

CANBY PLANNING COMMISSION

Regular Meeting

August 26, 1991

7:30 p.m.

APPROVED

I. ROLL CALL

Present: Chairman Schrader, Commissioners Mihata, Fenske, Westcott, Maher and Zieg.

Staff Present: Robert Hoffman, Planning Director and Joyce Faltus, Secretary.

Others Present: Roderick Ashley, Lynn Kadwell, Pat Harman, K. Graff, R. Isberg.

II. MINUTES

None

III. BUSINESS FROM THE AUDIENCE

None

IV. COMMUNICATIONS

None

V. UNFINISHED BUSINESS

None

VI. FINDINGS

None

VII. PUBLIC HEARINGS

MLP 91-07, a request by Patrick S. Harmon to divide a .45 acre parcel into two lots containing 8,323 and 7,290 square feet, respectively. The property is located to the rear of 610 S. Ivy Street (Tax Lot 600 of Tax Map 4-1E-4AB).
Continued from August 12, 1991.

Chairman Schrader asked if any Commissioner had ex-parte contact or conflict of interest, other than a site visit since the last hearing. Commissioner Maher explained she reviewed the tapes of the last meeting and visited the site.

Mr. Hoffman explained that, under the criteria, where the sole means of access is by a private road, it could not be approved unless the Commission finds that adequate assurance has been provided that year-round maintenance would be sufficient to allow for emergency vehicle access and that construction of a street to City standards is not necessary to insure safe and efficient access to the parcel. Also, in the case of flag lots, if the front lot is deeper than 100 feet, as is the case here, that the width of the driveway must be paved for a full 20 feet, that existing buildings would have to be set back at least 5 feet from the access road, and that the design and location of buildings would be such that traffic would be able to turn around on the flag lots. He also relayed a conversation he had with the Building Official, Mr. Godon, regarding vision clearance requirements.

Mr. Hoffman explained that most items were resolved at the last hearing. One item that still needs to be considered is the utility pole in the proposed access. Mr. Hoffman referred to the Supplemental Staff Report dated August 23, 1991, wherein he advised the Commission of a meeting he held with the owners of Tax Lots 501, 602, 600 and 700, to discuss driveway alternatives. All parties agreed that leaving the utility pole unprotected, in the center of the 2+^S+^3, is not a viable alternative to be pursued. The three parties all agreed to recommend four alternatives to the Planning Commission, as follows:

1. A so-called "planter box alternative."

2. A four-way reciprocal access alternative.
3. An easement from Tax Lot 700.
4. Moving the power pole if the previous three were not workable.

Mr. Hoffman also stated that Mr. Harmon had objected to the requirement for a waiver of remonstrance against an LID.

Applicant

Pat Harmon, P.O. Box 216, Canby, discussed his concerns regarding the LID. He explained that he would have to go back to his contract holder and negotiate for an LID. He further explained that he owns the flag lot, but the front lot is purchased on a contract. Mr. Harmon also pointed out that although there are no sidewalks all along Ivy now, but that when new owners come in for a permit or zone change to commercial, sidewalks would be automatically conditioned. Mr. Harmon explained that although he preferred not going to the contract holder to negotiate for a waiver of remonstrance against an LID, he would accept it as a condition of approval. He further explained that he is researching the costs involved for the alternatives to moving the power pole. Additionally, he stated that the preferred alternative involves the approval of lenders for the access easement. With regard to the planter box, he explained it would not interfere with vision clearance requirements. Mr. Harmon stated that, for economic reasons, he would prefer not to move the utility pole. He then discussed the other three alternatives, and added that he would pursue moving the pole only if the other alternatives are found to be impractical or impossible to implement because of legal or other major impediments.

With no further testimony, the public portion of the hearing was closed for Commission deliberation.

1. Hoffman discussed the three alternatives to the access as listed in the supplemental staff report and explained that the final selection would be provided in the final partition. The alternatives are as follows:

- a. Prior to occupancy, the utility pole is to be enclosed in a planter box provided with heavy landscaping appropriate for a non-irrigated situation. The design of the planter box and landscaping is to be reviewed and approved by the City Planner as adequate warning for drivers. A minimum of 12 feet of paved driveway is to be provided each side of the utility pole. The remainder of the drive is to be paved for a full 20 feet minimum width. Vision clearance requirements shall be met. (Exhibit A)
 - b. A four-way reciprocal agreement to share the existing driveway, located to the north of the subject property, for a minimum of the first 45 feet, such drive splitting into two paved 20-foot wide driveways, one drive accessing TL 501, 502, the other the division of TL 600. A lot line adjustment is to be applied for to add the utility pole and treed area to TL 700. (Exhibit B)
 - c. A 20-foot wide paved driveway is to be located southerly of the current utility pole at the Ivy entrance with access to the rear lots. Such paved portion of the driveway is to be allowed partially on an easement on TL 700. The utility pole and treed area is to be part of the driveway area access for the lots resulting from dividing TL 600. The driveway is to have reciprocal agreements for the lots resulting from dividing TL 600. (Exhibit C)
2. Mr. Hoffman reported that the result of his meeting with the owners of Tax Lots 501, 502, 600, and 700 concluded that it would be recommended to the Planning Commission that it approve the division with alternatives, as listed above, noting that alternative #2 was the preferred alternative.
 3. The Commission discussed the utility pole and agreed that leaving the utility pole, unprotected, in the center of the driveway **is not** a viable alternative to be pursued.
 4. The Commission discussed vision clearance requirements, which is covered in alternative #1, below.

5. At the applicant's request and as a least preferred alternative, the Commission considered adding Alternative #4 (moving the utility pole), to be pursued only if the other alternatives are found to be impractical or impossible to implement because of legal or other major impediments.
6. The Commission discussed adding to Condition #10, the words 'prior to occupancy.'
7. The Commission discussed adding Tax Lot 600 to Condition #9.
8. The Commission discussed requiring a minimum of two parking spaces and a turnaround on each new lot to insure there would be no backing out onto Ivy Street.

Commissioner Westcott moved for approval of MLP 91-07 with conditions, as follows:

1. The applicant shall prepare a final partition map. The final partition map shall be a surveyed plat map meeting all of the specifications required by the Clackamas County Surveyor. Said partition map shall be recorded with the Clackamas County Surveyor and Clackamas County Clerk, and a copy of the recorded map shall be provided to the Canby Planning Department.
2. A new deed and legal description for the new parcels shall be prepared and recorded with the Clackamas County Clerk. A copy of the new deeds shall be provided to the Canby Planning Department.
3. Utility easements, a minimum of six (6) feet in width, shall be provided on the exterior and interior lot lines of each lot in the proposed development.
4. Prior to construction a final partition modified to illustrate and show on the face of the partition all conditions of approval, shall be submitted.

The Director of Public Works shall review and approve it. The final partition shall reference this land use application -- City of Canby, Planning Department, File No. MLP 91-07.

5. Plans to extend the sewer shall be approved for construction by the Director of Public Works prior to the issuance of any building permits on the site.
6. All monumentation and recording fees shall be borne by the applicant.
7. All utilities must meet the standards and criteria of the providing utility authority.
8. A reciprocal agreement to share the driveway by the owners of the division of Tax Lot 600 shall be made a part of the final partition. If an arrangement can be made to share all or part of the adjacent driveway to the north, this is permitted and shall be indicated on the final partition.
9. Prior to approval of the final partition of Tax Lot 600, the applicant shall provide a waiver of remonstrance against the establishment of an LID for curbs and sidewalks along the full width of Tax Lot 700 and Tax Lot 600.
10. Unless mutually waived by the parties, prior to occupancy of either of the new tax lots, a fence shall be provided between the new access driveway and the adjacent lots 501 and 502, the costs of such fence to be shared. Adequate vision clearance of the driveway entrances or merges shall be provided.
11. Adequate slope and drainage measures shall be taken to ensure storm water is handled on site.

12. Adequate and appropriate signage shall be provided at the junction of the driveway and Ivy indicating this is a "Private Driveway."
13. A minimum of 2 parking spaces and one turnaround space shall be provided on each newly created parcel.

The following alternatives are approved for access with the final selection to be provided in the final partition.

- Alt. # 1. Prior to occupancy, the utility pole is to be enclosed in a planter box provided with heavy landscaping appropriate for a non-irrigated situation. The design of the planter box and landscaping is to be reviewed and approved by the City Planner as adequate warning for drivers. A minimum of 12 feet of paved driveway is to be provided each side of the utility pole. The remainder of the drive is to be paved for a full 20 feet minimum width. Vision clearance requirements shall be met. (See Exhibit A)
- Alt. # 2. **(Preferred Alternative)** A four-way reciprocal agreement to share the existing driveway, located to the north of the subject property, for a minimum of the first 45 feet, such drive splitting into two paved 20-foot wide driveways, one drive accessing Tax Lot 501, 502, the other the division of Tax Lot 600. A lot line adjustment is to be applied for to add the utility pole and treed area to Tax Lot 700. (See Exhibit B)
- Alt. # 3. A 20-foot wide paved driveway is to be located southerly of the current utility pole at the Ivy entrance with access to the rear lots. Such paved portion of the driveway is to be allowed partially on an easement on Tax Lot 700. The utility pole and treed area is to be part of the driveway area access for the lots resulting from dividing Tax Lot 600. The driveway is to have reciprocal agreements for the lots resulting from dividing Tax Lot 600. (See Exhibit C)
- Alt. # 4. The utility pole shall be moved and a 20 foot reciprocal access driveway shall be provided. (See Exhibit D)

Commissioner Fenske seconded the motion and it carried unanimously.

MLP 91-08/VAR 91-01, a request by Mike Patterson for approval of a minor land partition to partition an 11,500 square foot parcel into two parcels, approximately 6,300 and 5,200 square feet, respectively. The applicant is requesting the variance due to deficiencies in lot size and width. The property is located on N.W. 4th Avenue, between Douglas and Cedar (Tax Lot 4700 of Tax Map 3-1E-33CB).

Chairman Schrader asked if any Commissioner had a conflict of interest or had ex-parte contact. He said he had seen a neighbor when he visited the site but that there was no discussion of the site whatsoever. He then explained the hearing procedures.

Mr. Hoffman presented the staff report. He reviewed the applicable criteria and explained that both the buildings on the site are already constructed and have been occupied for a long time. The first structure was built too close to the original lot line which hinders selling the lots individually. Therefore, the applicant is requesting variance from the minimum frontage and minimum lot size requirements, to allow for the individual sale of the lots. The variance is the minimum to alleviate the hardship. The proposal would provide all required setbacks and yards and parking, which could not be done if the current lot were to revert to the original platting of two 50 x 115 foot lots. Mr. Hoffman explained that staff believes the current situation was not created by the current owner, who purchased the property in 1990, under contract, from his grandparents. The building permit for the two family home was signed by Mr. Patterson's mother in 1977. Mr. Godon, the Building Inspector who signed the permit for the two family home, stated that the Pattersons were told, at that time, they would not be able to sell the duplex individually, or divide the property because it would be too small.

Mr. Hoffman explained that staff concluded that the overall design of the proposed partition will be compatible with the area and will provide adequate building area. Also, the partition will have adequate frontage on a public street to insure safe and efficient access for the two structures, particularly since parking space is off the alley. He added that the parking pad in the front yard should be removed. Staff recommends that, if the Commission approves this application, a condition include providing a sidewalk prior to final approval of the partition. Further, Mr. Hoffman stated that, based upon the findings and conclusions, staff recommends approval, subject to conditions, which he discussed.

Applicant

Mike Patterson stated that the main reason he would like to partition the property is so that he can sell the rental, as he is having trouble with the renter. Many of his neighbors have called him asking to have the renters evicted. He plans to keep the duplex and sell the house and believes the new owners would take more pride in the property and its upkeep than the renters do.

Commissioner Maher moved for continuation of this hearing as the applicant had not physically posted the property. As there was no second to the motion, it failed. Mr. Hoffman explained that it was properly noticed in the newspapers, posted in the library and post office, and adjacent owners were noticed.

With no further testimony, the public portion of the hearing was closed for Commission deliberation.

1. The Commission agreed that the applicant's statement did not present sufficient hardship to approve the variance request.
2. The Commission considered the staff report wherein it describes the dimensions of the lot and some of the history of the structure and their existence. The Commission found that the alleged "hardship" of the exceptional or extraordinary circumstances was self-imposed and not adequate justification for reducing the frontage requirement from 60 feet to 43 feet (28%) or the required lot size from 7,500 square feet to approximately 5,000 square feet (33%).
3. The applicant, in his testimony, explained his need to divide the lot was "because of tenant problems." Tenant problems were not found to be related to tract size, shape, topography, or other property-related circumstances over which the owners have no control.

4. The Commission agreed that the burden of proof that the criteria has been met is upon the applicant and found that there is not adequate evidence that approval criteria #1 has been met.

Commissioner Mihata moved to deny MLP 91-08/VAR 91-01 based on Criteria #1 as there was not sufficient extraordinary or exceptional circumstances apply to this property. Commissioner Zieg seconded the motion and it carried 4-2 (Commissioners Fenske and Maher voted no).

CUP 91-06, an application by Canby Medical Clinic, Inc. for approval to classify an existing conforming structure in an R-1 zone, to a conditional use. The proposed construction will consolidate two entrances and three separate waiting rooms into one entrance and two centralized waiting rooms. A staff lounge will be relocated from a windowless basement, and added to the rear of the building. In addition, the Clinic will be able to make some long overdue repairs to a leaking roof and address other long-term maintenance items. This proposal will not add traffic to the area. The site is located at 1185 S. Elm Street (Tax Lot 7300 of Tax Map 4-1E-4BD).

Chairman Schrader asked if any Commissioner had ex-parte contact or conflict of interest. Commissioner Westcott explained that Dr. Kadwell is his physician, but that he did not have a conflict of interest, nor has he talked about this issue.

Mr. Hoffman presented the staff report. He explained that a previous conditional use was approved in 1970 for a clinic in an R-1 zone. He reviewed the applicable criteria. The intensity of activity is not expected to increase with this expansion. It is surrounded on three sides by institutional uses and has operated in a compatible fashion for many years. Mr. Hoffman also added that a sidewalk along S. Elm should be added as a condition of approval. He suggested adding, at the end of his recommendation on page 12 of the staff report, "provided that a sidewalk over the full width of the property is available prior to final building permit approval." The expansion is clearly within the parameters of the Ordinance under Conditional Use applications and would not be required to undergo Site and Design Review. The parking area is sufficient, he added.

Applicant

Dr. Lynn Kadwell, President of Canby Clinic, stated that he concurs with the staff report and is available if the Commission has any questions.

With no further testimony, the public portion of the hearing was closed for Commission deliberation.

Commissioner Fenske moved for approval of CUP 91-06 based on the August 16, 1991 staff report and on the public hearing, with the condition that the sidewalk on S. Elm be completed prior to occupancy. Commissioner Zieg seconded the motion and it carried unanimously.

VIII. DIRECTOR'S REPORT

Mr. Hoffman explained that the H.O.P.E. appeal has been withdrawn. H.O.P.E. requested the return of the appeal fee, asked to reserve the right to request an amendment to the public use issue at some future time, and requested time to address the City Council in order to express their concerns that originally led to filing the appeal.

IX. ADJOURNMENT

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,



Joyce A. Faltus