

**Regular Meeting of the Planning Commission
at Bandon City Hall and via Zoom Meetings
with Live Streaming on Facebook
October 28, 2021**

COMMISSION:

- Paul Fisher, Chair
- Sally Jurkowski, Commissioner
- Ed Landucci, Vice Chair
- Gordon Norman, Commissioner
- Catherine Scobby, Commissioner
- Gerald Slothower, Commissioner
- Donald Starbuck Commissioner

STAFF:

- Dan Chandler, City Manager
- Shala Kudlac, City Attorney
- Dana Nichols, Planning Manager
- Megan Lawrence, City Planner
- Eric Montes, Planning Assistant

1.0 CALL TO ORDER

1.1 Roll Call

Fisher called the meeting to order at 7:00 p.m. Roll Call was taken as indicated above. All members of the Commission were present in the Council Chambers.

2.0 CONSENT AGENDA

2.1 Minutes: Planning Commission Regular Meeting—September 23, 2021

Norman moved to approve the Consent Agenda without additions or changes. Slothower seconded the motion and it was approved by unanimous voice vote (7:0).

3.0 PUBLIC COMMENT – Opportunity for citizens to speak on items NOT on the Agenda

No members of the public chose to speak. A letter from Gordon Sabold, 690 Seaview Ct. SW, Bandon, OR 97411, concerning the cost of gorse abatement and addressed to the Planning Commission and other City entities, was entered into the record.

4.0 HEARING

4.1 Variance and Plan Review for 2608 Caryl Court (28S15W36CB/TL3200) – Variance to the Bandon Municipal Code provision 3.750(2) in place in 1989 which required a building line to begin at a property width of 60 feet and was recorded on the Beach View Estates Subdivision Plat and request to construct a single-family dwelling in the Controlled Development 1 (“CD-1”) Zone – #21-074; David Stokes & Sheri McGrath

Fisher opened the Hearing at 7:04 p.m. and read aloud the rules and procedures for the Hearing. Slothower, Landucci, Norman, Fisher, and Scobby declared that they had made a site visit at some point.

Nichols began her presentation of the Staff Report by noting that the Applicant's Site Review was being combined with a Variance request because siting a home on the property in question could not be done without a Variance to code criteria that was no longer in place but which governed the subdivision where the parcel was located. A provision in the Bandon Municipal Code (BMC) at the time the final plat was approved—3.750(2)—required a building line to begin at a property width of 60 feet. The current code called for a lot to have at least 40 feet of street frontage instead.

Nichols went over the history of zoning regulations in Bandon and their impact on the Applicant's parcel. Ordinance 972, the City's Zoning Ordinance, was passed in 1976, and many modifications were made to it over the years. Just before the Beach View Estates Subdivision was approved, Ordinance 1240 went into effect, modifying Ordinance 972 and instituting the provision pertaining to the 60-foot building line. In 1997, a Variance to the front building line minimum was approved for a lot at 2688 Caryll Court due to topography issues with the nearby creek.

Nichols described the unique location of the 2608 Caryll Court property. It abutted Beach Loop Drive and Whale Watch Way and was elevated above the street level. She showed photographs of the property taken from various angles. On a map of the Beach View Estates Subdivision, Nichols drew attention to the 60-foot building line toward the rear of the property, the narrower 43.85-foot width of the Caryll Court side of the lot, and the 85-foot width on the Whale Watch Way side. Required 15-foot setbacks from Beach Loop Drive and Whale Watch Way were also marked on the map, and special restrictions were noted, including a fence height limit of 2.5 feet in the setback areas and a map showing a building site adhering to the 60-foot front building line.

The Applicant's site plan was displayed, including the topography of the lot and showing a 20-foot setback between Caryll Court and the proposed structure. The Commissioners were also shown elevations and floor plans for the home, which would normally be part of a Plan Review.

Because the Applicant was requesting a Variance, Nichols provided the definition of a Variance and explained how it pertained to this application. The Municipal Code defined a Variance as "an administrative or quasi-judicial decision to lessen or otherwise modify the requirements of this code," but Nichols noted that the Variance being discussed was actually a modification of a code provision that no longer existed.

BMC Section 16.36.040 stated that all the following criteria had to be met for a Reviewing Body to approve a Variance:

1. The Variance is necessary because the subject Code provision does not account for special or unique physical circumstances of the subject site, existing development patterns, or adjacent land uses. A legal lot determination may be sufficient evidence of a hardship for purposes of approving a variance;
2. The Variance is the minimum necessary to address the special or unique physical circumstances related to the subject site;
3. The need for the Variance is not self-imposed by the applicant or property owner. (For example, the Variance request does not arise as a result of a property line adjustment or land division approval previously granted to the applicant);
4. The Variance does not conflict with other applicable City policies or other applicable regulations;
5. The Variance will result in no foreseeable harm to adjacent property owners or the public; and
6. All applicable building code requirements and engineering design standards shall be met.

Nichols suggested several items for the Commissioners to consider in discussing the application:

1. The Variance tool may or may not be the best option.
2. The request was regarding a code provision that was no longer in place but was a condition for approval and was recorded on the plat. (Nichols thought the time for a Variance would have been at the time the plat was created. That was how it had been done for previous subdivisions where setbacks were requested that did not conform to what was allowed by the code.)
3. The City enforced the plat because it involved land use, along with special restrictions listed on the plat, but did not enforce CC&Rs (Conditions, Covenants, and Restrictions), which were private agreements between property owners. On the other hand, a plat was an agreement between the City and the developer.
4. The 60-foot minimum lot width building line had a much greater impact on this property than on others in the subdivision.
5. A more reasonable approach—the minimum necessary—may be to allow a building line that permitted the home to be constructed in line with the other dwellings to the south.
6. One of the neighbors provided comments in opposition to the Variance request, and that needed to be taken into account by the Commissioners.

Fisher inquired if all the other property owners in the subdivision had been notified.

Nichols answered that they had, as was customary, given notice for a Public Hearing to those within 250 feet of the subject property, but she would check to make sure everyone in the subdivision had been sent a notice.

Nichols reminded the Commissioners that they could choose to approve, approve with conditions, or deny the application. Were the Commission to approve the Variance request, Staff recommended modifying the request to establish a 40-foot setback from Caryll Court—to place the Applicant's home in line with the others on the same side of the street—and continuing the Hearing to the Commission's regular December meeting, giving the Applicant time to revise his house plans prior to the Plan Review.

Norman asked what other "tools" were available if a Variance was not the proper tool in this instance.

Nichols replied that there might not be a "right" tool. The Commission could go through a re-platting process and change the whole subdivision or call for a vacation of the subdivision, both of which she considered "a little extreme for the present request."

Norman wondered if the subdivision plat map would be negated if the Commission were to approve the request as written.

Based on her research, Nichols did not think that would necessarily negate the plat, but the City would want a condition of approval requiring the Applicant to file a formal document with the County that would put a note on the plat that the property had been granted a Variance to the existing plat provision.

Slothower asked if the Commission could simply decide to move the building line.

Nichols responded that the final plat was a legal document recorded at the County that was relied on by anyone involved in property transactions. She said the City did not have the authority to remove it.

Landucci pointed out that subdivisions were under the auspices of subdivision laws in the Oregon Revised Statutes (ORS), and the City did not have the authority to change a subdivision plat or to nullify a CC&R requirement. He would have liked to see the neighbor agree to the building line change, because he thought it was a reasonable request.

Fisher observed that earlier in the meeting the Commissioners had approved minutes from their September 23 meeting, which had included a presentation from Ethan Stuckmayer, Senior Planner of Housing Programs with the Oregon Department of Land Conservation and Development (DLCD). Responding to a question from Fisher, Stuckmayer had told the Commissioners that CC&Rs, being contracts between private entities, could not be retroactively changed by local or state governments.

Nichols underscored Fisher's observation, stating that CC&Rs were agreements between property owners and plats were agreements between the City and developers. She said the City often required developers to put something in their CC&Rs when they had to submit them as part of a subdivision application, but the City was not involved in enforcing CC&Rs.

Landucci maintained that the Applicant needed to get the other owners in the subdivision to agree that what he was requesting was reasonable.

Nichols emphasized that the CC&Rs were not in play in the application before the Commission. The build line was a condition of approval imposed by the Planning Commission on the final plat.

Landucci did not think that build line could be changed unless the other property owners agreed with the change, whether it conformed to the City's ordinance or not.

Slothower sought to clarify that a Variance was the only option the Commission had, whether it was the best fit or not, to alter the 60-foot building line requirement.

Nichols stated that Staff had spoken with Mike Dado, Coos County Surveyor, who indicated that having an added provision recorded on a plat after the fact would be sufficient for County recording purposes.

Fisher commented that the 60-foot rule was archaic and that he had advocated for that rule to disappear for a long time. He then read aloud the rules for Public Hearing testimony.

Sheri McGrath, Coos Curry Consulting Group, P.O. Box 1548, Bandon, OR 97411

Speaking on behalf of the Applicant, David Stokes, who was also present, McGrath stated that she had become involved in the Variance application after it had already been submitted. She pointed out that a Variance to the setback requirement had been approved in 1997 due to the proximity of a creek to a building site on one of the other properties in the subdivision. McGrath believed the owners could have scaled down their 2,900 square-foot home and built on the site without a Variance. She said the owners did not go through a modification of the subdivision, did not have a deed restriction, and did not go through any other legal paperwork. The Variance was granted by the Planning Commission. McGrath added that the neighbor who was affected by the location of the house opposed the Variance and their view was blocked. By contrast, no one had claimed their view would be blocked by the Variance requested by the Applicant.

McGrath asked to have a continuance of the Hearing until December 16, to allow time for everyone to research the best legal way to grant the Applicant's request. She agreed with Nichols that the 20-foot setback Variance did not need to be granted if the building line could be made consistent with the other homes nearby. McGrath contended that would protect the property values of the homes in the neighborhood by allowing another home to be built within the same 2,000 to 2,900 square footage range.

McGrath stated that the subdivision's CC&Rs called for homes to have a minimum livable space of 1,500 square feet, plus a garage. She said the proposed building lot of 1,300 square feet would be a bare minimum to meet the CC&R requirements, but it would be less than ideal. On that small footprint, McGrath asserted, it would be difficult for a home to meet the City's required architectural features and the 24-foot height restriction.

McGrath referred to notes she had submitted to the Commission which discussed the Variance granted to Lot 9 in the subdivision and which pointed out that Lot 12 had been subdivided, creating a landlocked parcel without a modification to the overall subdivision. She wanted to find out how that had happened and how, when, and why the approved subdivision plat had 16 lots but the subdivision ended up with 17.

McGrath added that the Variance received by Lot 9 to build closer to the street was granted for a garage which had been opposed by a neighbor whose view was going to be blocked by the raised roofline created by the garage, and she stressed that the Applicant she represented had no plans to block anyone's view. McGrath did not think that the neighbor's testimony had been taken into consideration by the Planning Commission at the time, because the Commission was trying to meet the minimum 60-foot lot width, which had since been lowered to 40 feet. She also observed that Planned Unit Developments (PUDs) were not allowed by the code at the time, whereas a subdivision being done under the current code could have gone through the PUD process with exceptions to lot size minimums. McGrath felt the 60-foot build line had been intended to encourage a consistent front line for the homes in a neighborhood. She wanted the Applicant to be treated like any other homeowner in Bandon—to be consistent with the neighborhood, to have creative design, to protect everyone's property values, and to meet the architectural feature standards.

McGrath summarized that the Applicant was willing to compromise. The request was not necessarily for the 20-foot front yard setback; it was for 40 feet instead of 70 feet. An official land survey map had been prepared and provided to the Commission, showing the 30-foot setback line, which would be a 30-foot extension of the existing building line to give the Applicant an additional 30 feet to build, producing a 40-foot setback. Photos of the site showed stakes with pink flags on the property corners. The stakes without flags marked the setback from Whale Watch Way and the building line on the Caryll Court side of the lot. McGrath said the stakes illustrated how the proposed dwelling would line up with the existing homes on Caryll Court.

Fisher thought the garage shown on the Applicant's site plan protruded into the 20-foot setback, or about five feet past the proposed building line.

McGrath confirmed that by showing the locations of the existing and proposed build lines on a copy of the site plan shown on the large screen in the chamber.

Norman observed that the notes McGrath provided the Commissioners for the Hearing indicated that some negotiations had already taken place regarding the build line, reducing it from 60 feet to 40 feet.

McGrath responded that the Applicant had determined the breezeway between the garage and house could be eliminated and the garage could be straightened to align with a 40-foot build line consistent with the neighbors.

Norman noted that the 40-foot line would still not be consistent with the subdivision plat.

McGrath pointed out that there had been two other instances in the subdivision that were approved without any other legal action. She said in one case no one had sued in spite of new construction that blocked a neighbor's ocean view and in the other case a lot was created that she considered illegal

because it had no street frontage. McGrath contended the Applicant would be adjusting his proposal to be more reasonable and more in conformity with the other homes on Caryll Court.

Norman reviewed the allowable building footprint under the existing restrictions, and McGrath verified them: an approximately 30-foot by 30-foot space that would accommodate a structure of around 1,300 square feet, 200 square feet below the minimum stated in the subdivision CC&Rs.

McGrath added that a garage would be required as well, and she suggested to build a home that met the architectural features required by the City within that limited footprint would have necessitated a Variance.

Referring to the minutes of the 1989 Planning Commission meeting at which the subdivision was approved, McGrath concluded that the Commission, not the subdivision's original owner, had decided on the 60-foot lot width building line. She asserted, "I think today, we would have said, 'Come back to us proving this is a buildable lot' before that would have been accepted. That would be reasonable. You know, you're putting an exception onto something that had already been planned. There should have been some kind of forethought into, 'Okay, well, let's make sure a house can fit here and still meet those CC&Rs.' So, It's my opinion that it was...I understand why they did it. It was creative planning. 'How can we allow the subdivision to be here and meet the Bandon Municipal Code' at the time."

From the initial application, Norman understood the Applicant wished to build a home of around 1,800 square feet. He had the impression the size had grown to 2,100 to 2,800 square feet.

McGrath clarified that the existing homes in the neighborhood ranged from 2,100 to 2,900 square feet, but the Applicant was not proposing a home of that size. She noted that the Applicant's lot was the only one in the subdivision with a subpar footprint.

Norman stated that from his personal experience it was not unusual for a subdivision to be platted and have some leftover land that was configured in an odd way and probably sat alongside a street or highway.

McGrath again cited the fact that the landlocked seventeenth lot in the subdivision was created without questioning the legality of that decision in the same way the Applicant's Variance request was being examined. She wanted to make sure there was sufficient discussion of the Applicant's request.

Landucci said his biggest concern was the complaint submitted by a neighbor, which he feared would make its way to the State Real Estate Agency and an investigation would be opened, potentially leading to a cease and desist order. Landucci felt there should be a way to negotiate with that one complainant and work something out, since it appeared the other neighbors seemed agreeable to the Applicant's proposed changes.

Having only recently joined the Applicant, McGrath said she had not met with the neighbor who expressed opposition, and she wanted to learn as much of the subdivision's history before contacting her. She was waiting for the property to be staked and surveyed and was willing to meet with any of the neighbors at that point, including those who might have been beyond the 250-foot noticing radius. McGrath thought it would be helpful to find out who had been notified.

McGrath told the Commissioners that the question had come up as to whether the owner had performed due diligence when buying this property. She said he had and it had been discovered that there were two recorded plats of the subdivision, one of which did not show the 60-foot build line.

Concluding her testimony, McGrath expressed the Applicant's agreement with continuing the Hearing, but she voiced concern about continuing to the November Commission meeting, because it would only be three weeks away and that would not allow enough time to redesign the house to fit the proposed footprint in line with the other homes. As a designer, she did not believe it was wise to be rushing a design that quickly, especially considering it was expensive to build in Bandon. McGrath thought delaying until December would enable the Applicant to redesign the home, do some more research, and discuss the matter with the City Attorney.

Nichols suggested continuing the Hearing to November to discuss the Variance, then continuing it to December to conduct the Plan Review, because one was contingent on the other.

McGrath was agreeable. She said building on the site was not planned to begin until May, so the only impact would be on the Plan Review, which was about to expire and would need to be extended.

Aside from written remarks, no public testimony was offered.

Landucci moved to extend the Hearing to the Planning Commission's November 18, 2021 meeting. Jurkowski seconded the motion, which was approved by unanimous voice vote (7:0).

5.0 DISCUSSION/OTHER

5.1 Code Cleanup Work Session (cont.)

Nichols explained that the primary goal of the Planning Department's code cleanup project was to bring legal consistency to the Bandon Municipal Code. In particular, the City had to comply with ORS 197.307(4), amended by the legislature in 2019 to require local governments to adopt clear and objective standards, conditions, and procedures regulating the development of "needed housing," affecting almost all housing applications. State statutory language referring to "buildable land" had been removed, and "needed housing" had been redefined to mean "all housing." Nichols proposed a code cleanup that would provide a smooth transition to a housing code update that would establish standards, procedures, and conditions in the place of those that were discretionary or unclear, would redefine types of housing, and would review where housing was permitted.

Specific code cleanup actions to be taken included fixing imprecise definitions, organizing processes into Type I-IV actions, striking illegal language, using the Oregon Small Cities Model Code to reorganize zone codes and development standards into easy-to-follow tables, and setting special regulations that were clear and objective. Nichols showed the Commissioners an example of a table from the Model Code that would help to clarify all uses in Bandon's code, create uniformity in the naming of uses, and easily display the uses allowed in each zone. Organizing the development standards into a table would facilitate comparing them across zones.

Nichols recounted that an audit of the City's code several years earlier had pointed out that there was little difference between Bandon's R-1 and R-2 zones, and the same could be said about the CD-1 and CD-2 zones. She thought the Commission might consider differentiating those zones by setting unique standards for lot sizes, setbacks, and other characteristics.

Nichols also proposed quick adoption of a set of State standards for special uses, to be compliant with State law. She noted that the City did not have standards for multi-family apartment buildings or for duplexes, for example. Nichols added that during the Housing Code Update process the Commission could modify those standards as appropriate for Bandon.

Norman confirmed with Nichols that the Commission had already agreed to work on code cleanup.

Nichols said it was part of the Commission's work plan for the year. She hoped to schedule a formal Work Session for the Commission to review proposed ordinance language, to be followed by a Public Hearing. The Commissioners favored a lunchtime session prior to their next Regular Meeting.

Slothower wanted to see "green" requirements such as outside car charging stations in multi-unit apartment developments, and he wondered how the Commission would accomplish that.

Nichols replied that that type of requirement could be brought up when the Commission addressed the Housing Code Update.

5.2 Planning Department Report

Nichols had provided the Commissioners with a copy of the Planning Department's monthly report in their meeting packets. She reported that the City had received 51 applications for new single-family dwellings through October 21, which she believed to be a record for any year after the 1936 fire.

Staff had received a \$40,000 technical assistance grant from DLCD to help update the City's Housing Needs Analysis and Buildable Lands Inventory and prepare a Housing Strategy Implementation Plan. She hoped to align the process of updating the Transportation System Plan with the Housing Code Update so they would complement each other. Nichols added that the Commission would be involved because there would be ordinance language to adopt and a change to the City's Comprehensive Plan would be required as a result of the updates.

Nichols informed the Commissioners about the Parks and Recreation Commission's recent activities, which included a tree planting event in City Park on November 13, as part of the City Park Reforestation Plan. In conjunction with the Bandon School District, another tree planting activity was planned for the City's Johnson Creek property later in November and December. It would be aimed at blocking the growth of gorse above the creek. Nichols pointed out that since Planning Staff worked with both the Parks and Recreation Commission and the Planning Commission, she thought it was relevant to let the Commissioners know about Parks and Recreation developments.

Nichols concluded her report with a mention of the City's Holiday Lights Contest. She had provided the Commissioners with a copy of the flyer about the contest, which had been included in the City utility bills. Utility credit prizes were being offered for the best residential and commercial lighting, and registration could be done through the City's website.

Fisher inquired about the Transportation and Growth Management Grant from DLCD and ODOT (Oregon Department of Transportation), and Nichols said Bandon had just signed the acceptance form and would receive \$140,000 toward contracting with a consultant to work with Staff on the grant process.

6.0 COMMISSIONER COMMENTS

There were no additional comments.

7.0 ADJOURN

Fisher adjourned the Regular Meeting at 8:08 p.m.

Planning Commission Regular Meeting Minutes
Submitted by Richard Taylor, Minutes Clerk