

CANBY PLANNING COMMISSION

Special Meeting

July 15, 1991

7:30 p.m.

APPROVED

I. ROLL CALL

Present: Chairman Schrader, Vice-Chair Mihata, Commissioners Maher, Fenske and Zieg.

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

Others Present: Bob L. Stuart; Gary Stuart; Ken and Allison Patterson; Jolyn, Charles and Terry Blackwell; Debi and Randy Sajovic; Helen and Erle Grove; Harold Yoder; Paulette and Mike Jarvey; Vivian Borg; Dawn and Tracy Smith; Eugene Gascho; Doug Gingerich; Floyd Lapp; and David Gibb.

II. MINUTES

None

III. BUSINESS FROM THE AUDIENCE

None

IV. COMMUNICATIONS

None

V. UNFINISHED BUSINESS

None

VI. PUBLIC HEARINGS

- **DR 91-03**, a request by Mike Jarvey (Hot Off The Press) for approval to construct a 5,000 square foot office building. The site is located at 1270 N.W. 3rd Avenue (Tax Lot 1602 of Tax Map 3-1E-32DC).

Chairman Schrader asked if any Commissioners had ex-parte contact or conflict of interest. Commissioners Fenske, Mihata, Maher and Schrader said they visited the site and drew no conclusions.

Mr. Hoffman presented the staff report. The site is located at the west end of NW 3rd Avenue near the Mollala River embankment and is approximately 1.66 acres. The address of the existing warehouse is 1270 N.W. 3rd Avenue. The Comprehensive Plan designation for the site is Light Industrial, and the site is zoned M-1 (also Light Industrial). Mr. Hoffman then reviewed the approval criteria. He explained that the warehouse is already built and is occupied. The owners decided to redesign and relocate the original office building after the Site and Design Review Ordinance was in effect. The site plan includes landscaped areas which are appropriate. The ordinance requires one parking space per employee for the warehouse. An area exists which is large enough for approximately 10 parking spaces, which is not yet striped. As there are presently two employees in the warehouse, at least two spaces should be presently designated. Eighteen spaces are required and proposed for the office building. The designated access drives meet the minimum requirements. Mr. Hoffman then addressed the materials proposed to be used which include wood framing, metal siding, and aluminum windows. The office building will be located on a flat portion of the site which is not part of the hazard area. Staff finds that the proposal is consistent with policies of the Comprehensive Plan and recommends approval with two conditions.

1. Any change to the embankment area will require prior approval, especially for grading and tree-cutting.
2. The applicant shall provide striped paved parking for the warehouse at the rate of at least one parking space per warehouse employee.

Applicant

Paulette Jarvey stated that the warehouse is red with a cream top. Based on that, the color scheme for the office building is proposed to earthtones. With regard to signage, the applicant stated it would probably be something in wood. The site was chosen due to the natural setting and a wood sign would be most appropriate.

Mike Jarvey stated there would be nothing done to the bank at all. There would be a slight berm built up against the bank, with dirt about one to one and one-half feet tall, but that there would be no tree cutting and no moving of dirt over the edge.

Issues discussed:

1. The Commission discussed the location of the building on the site and the required parking.
2. The Commission discussed when signage would occur. The applicant explained that they would return with signage proposals, most likely in wood, in the near future.
3. The Commission discussed colors for the office building. The applicant explained that since the warehouse was red with cream along the top, the offices would most likely be painted in earthtones. Staff agreed to review the color scheme at the appropriate time.
4. The Commission discussed the embankment. The applicant testified that a berm would probably be built against the bank. It was agreed that no cut or fill would take place.

Based on the findings and conclusions in the staff report, **Commissioner Fenske moved for approval of DR 91-03 as recommended by staff, with the following conditions:**

1. **Any change to the embankment area will require prior approval, especially for grading and tree-cutting.**
2. **The applicant shall provide striped paved parking for the warehouse at the rate of at least one parking space per warehouse employee.**
3. **The office building shall be painted in an earthtone color scheme.**

Commissioner Mihata seconded the motion and it carried 5-0.

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- **MLP 91-05/PUD 91-02**, a request by Bob L. Stuart (applicant) and Carl R. Stuart (owner) for approval of a Minor Land Partition with a PUD Overlay to develop Tax Lot 201 under the Elderly and Handicapped Criteria. The property is located on the east side of N. Holly, between N.W. 12th Avenue and N. Territorial Road (Tax Lot 201 of Tax Map 3-1E-33BA)

Chairman Schrader stepped down from participating in this hearing due to a conflict of interest. Vice-Chair Mihata chaired the hearing for this application. When asked if any Commissioner had ex-parte contact or conflict of interest, other than Chairman Schrader, Commissioners Fenske, Maher, Mihata and Zieg all stated they visited the site but came to no conclusions.

Mr. Hoffman presented the revised staff report. He explained that the lot is currently occupied by a single-family house addressed as 1320 N. Holly. The home is surrounded by homes built on lots ranging in size from 7,000 to 10,600 square feet, with most falling into the 7,500 to 8,100 square foot range. There are two flag lots immediately adjacent to the subject parcel. This site is accessed by N. Holly and 13th Avenue. Thirteenth Avenue is a cul-de-sac with only six houses on it. He explained that the applicant proposes to divide a .59 acre parcel into three lots under PUD provisions. This allows the parcel to be divided into three lots averaging 7,000 square feet, after streets are provided for.

Mr. Hoffman explained that the Land Use Policies and Housing Policies of the Comprehensive Plan clearly propose encouraging division of land into lots averaging near the minimum allowed in the zone. Further, he explained, the policies encourage housing for the elderly and handicapped within residential areas and encourage the use of PUD provisions to permit smaller lots and a variety of sizes. Based on this, staff finds the proposal to divide a larger lot into three lots, under the PUD and Senior Citizen sections, is in conformance with and is consistent with the Comprehensive Plan policies, but ordinance provisions permitting this must be followed.

Mr. Hoffman explained that the applicant plans to incorporate additional amenities into the homes, which would make them more readily usable by seniors. He has proposed a garage and turnaround on each of the senior lots. These appear to be adequate provided visitor space for parking is provided and this can be done with only a slightly larger turnaround space for that front lot on Holly. As per the Fire Marshal's request, no parking is to be allowed in the driveways to the two new lots and signs should be posted to indicate this restriction. With regard to a deed restriction information submitted by the opponents, Mr. Hoffman explained that the referenced deed restriction applies only to the 17 lots that comprise "Candy Acres Subdivision." This parcel is explicitly excluded on the subdivision plat, which Mr. Hoffman presented for Commission perusal. Therefore, he explained there is no storm drainage easement on the 13th Avenue side of the subject parcel. After visiting the site staff did not conceive of the trees on the property as being "significant vegetation," although it is true that almost any additional development of the subject property will affect vegetation on the property. In summary, staff believes that the proposal is in conformance with the C.P., that the partition would have adequate frontage on a public street and would be safe and efficient for three single family structures. All necessary public services are available and the requirements of a PUD can be met, provided that there is a limitation on the use of the parcel for senior citizens. Mr. Hoffman referred to staff's Exhibit 2, where staff has illustrated logical areas for each building occupancy to use for outdoor recreation. In each case, the area outlined exceeds the

required 10% area for each lot individually and, in total, far exceeds the requirements of 2,440 square feet by over 1,200 feet. Additionally, he explained that common areas, homeowners' associations, by-laws, and "meeting federal laws" are not requirements for approving a PUD. Maintenance associations becomes issues only if there are common areas, which are not proposed.

He suggested modifying proposed condition #9 slightly to be linked to Exhibit 2, submitted by staff, to read:

9. The recreation and open space area shall be designated, as indicated on staff's Exhibit 2.

Proposed condition #10, should be modified to read:

10. A deed covenant shall be recorded for Lots 1 and 2, limiting occupancy to the elderly as defined in the National Fair Housing Act. Such covenant shall be reviewed and approved by the City Attorney. Such occupancy is intended for and solely occupied by persons 62 years of age or older.

With regard to driveway access, Mr. Hoffman referred to the staff map showing how a car can turn into the driveway of Lot #2 from 13th Avenue, without difficulty. He explained that the Police Chief reviewed the situation and sees no difficulty. This traffic movement will be no more difficult or hazardous than the right turns most of the residents of the cul-de-sac already make. He corrected the staff report, on page 14 to read, "An access easement, 14 feet in width . . .," as it erroneously read 12 feet. With regard to the utility pole, Mr. Hoffman explained that the ordinance permits one utility pole in vision clearance areas, but that if it is in a driveway, it will have to be removed.

Mr. Hoffman then explained that the applicant has not requested any specific modifications or exemptions under the provisions of "Special Housing Projects for the Elderly or Handicapped." As the applicant has not requested higher than normal densities and proposes to meet the R-1 density requirements, the distance to the central business district services from the site is not considered excessive. Further, Mr. Hoffman explained that the Comprehensive Plan intended some mixtures of types of structures and residential densities within neighborhoods. Staff is of the opinion, he added, that the required yards are being provided and the smaller buildings have been scaled to the smaller lots. Staff believes that the two homes specifically designed for seniors can fit into the community.

Applicant

Bob L. Stuart, 1320 N. Holly, Canby, described why he felt this application fits under the Planned Unit Development criteria, which permits a degree of flexibility. He described the turnarounds on the proposed lots, which would avoid having cars

back out onto main streets. Mr. Stuart explained that he would be concentrating on special features which would provide additional amenities for, and appeal to senior citizens.

Opponents

Charles Blackwell, 160 N.W. 13th Avenue stated one of the proposed homes will be eleven feet from his property line. Additionally, he discussed uses permitted in this low density residential zone and stated that he believes a zone change is required for homes designated for the elderly in an R-1 zone. He further stated that care facilities or care-givers fall under more stringent guidelines than the Federal Fair Housing Act for the Elderly. Mr. Blackwell stated that important things are missing from the application, like the architect's name, the address of the people who prepared the plat, location of existing streets, easements, etc. Additionally, he stated the proposed residences would probably now be included in Candy Acres deed restrictions. Mr. Blackwell discussed the natural features and isolated preservable trees he believes exist on the site. Further, he discussed two trees that are adjacent to his driveway which would have to be removed, that now provide a lot of shade. There are twin pines at 1408 N. Holly which are preserved as historical trees, he added. Preservable trees should be shown on the plat, he said. Grading and filling has already been accomplished which has not been shown, Mr. Blackwell added. Further, Mr. Blackwell stated that so many flag lots in a row create a monotonous atmosphere. With reference to the H.O.P.E. Master Plan, which he compared to Mr. Stuart's application, Mr. Blackwell stated there was no need for more housing for the elderly. He requested that the application be denied.

Ken Patterson, 155 NW 13th Avenue, submitted Exhibit 3, a diagram referencing surrounding homes and turning radii on NW 13th Avenue. He stated he is particularly concerned with traffic on the club cul-de-sac. He stated he has two vehicles and the pick-up always sticks out into the street about half way. Mr. Patterson stated that if Mr. Blackwell and he both pulled out of their respective driveways at the same time, unless they looked, they would hit one another. An additional vehicle in the cul-de-sac would hinder their site distance. With regard to Mr. Hoffman's figures on the turning radii, Mr. Patterson said they tested the radii planned for the new lot and what is proposed is not large enough, nor is the 14' driveway wide enough for a full size vehicle. Mr. Patterson described what the opponents would agree to on the site, with access from Holly Street only.

Allison Patterson, 155 NW 13th Avenue stated there are 18 children who live in the cul-de-sac and, further, stated her concerns that the elderly would be disturbed by the children. She also stated her concerns about the shape of the new lots. Ms. Patterson concurred with the Commission's approval of the H.O.P.E. application and pointed out the amenities such as the community center, horseshoe pit, bank, tennis courts, convenience store, parks, gardens, etc., which this application does not include. Ms. Patterson stated that with the approval of H.O.P.E., a non-profit corporation, this

application, a for-profit construction, was not needed as housing for the elderly. Ms. Patterson also expressed her concerns about having four flag lots in a row on the cul-de-sac which she said would hinder her use of her own property. Originally, Ms. Patterson stated, the neighbors were opposed to any development on the rear portion of this lot, but they would allow one house now.

Terri Blackwell, 160 N.W. 13th Avenue wondered whether the intention of the man who designed the cul-de-sac was to have all flag lots.

Randy Sajovic, 1260 N. Holly submitted Exhibit 4 and stated that he did not understand why the existing house is excluded from the PUD. Mr. Hoffman explained that all three lots were included in the PUD application, but that only two homes would be included under the Elderly criteria. Mr. Sajovic compared this application to the H.O.P.E. application. He further stated that this application does not devote a minimum of 10% of the gross area of the development to open space or recreational area, nor does it propose an indoor recreational facility or common outdoor area. Additionally, Mr. Sajovic stated that 16.82.020 is intended to be applied to either condominium or rental type developments. In any event, he added, this project cannot be deemed to be a special project for the elderly and none of the criteria in that chapter can be applied to this application. Mr. Sajovic then discussed the Candy Acres easement, which Mr. Hoffman addressed earlier. He then pointed out that a utility pole is located within the proposed paved portion of the driveway for Lot 1, where it meets Holly Street, and stated the pole would reduce the minimum footage for the driveway width. In summary, he stated that the proposed partitioning would create lots considerably smaller than the minimum area required under the R-1 zoning. The PUD overlay, allowing reduced lot areas cannot be approved because the proposal fails to designate 10% common or open recreational space. The Elderly status cannot be applied because the development is not a condo or apartment rental type project, nor is there any indoor recreational facility which must exist if the Commission allows a reduction in the 10% common open recreation space requirement.

Earl Grove, 140 N.W. 13th stated that this application does not fit in with the functionality criteria of the City. He is also opposed by the manner in which Mr. Stuart came into the neighborhood and proceeded to do the work on his lot. Mr. Grove stated he check with the Contractor's Board and found Mr. Stuart's license expired in 1985.

Dawn Smith, 1255 N. Ivy Street stated that she lives on the corner of N. Ivy and 13th Avenue. She said she concurs with Ms. Patterson's concern about the children either living in or playing in the cul-de-sac. If this application is approved it will jeopardize safety on the cul-de-sac.

Kurt Schrader, 2525 N. Baker Drive stated that a central concern for the Commission to consider is whether this application fits as a PUD. He also discussed

interpretation of 16.70.010 and the property division of this site. He also discussed 16.70.020, the purpose of PUDs and whether traditional lot-by-lot development fits the PUD criteria. He further stated he is concerned about other small properties coming in under PUD criteria. Dr. Schrader said the community that is opposing this application might help the Commission interpret how the criteria applies.

Rebuttal

Bob L. Stuart, when asked about the open space, responded that it was difficult to state positively that the open space shown on staff's Exhibit 2, would remain exactly as shown. He said that once the plans and specs are drawn, it would be much more definite. He plans to keep the sizes similar to the ones shown on that exhibit and for definitely more than ten percent open space. Mr. Stuart added that he would be happy to agree to a condition stating that his final plans would be similar to those in staff's Exhibit 2.

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

Issues discussed:

1. The Commission discussed the drainage easement and agreed the subject parcel was explicitly excluded from the deed restriction applying to the 17-lot Candy Acres Subdivision, based on information submitted by staff.
2. The Commission discussed the appropriateness of the PUD and Mr. Hoffman referred to Division IV, regulations regarding PUDs. He explained that Minor Land Divisions are methods of subdividing smaller parcels of land and that nothing limits the size of PUD areas in the Canby ordinances. Further, staff felt this was a method that could be used to provide reasonable housing opportunities for senior citizens in the community. He added that 14% of Canby's population of 9,000 are seniors. It is estimated that when the population of Canby reaches 20,000, the percentage of senior citizens will be 20%.
3. The Commission discussed the open space/recreational area on the proposed lots. Mr. Hoffman explained that the applicant proposes that the owners maintain their own property, and that the green area would not be owned in common. He further explained that the ordinance does not require common area or public open space, just recreational open space. Additionally, Mr. Hoffman explained that it is left to the Commission to decide if yards are considered recreational space.

4. The Commission discussed Section 16.82.020, Applicability of Special Housing. Mr. Hoffman explained that the applicant was not asking for any waivers or modifications, and was only asking for housing limited to senior citizen occupancy. Mr. Hoffman further explained that, in conferring with John Kelley, City Attorney, about whether or not the Commission can specifically limit occupancy to seniors, Mr. Kelley explained that under the Fair Housing Act, that is not only possible, but wise to do. There are three definitions and the one staff recommended is the one that appears to fit this application the closest.
5. The Commission asked whether all three homes were designated for senior citizens. Mr. Hoffman explained that only the two new lots would be designated for the elderly.
6. The Commission discussed the ordinances which support the Comprehensive Plan and agreed that it is intended for the Commission to be creative and flexible, and encourages infill growth wherever possible. The Housing Element talks about encouraging a variety of lot sizes that average out, about density bonuses in two or three places, and about lot size averaging for partitions. Additionally, the Housing Element, under 4(E) talks about "Continuing to allow for "lot size averaging" in new subdivisions or partitions, and duplex construction on larger lots in low density residential districts. Both of these changes have encouraged greater diversity of housing types, rent levels, and price ranges without significantly affecting the character of established neighborhoods." Policy 1(C) under Land Use Element discusses unusual lot shapes, and 1-H talks about increased density. The Commission discussed conflicts within the Plan and how decisions must be weighed.
7. The Commission discussed the open space as depicted on Mr. Hoffman's Exhibit 2, and agreed it is in excess of the 10% required recreational area. Mr. Hoffman added that it is up to the Planning Commission to make an interpretation regarding whether or not yards are considered recreational area. The Commission discussed Section 16.76.010 which says, ". . . there shall be 10% specifically devoted to park and recreational purposes," and agreed it would have to make such determination. This aspect is covered in Condition #9.
8. The Commission agreed that with a better idea of where the houses will be located, better lot design, explicit turning radii depicted on the lots, and better defined open space areas, the application was substantially changed from the previous application.

9. With regard to enforcing the sale of the homes to the elderly, Mr. Hoffman explained that he was suggesting a deed covenant which would run with the land.
10. The Commission questioned whether Mr. Stuart was willing to adhere to staff's Exhibit 2, with regard to the green areas marked as recreational/open space. Mr. Stuart responded that since the actual house plans are not drawn up yet, the shapes on Exhibit 2 are only representations. He agreed he plans to build structures similar to what is shown, meeting all the setbacks and open space requirements.
11. The Commission discussed the water supply to the lots. Mr. Hoffman advised that a 10" line on the south side of the property, which is easily available to access the property.
12. With regard to safety on the cul-de-sac, Mr. Hoffman stated that because Mr. Patterson's lot was undersized with regard to his parking two vehicles in his driveway, should not prevent the applicant from developing this property.
13. With regard to historical trees, Mr. Hoffman stated there were none on this property.
14. In response to a question from the Commission, Mr. Hoffman stated there was no ordinance limiting the number of flag lots in a row.
15. The Commission discussed adding a condition regarding buffering due to close proximity between Lot #2 and 160 NW 13th.
16. Terry Blackwell asked the Commission to ask Bob Stuart to remove a gate on the cul-de-sac so he wouldn't have to go across their property. The Commission asked if he would remove it and he agreed he would.
17. The Commission agreed to add a condition that the homes that will be built will not differ **markedly** from the sizes/shapes that are shown on Exhibit 2.

18. The Commission agreed to add a condition that the turnaround on Lot #1 would be wide enough for two parking spaces.
19. The Commission discussed the utility pole near the driveway to Lot #2. Mr. Hoffman explained that 12 feet of space is required for the driveway, which clearly exists. This will show up on the final plat, and a survey is a part of the final plat.

Based on the findings and conclusions in the staff report, and on Commission. The deliberations, **Commissioner Zieg moved for approval of MLP 91-05/PUD 91-02 for two senior citizen lots, with the following conditions:**

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. Ten (10) feet of land for street widening purposes along Holly Street shall be dedicated as part of the final partition. A sidewalk, curb, and widened street shall be provided along Holly.
4. 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, and 12 feet along each street. An easement for the sewer line for serving the existing home at 1320 N. Holly shall be provided on the final partition.
5. A final partition modified to illustrate the conditions of approval, shall be submitted to the Director of Public Works for review and approval. The final partition shall reference this land use application -- City of Canby, Planning Department, File No. MLP 91-05/PUD 91-02.
6. 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.

7. All monumentation and recording fees shall be borne by the applicant.
8. All utilities must meet the standards and criteria of the providing utility authority.
9. The recreation and open space area is hereby designated by the Planning Commission as indicated on the staff drawing dated July 8, 1991.
10. A deed covenant shall be recorded for Lots 1 and 2, limiting occupancy of the housing on these lots to the elderly as defined in the National Fair Housing Act. Such covenant shall be reviewed and approved by the City Attorney. Such occupancy is intended for and to be solely occupied by persons 62 years of age or older.
11. No parking is to be allowed in **driveways** to the two new lots off 13th Avenue and N. Holly. Signs shall be posted to indicate this restriction.
12. The final designs of the new houses is not to differ markedly from the "footprints" (including size and shapes) submitted as part of the application.
13. Adequate buffering treatment is to be provided between Lot #2 and 160 NW 13th Avenue, to consist of a row of arbovitae, or similar dense evergreen trees or shrubs.
14. The existing gate on the cul-de-sac shall be removed so as not to encourage pedestrian traffic on 160 NW 13th Avenue property.
15. The turnaround on Lot #1 shall be widened slightly to provide one parking space, plus a turnaround, in addition to the garage for two on-site parking spaces.
16. The driveway width for Lot #1 shall provide a minimum paved width of 12 feet to the north of the utility pole, or the pole shall be removed.

Commissioner Maher seconded the motion and it carried 3-1.

VII. FINDINGS

Commissioner Zieg moved for approval of ZC 91-01 Findings, Conclusions and Order (H.O.P.E.) to recommend approval of this zone change to City Council. Commissioner Maher seconded the motion and it carried unanimously, with Commissioner Fenske abstaining.

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Chairman Schrader's suggested changes to the set of Findings submitted by staff were distributed. He explained that his changes were due to his recollection of the Commission deliberations regarding public park land and maintenance of park land.

Applicant

Doug Gingrich, President, H.O.P.E. Board of Directors, stated that he is speaking as an individual board member, and not as a representation of the entire Board. The Board was prepared to accept the original set of Findings, but the amended Findings do not meet with his approval. Without his Counsel present, he does not feel he is in a position to renegotiate the conditions.

Having sat through the previous application (Stuart MLP/PUD) and listened to the way the Commission reviewed the park requirements for that PUD with such leniency, Mr. Gingrich said if such leniency were applied to the H.O.P.E. project, most major objections regarding parks would have been eliminated. With reference to the public versus private use of open space, Mr. Gingrich stated that greater than 10% was set aside in the original proposal. The only issue was over whether it was open for public access. He further stated that H.O.P.E. has gone to considerable expense to rewrite the project, and compromise the integrity and ideals of the project, by opening it up to the question of desirable living for seniors with the incompatibility of public playgrounds. The key issue is one of security for the seniors.

Commissioner Maher moved for approval of CUP 91-05/PUD 91-01 (H.O.P.E.) Findings, Conclusions and Order, as amended during deliberation, and further recommending to City Council that, should the applicant appeal the Findings, Conclusions and Order, that the fee be waived. Commissioner Zieg seconded the motion and it carried unanimously, with Commissioner Fenske abstaining.

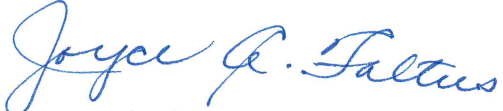
VIII. DIRECTOR'S REPORT

None

IX. ADJOURNMENT

The meeting was adjourned at 11:15 p.m.

Respectfully submitted,



Joyce A. Faltus