

MINUTES

CANBY PLANNING COMMISSION

7:00 PM November 14, 2005
City Council Chambers, 155 NW 2nd

I. ROLL CALL

PRESENT: Chairman Jim Brown, Commissioners Dan Ewert, John Molamphy, and Tony Helbling

STAFF: John Williams, Community Development and Planning Director, Kevin Cook, Associate Planner, Carla Ahl, Planning Staff

OTHERS PRESENT: Daniel Muchleck, Alex Krishchenko, and Thomas Cutler

II. CITIZEN INPUT

None

III. PUBLIC HEARINGS

DR 05-05 (Canby Place) An application by Sterling Development Corporation to develop an 85,348 sq. ft. CM zoned parcel.

Sterling Development Corporation asked for a continuance until January 9th 2005, at 7:00 pm

MLP 05-07 (Dream House Construction LLC) an application to partition of 0.46 acre parcel into two residential lots consisting of the existing residence and one additional single family residence. The property is located at 919 N Maple Lane.

Mr. Brown read the public hearing format. When asked if any Commissioner had a conflict of interest, none was expressed. When asked if any Commissioner had ex-parte contact, none was stated. No questions were asked of the Commissioners.

Kevin Cook presented the staff report. He explained that the original application was to partition the lot, then rezone to allow 2 duplexes to be built on the newly created lot. The Planning Commission recommended denial of the zone change to the City Council. The City Council denied the zone change at their October 5, 2005 hearing. Mr. Funk has amended his application and dropped the zone change aspect. He is now asking the Commission to approve the minor land partition and allow the applicant to build a single-family home on

the new lot. Access to the new lot would be provided by a 20' easement along the northern lot line of the existing home.

Two letters were received regarding this application. The first one is from Kathleen Budnick who did not want new traffic in the area. The other from Judy Pellet who stated she was in favor of the application citing that other neighbors have already divided their lots.

Sidewalks are addressed by condition #13, which states that the applicant could sign a waiver of remonstrance for future sidewalks.

Mr. Brown stated his concern that there would be no sidewalk if the applicant were allowed to sign a waiver of remonstrance.

Mr. Ewert questioned the easement along the north. Kevin explained that it was the only area that allowed enough room for the driveway; it is too narrow on the south side.

Mr. Ewert questioned how close the driveway would be to existing driveways. Kevin gave the Commissioners an aerial photograph, which showed the existing driveway spacing.

APPLICANT: None

PROPONENTS: None

OPPONENTS: None

The Commission discussed the sidewalk issue, if the sidewalk is put in, it would be the only piece of concrete there but if a waiver of remonstrance is used, it could be years before a sidewalk would go in. John explained that the City Council could put a LID on this property, or the whole block and the owner of this property would not be able to object to it.

It was moved by Mr. Ewert to approve MLP 05 – 07 as submitted.
Seconded by Mr. Helbling. Motion carried 4-0.

V. NEW BUSINESS

MOD 05-07(Krishchenko)

John gave a summary of the original application that was brought before the Commission. The applicant proposed a new lot on the east side of his property with a driveway onto S. 13th St. The Commission approved the partition but not the access spacing standard exception that was required to locate a driveway here, citing that it is an arterial street with a significant spacing standard that this proposed new driveway would not meet. The Commission approved the partition with a condition that stated, "No lot shall directly access SW 13th

Avenue. Prior to signing the final plat, the applicant shall provide proof of adequate alternate access. The proposed access shall be reviewed and approved by the City of Canby Planning Department prior to the issuance of any building permits or signing of the final plat”, so Mr. Krishchenko can not get a final plat approved without demonstrating to us that there is an access.

When the Commission heard the original application there was a triangular piece of property to the east, owned by the City, which had been dedicated by the LDS Church to use for the alignment of 13th Ave. There had also been a piece of property that belonged to the Rackliff House, which Mr. Krishchenko has since obtained.

When Mr. Krishchenko came in with his application there was a discussion by the Commission that maybe Mr. Krishchenko could get access from the right-of-way through the church parking lot or route a driveway through his property to Cedar Loop. Neither option turned out to be very feasible. The property was resold back to the church by the City Council, after it was determined what the property was and how it had been acquired.

Mr. Krishchenko has come back to the Commission to ask that the condition limiting his access to 13th Ave be removed. John explained that this is an intermediate modification, which means that if the Commission approves the modification, then notice would be sent out to everyone who received notice of the original hearing, they would then have the opportunity to request a public hearing. If the Commission denies the modification then no notice is sent, but the decision could be appealed to the City Council.

The existing driveway is approximately 25' from the new parcel to the east, the access standard for an arterial is 300', there are driveways in Cedar Ridge which are non-conforming, and older homes to the east that have access onto 13th.

The Commission does have the ability to approve access points that do not meet spacing standards and have approved two recently in MLP 05-08 and MLP 05-09, the Commission found in those cases was that the hardship was not self created, because of the density standards in place in those areas, creating the ability to divide the lots, so the City created the opportunity for the increased accesses.

According to the criteria there has to be no alternative access that can be obtained. No engineering or construction solutions. No alternative access on a lower classification street.

There are two things that have changed since the original hearing. The property was sold back to the church and the City has gotten the funding for the Berg Parkway extension. The Commission denied the application in the first place because there would be increased traffic if the Berg Parkway connection were ever made. Now it is a certainty and traffic levels will rise on 13th Ave.,

when the bike lanes are constructed, parking would be likely be restricted to the north side of the street.

Mr. Brown stated he has had some ex-parte contact and explained that he is the Bishop of the Canby Second Ward of the Church of Jesus Christ of Latter Day Saints and in that capacity he is a volunteer and does not receive payment. He had met with Mr. Krishchenko briefly after the original hearing, Mr. Krishchenko indicating that he would like to seek access through the church site. Mr. Brown stated he passed it along to Mr. Kraven who is the Preventative Maintenance Supervisor and does not know what has happened since. Mr. Brown stated he intended to participate.

Applicant:

Thomas Cutler, representing the applicant addressed the Commission. He explained he was a land use attorney and was representing Mr. Krishchenko. He explained that he came on short notice and apologized if he was not up on all the all of the nuances of the staff report

Mr. Cutler stated the report describes this as a reconsideration of a denial for a request for an exemption to the spacing requirements. He believes that the request for an exemption is now timely. Mr. Krishchenko was not represented by council at the time of the original hearing. Mr. Cutler believes that Sub "B" of the exemption states "the granting of the exemption shall be in harmony with the purpose and intent of these regulations and shall not be considered until every feasible option for meeting access standards is explored. At that time everything had not been explored, there was the question of the triangular piece that was public right-of-way, and whether there was a way to get access to Cedar Loop.

Mr. Cutler stated he has spoken with Mr. Kraven and is a member of the LDS Church himself and understands the liability issue of shared access, and appreciates the concerns the church has. The City Council held a hearing and decided to allow the church to purchase the property, which is built out as parking lot.

Mr. Cutler explained that Mr. Krishchenko submitted a written offer to the City to purchase the property for more than the church was going to purchase the property for. He suggested the City could have sold the property back to the church but reserved, for the benefit of Mr. Krishchenko, an easement.

Mr. Cutler stated that a lot of options were explored but none of them worked out. So the Commission's question of whether there is alternate access has been answered, there is no other access except by 13th Ave.

Mr. Cutler explained there are two ways that the hardship is not self-created by Mr. Krishchenko. The first is that it is similar to other cases where access has been granted onto arterials and second the city is the one who designates zoning and density, Mr. Krishchenko was doing what the city wants people to do, utilizing existing land within the City boundary.

Mr. Cutler stated that if Mr. Krishchenko had hired him prior to the Minor Land Partition, he would have suggested a lot line adjustment, then it would be an existing tax lot, not a newly created tax lot, which abuts 13th Ave. There is a general principle in Oregon law that if you abut a public right-of-way you have access to that right-of-way unless there is some other prohibition. Access is a very critical thing to any property and it is constitutionally protected. If it gets to the point where access is extinguished then there is a question of whether it becomes a "taking", if there has been a taking of the realistic value of the property.

Mr. Cutler stated if the City found the public no longer needed the right-of-way, then it was only true for the rest of the city, it was necessary to Mr. Krishchenko, so there should be some consideration for granting an exception for obtaining access onto 13th Ave.

Mr. Cutler explained that Mr. Krishchenko was trying to take advantage of the stated goals of the city and found a buildable unit. It was the City that denied his use of the public right-of-way, by selling it to the church, so this situation was not self-created. He believes it is a fairness issue, Mr. Krishchenko has tried to obtain alternative access and at this time an exception would be warranted. To deny this exception would create a useless parcel with no value.

Mr. Cutler stated just because the future expanded use of 13th Ave. is contemplated, doesn't mean the City should take away the exemption. He explained that there are already closely spaced accesses onto 13th at this time, so it is not a perfect situation. He believes granting this exception would not create a precedence for accesses since the area is built out at this time.

Mr. Brown asked if they were asking for an exception just because the applicant lives on a lot that is big enough to subdivide. Mr. Cutler answered that the City should want to accommodate the application to achieve optimal use of land in the City. He stated that the act of making a land use application makes the issues self-created. Why should Mr. Krishchenko not be allowed to develop when everyone else already has.

Mr. Brown explained that the lot has not been created yet, because it can't meet the condition of not having direct access onto 13th Ave. The Planning Commission's decision was that if the applicant could find alternate access, other than 13th, then the lot could be created, if he couldn't find access then the lot couldn't be created. Mr. Cutler explained that if Mr. Krishchenko had utilized the lot line adjustment application, there would not have been a hearing. The land use laws encourage this type of development, using what is already in the city.

Mr. Cutler asked if there would be an opportunity for additional evidence to be added to the record. John explained this is not a formalized public hearing and he is not sure what the legal answer is. Mr. Brown stated Mr. Cutler could add any information he wanted to the record.

Mr. Brown asked for clarity on what the Commission needed to do with this request. John explained that the Commission could approve or not approve the request, which is to strike the original condition, not allowing access onto 13th from the findings.

John explained that if the Commission approves the request tonight, then notice of the decision would be mailed out to everyone in the radius, and anyone who was involved with the last hearing. They would have the ability to file a written request for a hearing, if that happens then Mr. Krishchenko would have to pay the charges, everyone would get noticed and it would come back to the Commission again.

Mr. Krishchenko addressed the Commission. He stated that there is no problem with the partition of the property, the problem is with access onto 13th Ave. He did not need access onto 13th, he had access to public right-of-way, 100%. But the City created the problem by taking his last chance for alternate access. The Planning Commission approved the partition because there was access through the public right-of-way, nobody could stop him because it was public right-of-way.

Mr. Ewert asked why the City took the lower offered price on a piece of property. John explained the City Council felt it was the right thing to do since the land had been acquired from the church in the first place for the purpose of street right-of-way. Mr. Brown explained that it has been developed as a church parking lot for 25 years. Mr. Helbling asked if the church donated the property or if the City condemned it. John believed that the City purchased it for a small sum of money, with the City doing the frontage improvements if the church donated the property. Mr. Krishchenko stated that the church didn't have preference for buying the property, and he had offered more money for the property. John stated again that the City Council felt that since the City had required the property from the church, it was right to sell it back to the church.

Mr. Helbling asked if the Commission could hear from John Kelley regarding the sell of the property. Mr. Cutler understood why the City felt it had to go through with the sell of the property to the church, but it did not change the fact that the City favored the church over Mr. Krishchenko and the property was equally as important to Mr. Krishchenko. Mr. Helbling stated the difference was that Mr. Krishchenko didn't own the property in the first place, the church did. Mr. Cutler stated that because the City sold the property to the church, the problem was not created by Mr. Krishchenko, it was created by the city. He stated for that reason this application is appropriate for an exception.

Mr. Molamphy stated that the approval from the Commission was based on obtaining access from an alternate source. Whether it was a lot line adjustment or another type of application, it is based on access for the lot and that condition hasn't changed.

Mr. Brown explained that during the first hearing he had stated the church would probably not grant access through their parking lot. The Commission

agreed there should not be access off of 13th because of the possibility of it becoming an arterial. Now the Commission knows it will be an arterial, this property is right where the "S" curve starts and safety is the main issue.

Mr. Helbling stated this is a tough decision. The challenge is deciding if the problem is self created, when he purchased the property, it wasn't two lots. By zoning and by being able to create 2 lots there it allows the applicant to self-create but the City didn't create it.

Mr. Krishchenko explained that there are only 2 driveways for 5 houses for 1,500 feet, the church does not use their parking lot during business hours, mostly on Sunday and after business hours. He believes that Knights Bridge Rd is an arterial street, and there are driveways that are not up to the standard.

Mr. Brown questioned how allowing the access would be beneficial for the other 3,000 cars that will travel that road.

Mr. Helbling explained that the Commission uses the traffic control book to help them make their decisions. They decided this was an unsafe area, due to the curve, the sight distance and the number of accesses to an arterial.

Mr. Cutler agreed that this is a discretionary decision, the City could also condemn the property and say they don't want anything developed there because it is unsafe. That is the right of the City, but it is condemnation power. He suggested the Commission discuss this with Mr. Kelley before they make a decision, because that is the reason they have exceptions allowed in the code is because the very action of denying access is a big deal and amounts to a defacto condemnation. The Commission explained that at this time it is one piece of property with access, the Commission gave Mr. Krishchenko the opportunity to find access for the second lot.

Mr. Ewert believed that since the last hearing it was determined that the parcel was publicly owned, the City brought to the attention of the church and the church bought back the property. John explained every time the City sells property there is an appraisal done, the church paid for the appraisal and then paid the appraised price for the property.

Mr. Helbling questioned if the church had "First right of refusal" on the property. Mr. Brown questioned if it mattered how the church purchased the property. Mr. Helbling questioned if it would have been a separate driveway or if they would have used the existing church access. John explained that the applicant would have used the existing driveway. Mr. Krishchenko tried to acquire that existing access and was unable to do so, the property transaction is a done deal.

John explained that the Commission's options are to ask for more information, either from himself or from the applicant, to deny the modification or to approve the modification. Mr. Brown clarified that the Commission conditioned

the applicant to find any other access besides 13th, which he did and couldn't find alternate access, so now he is asking to use 13th Ave.

Mr. Cutler asked for the right to submit additional information. The Commission continued the hearing until November 28, 2005, 7:00 pm. John asked for information to be into the Planning Office by Friday so it could be included in the Commissioner's Packets.

VI. FINDINGS

DR 05-07 It was moved by Mr. Molamphy to approve as submitted. Seconded by Mr. Ewert. Motion carried 4-0

VII. DIRECTOR'S REPORT

John stated there would be a meeting regarding the Berg Parkway connection at the Adult Center, Tuesday night. He stated many folks have stated concerns regarding the increased traffic along 13th St., they will be looking at what the actual problems and ways to solve them.

The first meeting of the street maintenance committee was held earlier tonight. There are 14 people on the Committee, made up of business people and citizens to discuss funding and project lists. This is the 1st of 4 meetings and he is hoping to get something to the City Council by the end of May.

VIII. ADJOURNMENT