforming use. Commissioner Seale stated that in his opinion the impact would be less from the towing business than from the construction business. Commissioner Lindsay stated that he did not have any problem with this on S. Elm Street as the businesses are similar in nature and the level of intensity would be less than in 1963. Commissioner Lindsay felt the impact would be negligible from the change in business. Commissioner Nicholson stated that he felt the level of intensity would be less. There would be two people working on cars which is a small degree of change, however he was concerned about noise level during the nighttime hours.

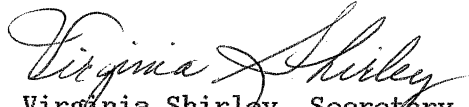
City Administrator Lashbrook asked if it was possible for the non-rolling wrecks to be placed at another location when brought in at night. Mr. Whitman stated that he did not want to tie up his roll-bed. His feelings were that it must be kept clear as there was the possibility that it might be needed at any time. Virginia Whitman read a letter from their attorney into the record.

Several Commissioners expressed their concern that all vehicle unloading at night be done within the building, to reduce the noise impact on neighbors. City Administrator Lashbrook noted that the yard light would need to be designed and located to minimize glare on surrounding dwellings.

*Commissioner Lindsay moved that the change of use of the nonconforming use at 654 S. Elm be approved with the findings of fact and conditions of approval to be approved at the Planning Commission meeting of October 12, 1987. The motion was seconded by Commissioner McKibbin and passed with 5 yeas, 0 nays, and 1 abstention (Patrick Harmon).

This meeting has been recorded on tape.

Respectfully submitted,


Virginia Shirley, Secretary
Canby Planning Commission