

MINUTES
CANBY PLANNING COMMISSION
Regular Meeting
April 14, 1997
7:30 P.M.

I. ROLL CALL

Present: Chairman Ewert, Vice-Chair Stewart, Commissioners Dillon, O'Shea, Prince and Keller.

Staff: James Wheeler, Planning Director; Larry Vasquez, Assistant Planner; and Joyce Faltus, Secretary

Others Present: Rod Shippee, John Bee, Don Staehely

II. MINUTES

Commissioner Keller moved to approve the March 24, 1997 minutes, as submitted. Commissioner Stewart seconded the motion and it carried unanimously.

III. CITIZEN INPUT ON NON-AGENDA ITEMS

None

IV. FINDINGS

None

V. COMMUNICATIONS

None

VI. COMMISSION DISCUSSION OF PLANNING ISSUES

The Commission reiterated its concern that staff advise them whenever any large company showed interest in locating in Canby, as opposed to their reading it in the newspaper.

VII. PUBLIC HEARINGS

CVP 97-02, an application by Canby School District #86 for approval to extend the approval for CVP 93-01 and retain the three existing modular classroom buildings at Knight Elementary School. The project is located at 811 S.W. 5th Avenue [Tax Lot 1400 of Tax Map 3-1E-33CB].

Chairman Ewert reviewed the hearing process and procedures. He referred to the applicable criteria posted on the wall and on page 2 of the staff report. When asked if any Commissioner had a conflict of interest or ex-parte contact, none was indicated.

Larry Vasquez presented the staff report. He explained that the Canby School district was requesting approval to retain the three modular classroom buildings currently located in the northeast corner of the Knight Elementary School campus. The modulars had been previously approved on November 8, 1993 [DR 93-05/CVP 93-01] with the approval expiring in August, 1997. The condition further stated that the Commission would consider a request for an extension of the use of the "temporary" buildings after the appropriate population and building capacity and service district analyses have been accomplished. The school district has completed a long-range facilities study and estimates that construction of a new school will take place in approximately the year 2001, if the voters approve the bond. Mr. Vasquez explained that an extension of the use will maintain the same intensity and density of school classroom uses that currently exist on the site, and will not affect the scenic or aesthetic quality of the City. Visual impacts of this development, such as landscaping and access, were previously reviewed through the Site and Design Review process under DR 93-05. Staff recommends approval, with a condition that this conditional use expires in August, 2000, when the modular classrooms would then have to be removed.

Applicant

Don Staehely, Canby School District #86, 811 S.W. 5th Avenue reviewed the results of the long range facilities plan, explaining that it has been estimated that by the year 2001, Canby will need another school building, most likely a middle school, while Eccles will become an elementary school again. The school population is currently growing at a rate of 100-150 student per year. At the present time, most of the growth is centered around the southeast portion of the City, near the new Trost Elementary School and the district is predicting that another school will be needed by the year 2001 within the Canby area boundary. After modifying the boundaries twice, and having the use of the Carus and 91 school buildings, it has still been found that another school building will be needed. The high school, Mr. Staehely explained, is estimated to be at 1,600 students next year, and Ackerman is projected at 1,080 for next year. If another middle school was built, it would open Philander Lee as an elementary school, he added. Mr. Staehely explained that he was advised that he could only apply for a 3-year extension, although the district would prefer a 4-year extension when, hopefully, the voters will pass a bond for a new school. With no additional testimony, the public portion of the hearing was closed for Commission deliberation. Issues discussed included:

1. The Commission asked if the modular units were ever used in the evenings, other than for classroom use. Mr. Staehely explained that, to the best of his knowledge, they were not used after school hours for private use.
2. When asked if the long range facility plan met the appropriate guidelines for population and building capacity studies, Mr. Staehely explained that they did.
3. The Commission asked about the capacity of Eccles, Knight and Trost Elementary Schools. Mr. Staehely explained that all three schools are all near capacity, and until September 1, it is impossible to know the exact number of new students. He added that all the classrooms are being used and the class sizes are being increased and the student/teacher ratios are going up.
4. The Commission discussed having the school district come back once a year with updates regarding where they are regarding capacity in the various school buildings and the need for modulars.
5. When asked when the district plans to propose a bond measure for a new school building, Mr. Staehely explained that it is dependent on growth within the next two years and, based on the current study, the district projects to propose a bond in the year 2001. At one point, the district was going to propose a maintenance bond to modify some of the buildings, but due to Measure 47, the board has decided to wait for clarification on the 50% voter turnout issue.
6. The Commission questioned what the life of a modular unit was and agreed that they are usable for at least 7-8 years.
7. The Commission discussed school capacity. It was agreed that modulars are one way to expand and contract, and if sited well, are not too unattractive.
8. The Commission agreed that there was really no way to predict growth because there are so many factors to consider.
9. The Commission discussed the possibility of having the building inspector inspect the modular units to make sure they are sound. Mr. Wheeler explained that there might be a problem implementing such inspection because of the commercial building code and that he would have to check with Mr. Codon as to whether this was acceptable.
10. Mr. Wheeler explained that when the modulars were originally approved, did not require Site and Design Review and, under current provisions, they would now have to undergo Design Review. Mr. Vasquez explained that it was his understanding that they had already been reviewed under Site and Design Review [DR 93-05].

Based on the findings and conclusions contained in the staff report dated April 4, 1997, on testimony at the hearing, and on Commission deliberations, **Commissioner Keller moved to approve CUP 97-02 with the following conditions:**

1. The temporary classrooms are approved for a three year period beginning August 1997 and ending August 2000, and the temporary classrooms are to be removed at the end of this time period.

2. That the school district shall come back before the Planning Commission annually, in December, to review current capacity conditions.

Commissioner Prince seconded the motion and it carried unanimously.

VAR 97-03, an application by Rod Shippee for approval to locate a pond and waterfall structure in the backyard of the residence at 830 S.E. 7th Avenue, in variance to the minimum setback from the property line permitted by the Zoning Ordinance. The property is located on the north side of S.E. 7th Avenue, west of S. Pine Street [Tax Lot 2100 of Tax Map 4-1E-3BB].

Chairman Ewert reviewed the hearing process and procedures and referred to the variance criteria posted on the wall and on page 2 of the staff report. He asked if any Commissioner had ex-parte contact or conflict of interest. Commissioner Prince explained that he was on the City Council when the issue of waiving the fee for the applicant was discussed, but that he drew no conclusions with regard to the application. No one from the audience had any questions of Commissioner Prince. No other conflicts of interest or ex-parte contact were indicated.

Larry Vasquez presented the staff report. He explained that the pond/waterfall was located in the northeast corner of the applicant's parcel, within 3 feet of the minimum required rear and side yard setbacks for structures in excess of 30 inches above grade. The structure is more than 5-1/2 feet in height, and is constructed of concrete block and cement. The structure, according to the applicant, was constructed prior to his purchasing the property in November of 1995. Due to a dispute between neighbors, this structure, which intrudes into the required side and rear yard setbacks, came to the attention of the Code Enforcement Officer. After discussions with both the Code Enforcement Officer and the Planning Director, where the applicant learned that such structures could be deemed intrusive to neighboring properties, the applicant submitted a variance application, requesting approval to retain the existing structure. Further, Mr. Vasquez reviewed the applicable criteria and explained that Criteria "A," "B," "C," and "D," in staff's opinion, had not been met. In order to approve a variance application, all applicable criteria must be met, he added. Therefore, staff recommends that the Commission deny this application.

APPLICANT

Rod Shippee, 830 S.E. 7th Avenue stated that he spoke with the Code Enforcement Officer, who told him that it would be in his best interests to apply for a variance because he did not meet the setback requirements, because it does not meet fire department safety requirements, and because it might interfere with utility installation or maintenance. Mr. Shippee went on to explain that all

utilities are already installed, and that the structure does not contain any flammable materials. In addition, Mr. Shippee stated that he had no intention of trying to set a precedent or any intention of trying to change policy and that if the City needed that 3 foot area, they could have it. Furthermore, Mr. Shippee stated that the neighbor who is complaining has lived with the structure in the same place while the previous owner lived there, and wondered why it suddenly has become a problem. He explained that there had been a leak, from the waterfall portion of the structure when he had left the water turned on for too long a period, which has been repaired with silicon. The pond, he added, holds approximately 70-80 gallons of water and has fish in it.

Proponents

None

Opponents

John Bee, 1022 S.E. 7th explained that he lived just to the east of Mr. Shippee. Mr. Bee stated that Mr. Shippee climbs up on the waterfall to service it and takes this opportunity to stare in his neighbors' yards and scares people, especially the children. Additionally, he can look into the kitchen and bedroom windows of the Bee home, when on top of the structure. Mr. Bee submitted photos in evidence. When this occurs, it also causes all the dogs in the neighborhood to bark, annoying all adjacent neighbors. He pointed out that if the water structure was removed, there would be no reason for Mr. Shippee to peer over the fence. In addition, Mr. Bee pointed out that the structure has numerous plants around it that require watering. They are planted in sandy loam soil, which allows the water to drain very quickly, especially when they are over watered. There is poor drainage in the area anyway, which makes a bad situation even worse. Mr. Bee explained that neighbors to the north called the police last summer, when the water was left on for many hours, as their yard flooded. Additionally, he pointed out that there was a lot of standing water with algae growing in it all during last summer, which is very detrimental to the two houses to the north, which already have poor drainage conditions existing under their homes, and who have already installed pumps to reduce existing water, without having the additional water added because of this structure. There are no safeguards built into the water structure to ensure safety for small children wandering into the area. Mr. Bee pointed out that he erected a fence along the property line to keep small children from leaving his yard and wandering into the Shippee yard. Other neighbors also erected fences to keep small children from accessing the pond, while the structure was being built. From a landscaping point of view, a pond should not be in direct sunlight, he added, because it creates algae and problems for the fish that are in the water. Mr. Bee explained further that the previous owner built the structure as a selling point when he was preparing to put the property up for sale. It was put together rather quickly and poorly, he added.

Rebuttal

Rod Shippee stated that many people accidentally water their lawns for too long a period of time, like he did the one time it flooded. He further explained that Mr. Bee is opposing this application because he reported that the fence that Mr. Bee installed was not in compliance with the Canby ordinance regarding fence heights. Furthermore, Mr. Shippee stated that he did not see anything intrusive about servicing his pond, denied looking over into neighboring property when doing so, and explained that it was well constructed.

With no additional testimony, the public portion of the hearing was closed for Commission deliberation. Issues discussed included:

1. The Commission discussed the definition of the term "intrusive" and asked staff how the pond/waterfall intrudes on a neighboring property. Mr. Vasquez explained that, in this case, the structure has been leaking.

2. The Commission asked discussed the height of the structure. Mr. Shippee explained that their are tiers of steps, but the structure is not higher than the fence. The structure is about 5-1/2 feet, and the fence is 6 feet high.

3. The Commission discussed the existence of the structure. Mr. Shippee explained that the structure was built between 7 months and a year before he purchased the property. The concrete blocks, he explained, are mortared together.

4. The Commission questioned why Mr. Bee was complaining about the structure at the present time. Mr. Bee explained that the neighbors got along better with the original owner of the Shippee property.

5. The Commission agreed the main issue was one of feuding neighbors. The Commission further agreed that in order to maintain the same property rights for both neighbors, the pond/waterfall structure must conform to the 3 foot minimum yard setback, just as the fence had to meet height requirements.

6. The Commission discussed the criteria for approving a variance application. The Commission agreed that in order to approve a variance application, ALL of the applicable criteria must be met. The Commission further agreed that the application does not meet Criteria A, B, C and D.

Based on the findings and conclusions contained in the staff report dated April 4, 1997, on testimony at the hearing, and on Commission deliberations, Commissioner Dillon moved to deny VAR 97-03. Commissioner Keller seconded the motion and it carried unanimously.

VII. OLD BUSINESS

None

VIII. DIRECTOR'S REPORT

The Commission accepted, with regret, Commissioner Hartwell's letter of resignation, and urged each other to try to find a replacement for Mr. Hartwell within a reasonable period of time.

Chairman Ewert noted that the majority of staff reports are generated by Mr. Vasquez, and thanked him for all his hard work.

Mr. Wheeler reported that it appears that a commercial developer who works with a number of different type retailers is interested in the Arneson property. It appears likely that some type of a grocery store will locate there, although no specifics have been forthcoming. No specific design for the layout of this phase of the industrial park has been submitted for consideration.

Staff reminded the Commission about the workshop on April 16, 1997, at 6:00 p.m., and that Senator Baker and Representative Schrader would be attending.

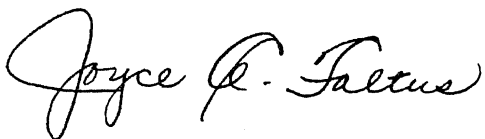
Staff explained that talks are underway with regard to Tofte Farms Phase 2, regarding future layout. Chairman Ewert asked if people could occupy homes prior to the traffic signal being installed. Staff explained that it is a timing issue and they might be required to install a 4-way stop prior to the signal being installed. The signal is scheduled for installation in early July. The Commission discussed the request from Tofte Farms to reduce setbacks or add fireplaces and windows into the setbacks. The Commission commented on how close the houses appear to be to each other and how much closer they appear to be to each other due to the large sizes of the homes.

Staff reported that a meeting was held with METRO regarding the language to be included in an intergovernmental agreement for the area between Canby and METRO, in order to maintain the separation and not to enlarge the urban growth boundary. Discussions were also held regarding how to deal with other jurisdictions, including Clackamas County, and regarding the Highway 99-E corridor.

IX. ADJOURNMENT

The meeting was adjourned at 9:10 p.m.

Respectfully submitted,



Joyce A. Faltus