

**MINUTES**  
**CANBY PLANNING COMMISSION**  
7:00 PM – January 28, 2013  
City Council Chambers – 155 NW 2<sup>nd</sup> Avenue

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- PRESENT:** Commissioners Shawn Hensley, Sean Joyce, Charles Kocher, John Savory, Tyler Smith, and (Vacant)
- ABSENT:** John Proctor
- STAFF:** Bryan Brown, Planning Director; Angie Lehnert, Associate Planner and Laney Fouse, Planning Staff
- OTHERS:** Steve Abel, Mike Connors, Jim Coombes, Lee Leighton, Brent Ahrend, Jake Tate, Curt Hovland, Wayne Oliver, Ryan Oliver, Mike Arb, Roger Skoe

**1. CALL TO ORDER**

Chairman Smith called the meeting to order at 7:00 pm.

There was a request by Commissioner Proctor to participate by video conferencing. Commissioner Savory moved to allow Commissioner Proctor to participate by video conferencing. The Motion was seconded by Commissioner Kocher. The motion passed 5/0.

**2. CITIZEN INPUT – None**

**3. PUBLIC HEARINGS – None**

Chairman Smith opened the public hearing and read the public hearing format.

All five Commissioners stated they had no conflict of interest.

Angie Lehnert, Associate Planner entered the staff report with the PowerPoint presentation into the record. Ms. Lehnert said the previous Type IV application which received final approval from the City Council regarding the Downtown Overlay Boundary is currently under appeal to Land Use Board of Appeals.

Ms. Lehnert presented the conditions of approval recommended by staff and said that staff had some proposed rewording of some of the conditions for specificity. Ms. Lehnert said the conditions of approval include the following:

1. The applicant shall demolish the existing driveway along Locust Street and replace is with a new curb and sidewalk that matches the existing curb and sidewalk and the final sidewalk design must be approved by the city prior to construction.

Chair Smith asked for clarification on who recommended the condition of approval for the demolition of the driveway. Ms. Lehnert said both the City and the applicant but the City had not received engineering construction drawings for the driveway and wanted to have the City engineer look at the final construction drawings.

2. The applicant has received approval of file #TA 12-01/ZC 12-02 by an ordinance of Canby City Council regarding the amendment of the Canby Land Development and Planning Ordinance to alter the subarea boundary of the Downtown Overlay District. The case is currently under appeal to the Oregon Land Use Board of Appeals (LUBA). As a condition of approval of this Site and Design Review, files #TA 12-01/ZC 12-02 must be determined to be final, with no further rights of appeal.
3. The site's vehicle maneuvering area shall be set back an average of 15 feet from the front lot line; this setback shall comply with the landscaping standards of 16.49.080.100 and 16.49.120.
4. The site's signage shall not result in glare onto neighboring properties or onto public right-of-way per the standard of 16.42.040(B) (3).
5. The proposed canopy lights shall be recessed up into the canopy or apply shielding in a manner that prevents light trespass, as defined in 16.43.020.
6. The applicant will be required to maintain all landscaping on the site.
7. The applicant shall coordinate this development with the Oregon Department of Transportation (ODOT) and shall obtain all necessary permits from ODOT prior to construction.
8. The development shall comply with the standards of all applicable outside utility and regulatory agencies; including Canby Utility (CUB), Northwest Natural Gas, Wave Broadband, Canby Fire District, Canby Telcom, the Oregon Department of Transportation (ODOT), and Clackamas County.”
9. The development shall comply with all applicable City of Canby Public Works Design Standards.
10. The development shall comply with design requests from agencies and Canby Public Works representatives that submitted design recommendations; these comments are attached and incorporated into this staff report and include comments from Hassan Ibrahim, Curren McLeod, consulting City of Canby Engineers, items 1-9 in memo dated 1/10/13; Chris Maciejewski, DKS, consulting City of Canby Traffic Engineers, memorandum dated 7/17/12; Gary Stockwell, Canby Utility Board, comments dated 1/9/13 with attached site plan markups and comments dated 2/21/12; Dan Mickelsen, Canby Public Works, comments dated 1/14/13; Dan Kizer and Jennifer Wood, NW Natural Gas, comments dated 6/25/12 & 1/9/13, and Darvin Tramel, City of Canby Environmental Services Coordinator, comments dated 1/14/1.

Chair Smith asked for some clarification on the design requests from agencies and noted that it sounded like a blank check for what the agencies might request. Mr. Brown suggested language stating the applicant shall comply with the design statements within the comment forms. Chair Smith said the Commissioners could work that out during their discussion.

11. Easements for electric service by Canby Utility shall be dedicated along the 2<sup>nd</sup>

Avenue and Locust Street frontages as indicated in Gary Stockwell's comments dated 2/21/12.

12. Tree species suitable for planting under overhead lines along the Locust Street frontage, in compliance with the provisions of 16.49.120(F) and as approved by the City Arborist, shall be specified on the final landscape construction plans.
13. On-site storm water management shall be designed in compliance with the Canby Public Works Design Standards, and in particular:
  - a. The project shall be required to retain and infiltrate on-site all stormwater generated by the development up to the 25-year, 24-hour storm event (25-year storm) as defined in Section 4.301 of the Canby Public Works Design Standards.
  - b. An emergency overflow shall be designed to direct runoff from storms in excess of the 25-year storm to the street as defined in Section 4.311 (b) of the Canby Public Works Design Standards.
14. New condition concerning right-in/right-out only restriction, use city traffic engineer's wording. Condition the site so that if future ODOT monitoring, evaluation, or design review of improvements to OR 99E find that the full access to OR 99E has safety issues related to queuing onto the highway, or crash frequency increasing above typical levels, or conflicts with the design for the pedestrian refuge island (e.g., inadequate deceleration space or queuing conflicting with safe crossing conditions for pedestrians), the owner/operator of the site will accept the access being restricted to right-in/right-out manoeuvres. This condition should be placed upon the property such that it carries from one owner to another (to be effective if the property ownership changes in the future).

Commissioner Joyce asked if CAT was still considering re-doing the bus routes and bus stops.

Mr. Brown said there is always an ongoing evaluation but due to the recent significant downsizing the routes have been set and this new set of routes includes stops both ways on 2<sup>nd</sup> Ave. and at the intersection of Hwy 99E and Locust. He said the bus will not be able to stop where the driveway exists onto 2<sup>nd</sup> Avenue and additional conflicts with on-street parking may occur.

Ms. Lehnert suggested the Commissioners change the wording from "should" to "shall" in order to be certain the condition placed upon the property will carry from one owner to the next.

Ms. Lehnert said there were some procedural conditions the applicant would need to complete like getting a building permit prior to the start of construction.

15. The proposed monument sign shall have a distinct base, middle, and top, and the base and top shall be constructed of stone, brick, or wood as specified in 16.42.040(C). The sign shall also be in conformance with the requirements of 16.42.050, Table 3, "Highway Commercial Zone (C-2) and Outer Highway Commercial Area in the Downtown Canby Overlay Zone (DCO-ohc)". *(This condition was added to the original list of conditions presented in the January 28, 2013 Staff Report at the Planning Commission's request and determination that the monument sign as proposed needed a frame or top cap to more*

*clearly meet the above cited standards.)*

Ms. Lehnert said there were two potential conditions the Commissioners could consider which included the requirement of a frame around the sign as well as decreasing the size of the signs.

### **COMMISSIONERS DISCUSSION:**

Chair Smith asked if the sign sizes were calculated from the ground up or just based on the actual wall face of the canopy. Ms. Lehnert said she used just the size of the canopy in her calculations. She said if the measurements started at ground level than the size of the signs would be okay.

### **PROPONENTS**

Lee Leighton, Westlake Consultants, gave a recap of the previous application for a Text Amendment/Zone Change to alter the subarea boundaries of the Downtown Canby Overlay Zone.

Jake Tate, Great Basin Engineer, Design Engineer, pointed out the main design features of the fuel station site design.

Commissioners voiced concern about the limited on-site parking although they recognized that employees would be using public on-street parking along 2<sup>nd</sup> Avenue.

Commissioner Savory said he was concerned about the restrooms not being made available to the public. Mr. Tate said the lack of a public restroom was mainly due to maintenance issues and that the restrooms would be provided only for employees.

Mr. Tate explained the preferred setback option of 5 to 6 foot versus the 15 foot setback requirement next to Hwy 99E which is called for in Condition #3 and how the smaller setback would allow improved circulation on the site and making it more auto customer friendly.

Chair Smith asked if the applicant would be able to move forward if they were to go with the 15 foot setback.

Mr. Tate said the 15 foot setback creates a bottleneck for vehicles during peak times but it can be done although they would prefer the much narrower 5 to 6 foot landscape buffer.

Mr. Tate also noted that fuel stations must also meet the State of Oregon requirements when it comes to their signs, which requires them to post all fuel prices and thus their bigger sign conflict with City's sign regulations. He asked the Commission to take the State's extra requirement into consideration.

Chair Smith asked Mr. Tate where he thought the measurements for the canopy sign should be taken

Mr. Tate said that if the canopy face was considered a building the sign would be within the allowed limits because it would be measured from the ground up. He said he had seen it done by measuring just the canopy section as well as from the ground up, depending on the jurisdiction.

Chair Smith asked Mr. Tate if he was aware of any City or State code provisions which specifically said that a canopy was a building. Mr. Tate said he did not and the way he interpreted it as a structure whereas a building has to do with habitation.

Commissioner Joyce asked to revisit the parking issue and asked how the minimum number of parking stalls was determined for this site.

Mr. Tate said they were determined by the square footage of the two kiosks which totaled only about 330 square feet and would require only one parking stall although they added an additional ADA parking stall.

Commissioner Joyce said his biggest concern is the on street parking that the employees might need to utilize and how that might affect the existing bus stops on SE 2<sup>nd</sup> Avenue.

Brent Ahrend, Traffic Engineer, Group Mackenzie talked about key points of the Traffic Analysis and said that now is the time to address the impacts of the proposed fuel facility and to talk about the Traffic Study requirements and what it found. He said the scope of the Traffic Study is determined by the City and their consultant traffic engineer DKS.

Mr. Ahrend said an approach application was submitted to ODOT for full movement access which ODOT approved. He said ODOT was agreeable to what is currently proposed allowing a right in/right out restriction and a median would probably be installed at that time.

Mr. Ahrend said that DKS reviewed and accepted the Traffic Impact Analysis and made their recommendations in a July 17, 2012 memo which was a part of the Planning Commission packet and stated their trip generation was based upon surveys taken at two Fred Meyer facilities; one at Oak Grove and one at Sandy. He said DKS used the higher AM/PM trip generation numbers as a worst case scenario in their analysis. Mr. Ahrend said ODOT reviewed and approved the left turns onto Hwy. 99E and DKS had noted that left turn conflicts would be infrequent. He said that the City has a plan for a pedestrian refuge sometime in the future and that it would also restrict traffic to right in/right out.

Mr. Ahrend said there were some questions whether a neighborhood through trip study was needed on 2<sup>nd</sup> Avenue. He said he didn't think one was needed because 2<sup>nd</sup> Avenue is the boundary between residential and commercial and that 2<sup>nd</sup> Avenue has to serve both uses.

Commissioner Kocher said he had a problem with traffic that will be added to 2<sup>nd</sup> Avenue because it is bordered by a neighborhood which is full of apartments. He also said there would be a problem for drivers trying to turn left onto Hwy. 99E from Locust Street, who would now travel down 2<sup>nd</sup> Avenue to Ivy Street which would create an even greater problem for an already congested street.

Mr. Ahrend said compared to today it would not be as many trips as some people think.

Lee Leighton talked about the landscape widths and how the alternative “wavy” landscape pattern would appear to be wider to those traveling along Hwy. 99E. Mr. Leighton also noted that Mr. Ahrend’s surveys were based on actual customers at Fred Meyers fuel stations who buy their fuel on the same trip as when they are visiting the Fred Meyer Store making them shared trips. He said that restrooms are available at the stores and not really needed at the fuel islands.

**OPPONENTS:**

Mike Connors, Hathaway, Koback, Connors, the attorney for Save Downtown Canby, submitted a six-page letter to the Planning Commission listing concerns raised about the proposed fuel facility and how it does not meet several development approval standards.

Mr. Connors said when this started out they were under the impression they were addressing two consolidated applications but then the applications were separated and the Text Amendment/Zone Change application was the first one to be addressed. He said that three of his previous letters were introduced during the Text Amendment/Zone Change process and formally requested they be entered into the Site and Design Review record.

Mr. Connors said Fred Meyer has responded only to issues raised during the Text Amendment/Zone Change portion and took the position that the Site Plan process had not begun and they would deal with it later.

He said they were surprised that nothing had been submitted by Fred Meyer in response to issues raised in particular about traffic.

Mr. Connors said that when the Text Amendment/Zone Change vote took place, a number of the Commissioners expressed concern regarding the traffic and had serious doubts about the methodology with the conclusion of the traffic impact analysis and the applicant had yet to respond to the serious flaws in the TIA.

Mr. Connors said the January 28<sup>th</sup> Staff Report incorrectly concludes that certain approval standards do not apply and provided the Commissioners with a list of those issues.

Mr. Connors said the issues raised regarding the applicant’s traffic analysis never received a response.

Chair Smith said that the City code requires mitigation measures of any impacts to be adequate and feasible but that he had not yet heard that addressed.

Mr. Connors said basically there had been little or no mitigation proposed and before mitigation is determined you have to evaluate all of the impacts making sure the amount of traffic is accurate and the scope of the area being studied includes the whole one half mile area.

Ms. Lehnert said that Staff goes with the hired traffic engineer’s conclusion.

Mike Ard, PE, transportation engineer, Lancaster Engineering talked about the detailed

review of the Group Mackenzie Transportation Impact Analysis. He said there are safety and capacity concerns on Hwy 99E in the vicinity of this site, especially at Ivy St. Mr. Ard shared information on trip generation and that the TIA needs to be corrected to reflect a more accurate estimate of traffic which will be generated by the development.

Mr. Ard told the Commissioners there were a number of questions they should be asking of the applicant including if the trip generation the applicant used was typical for Fred Meyer sites; what is the impact on the local streets like SE 2<sup>nd</sup> Avenue and at Pine and Ivy Streets.

Commissioner Joyce asked for clarifications about trip generation to which Mr. Ard referred to the distribution diagram in the traffic study to explain trip generation.

Commissioner Smith asked if Mr. Ard had previously argued that the shared trips were overestimated by the applicant. Mr. Ard said he had. Commissioner Smith asked if the amount of shared trips went down then the amount of pass-by trips would be increased which in turn would lessen the impacts.

There was some discussion about whether the internal reductions would apply to the site if it was not located next to a Fred Meyer store. Mr. Connors directed attention to the emails from the City's traffic engineer and ODOT both having concerns whether the internal trip reductions would apply for this site.

Curt Hovland, owner of Hulbert's Flowers, pointed out the major problems he sees with the increased flow in traffic to the fuel station when drivers will be utilizing the center lane which also provides the left turn lane into Hulbert's Flowers.

### **REBUTTAL:**

Steve Abel, Stoel Rives, attorney for Fred Meyer, addressed some material Mr. Connors presented regarding development standards. He said the City's 16.41 code allows for alteration by the Commission's discretion to better meet the purposes of the code. He said he thinks staff responses to 16.49 standards as they relate to the site and design review are accurate.

Mr. Ahrend rebutted testimony given by Mike Ard and explained how trips were counted. He said they had adequately addressed the impacts of this particular project. Mr. Ahrend said that if there are significant traffic problems in the future that ODOT could come in and install a median which could impact all of the driveways. He said that should a pedestrian refuge be put in it would restrict left turns in both directions.

Commissioner Hensley said he took part in the meetings where the idea for a pedestrian refuge came up. He said he thought it was being taken out of context here.

Chair Smith closed the public hearing.

### **DELIBERATIONS:**

Chair Smith asked that the Commission accept the three letters referenced by Mr. Connors into record.

Chair Smith said he agreed with the proponent that the Commission would have more leniency on interpretation to fulfill the intent of the code. He said the reason he brought up the interpretation on the frontage is because the code makes it clear that it should be measured from the ground up and he did not think they needed to fulfill any intent. He said if they required the right in/right out as a mandatory condition they would be remiss as it could impact both businesses so he thinks that condition should be left out. He said it makes sense to have more than one parking spot but the code calls for one parking spot and they meet the criteria. Chair Smith said as a condition of approval they should require the applicant to submit and use a revised lighting plan. He said he had mixed feelings on what the applicant called the “wavy” setback line versus the straight across 15’ line and although he leaned toward the 15’ setback he could go either way. Chair Smith said the elephant in the room was the traffic issue and agreed with Mr. Abel that it had come down to a battle of the experts. He said he has not seen any tangible impacts that had not been dealt with.

Commissioner Savory said he preferred the 15’ straight across setback because it would lessen the bottleneck in traffic flow but could be persuaded to go with the wavy design setback. He said he is concerned with the traffic impact on residents on 2<sup>nd</sup> Avenue.

Commissioner Hensley said he prefers the 15’ setback but could be persuaded to go with the wavy design if the traffic flowed through the site better. He said he does not feel there would be a major issue with Ivy Street because a lot of people bypass it and use Knott Street instead. Commissioner Hensley said he does not see any traffic impact at Pine Street.

Commissioner Kocher said he does not have any preference in the landscape design, but struggles with the traffic problem. He said the parking for only one employee means others will be parking out on the street, and because the station will not be located near Fred Meyers, not having a public restroom on the site is still an area of concern for him.

Chair Smith pointed out some procedural steps for when they make decisions. He said he wants to be sure they address the factual questions like, were mitigation efforts enough and the legal questions – if there are any interpretations they are making. He said the Commission can adopt staff findings or modify them, do a combination of the two or even reject them. He said they would want to make sure they make findings about the various issues so everyone will know why we make the decision we make.

Commissioner Joyce said he thinks they should stick with the sign code provisions called for because there is a specific design the City is trying to accomplish and they should not waver from that. He said he is struggling with the parking and the definition of a structure.

There was discussion about the whether the canopy was considered a structure or a building and more discussion about parking and maneuvering but because the applicant is not proposing substantial buildings the standard which is called for in the code is not applicable.

Mr. Brown said he thinks the wavy design for landscaping would function better because it would allow for more onsite maneuvering and less traffic being stacked up on Hwy.



99E.

Commissioners voiced their concerns about the limited on-site parking and Chair Smith said that unless they amended the code there was no way to require them to have more on-site parking because they had already met the minimum parking standards based on building square footage.

**MOTION:**

Commissioner Joyce made a motion to approve the Fred Meyer DR 12-03 with the following conditions as submitted in the PowerPoint addendum presented at tonight's meeting: Condition #1, the applicant shall demolish the existing driveway along Locust Street and replace it with a new curb and sidewalk that matches the existing curb and sidewalk; Condition #2 will stay the same; Condition #3 stay the same; Condition #4 stay the same; Condition #5 stay the same; Condition #6 stay the same; Condition #7 stay the same; Condition #8 stay the same; Condition #9 stay the same; Condition #10 stay the same; Condition #11 stay the same; Condition #12 stay the same; Condition #13 stay the same; Condition #14 will stay the same with additional language at the bottom to read: "with the same use"; Condition #15 will stay the same with the following added: "the monument sign will comply with our City for monument signs of that sort." Commissioner Savory seconded motion.

Discussion on Motion:

Chair Smith asked that the motion be amended to state "it is our interpretation that the canopy is not a building for purposes of the sign code provision"; add "and use" to Staff's proposed findings on Page 18 and Page 20 on the lighting plan; and we add to the findings that "the Traffic Impact Analysis presented by the applicants was more convincing and that mitigation measures were adequate and feasible as presented by the applicant in the Traffic Impact Analysis."

Commissioner Joyce said he would second the changes made to his motion.

Commissioners discussed Condition #14 which would restrict access to the site to right-in/right-out depending upon safety issues relating to queuing onto Hwy. 99E or if crash frequency increases.

Mr. Brown said the condition is written to give ODOT more support and ability to go in and restrict an existing driveway if necessary in the future.

Commissioners discussed the 15' setback requirement and determined the setback was not applicable to this development at all and would not be an ideal configuration for the site.

Commissioner Joyce said he would drop Condition #3 from his motion.

Motion passes 5/0.

**4. NEW BUSINESS - None**

**5. MINUTES**

- a. Commissioner Joyce moved to approve the December 10, 2012 Regular Planning Commission Meeting Minutes as submitted, Commissioner Kocher seconded.  
**Motion passed 3/0 with 2 abstentions.**
- b. Commissioner Kocher moved to approve the January 14, 2013 Regular Planning Commission Meeting Minutes as submitted, Commissioner Savory seconded.  
**Motion passed 5/0.**

**6. ITEMS OF INTEREST FROM STAFF**

- a. Mr. Brown said the Commissioners now had access to the Planners Website.

**7. ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION**

- a. Commissioners discussed parking standards

**8. ADJOURNMENT: 10:25 PM.**