

1 Depoe Bay Planning Commission
2 Regular Meeting
3 Monday, May 10, 2010 – 6:00 P.M.
4 Depoe Bay City Hall
5

6 PRESENT: G. Steinke, S. Scopelleti, B. Taunton, R. Hageman, P. Leoni
7 ABSENT: D. Goddard, J. Hayes
8 STAFF: City Planner L. Lewis, Recording Secretary C. Duering
9

10 I. CALL MEETING TO ORDER

11 Hageman called the Meeting to order and established a Quorum at 6:00 P.M.
12

13 II. APPROVAL OF MINUTES: April 14, 2010 Regular Meeting.
14

15 Motion: Hageman moved to approve the Minutes of the April 14, 2010 Regular Meeting with the following
16 correction – Page 2, Line 31 MOTION: *Hageman moved to approve Case File #1-LI-PC-10 (Building Permit in*
17 *the Light Industrial Zone) and adopt the Conditions of Approval (Item 1. thru 7.) as recommended and amended*
18 *by the City Planner. **Includes only Phase I with the stipulation Applicant will need to come back to get the***
19 ***necessary approval for the follow on Phases.*** Taunton seconded the Motion.
20

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

23 Vote: Motion passed.

24 Ayes: Taunton, Hageman, Steinke

25 Abstain: Scopelleti, Leoni
26

27 III. ITEMS FROM THE AUDIENCE

28 There were no Items from the Audience.
29

30 IV. UNFINISHED BUSINESS
31

32 V. PUBLIC HEARING ITEMS

33 Hageman explained the Public Hearing procedure, noting that this procedure applies to all Public Hearing Items
34 (Agenda Item A. and B.) that will be heard this evening. Hageman said Testimony and evidence given must be
35 directed toward criteria described by the City Planner, or other criteria in the Code that the Testifier believes
36 apply to the request. Failure to raise an issue, accompanied by statements or evidence sufficient to afford the
37 Commission and the parties an opportunity to respond to the issue precludes appeal to the State Land Use Board
38 of Appeals on that issue. Application materials or other evidence relied upon by the Applicant had been provided
39 to the City and made available to the Public. Commissioners will be asked for any declaration of ex-parte contact,
40 conflict of interest, or bias to declare. The Public will have the opportunity to state objection to any Planning
41 Commissioner hearing the Case. Applicants will have the opportunity to present information relevant to their
42 Application, followed by Testimony in support of the Application, then Testimony in opposition, with the
43 Applicant having the opportunity for rebuttal. Unless there is a request to hold the Record Open, Testimony will
44 be closed and the Commission will enter into Deliberations on the Application.
45

46 A. Case File: #1-CS-PC-10

47 Applicant: John Berry

48 Application: Coastal Shorelands Development

49 Zone, Map and Tax Lot: Retail Commercial C-1, 09-11-05-CD #00200

50 Location: 167 N.W. Hwy. 101
51

52 Scopelleti recused himself.

1 Hageman asked if there was exparte contact, conflict of interest, or bias to declare. There was none. Hageman
2 then asked if anyone had objection to any Planning Commissioner Hearing the Case. There was no objection.
3 Lewis summarized the Staff Report (copy attached to original of these Minutes). Hageman asked if the
4 Commissioners had any questions to address to the City Planner. There was brief discussion regarding: The
5 Summary and Staff Analysis Item 4. Parking. *At the time an Existing Structure is enlarged, Off-Street Parking
6 Spaces shall be provided as set forth in DBZO Section 4.030. Currently, the Mixed Use Structure does not have
7 Off-Street Parking. The lack of Off-Street Parking is a lawful Nonconforming Use. Parking is provided along
8 the frontage within the Highway 101 Right-Of-Way. The Applicant's Agent stated that the proposed Third Level
9 is not for Public Use and it will only be used as a personal Office and Studio, i.e. an Extension of the Residential
10 Dwelling. Therefore, the Addition does not increase Parking Requirements. DBZO Section 4.030, Off-Street
11 Parking and Off-Street Loading Requirements. At the time a New Structure is Erected, or an Existing Structure is
12 enlarged, or the Use of the Structure is changed, Off-Street Parking Spaces, Loading Areas and Access thereto
13 shall be provided as set forth in this Section unless greater Requirements are otherwise established. If such
14 facilities have been provided in connection with an Existing Use, they shall not be reduced below the
15 requirements of this Ordinance.* Taunton stated she may have a conflict of interest (there are 5 Businesses on her
16 block without any Off-Street Parking). The Applicant was given an opportunity to testify and answer questions
17 from Commissioners. John Berry, 167 N.W. Hwy. 101, stressed his concern regarding the Storm Drainage Plan
18 mentioned in the Staff Report. Lewis explained any time there is Construction on Oceanfront Properties the City
19 Field Superintendent needs to be assured that Storm Water Drainage is handled appropriately (typically as simple
20 as Gutters connecting to Private/City System). Hageman called for Testimony in favor of the Application. Rick
21 Davilla, 35 South Point St., reiterated he is in favor of the Application. He asked if the Planning Commission will
22 be taking into consideration the extensive Parking available on Highway 101 near the Subject Property. Lewis
23 answered the DBZO requires Off-Street Parking be provided - Retail (one) 1 Space each 200 sq. ft. of Floor Area,
24 Office (one) 1 Space for each 300 sq. ft. of Floor Area, and Single Family Residence (two) 2 Spaces. Davilla has
25 observed other Businesses that appear to have no Off-Street Parking. Lewis clarified those Businesses were
26 determined to be a continuation of a Non-Conforming Use or Structure as defined in the DBZO. Davilla repeated
27 for the Record his support of the Application. John Berry acknowledged he was aware of the Building Height
28 Requirements but unaware that Parking would be an issue with the expansion of his Building. A Commissioner
29 gave an example of how another Applicant met the Parking Standards (Off-Street Parking is to be located on the
30 same Lot or within 500 feet). There was no Testimony in opposition. There was no request to keep the Record
31 Open. The Public Hearing was closed and Deliberations began. Hageman said he believes the Applicant needs to
32 submit an Application for a Variance to the Parking Requirements and cited relevant portions of the DBZO.
33 Lewis suggested if the Planning Commission agrees, then continue the Public Hearing rather than Deny the
34 Application. The Planning Commission concurred. The Applicant and Planning Commission ensued in lengthy
35 discussion regarding the matter. The Applicant declared he had no intention to pay additional money to the City
36 of Depoe Bay (\$500 Fee and \$240 Deposit) to apply for a Variance.

37
38 MOTION: Hageman moved to Reject (Deny) Case File #1-CS-PC-10 (Coastal Shorelands Development –
39 Construction of a Third Floor Addition to a Commercial/Residential Building) because of Parking issues (non-
40 compliance to DBZO Off-Street Parking Requirements) and the refusal of the Applicant to submit a Variance
41 Application. Taunton seconded the Motion.

42
43 The Applicant from the Audience stated he wished he would have known of the Regulations before he submitted
44 his Application.

45
46 Hageman said it was moved and seconded, and called for discussion. There was none.

47
48 Vote: Motion passed.

49 Ayes: Taunton, Hageman, Leoni, Steinke

50
51 The Applicant asked the Planning Commission to confirm that his Application to construct a Third Story had been
52 denied due to the DBZO Parking Requirements. Further discussion occurred.

1 Scopelleti returned to his seat.

2
3 B. Case File: #2-CS-PC-10

4 Applicant: Ronald and Mary Gilliam

5 Application: Coastal Shorelands Development, Geologic Hazards Permit, and Variance
6 Zone, Map and Tax Lot: Residential R-4, 09-11-05-CA #08100 (Parcel 2)

7 Location: East of 125 Vista St.
8

9 Hageman asked if there was ex parte contact, conflict of interest, or bias to declare. Hageman, Taunton, Leoni,
10 and Scopelleti declared ex parte contact (acquaintance of the Applicants, familiarity with their Existing Home and
11 Subject Lot). There was no objection to any Planning Commissioner Hearing the Case. Lewis summarized the
12 Staff Report (copy attached to original of these Minutes). Written Testimony was received after preparation of
13 the Staff Report from Pat and Monika Farris and Michael L. Norris (copies attached to original of these Minutes).
14 Lewis and Planning Commission discussed: Dashed Line on the Plot Plan submitted by the Applicant illustrates
15 the Partition approved by the Planning Commission on January 13, 2010 (Case File #4-PAR-PC-09);
16 Consideration of the Setback Standards at the time of the Partition; 12 ft. from the edge of the Pavement to the
17 Front Property Line; Encroachment into the Front Yard Setback by adjacent Homes and others in the vicinity
18 (Non-Conforming and Variances Granted); Proposed Residence illustrated on the Plot Plan (First Floor Footprint
19 or the total House Footprint – there is a 2 ft. overhang on the south side of the House on the Third Floor). The
20 Applicant was given an opportunity to testify and answer questions from Commissioners. Dawn Pavitt, Pavitt
21 Land Use Consulting, 8099 N. Beaver Creek Rd., Seal Rock (home address), 134 S.W. Lee St., Newport
22 (business address), P.O. Box 5 (mailing address), Representative for the Applicants Ron and Mary Gilliam,
23 testified on their behalf. Pavitt further explained the Applicant's Proposal: Partition was granted without any
24 Variances (not a Substandard Lot); submitted earlier today via e-mail a revised Elevation Plan (copy attached to
25 original of these Minutes) illustrating cantilevered narrow Decks (removed posts in the "No Build Zone" as
26 recommended by the Engineering Geologist); explained the Applicant's and Designer's effort to work within the
27 constraints of the irregular shaped Lot combined with the Engineering Geologists Recommendation *the*
28 *Foundation for the Proposed New Residence be located no closer than 10-feet from the top edge of the north*
29 *facing slope...The purpose of this Recommendation is to provide a minimum buffer for access to maintain the*
30 *slope and provide an additional factor of safety...* She reiterated segments of the Staff Report as well as her
31 Written Narrative (copy attached to the Staff Report). Her understanding is the Site Plan depicts the First Floor
32 Footprint (not including the approximate 2 ft. Overhang on the Third Level). Discussion ensued between the
33 Applicant, Lewis, and the Planning Commission.
34

35 Recess: 7:00 p.m. – 7:05 p.m.
36

37 Lewis scaled the Drawing and concluded that the 18 in. Third-Story Overhang is not illustrated on the Site Plan
38 and stated the Variance Request is actually for a 10½ ft. Setback from the Front Property Line versus the Standard
39 20 ft. Hageman suggested that the Planning Commission restrict the Maximum Finish Grade to be in accordance
40 with the current Flood Hazard Regulations. Pavitt disagreed with the Written Testimony submitted by Michael L.
41 Norris disputing that the Circumstances for Granting a Variance are being met (specifically in regards to the
42 Exceptional or Extraordinary Circumstances and emphasized the reasons as outlined in her Narrative). The
43 Applicant and Planning Commission further discussed: The 10' Public Access; the recent Tentative Approval of
44 a Two-Lot Partition that created the Subject Lot and the possibility of shifting the Line to the west (achieve
45 conformance to the Side Yard Setback for the Existing and Proposed Homes – To date Partition Plat has not been
46 prepared by the Surveyor – Eliminates the need for a west side Variance). Hageman called for Testimony in
47 favor of the Application. Rick Davilla, 35 South Point St., testified that Depoe Bay has numerous Platted Lots
48 that are substandard and/or are difficult to build on and years ago some of the Planning Commission Members
49 tried to make it almost impossible. He is a firm believer that a Property Owner has the right to make it work
50 (within the Zoning Ordinances in cooperation with the Planning Commission). He thanked the Planning
51 Commission for their efforts (as a Builder he feels good about the current Planning Commission). There was
52 further discussion concerning: Erosion (addressed in the Written Testimony submitted by Michael L. Norris and

1 the Geotechnical Site Investigation prepared by K & A Engineering, Inc. – copies attached to the Staff Report and
2 original of these Minutes); Property Owners/Designers should endeavor to design a Home that complies to the
3 DBZO Development Guidelines and Standards and to grant numerous Variances is self-defeating; the Planning
4 Commission’s responsibility to determine if Applications are in adherence to the DBZO Variance Criteria; Front
5 Yard Variance Request would not be detrimental to the vicinity (not protruding beyond other surrounding
6 Homes). There was no Request to keep the Record Open. Hageman summarized his Recommendation for a
7 Motion to Approve the Application with Amended Conditions: Lot Line re-drawn to the west (achieve
8 conformance to the Side Yard Setback for the Existing and Proposed Homes); Finish Grade Elevation be at the
9 minimum required to meet the Flood Hazard Regulations; and approval of the Front Yard Variance Request and
10 the Development in the Coastal Shorelands Overlay Zone.

11
12 MOTION: Leoni moved to approve Case File #2-CS-PC-10 (Coastal Shorelands Development, Geologic
13 Hazards Permit, and Front Yard Variance) and adopt the Conditions of Approval (Items thru 1. thru 10.) as
14 recommended by the City Planner and amended by Hageman (so moved - see above). Scopelleti seconded the
15 Motion.

16
17 Hageman said it was moved and seconded, and called for discussion. There was none.

18
19 Vote: Motion passed.

20 Ayes: Hageman, Leoni, Scopelleti, Taunton, Steinke

21
22 Pavitt (from the Audience) noted the limitation to the Finish Grade was not included in the Motion.

23
24 MOTION: Hageman amended the Motion to include the Finish Grade Elevation be the minimum required to
25 meet the Flood Hazard Regulations. Leoni seconded. Lewis repeated his understanding of the Motion: Partition
26 Lot Line to be adjusted to maintain conformance to the west Side Yard Setback, 10½ ft. Front Yard Setback
27 (versus 12 ft.); Building Elevation Finish Grade at a minimum to satisfy the Flood Hazard Standards; Approval of
28 the request for Development in the Coastal Shorelands Overlay Zone. Staff noted that the Finish Grade Elevation
29 was addressed in the original Motion. It was agreed the second Motion was not necessary and no Vote was taken.

30
31 Pavitt (from the Audience) asked if the Planning Commission is allowing the Encroachment into the Area of
32 Visual Concern. Lewis replied yes (Condition of Approval Item 3.).

33
34 VI. NEW BUSINESS

35
36 VII. CITY COUNCIL LIAISON REPORT

37 Steinke prepared a Liaison Report (copy attached to original of these Minutes). There was brief discussion
38 regarding the Adoption of Ordinance No. 287 (Amendments to Depoe Bay Zoning Code); the City combining
39 resources with the Fleet of Flowers to get a low-powered FM Station in Depoe Bay; preparing a Draft Letter to
40 City Council from the Planning Commission to be reviewed at the next Planning Commission regarding
41 Emergency Preparedness specifically a Tsunami Warning System; a Letter of Support from Little Whale Cove
42 Homeowners Association of the Planning Commission’s endeavor and also a Letter of Request to the City
43 Council. Taunton expressed her appreciation of the Letter to the Fire Chief, Josh Williams (copy attached to
44 original of these Minutes); and the Depoe Bay Rural Fire Protection District’s role in Emergency
45 Preparedness/Warning.

46
47 VIII. PLANNER'S REPORT

48 There was none.

49
50 The Planning Commission directed Lewis to prepare the Findings, Conclusions, and Final Order (Case File #1-
51 CS-PC-10 and Case File #2-CS-PC-10) for Hageman’s signature.

1 IX. PLANNING COMMISSION CONCERNS

2 There was additional discussion regarding Case File #1-CS-PC-10 and the Applicant's lack of knowledge and/or
3 misunderstanding of the applicable portions of the DBZO pertaining to his Application (Lewis noted that the
4 Parking issue was discussed with the Applicant's Designer and a copy of the Staff Report was provided to the
5 Applicant and his Agent the week prior to the Meeting) and does the Applicant have any other option other than
6 submitting a new Application (Coastal Shorelands Development and Request for a Variance) after denial; and the
7 DBZO Section 4.030 Off-Street Parking Requirements and Off-Street Loading Requirements. Leoni asked if the
8 Planning Commission intends to review the DBZO for future Text Amendments. Hageman voiced his
9 dissatisfaction with the City Council's consideration of the Planning Commissions Recommended Text
10 Amendments (lack of understanding of the revised text and/or how the Planning Commission came to the derived
11 Recommendations; and not addressing the Planning Commission regarding the matter). The Planning
12 Commission discussed redrafting the revisions to Building Height and agreed later to not pursue Text
13 Amendments at this time (the recently adopted Amendments will be codified and new pages and/or books will be
14 distributed).

15
16 X. ADJOURN

17 There being no further business, the Meeting was adjourned.
18
19
20

21 _____
Roy Hageman, Vice-President

22
23
24 _____
25 Carla Duering, Recording Secretary