

1 Depoe Bay Planning Commission
2 Regular Meeting
3 Wednesday, October 19, 2005 - 7:00 PM
4 Depoe Bay City Hall

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7 PRESENT: S. McGavock, C. Connors, B. Taunton, B. Langdon, D. Johnson, D. Davilla (arr. 7:02)

8
9 ABSENT: D. Goddard

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11 STAFF: City Planner L. Lewis, City Recorder Pery Murray, Recording Secretary C. Duering

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13 I. CALL MEETING TO ORDER

14 Johnson called the meeting to order and established a quorum at 7:00 PM.

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16 II. APPROVAL OF MINUTES: September 21, 2005 Regular Meeting
17 Langdon moved to approve the Minutes of the September 21, 2005 Regular Meeting as written.
18 McGavock seconded the motion.

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20 Johnson said it was moved and seconded, and called for discussion. There was none.

21
22 Vote: Motion passed.

23 Ayes: McGavock, Connors, Taunton, Langdon, Johnson

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25 III. ITEMS FROM THE AUDIENCE

26 There were no items from the audience.

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28 IV. PUBLIC HEARING ITEMS

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30 A. Case File #7-CS-PC-05
31 Applicant: Tony and Heather Archer
32 Application: Coastal Shorelands

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34 Johnson said testimony and evidence given must be directed toward criteria described by the City
35 Planner, or other criteria in the code that the testifier believes applies to the request. Failure to raise an
36 issue, accompanied by statements or evidence sufficient to afford the Commission and the parties an
37 opportunity to respond to the issue precludes appeal to the State Land Use Board of Appeals on that
38 issue. Application materials or other evidence relied upon by the Applicant had been provided to the
39 City and made available to the Public. He asked if any Commissioner had ex-parte contact, conflict of
40 interest, or bias to declare. Davilla declared that she has represented the Applicant in several real estate
41 transactions and recused herself from the hearing. Johnson then asked if anyone had objection to any
42 Planning Commissioner hearing the case. There was no objection. Lewis summarized the Staff Report
43 (copy attached to original of these Minutes). Written Testimony was received from Fran Recht (copy
44 attached to original of these Minutes). Lewis noted: A property line (west of the Subject Property)
45 discrepancy shown on the Site Plan submitted by the Applicant is a proposed property line not the

1 existing, however Tax Lot #5800 property lines are the existing lines for the proposed site; two existing
2 buildings (a Residence and a Eating/Drinking Establishment) encroach the Subject Property on the north
3 end and their parking is on the Subject Property. Johnson requested the Planner to address Recht's
4 written concerns. Lewis stated the proposed use is a new Office/Showroom/Garage, an outright
5 permitted use. Lewis illustrated (using the Site Plan provided by the Applicant) the inaccurate property
6 line. Johnson asked if the Commissioners had any questions to address to the City Planner. Johnson re-
7 clarified that this is not a request to construct an Accessory Garage but an Allowed Use and the Plot Plan
8 for the Subject Property is correct. The Applicant was given an opportunity to testify and answer
9 questions from Commissioners. A Commissioner asked what is the square footage of the proposed
10 Office/Showroom. The Applicant replied a little more than half. A Commissioner asked if the
11 remainder of the lot would be paved. The Applicant stated he plans to pave the lot eventually. There
12 was no testimony in support of the Application and no testimony in opposition. There was no request to
13 keep the record open. The Public Hearing was closed and deliberations began. A Commissioner
14 suggested that an additional Condition be included that states that the structure shall be used as an
15 Office/Showroom in addition to being a Garage.

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17 Motion: Connors moved to approve the Coastal Shorelands Application for Case #7-CS-PC-05 with the
18 Conditions of Approval as recommended by the City Planner and including the following revision:
19 Insert Item 5. *The structure shall be used as an Office/Showroom in addition to being a Garage.*
20 Langdon seconded the motion.

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22 Johnson said it was moved and seconded, and called for discussion. There was none.

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24 Vote: Motion passed.

25 Ayes: McGavock, Connors, Taunton, Langdon, Johnson

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27 Johnson acknowledged he would sign the Case Final Order tomorrow unless there is an objection.
28 There was none.

29
30 Davilla returned to her seat.

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32 B. Case File #7-CS-PC-04
33 Applicant: A. Joe Dunn
34 Application: Coastal Shorelands

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36 Johnson reminded the Commissioners that this was an Application to construct a Single-Family
37 Dwelling in the Coastal Shorelands Overlay Zone and not a Variance Request. Johnson said testimony
38 and evidence given must be directed toward criteria described by the City Planner, or other criteria in the
39 code that the testifier believes applies to the request. Failure to raise an issue, accompanied by
40 statements or evidence sufficient to afford the Commission and the parties an opportunity to respond to
41 the issue precludes appeal to the State Land Use Board of Appeals on that issue. Application materials
42 or other evidence relied upon by the Applicant had been provided to the City and made available to the
43 Public. He asked if any Commissioner had ex-parte contact, conflict of interest, or bias to declare.
44 Langdon declared that several South Point Neighborhood Residents had approached her with their
45 concerns and she informed them that they should be addressed through Written Testimony or attendance

1 of the Public Hearing. Johnson then asked if anyone had objection to any Planning Commissioner
2 hearing the case. There was no objection. A Commissioner asked is this a continued Public Hearing or
3 a New Hearing. Lewis answered it is a continued Public Hearing and the Commission agreed at a
4 previous meeting to re-open Public Testimony. Lewis summarized the Staff Report (copy attached to
5 original of these Minutes). Lewis noted on Page 2, Applicant's Proposal, first paragraph, the correct
6 request is for a *Coastal Shorelands Application* only not a *Coastal Shorelands Overlay and Variance*
7 *Application*. Written Testimony was received from Thomas Thornton; Fran Recht; Robin R. Crum,
8 Claudia Crum, and Ronald P. Newark (copies attached to original of these Minutes). Johnson asked if
9 the Commissioners had any questions to address to the City Planner. A Commissioner asked why they
10 have three Staff Reports. Lewis and Johnson replied the Planning Commission first reviewed this case
11 on March 16, 2005, some additional information was provided and the Public Hearing was continued to
12 April 20, 2005, and now you have the Staff Report prepared for tonight's meeting encompassing a
13 revised Application. A Commissioner asked the Planner to read the decision from the March 16, 2005
14 Meeting. It was the consensus of the Commissioners to take a short recess to read the Written
15 Testimony received after preparation of the Staff Report.

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17 Recess: 7:40 PM – 7:52 PM

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19 The Applicant was given an opportunity to testify and answer questions from Commissioners. Joan
20 Chambers, Attorney representing the Applicant, 4488 N.E. Devils Lake Blvd., Lincoln City, presented
21 the important issues pertaining to the case as detailed in her prepared Narrative (copy attached to the
22 Staff Report) and responded to some of the oppositions' concerns raised in written comments. She
23 reiterated that this is not a request for a Variance and emphasized a Coastal Shorelands Application
24 requires the Applicant to submit a Plot Plan of the Subject Property not Building Plans; Compliance to
25 the Coastal Setback – Area of Coastal Erosion, Storm Drainage, Flood Hazard, and minimum Yard
26 Requirements. Chambers stated there is no clear coastal bluff/break in slope and referenced Photographs
27 (copies attached to Staff Report.) She submitted a copy of the Staff Report prepared for the Tentative
28 Approval (Hearing Date August 21, 1985) of the 8-Lot Subdivision (Ebb Tide Estates Addition)
29 highlighting *Topography and Vegetation: The property slopes gently from Pine Street towards the*
30 *ocean. The eastern 2/3rds of the property is forested while the western 1/3 has a thick mat of grass to*
31 *the bluff line*. Chambers addressed determining the setback and meeting the criteria for the Area of
32 Visual Concern. Chambers stressed the three exception standards to the Area of Visual Concern and
33 that the Applicant is not required to prove anything that is applicable in the Variance Procedure criteria.
34 She summarized *Page 3., Item 3. Alternative Request for Exception from Section 13.0802* of her written
35 Narrative. Chambers responded to written concerns regarding loss of view and the Subdivision
36 CC&Rs. A Commissioner asked for clarification of her interpretation of the 1985 Staff Report. There
37 was no testimony in support of the Application. Johnson called for testimony in opposition. Robin
38 Crum, 430 Pine Court, stated this is a 13,000 sq. ft. lot with 5,610 sq. ft. useable space. He believes the
39 top of the riprap wall is the determining factor for the top-of-the-bluff line; the exceptions are self-
40 imposed hardships – The Applicant needs to modify his proposed building plan to a reasonable size
41 suitable to the Subject Lot; the lot drops 54' from the center of the sewer storm drain to sea level (over
42 135' run) and does not consider this a gently sloping lot; the Ordinance was adopted in 2004, Mr. Dunn
43 purchased the property in 2005 so he needs to abide by the regulations in place. He referred to Page 13,
44 *Overview*, of his submitted Written Testimony and the attached Photographs. Crum cautioned Mr. Dunn
45 and the Commission of the possibility that approval of this Application would be followed by a request

1 for a seawall in the future. A Commissioner asked what is your concern with this Application, aside
2 from non-conformance to the Rules and Regulations and how will the decision affect your life. Crum
3 replied, the further out this house is built the more it diminishes the sights and sounds of the ocean that
4 we purchased, it will have a direct impact on our enjoyment. Johnson clarified the Geologist defined the
5 top-of-the-bluff as 5' west of the riprap wall and the line of vegetation is a few feet beyond that. A
6 Commissioner read the December 13, 2004 letter amending the recommended setback provided in the
7 Engineering Geologic Hazards Investigation dated November 9, 2004. A Commissioner reminded Crum
8 there is no Ordinance that protects views. There was no further testimony in opposition. Joan Chambers
9 was given an opportunity for rebuttal. She illustrated (Site Plan, Exhibit "A") to validate there is 2,100
10 sq. ft. of buildable space. She concluded exception criteria is that the lot existed prior to the
11 establishment of the Ordinance Amendment; 2 lots received Variances when the Subdivision was
12 approved; the Applicant is willing to accept the vegetation line to determine setback in the Area of
13 Visual Concern; should the Commission view the line as 5' west of the riprap wall as the top-of-the-
14 bluff then the request is to encroach 5' into the Area of Visual Concern.

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16 Recess: 8:37 PM – 8:42 PM

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18 There was no request to keep the record open. The Public Hearing was closed and deliberations began.
19 Johnson acknowledged that determining what line is the line from which the 25' Area of Visual Concern
20 setback should be defined is the issue to be resolved. The Commissioners ensued in discussion
21 concerning the procedure to change the previously unanimous Planning Commission Decision to *use the*
22 *natural bluff line as articulated by Geologist's November 9, 2004 report to determine setback.* The City
23 Recorder quoted Robert's Rules of Order. She believes that it would be appropriate if tonight, someone
24 that voted in support of that previous motion wanted to ask that it be reconsidered. Johnson said there
25 are two significant items that have been presented that are cause for reconsideration, the December 13,
26 2004 letter and the Planning Commission in 1985 setting the precedence that it is a gently sloping lot to
27 the line of vegetation, not a break in topography.

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29 Power Outage: 8:50 PM

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31 VIII. ADJOURN

32 Johnson asked if the Applicant would accept continuing the Public Hearing Deliberations on November
33 16, 2005. There was no objection. There being no further business, the meeting was adjourned at 9:10
34 PM.

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Richard Johnson, Chairman

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42 Carla Duering, Recording Secretary