

**BEFORE THE CITY COUNCIL
OF
YACHATS, OREGON**

**Appeal Planning Commission Decision
Aqua Vista Square Parking**

Aqua Vista Square, LLC

FINDINGS AND CONCLUSION

Applicant: Aqua Vista Square, LLC

Nature of the Application

The applicant appealed the Planning Commission's decision that all required parking spaces be entirely located outside of the public right-of-way.

The applicant requested a mixed-use development consisting of approximately 1,500 square feet of commercial space and six multi-family residential units. The Planning Commission approved the request to increase the maximum density permitted outright in the C-1 Commercial Zone from 2,500 square feet of land per multi-family dwelling to 2,223 square feet of land per multi-family dwelling. The density may be increased if the developer is willing to yield to the Planning Commission's design control. However, the Planning Commission approved the request for increased density with the condition that the 17 required parking spaces be located on-site and entirely outside of public right-of-way.

Relevant Facts

The following is a summary of the facts and testimony found to be relevant to this decision.

- A. **Property Location:** The subject property is located at the southwest corner of Hwy. 101 and Aqua Vista Loop, and further identified on Lincoln County Assessors Map 14-12-27AA as tax lots 1308 and 1309.
- B. **Zoning:** Retail Commercial Zone C-1
- C. **Plan Designation:** Commercial
- D. **Lot Size and Dimensions:** The site currently consists of two tax lots. Each tax lot consists of 6,744 square feet with dimensions of 67.44' x 100'. The two tax lots total 13,488 square feet with dimensions of 134.88' x 100'.
- E. **Existing Structures:** None.
- F. **Surrounding Land Use and Zoning:** Surrounding land uses are primarily single family residential. Existing zoning is C-1 Retail Commercial to the north and south along the Highway 101 frontage. R-1 Residential zoned land is adjacent to the west, and R-3 Residential zoned land is across Highway 101 to the east.
- G. **Existing Utilities:**
Water & Sewer: City of Yachats

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Electricity: Central Lincoln PUD

- H. Development Constraints: None identified.
- I. Applicant Submittal: The applicant's submittal included a September 30, 2010 letter to the Mayor and City Council. The letter describes the appeal of the Planning Commission's decision including 1) Decision Appealed; 2) Timeliness of Appeal; 3) Executive Summary; 4) Pre-Purchase Due Diligence and City Planner Confirmation on Zoning Code Issues; 5) Minor Modification of the Plan; 6) The Application to Reduce Land per Residential Lot Ratio; 7) The Planning Commission's Actions: July to September; 8) Basis and Reasons for the Appeal and; 9) Conclusion. Thirteen (13) exhibits were also included with the submittal. The applicant submittal is hereby incorporated into the record.
- J. A public meeting was held before the Yachats Planning Commission on July 26, 2010 at 3:00 p.m. in order to consider the applicant's request. The applicant presented testimony and answered questions at the public meeting. Six people provided public comment at the July 26, 2010 Planning Commission meeting.
- A public meeting was held before the Yachats City Council on October 14, 2010 at 2:00 p.m. in order to consider the applicant's appeal of the Planning Commission's parking condition. The applicant presented testimony and answered questions at the public meeting.

Relevant Yachats Municipal Code Criteria (relevant to this appeal)

Section 9.04.030 Definitions

Lot Line, Front. "Front lot line" means the property line separating the lot from the street, other than an alley. In the case of a corner lot, the shortest property line along a street other than an alley; or, in a case where the lot does not front directly upon a public street, that lot line toward which most houses in the immediate area face.

"Right-of-way" means a strip of land within which is located a passageway, as conveyed for a specific purpose.

"Street" means a way of travel for vehicular traffic which has been dedicated, deeded, or an easement granted to the public for public use.

Section 48.010 Off-Street Parking and Loading

At the time a structure is erected or enlarged or the use of an existing structure is changed, off-street parking spaces, loading areas and access thereto shall be provided as set forth in (Section 9.48).

B. In the event several uses occupy a single structure or parcel of land, the total requirements shall be the sum of the requirements of the several uses computed separately.

D. Off-street parking spaces for dwellings shall be located on the same lot with the dwelling. Other required parking spaces shall be located not farther than five hundred (500) feet from the building or use they are required to serve, measured in a straight line from the building.

E. Required parking spaces shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only, and shall not be used for storage of vehicles or materials or for the parking of trucks used in conducting the business or use.

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F. Areas used for parking and maneuvering of vehicles shall have durable and dustless surfaces improved to minimum city road standards, maintained adequately for all-weather use, and be so drained as to avoid flow of water across public sidewalks.

G. Except for parking to serve dwelling uses, parking and loading areas adjacent to or within residential zones or adjacent to residential uses shall be designed to minimize disturbance of residents by the erection between the uses of a sight-obscuring fence of not less than five feet in height where vision clearance is required.

H. Parking spaces along the outer boundaries of a lot shall be contained by a curb or bumper rail at least four inches high and set back a minimum of four and one-half feet from the property line.

I. Any lights provided to illuminate any public or private parking area or sales area shall be arranged so as to reflect the light away from any abutting or adjacent residential zone.

K. Groups of more than four parking spaces shall be served by a driveway so that no backing movements or other maneuvering within a street, other than an alley, will be required.

M. Loading of Merchandise, Materials or Supplies. Buildings or structures which receive and distribute material or merchandise by truck shall provide and maintain off-street loading berths in sufficient numbers and size to adequately handle the needs of the particular use. Off-street parking areas used to fulfill the requirements of this title may be used for loading and unloading operations during periods of the day when not required to take care of parking needs.

N. Individual parking spaces shall not measure less than nine feet by twenty (20) feet.

O. Off-Street parking space requirements:

1. Residential dwellings: refer to specific zones for parking regulations (i.e. 1.5 parking spaces per residential dwelling as described in Section 9.24.040(E)).
9. Retail store: one space for each 200 square feet of floor area.
11. Office: one space for each 300 square feet of floor area.

Findings

The following is a summary of the findings:

1. Proposed Development

Aqua Vista Square is proposed to be a mixed use development consisting of approximately 1,500 square feet of commercial space and six residential units.

2. Parking. Six residential units require 9 parking spaces (1.5 spaces/unit). If the 1,500 square feet of commercial space is all retail, 8 additional parking spaces are required (1 space/200 sq. ft.). Total required parking for 6 residential units and 1,500 square feet of retail is 17 spaces.

Seventeen (17) parking spaces are proposed including 9 residential spaces, 5 commercial spaces assuming 1 space is needed for every 300 square feet of floor area (office), and 3 guest spaces. If all of the commercial space is retail, the guest spaces could be commercial spaces and therefore satisfy the parking requirement. Note that if the commercial space is proposed to be converted to an eating

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or drinking establishment in the future, the one parking space for every 100 square feet of total floor area would need to be satisfied.

Some of the parking is proposed to be within the Aqua Vista right-of-way. The five commercial spaces are proposed to be head-in spaces with about ½ of the spaces on the private property and ½ within the right-of-way. Additionally, the three guest parking spaces are within the right-of-way and a portion of one residential parking space is in the right-of-way. The Planning Commission findings were that required off-street parking spaces need to be located entirely within the subject lot.

The applicant stated several reasons for the appeal. In summary, the applicant discusses 1) the Planning Commission's confusion between parking space requirements for residences and parking spaces for commercial uses; 2) the City Code has no provision stating that commercial parking spaces must be located on the same lot; 3) the Code has specific language on required commercial parking spaces that clearly does not state that all commercial parking spaces must be entirely on the same lot on which the commercial building is located; 4) Code definitions of "street" and "right-of-way" are contrary to the Planning Commission's finding and order and; 5) the effect of the Commission's finding is to re-write the Code's commercial parking spaces requirement to read like the requirement for residential parking spaces. Refer to the applicant's September 30, 2010 letter, "Basis and Reasons for the Appeal" for a detailed description for the appeal.

The Yachats Municipal Code (Code) Section 9.04 definition of "Front lot line" means the property line separating the lot from the street. The City Council finds this definition clarifies that the 'street' is adjacent to or abuts the front lot line. There is an opportunity in the future for any city street that is within a right-of-way to be expanded so the intention is for the entire right-of-way to be available for use as a street. The City Council finds that the intent of the ordinance is to protect the right-of-way for street uses and not parking. The City Council also finds that zoning regulations regarding commercial parking requirements needs to be looked at to determine a solution for similar properties. However, the intent of the existing Code is to protect the right-of-way for street uses and not parking. Therefore the Planning Commission decision requiring all parking spaces be provided on-site is upheld.

- 3. Remaining Conditions of Approval.** The City Council finds that regardless of the decision on the parking, all remaining conditions of approval as specified by the Planning Commission shall remain intact.

Conclusions and Final Order

Whereas the City Council believes the intent of the ordinance is to protect the right-of-way for street uses and not parking. Therefore, it is ORDERED by the Yachats City Council that the Planning Commission decision be upheld and all required parking spaces shall be provided on-site.

All conditions of approval as specified by the Planning Commission shall remain intact as follows:

1. **Proposed Development and Density.** Approval is based on the submitted plan including a density of no less than 2,223 square feet of land per dwelling
2. **C-1 Standards.** The development shall adhere to all C-1 standards including, but not limited to, a maximum 30 foot building height, minimum 60 foot setback from the centerline of Highway 101, and minimum 10 foot setback from the west property line.

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3. **Screening and Landscaping.** A solid fence and landscaping shall be provided along the entire west property line. The fence shall be three feet in height along the first 16 feet from the Aqua Vista property line (16' is the building setback from the front property line) and six feet in height for the remainder of the property.

Landscaping shall be provided as shown on the approved site plan, including but not limited to tree planting along the street frontages and landscaping along a portion of the south property line. The existing cherry tree within the Aqua Vista right-of-way shall be preserved and maintained if possible.

4. **Parking.** A minimum 17 parking spaces shall be provided as shown on the approved site plan. All required parking spaces shall be provided on-site.
5. **Lot Consolidation.** Prior to approval of a building permit, the applicant shall provide documentation that the two existing tax lots have been consolidated.

This ORDER was presented to and approved by the Yachats City Council on November 8, 2010.

Ronald Brean, Yachats Mayor

Date