

Dana Nichols

From: Eric Montes <emontes@ci.bandon.or.us> on behalf of Eric Montes
Sent: Tuesday, April 19, 2022 8:19 AM
To: Dana Nichols
Subject: Fwd: Public Comment submittal

Eric Montes

City Planner

He/Him/His ([Why these pronouns?](#))

*****I will be leaving my position with the City of Bandon. My last day will be Thursday, April 21st, 2022*****

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From: **Nancy Evans** <nancybandon72@gmail.com>
Date: Mon, Apr 18, 2022 at 8:15 PM
Subject: Public Comment submittal
To: Eric Montes <emontes@ci.bandon.or.us>, Nancy Evans <naevans1@frontier.com>

To:

City of Bandon Planning Commission
City of Bandon Planning Department
Attention: Eric Montes
Via email

Public Comment for Code Clean Up
on 4/28/22. Please include in meeting packet ...before meeting.

April 19, 2022

Dear Planning Commissioners, thank you for this opportunity to submit public comment to the commission.

I am submitting my testimony by the deadline for inclusion in the commissioners meeting packets. I do this in order for you to have the time required to review my concerns throughly. Thank you.

In order to make myself understood and to assist in your discussion and possible input to the City Council I have requested supporting documentation for my comments with a public document request to the city. Now in progress at city hall.

Anyone who makes these requests for documents knows the city works on a first come first served basis for public document requests ...and there may be many other requests in line before your own. At this writing my request is still in the process of being researched and compiled for your review. I expect the results soon. I made my public documents request early last week.

Thank you for sending out public notices to all of us who's properties are directly affected. My property has already been affected by one change made to the code but this change is not currently flagged to be reviewed by you for the "clean-up" exercise at your meeting on April 28th. I will explain why it should be included below. And the public document request materials will be the evidence you need to be aware of.

My interest is not regarding my property alone. Instead I am concerned that any property that may require a variance or any property that may be affected by an approved or denied variance or is near such a property is at risk at this time. It is a serious issue that requires your attention please.

Variances in my words are the city's way to make order from disorder. To find the appropriate way to manage compliance for issues not able to comply in the normal fashion. But usually only when nothing else will work within the code or special district are they considered at all. Then a variance becomes the remedy. But it's not an easy thing to do and it shouldn't be.

As some of you know I was one of the Historic Old Town Bandon's pioneers. I purchased my first commercial property in 1977, before there was even a thought of an Old Town in anyone's mind at that time. I was also honored to be appointed by the mayor of Bandon to sit on one of the committee's who were responsible in the 1980's for the conception and creation of our now famous Old Town. Later I watched as our Plan we made was formally included as a part of Bandon's Comprehensive Plan in 1982 ...by the city council(never rescinded, still in place today). That plan included Bandon's first Overlay Zone with special requirements for all to follow regarding public and private properties in the overlay zone. All public and private properties are meant to comply. I like to believe I was a good example for forty-three years of best practice for a private property owner in Old Town. I was always in compliance. For all my 43 years at 350 Second Street.

Unfortunately without the supporting documentation it is only my word as evidence of what happened to me and why it needs to be cleaned up. It's important you all are able to see this evidence and understand why this too needs to be cleaned up along with the other items presented to you by staff in your Code Clean Up.

The city manager kindly answered a question for me last week because Dana was out of town. I was interested in all aspects of that work you did with the code over many months but the rules around variances was of special interest to me. I was not sure but it seemed no changes had been made regarding variances but I wanted to check with Dana or Dan to be sure my memory was correct. Dan immediately sent me a return email telling me none of the language had been changed regarding variances. (I was so pleased to hear this and the rules around variances would remain exactly the same as they had for years I thought). Except something was added to the original wording he told me. "Adjustments".

The staff had recommended a method to help streamline the system of approval or the denial of variances by adding an alternative to variances. This would save time and money for the planning department. It was simple and to the point. The staff would decide if a variance application or the required action to enforce a Variance was warranted by the planning department. In their opinion. In these cases, when the planning staff decided the variance was not warranted, in its place would be an "adjustment". Not a variance.

The adjustment criteria was formulated based on several things. And staff can help you better understand how they decide between a variance and an adjustment if you inquire. I'm not familiar with the recent Adjustments that have been made since the codification in June last year. Maybe none. The staff can advise you about this too. Please ask them.

The old variance criteria(still in place today) is very clear and easy to understand in the code. I see it as very straightforward. Based on facts regarding the actual property and its use, intended use, etc., appeals were/remain possible if a variance was/is denied but exceptions generally were/are always discussed in detail by the commission and legal advise from the city attorney is often given in the past examples I have read...and variances have rarely been granted in the past and it appeared that was to remain going forward from what I was told by the city manager last week.

Because the original standard was intended to be a high bar discouraging property owners from finding a loophole to get around things by getting a variance. Very understandable in my opinion.

For example required off-street parking in Old Town. This was tested many times over the years and if one wants to see examples in the archives at city hall they are usually detailed clearly in meeting minutes and legal advise from the city attorney quoted in those minutes warning of how a variance may or may not possibly become a problem or bad example for others in the future. Off-street parking issues were sometimes remedied by the property owner finding alternative required parking not on their property but sometimes several blocks away from the subject property. Each variance was well researched and presented to the governing body, the planning commission, in great detail and after much study and consideration a studied decision was made...by the commission. I think personally variances are one of the city's most misunderstood planning options by the general public.

Another interesting point is if you owned/own now a property in Old Town these same criteria for variances could be seen as a safety net for neighboring properties. As the neighboring property received notice of the intended actions and were encouraged to comment in person or in writing before the commission decided to deny or approve a variance. Only fair! And a great solution to avoiding misunderstandings with your neighbors.

It was good to know this will still be how things are going to be in the future. My property at 340 Second Street received a parking variance in 1994 only months before I purchased the property from my longtime bookkeeper Mr. McGinty. I have the meeting minutes of that meeting and it is interesting to read how and why the approval was granted then. No other parking agreements off site were required by the conditions of the variance. It remains in force today.

Seventeen years after buying my first property in 1977 I purchased the property next door in 1994 at 340. It remained a separate tax lot and was separated very obviously by a off-street parking place owned by 350 Second Street as it's required off-street parking place after the Old Town Overlay was put in place. It has been the parking place for that property for well over fifty years. That parking place was a part of the property I bought in 1977. It could not be vacated. I know this because during the forty-three years I owned it I had inquired twice about using the parking space to expand my business space. But I was told by two different city managers I would be denied if I applied to vacate the parking space. It was required and could not be vacated to expanded my business. Period. In fact the most recent remodel of my second property in Old Town an antique imported black iron gate was installed in front of the required off street parking place. I was instructed by the then city manager Matt Winkel, in writing, I must remove the gate unless I agreed to have the gate OPEN at all times my business at 350 was open (and available to be used by the public). I agreed in writing to his order and the gate was always open when my wine tasting room was. For many many years.

You will recall having to decide similar requests from Old Town property owners. The wording has not changed for variances. But the code now includes an alternative to a variance as a remedy to some things. It's called An Adjustment. And it is the planning staff who decides when this is the appropriate action to take rather than a variance. Not the commission to decide. To save time and money.

So why the concern on my part? I will demonstrate this to you when the public document request is in my hands. And available for me to share with you. Until then it is only my word ...but the evidence tells the whole story about what can happen now.

Please encourage the planning staff to complete the public document request as soon as possible. If it is available by your meeting date on the 28th I will request it is made part of this comment for you to see then. If not available by the 28th I will, with your encouragement, take the evidence to the City Council Hearing in June and finish my public comment at that place and time.

Either way I sincerely believe there is a need to have this commission or the council address one more thing in your "Code Clean Up". Something that needs attention and is very very important for now and in the future of Bandon's Old Town Overlay Zone

Thank you for your attention to this request. N.