

**MINUTES**  
**CANBY PLANNING COMMISSION**  
7:00 PM – September 8, 2008  
City Council Chambers – 155 NW 2<sup>nd</sup> Avenue

---

**PRESENT:** Chair Dan Ewert, Vice Chair Jan Milne, Commissioners Chuck Kocher, and Jared Taylor

**ABSENT:** Bruce Holte and Misty Slagle

**STAFF:** John Kelley, City Attorney; Matilda Deas, Project Planner – AICP; Melissa Hardy, Associate Planner and Jill Thorn, Planning Staff

**OTHERS PRESENT:** Mike Wells, Bob Zimmer, Charles Burden, Debbie McKee, Seth King, Jon Hummelt, Jim Beamer, Brent Ahrend, Syble McQuirk, Ralph McQuirk, Walter Devine, Shirley McKinney, Arlene Andersen, Mary Turner, Margaret Clark, Joni Byrd, Frank Leuck, Larry Ball, El Donna Duffy, Tom Duffy, Hubert Aebischer, Helen Cox, Lillian Chais, Russ Chin, Diana Chinn, Margaret Hard, Don Fritts, Margaret Schueber, Pat Ratheage, Mary Wonder, John Junkin, Dean Pollman

**I. CITIZEN INPUT** None

**II. PUBLIC HEARINGS**

**MOD 08-12 of Rite Aid DR 07-06** - The modification involves a change from right-in/right-out only access to Highway 99E to a right-in only access from Highway 99E to the Rite Aid site. The access point to Highway 99E has also been moved a short distance to the west from its previous location. The proposed modification is the only issue before the Commission regarding the Site and Design Review for the Rite Aid Drug Store.

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.

John Kelley, City Attorney, said that the attorney for Mr. Pollman was requesting that the record be held open for seven days for additional evidence. This would be 5 PM on September 15, 2008. Then there would be a seven day period for the applicant to respond and this application would be back before the Planning Commission on October 13, 2008 at 7 PM.

Mr. Kelley also said that the Planning Commission would hear from everyone present but would not deliberate and make a decision until October 13, 2008.

Matilda Deas presented the August 28, 2008 staff report for the record.

Ms. Deas stated that staff concluded the application meets all approval criteria.

**Applicant:** John Junkin, Attorney for Jon Hummelt, stated that in October of 2007 the Planning Commission had approved the site and design review and that Condition 5 was the reason for the hearing. Condition 5 stated that the applicant had to gain approval from Oregon Department of Transportation (ODOT). On January 4, 2008 ODOT gave approval for right-in

only approach to be located as close as possible to the Rite Aid western property line. ODOT also required Rite Aid to pay for the median. The applicant didn't think the median was needed.

Mr. Junkin stated that the applicant had complied with Condition 5 and disagreed with the City that a minor modification was needed.

The opponent was not aware of the modification and appealed the decision to the Land Use Board of Appeals (LUBA) on July 10, 2008. All of the parties agreed to a voluntary remand from LUBA to save time and money, thus the hearing was being held tonight.

The applicant has a deeded right of access onto Highway 99E to his property and has agreed to provide behind the building a secondary easement from S. Pine Street. The opponent's attorney has been given the easement information.

Mr. Junkin is in agreement to leave the record open with final arguments due on September 22<sup>nd</sup> at 5 PM.

Mr. Junkin addressed the opponent's attorney's request to continue this hearing until ODOT's final decision on October 18, 2008. Mr. Junkin felt that was unnecessary as the decision had been made in January of 2008 and the right to appeal the supplemental findings was in August.

Mr. Junkin then discussed the opponent's attorney argument that CMC16.46.090 A limits vehicular access to Rite Aid from Pine Street. Mr. Junkin said that CMC 16.46.090 A applied to residential subdivision not commercial projects.

Jon Hummelt, applicant, stated he had done everything he had been told to do. The access would be approximately 45 feet from the property western line.

Brent Ahrend, Group McKenzie and traffic consultant for the applicant, stated he had reviewed the ODOT decision. The median had come to ODOT's attention and if funds had been available it would have been put in previously. The AM peak hour traffic count for Canby Manor was 3 vehicles per peak hour and the PM peak hour traffic count for Canby Manor was 5 vehicles per peak hour. He felt the biggest benefit for Canby Manor was the access off of Pine through the Rite Aid property as it was much safer.

Commissioner Ewert asked if there would be an easement and was there sufficient turning radius.

Mr. Junkin responded that the Fire Department had looked at the easement and it would meet their requirements and the applicant was willing to cooperate with Mr. Pollman.

**Proponents:** None

**Opponents:** Seth King, attorney for Dean Pollman of Canby Manor, stated that Canby Manor had one deeded access from ODOT and that Canby Manor will be damaged if Rite Aid puts their access so close to the Canby Manor access. He requested a continuance until the order is final with ODOT.

He disagreed with the applicant's attorney that the CMC 16.46.090 A was not limited to residential subdivisions. He supported a crash gate instead of a full access easement as there was no way to stop traffic from leaving Rite Aid property and going into Canby Manor.

Commissioner Taylor asked what Mr. King's client's concern was with the access as approved.

Mr. King stated it has been moved closer to Canby Manor's driveway and will cause more conflicts.

Dean Pollman, owner of Canby Manor, said he had been offered \$50,000 for the access, but after looking at the situation, felt he could not sell his people out.

Commissioner Milne asked staff for clarification about the access on the west side, the easement and crash gate.

John Kelley responded that the driveway comes out of Canby Manor only. The applicant was willing to grant an easement for Canby Manor residents to cross the Rite Aid property and exit onto Pine Street. The Canby Fire Department had required the access and crash gate to provide a secondary fire access to the Canby Manor Manufactured Home Park.

Commissioner Kocher stated he drives seniors and felt the access from Pine would be a good idea.

Mr. Pollman stated that in the beginning he felt the same way until he thought it through.

Commissioner Taylor asked about the 5 cars per peak hour and 35 trips per car into Rite Aid and what Mr. Pollman thought.

Mr. Pollman said there was lots of traffic, 56 residents of the park with 100 plus cars and the study was not his study.

Mr. King said that with the two driveways closer that it would put more vehicles in a smaller area.

Mr. King asked for clarification on the open record period. Would it be 7 days for additional evidence, 7 days for all parties to rebut and then 7 days for the applicant to rebut.

John Kelley said that would be the process.

Commissioner Taylor asked Mr. Pollman where in the record it said 800 trips per day would occur at Rite Aid. Mr. Pollman response was that it was from the applicant's traffic study.

Debbie McKee, Manager for Canby Manor, stated that the three driveways for the shopping center, Canby Manor and Rite Aid was the main concern of the residents. She also mentioned that the bus stop would make the situation worse.

She had concerns about the loading area and how a delivery truck would park behind Rite Aid as she thought it was just a man door for unloading.

She felt that the movement of the driveway might be a minor modification, but to the residents it was major and asked that the driveway for Rite Aid be moved or removed.

Commissioner Taylor stated that ODOT had not resolved the bus stop issue.

Commissioner Taylor said that he felt the ability to turn right and left was more dangerous, so how was the right in making the area worse.

Ms McKee stated there had been no accidents at the entrance to Canby Manor and the accidents occur at Highway 99E and Pine Street.

Don Fritts said his RV and truck were 51 feet from bumper to bumper and he had concerns about getting in and out with the new configuration.

Syble McQuirk asked who had taken the tanks out of the ground and had soil samples been taken.

Chair Ewert responded that was outside the scope of the hearing, but the applicant may choose to respond during rebuttal.

Ms. McQuirk had concerns about the ability of emergency vehicles to enter and leave Canby Manor at all hours of the day and night.

Frank Leuck said that the three exits to Highway 99E was actually five and there were 20 shops within the area and by putting in the median it would force all the traffic north.

He said the 4 to 7 PM traffic is trucks, trailers, and cars and when the light changes at Pine the traffic backs up. He felt the median was really tough on the Canby Manor residents.

Commissioner Taylor asked if a "private drive" sign would help.

Mr. Leuck said he didn't see the need to go through Rite Aid and no, a sign would not help.

Ralph McQuirk said the traffic queuing would cause issues with the median.

Walter Devine said he had lived in Canby Manor for 18 years and there had only been two wrecks at the entrance, one of which was when he was hit by another car. Mr. Devine also asked about the public notice for the original hearing.

John Kelley said that the property owner was notified.

Matilda Deas stated that Debbie McKee had attended the hearing.

El Donna Duffy had concerns about the commercial traffic and was not in favor of the easement access but the crash gate was okay.

Commissioner Milne asked if a sign that said "private drive" would solve the problem.

Ms Duffy did not think so.

**Rebuttal:** John Junkin, attorney for the applicant, said the hearing was limited to the modification of the access as approved by ODOT. The applicant did not want the median, but was required by ODOT to be put it in. ODOT's job was to make the highway safer and the solution proposed by ODOT would be safer.

He stated the easement was prepared and given to the attorney for the opponent, but there had been no response from the opponent. The easement was not a requirement of the Planning Commission, but of the Fire Department. A crash gate or open access either way was acceptable to the applicant.

Brent Ahrend, traffic engineer, stated that peak hours was an industry standard and 7 to 9 AM were the range for morning and 4 to 6 PM the range for evening. When the traffic study was done at the entrance to Canby Manor it was found that 7 to 8 AM were the peak in the morning and 4:30 to 5:50 PM the peak in the evening. He stated that the right out would be much safer than the conditions today.

Mr. Junkin stated he had the contact info from Ms McQuirk and would respond to her questions.

Jon Hummelt said he appreciated all the comments and wanted the retail site to be successful. The drive up window would be for drop off and pick up of prescription drugs only.

Chair Ewert closed the public hearing and announced the Commission would deliberate and reach a decision on October 13, 2008 at 7 PM.

**SUB 08-02 – Zimmer Ventures, LLC / Canby Industrial Venture, LLC** – Request to subdivide approximately 9.98 acres of land into 7 lots ranging in size from 24,689 to 151,768 square feet, with a concurrent request for a variance of CMC 16.64.020 in order to waive the requirement for construction of a cross-street from Sequoia Parkway, and a variance of CMC 16.64.030 in order to waive the requirement for construction of a pedestrian way through the middle of the block from Sequoia Parkway. The subject property is located north and south of Sequoia Parkway in the 300 Block, and is zoned Heavy Commercial Manufacturing (C-M), Light Industrial (M-1), and Heavy Industrial (M-2), and is located in the Canby Industrial Area Overlay (I-O) Zone.

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.

Melissa Hardy presented the August 29, 2008 staff report for the record. She stated an additional condition was being proposed by the Building Official which will be: Prior to final plat approval, subdivider shall provide the City with an as-built survey, prepared by a licensed surveyor, which demonstrates where all structures are located in relation to the new proposed lot lines, particularly that the net lot line separating the two lots identified as lots 5 and 6 on the tentative subdivision plan is located 3'6" from the south wall of the building being constructed on lot 6 and 10' from the northerly wall of the greenhouse being constructed on lot 5 in conformance with the building plans that were approved for those structures; OR if survey is unable to demonstrate conformance with the property line separations that the buildings were designed for in the approved building plans, subdivider shall submit redesigned building plans to the Canby Building Department to demonstrate that buildings meet all code requirements, and shall make whatever changes are necessary to the structure(s) to bring them into conformance with code requirements, and shall obtain approval from the Canby Building Official prior to final plat approval.

Ms Hardy read into the record a letter from William McCormack of Trend Business Center, LLC. She described the setback issue being raised.

Ms. Hardy stated that staff concluded the application meets all approval criteria.

**Applicant:** Mike Wells of Wells Otis Development representing the owner of Zimmer Ventures, stated he had met with Mr. McCormack, but felt the condition Mr. McCormack was seeking would best be addressed at the time of site and design review.

Mr. Wells discussed the variance request, and stated that he felt the code was designed to address residential block and not large commercial/industrial sites and that was the reason for the variance.

Mr. Wells asked that the final approval apply to lots 1, 2, 3, 4, and 7 and not 5 and 6 as they were currently being developed.

Commissioner Milne asked staff if there were any concerns with doing this.

Ms Hardy stated that she believed it would not be appropriate to exclude those lots from having to meet the subdivision approval criteria, and that if those lots already meet the conditions then the applicant only needs to demonstrate compliance with the findings.

**Proponents:** None

**Opponents:** None

**Rebuttal:** None

Chair Ewert closed the public hearing.

Commissioner Taylor stated he had a concern with the variance request and he felt that the approval criteria were not being met; but he clearly agreed with the request the owner was making.

Commissioner Milne said she disagreed with Commissioner Taylor and felt the Commission had the ability to award a variance. She felt the Industrial Overlay Zone was an extra ordinary circumstance. She felt Criteria 2 dealing with the property rights of the owner should be considered because of the size of the industrial/commercial lots.

Commissioner Ewert stated he agreed with Commissioner Milne and that words like exceptional and extra ordinary might be left open to interpretation.

Commissioner Taylor said he saw this as a risk.

Commissioner Ewert said he was willing to roll the dice.

It was moved by Commissioner Milne that the Planning Commission approve tentative subdivision application SUB 08-02 proposed provided that the four conditions of approval recommended by staff this evening are met, based upon the findings contained in the August 29 staff report and the findings from tonight's public hearing. The motion was seconded by Commissioner Kocher. The motion passed 3-1 with Commissioner Taylor voting No.

**III. NEW BUSINESS None**

**IV. FINDINGS None**

**V. MINUTES**

**August 25, 2008** - Commissioner Milne moved to approve minutes of August 25, 2008 as presented. Motion seconded by Commissioner Kocher and passed 3-0 with Commissioner Taylor abstaining.

**VI. DIRECTOR'S REPORT**

Ms Hardy provided a staff update concerning the people who attended the previous Planning Commission meeting asking for assistance with their fence issues. She stated that the City staff has been in contact with them, and that they have indicated they are working on a fence proposal to show the City staff.

**VII. ADJOURNMENT**