

MINUTES
CANBY PLANNING COMMISSION
7:00 PM – April 14, 2008
City Council Chambers – 155 NW 2nd Avenue

PRESENT: Chair Dan Ewert, Commissioners Janet Milne, Misty Slagle and Jared Taylor

ABSENT: Bruce Holte

STAFF: Melissa Hardy, Associate Planner; Carla Ahl, Planning Technician and Jill Thorn, Planning Staff

OTHERS PRESENT: Beth Saul, Dennis Burke, Merja Laukka, Pat Sisul, Dustin Hamby, Wayne Scott, and Wayne Layman

I. **CITIZEN INPUT** None

II. **PUBLIC HEARINGS**

MLP 08-02 – Maple Street Property of City of Canby – Minor Land Partition to create three tax lots suitable for detached homes. One parcel will have frontage on N Maple Street and two parcels will be flag lots having frontage on a new interior driveway providing a shared point of access to N Maple Street

Chair Ewert 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.

Carla Ahl presented the staff report. The project site is located on the east side of N. Maple Street, north of the Maple Street Park, adjacent to the parking lot and tennis courts. There is an existing residence and garage on proposed parcel #2. The house and garage are situated on the lot so they would meet current setback requirements, but it is likely they will be removed. The property is fairly flat with several established trees on the lot. No natural resources or hazards have been identified on this site.

The applicant is proposing to create 3 parcels from the existing 27,900 sq ft tax lot. Parcel 1 would have 90' of frontage on N. Maple Street and consist of 7,000 sq ft. Parcel 2 would consist of 7,700 sq ft, and contains the existing house. Parcel 3 would consist of 8,100 sq ft and would have 10' of frontage along N. Noble Street; there is an existing pedestrian access to N Maple St Park located on the east side of this parcel. Access for parcel 1 would be from a driveway located on the north side of the lot. Access for parcels 2 and 3 will be from a shared access drive located on the south side of the parent parcel.

Commissioner Taylor asked if there was a current plan for the trees on the site. Ms Ahl responded there was no plan.

Commissioner Taylor asked if street trees will be required. Ms Ahl responded that one street tree would be required.

Applicant: Pat Sisul of Sisul Engineering at 375 Portland Avenue in Gladstone, representing the Applicant. Mr. Sisul said he was working with Beth Saul, Director of General

Services for the City of Canby and the Parks Department. He said the trees would remain and it would be up to the property owner at the time of development to determine which trees would come down. He said the frontage improvements would be the responsibility of the developer of the property.

Commissioner Ewert asked why since the City was always looking for park land, why this property was being divided.

Ms Saul responded that the property had been purchased long before the Parks Development Plan was developed. Over the year there has been a serious decline in funds available for the older parks in the City. It was hoped that the proceeds from the sale of the property could be put into improvements in the older parks like Wait Park.

Commissioner Ewert asked if there had been a neighborhood meeting. Ms Ahl responded all surrounding property owners had been notified and one individual had come into the office with concerns about tennis balls coming onto his property.

Proponents: None

Opponents: None

Rebuttal: None

Marja Laukka of 13600 S Carus Road in Oregon City said that her property was one of the adjoining properties and wanted to know how many driveways would be created. Mr. Sisul showed her the plans and said there would be only two driveways.

Chair Ewert closed the public hearing.

Commissioner Milne said the Planning Department had done a stellar job on the application and it made sense for the City to generate income for the parks.

Commissioner Taylor said it was low density creating low density and had no problems with the application.

Commissioner Slagle said the application was straight forward and her only concern had been the fact the fire department had not given any input, but the new Condition 13 covered that.

Commissioner Ewert felt it was a good proposal.

It was moved by Commissioner Taylor to approve MLP 08-02 as amended for conditions 4, 5, 6 and delete Condition 13 and add a new Condition 13 that prior to issuance of building permits applicant shall meet all fire and life safety requirements of the Canby Fire District. It was seconded by Commissioner Slagle. The motion passed 4-0.

MLP 08-03 – STJ, LLC – Canby Square – Minor Land Partition to adjust lot lines to adhere to fire code setbacks for future building improvements.

Chair Ewert 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-prate contact, none was stated. No questions were asked of the Commissioners.

Carla Ahl presented the staff report. The applicant is proposing to adjust existing lot lines to facilitate compliance with building and fire code setbacks for future improvements. Doing a lot line adjustment was not feasible since only one lot line could be done at a time. With a minor land partition all lot lines could be replatted at the same time making it both quicker and more efficient.

This development is located between S Hwy 99E on the north, SW 2nd Avenue on the south, S Ivy Street, on the east and S Grant Street on the west. There is access from both S Hwy 99E and SW 2nd Ave.

The development consists of 6 separate tax lots with 7 existing buildings. Current uses are a bowling alley, restaurant and various medical /professional office buildings.

The applicant has asked for the minor land partition to facilitate doing considerable improvements to some of the buildings. To meet current building and fire codes there must be a 10' setback from all property lines to any wall of a commercial building that has an entryway. This application arranges the property lines so the buildings conform to the current codes.

Commissioner Milne asked if a new building would be constructed. Ms Ahl responded the lot line adjustment was necessary for a modification to an existing building.

Applicant: Wayne Scott of 2360 E Madrona stated the adjustment of the lot lines was to give clearance for store front improvements.

Proponents: None

Opponents: None

Rebuttal: None

Chair Ewert closed the public hearing.

Commissioner Milne said the application was a typical housekeeping item.

Commissioner Taylor said anyone who owns property can adjust the lot lines.

It was moved by Commissioner Slagle to approve MLP 08-03 as presented. It was seconded by Commissioner Milne. The motion passed 4-0.

III. NEW BUSINESS

MOD 08-04 – Batting Cages at Canby High School - The land use approvals that the applicant is seeking modification of are a Conditional Use Permit (CUP 99-05) and a Site and Design Review application (DR 99-08) to construct a 4,800 sq ft (30' x 160') building south of the existing varsity baseball diamond, to house softball and baseball batting cages.

Melissa Hardy presented the staff report. The applicant is proposing to construct a 4,800 square foot (30'x160') building south of the existing varsity baseball diamond, to house softball and baseball batting cages.

CMC Section 16.89.090.D requires that modification applications be evaluated based on the criteria pertaining to the original application being modified.

Commissioner Taylor suggested that Condition 3 be reworded to say that the colors and finishes should match the other school buildings rather than match the pictures.

Commissioner Ewert asked if there would be any additional parking. Ms Hardy responded that no additional parking is required as the batting cages are intended to serve existing students and will be an accessory structure.

Wayne Layman, Facilities Director for the Canby School District said the structure was to replace the temporary structure that was lost in an ice storm several years ago.

It was moved by Commissioner Taylor to approve MOD 08-04 as amended on Condition 3 that all colors and finishes of the exterior wall and roofing materials shall be compatible with existing surrounding school structures. It was seconded by Commissioner Milne. The motion passed 4-0.

Code Interpretation – Melissa Hardy said the Planning Staff is seeking an interpretation from the Planning Commission concerning whether two dwelling units connected by a wall shall be considered a “Duplex Dwelling.” She said Title 16 of the Municipal Code defines a duplex dwelling as a building containing two dwelling units. Also Title 16 defines “building” as a structure built for the shelter or enclosure of persons, animals, chattels or property of any kind.

In 2004, the Planning Commission approved a 136 lot subdivision (SUB 03-05) of property located at NW 3rd Avenue and N Cedar Street. The approval included required construction of twelve duplexes. A homebuilder has proposed to construct two structures that are side by side on the lot with open space between them, and at both ends of the building there would be a wall that connects those two parts of the structure together so that from the outside it gives the appearance of one building.

Carla Ahl said that duplex might not have been right word to use in the original application in that each unit is a separate lot, normally a duplex is one lot, one owner and two units. This will be two lots with two owners connected by a wall. The reason the builder wants to do this is for sound separation, but if you separate the units they are subject to seven foot setbacks and they won't fit on the lots.

Commissioner Taylor asked if the false wall would be on both ends with a walkway enclosed on both sides but no roof.

Ms Hardy said it would create a courtyard between the two halves of the structure. The property line runs down the middle of the courtyard.

Dustin Hamby, applicant, said the courtyard would be a gated enclosure on both ends to get into for maintenance of the separate walls. It would be considered common open area between the two units.

Commissioner Taylor asked if there would be a door accessing either of the dwellings from the interior of that space.

Mr. Hamby said no. It is a fire wall on both sides so there can't be an opening or anything like that. There would be gates on at each end of the building.

Commissioner Milne asked who would regulate potential disputes between adjoining owners. What would prevent an owner from putting a fence down his side of the property.

Mr. Hamby said it would be in deed and final purchase of the house that it is a common area between both units. It is a separation to give some privacy; it is not there for use by either house.

Commissioner Milne stated she understood the concept of what the applicant is trying to do and sympathizes because she understood that most home owners given the choice would rather have total separation than be sharing a wall. The arched doorway is three feet wide.

Commissioner Slagle asked if the common space would be maintained by the homeowners association.

Mr. Hamby said the homeowners association would regulate some of it, but it will probably be a concrete area for drainage.

Commissioner Taylor asked if the houses would have any windows that open on to the area. Mr. Hamby responded no it has no openings at all. Commissioner Taylor said it was exactly like a duplex except it is split apart.

Commissioner Slagle asked if the Commission were to approve this would that be setting does that set precedence for any other duplex.

Ms Hardy responded that it would.

Commissioner Ewert asked if the illustration was the front or the back of the house.

Mr. Hamby said it was the back of the house.

Commissioner Ewert asked if the front was going to be open.

Mr. Hamby said both the front and back would have gates and look like the illustration.

Ms Hardy said that because duplexes were required on these lots the builder has come forward with this creative type of duplex and they want to know if the Commission would consider this a duplex.

Commissioner Ewert said that in his mind a duplex is a two rental units. He sees this being sold as two separate houses.

Ms Hardy said the Code does not differentiate the ownership it only says a duplex is two dwelling units located within a building. It doesn't state who has to own which part of the building.

Commissioner Ewert asked what the definition of a building is.

Ms Hardy said a building is a structure build for the shelter or enclosure of persons, animals, chattels or property of any kind.

Commissioner Taylor said that “enclosure of chattels” means if you put your garbage cans there you have enclosed chattels.

Commissioner Ewert said the space wasn’t enclosed.

Commissioner Taylor said it was enclosed on four sides and only open to the sky. The definition says shelter or enclosure and interprets that to mean that shelter has a roof and enclosure being enclosed.

Commissioner Slagle asked if it would be considered a duplex with two attached garages and the units being separated.

Ms Hardy responded yes if there is a common wall between the units.

Commissioner Slagle asked if there was a gate between at both ends would that be considered enclosed.

Commissioner Taylor said it would be enclosed as any other fence with a gate.

Commissioner Milne said it doesn’t fall under the condition of a shelter because it isn’t sheltered.

Commissioner Taylor said he agreed and that is why the operative was “or” enclosure.

Commissioner Milne said that putting a fence around your property was enclosing it and you don’t call the fence a building.

Commissioner Taylor said that under this definition it is pretty flexible.

Commissioner Ewert said the problem was the attaching of two structures together making them one structure. There would be no access into the common courtyard.

Commissioner Milne said the Commission was being asked to interpret the definition and the Commission should not feel bound by the definition that is currently in the Code. We can refine, decide what that definition is.

Commissioner Taylor said the Commission could interpret the definition as written, but the Commission has to use the words, not modify the words. The Commission has to use the common dictionary usage.

Commissioner Taylor thinks this is creative and glad to see someone come in with some new way to give people their privacy and keep the price down.

Commissioner Milne asked the applicant if he is convinced that this design is more attractive and acceptable to a potential buyer

Mr. Hamby indicated they had units like this in Salem.

It was moved by Commissioner Taylor to interpret the definition of a duplex dwelling in the Canby code to include structures like shown in Exhibit A of the Memorandum from Melissa Hardy dated April 14, 2008 and it should require gating on both sides to meet the definition; any different design would have to be considered by the Planning Commission. It was seconded by Commissioner Slagle.

Commissioner Ewert said he would be more comfortable if this specific proposal was within the definition and anything else would have to come before the Commission.

Commissioner Milne did not like the proposal and could not support the motion.

Commissioner Slagle said she thought it was a creative idea, decent solution to a problem and willing to give it a try.

The motion passed 3-1 with Commission Milne voting No.

Initiation of a Canby Municipal Code Amendment for the purpose of updating the City's floodplain management regulations – The Planning Commission to consider, and provide direction to City Staff regarding initiation of a Canby Municipal Code Amendment for the purpose of updating the City's floodplain management regulations, including adoption of the updated Flood Insurance Study, to ensure compliance with the National Flood Insurance Program.

It was moved by Commissioner Milne to initiate an amendment to the Canby Land Development and Planning Ordinance (Title16) for the purpose of amending Canby's flood hazard protection regulations. It was seconded by Commissioner Slagle. The motion passed 4-0.

IV. FINDINGS None

V. MINUTES

February 11, 2008 - Commissioner Milne moved to approve minutes of February 11, 2008 as corrected. Motion seconded by Commissioner Taylor and passed 3-0 with Commissioner Slagle abstaining.

VI. DIRECTOR'S REPORT

Melissa Hardy said there was no Director's report and asked if any Commissioner had any questions.

Commissioner Ewert asked about the Director's position. Ms Hardy said she did not have any information.

Commissioner Taylor asked about the fence in Darcy's County Estates.

Ms Ahl said they would be coming back to the Commission with probably a new design.

VII. ADJOURNMENT