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CITY OF YACHATS
PLANNING COMMISSION
January 21, 2014

Minutes

The January regular meeting of the Yachats Planning Commission was called to order by Vice-Chair at 3:00 p.m. in the Civic Meeting room of the Yachats Commons. Members present: Musial, Nan Scott, Ken Aebi, and Helen Anderson. Absent: Katherine Guenther. Also present, City Planner Larry Lewis. Audience – 9.

I. Election of Chair and Vice Chair

Motion to elect Katherine Guenther Chair of the Planning Commission, Aye – 6, No – 0, Absent – 1 (Guenther).

Motion to elect Musial as Vice-Chair, Aye – 5, 1 - No – Anderson, Absent – 1 (Guenther).

Motion to elect Scott as Vice-Chair, Aye – 1 (Anderson), No – 5, Absent – 1 (Guenther).

II. Announcements and Correspondence

Musial said that the annual State of the City event would take place on Sunday, January 26, 2014 at 2:00 p.m.

III. Minutes

• **Regular Meeting – November 19, 2013**

Motion to adopt the minutes, Aye – 5, No – 0, Absent – 1 (Guenther), Abstain – 1 (Urban).

IV. Citizen's Concerns – None.

V. Public Hearing

A. Case File #1-VAR-PC-13 Nelson Variance Application

Musial opened the public hearing and stated that the purpose of the hearing was to consider the application made by Mia Nelson for a variance.

Musial asked if anyone wished to object to the jurisdiction of the Commission to hear this matter. There was none.

Musial asked if any Commissioner wished to make any disclosure, or abstain from participating or voting on this application because: of possible financial gain resulting from this application; because they owned property within the area entitled to receive notice of this hearing; because they had a direct private interest in the proposal; or because they had determined that they could not be impartial. There were none.

Musial asked if any Commissioner needed to declare any contact, written, oral or otherwise, prior to the hearing, with the applicant, appellant, any other party involved in this hearing, or any other source of information (outside of staff) regarding the subject of this hearing; and if so, to please state with whom they had the contact and what was said.

1 Urban, Aebi and Anderson each reported that they had visited the property.

2
3 Scott and Aebi said that they received an email from Dave Rieseck, which has since been
4 added to the record.

5
6 Musial asked the staff to describe the public hearing process, the criteria that will be used by the
7 Planning Commission to evaluate the application and a description of the land use application.

8
9 Lewis described the public hearing process Lewis stated that the applicable criteria the Planning
10 Commission will use as they consider the application are the Yachats Municipal Code, Title 9
11 Zoning and Land Use

- 12 - Chapter 9.12 R-1 Residential Zone
- 13 - Chapter 9.48 Off-Street Parking and Loading
- 14 - Chapter 9.52.050 Hazard areas
- 15 - Chapter 9.52.070 Shoreland setbacks
- 16 - Chapter 9.80 Variances

17
18 Musial explained that the Planning Commission has received all of the letters that were
19 submitted and have read them.

20
21 Lewis said that the City has received 15 letters from 11 different people. Of those, 14 letters are
22 opposed to the application.

23
24 Lewis explained that he originally prepared the Staff Report based on the belief that Gender
25 Creek was a perennial stream. Later review and research proved that the stream is actually an
26 intermittent stream, which changes the required setbacks. A revised Staff Report was drafted
27 based on the change.

28
29 Lewis explained that the City Council granted an exception for setback from the bluff in August
30 2012. The exception to the Code was not a variance. When granting the exception the City
31 Council placed restrictions on further development.

- 32 a. Any structure built on the 67 Windy Way property (Tax Lot 8800 of Tax Map 14-
33 12-34AC) shall be in accordance with an Oregon certified engineering geologist's
34 recommendations and no closer than seven (7) feet to the top of the bluff.
- 35 b. Development of the property shall be in accordance with all provisions of the
36 Yachats Zoning and Land Use Code except for the setback from the top of bluff
37 as described in these Exception Findings.

38
39 Lewis said that his staff report includes recommendations the Planning Commission may wish
40 to include if the variance is approved.

41
42 Musial opened the public testimony portion of the public hearing and asked anyone addressing
43 the Planning Commission to come forward, use the microphone, begin by giving their full name
44 and address and sign the sign-in sheet with their mailing address.

45
46 Musial asked the applicant to explain the application.

47
48 Mia Nelson said that she was told last week that there was no time limit so she did not come
49 prepared for the limited time, but will try to keep to the 15 minute time limit.

1 Nelson said that she inherited this property from her mother. There was one house on two lots.
2 The property was worth more as two lots, so she had the house removed and restored the two
3 lots.
4
5 Nelson said that when the exception was granted the City Council said that any future
6 development would have to be built to Code. Asking for a variance is following the Code.
7
8 Nelson said that she is not able to discern from the letters how much of the anger is due to the
9 confusion about the request and the necessary setbacks.
10
11 Nelson said that many of the neighbors who wrote the letters are angry about the house that her
12 sister built. Nelson said that she had no input into the design of her sister's house and had not
13 even seen it until today. The neighbors are angry with her sister, not her.
14
15 Many of the letters suggest that she is asking for the setbacks because she is greedy and a
16 jerk. In many cases, variances to setbacks actually improve the views for the neighboring
17 homes.
18
19 Nelson said that she has pride in her work and she does not want to build a bad product with a
20 bad driveway.
21
22 Nelson said that she would like to be able to build a home without a 60-foot driveway that
23 required the owner to back out of each time they leave the home.
24
25 Nelson said that she believes the proposed home is the smallest possible home that could be
26 built.
27
28 Nelson submitted the following documents:
29 • Aerial photograph of S Windy Way with a diagram of the proposed home, showing the
30 amount of the home that would be out of the established setback.
31 • Photographs of Windy Way Homes and Gender Drive Homes showing the differences in
32 the elevation of the area homes.
33 • Diagram of the elevation of the proposed home.
34 • Diagram of the downward view angle of the neighboring home at 12 Gender Drive.
35 • Photos of homes at 12 and 52 Gender Drive and 17, 33 and 43 Windy Way showing
36 how much of neighbors' view will be impacted by proposed variance as opposed to the
37 home that could be built without the variance.
38
39 Nelson said that the elevation of the proposed home would actually improve the view because
40 of the slope back roof design. In many cases, the trees near the lot already block the views.
41
42 Nelson said that if the Planning Commission wishes to ensure that the home they build is the
43 one proposed in the application that could be a requirement of the variance.
44
45 Nelson said that if the Planning Commission denies the variance she will still build a house, and
46 the house she builds will be taller and wider than the one proposed.
47
48 Nelson said that the letters include erroneous statements, which she could address if the
49 Planning Commission wishes.

1 Proponents were asked to present evidence and testimony. - There were none.

2
3 Opponents were asked to present evidence and testimony.

4
5 Betty Reed:

- 6 • There has been a lot of confusion about the riparian setback requirement.
- 7 • The City has gone to a lot of trouble to pass setback standards to protect the riparian
- 8 areas.
- 9 • Gender Creek has water year round, so she would ask at this time that the Planning
- 10 Commission take more time to consider if Gender Creek is an intermittent stream or a
- 11 perennial stream.
- 12 • The reasons given for the hardship – adverse market conditions and the wind - do not
- 13 constitute a true hardship as applicable to the Yachats Municipal Code.
- 14 • The Planning Commission should not disregard the impact it will have on the views of
- 15 the neighboring homes.

16
17 Will Reed:

- 18 • He wrote a letter opposing the variance, but now that the applicants have threatened to
- 19 build an even bigger house he feels he can no longer be opposed to proposal.
- 20 • It is true that there is water in Gender Creek year round, it has flooded in the past and it
- 21 has already been impacted by the development in the area.
- 22 • He would like to have the Planning Commission make the lot unbuildable.
- 23 • The applicant herself created the easement on the lot. The homeowner will be able to
- 24 back into the easement, which means they will only need to back up 20 feet – not 60
- 25 feet.

26
27 Kathy Kuck:

- 28 • She came to the hearing opposed to the variance request, however now that the
- 29 applicant has stated they will build a taller and wider house if the variance is not granted
- 30 she can no longer be opposed to the request.

31
32 Undecideds were asked to present evidence and testimony.

33
34 Robert Weinman:

- 35 • His daughter lives on Gender Drive. His daughter's house was built on the footprint of a
- 36 previous house that was removed, and it was necessary to drill down to the basalt in
- 37 order to construct her home.
- 38 • The lot has many different problems, including the shape of the lot, the riparian areas,
- 39 etc.
- 40 • A home could be built on that lot if it were cantilevered to the west. It would take some
- 41 work, but it could be done.
- 42 • The roof of his daughter's home blew off just one year after it was built.

43
44 Musial said that the Planning Commission is trying to make a decision about the variance

45 request, not if they should drill down to the basalt and asked Weinman if he is for or against the

46 variance.

47
48 Weinman said that he would like them to consider consulting a structural engineer regarding the

49 home they plan to build.

1 Musial suggested that Weinman talk to the applicants about his suggestions.

2
3 Dave Rieseck asked if the all of the property owners in the neighboring area given notice when
4 the City Council granted the exception.

5
6 Lewis said that the exception was granted as part of an overall Code Amendment, and notice
7 was given to all property owners in town.

8
9 Rieseck continued:

- 10
- 11 • There may be many other lots that could or will come forward for similar exceptions – the
12 owners just did not realize they could ask for an exception at the same time Nelson
13 submitted the request.
 - 14 • Many of the people in the neighborhood bought their homes when there was one home
15 on the lots, now there are two.
 - 16 • Setbacks are expectations other homeowners rely on when they purchase and build.
 - 17 • The decision the Planning Commission makes today will set a precedence for all the
18 other homeowners along the ocean.

19 The applicant was asked to respond to opponents

20
21 Nelson said that there has never been a variance granted – there were always two lots there.

22
23 Nelson said:

- 24 • They asked for an exception because the City was considering a change to the Code
25 after she had already had the old home removed. They simply asked to be able to build
26 based on the old rules that were in place when she had the old house removed. If she
27 had known that the City would change the rules she would have never had the old house
28 removed.
- 29 • The only map that exists indicates that Gender Creek is intermittent.
- 30 • The application did not list adverse market conditions as one of the hardship conditions.
- 31 • She has not been able to draft any plans for a driveway less than 60 feet.
- 32 • Her sister is having a lot of trouble with the wind, and she is required to
- 33 • Is working with a geo-technical engineer and have considered cantilevering the home,
34 but have decided to not do that.
- 35 • The statement that they will build a taller and wider house if the variance is not granted
36 is not a threat; she is simply trying to share information so that later the neighbors do not
37 regret their opposition to the variance.
- 38 • As the executor of the estate it was her responsibility to maximize the value of the home
39 and the market appraisal showed that the property would be worth more as two lots.
- 40 • Her sister did not want to co-own the property with her, so the home was removed and
41 the two original lots divided between the sisters.

42
43
44 Musial asked if any of the Commissioners had any questions they would like to ask of the
45 applicant before the public testimony portion of the hearing was closed. There were none.

46
47 Musial asked if the Planning Commission believed all necessary evidence has been presented
48 that they will need to make a decision. It was agreed that they did.

1 Musial said that the Commission would like to thank all those that have presented evidence or
2 testimony, either in writing or at this hearing. And, that the Commission would remind the
3 applicant and all others that the Planning Commission may only consider the evidence and
4 testimony that strictly pertains to the applicable criteria as stated in the notice of hearing and at
5 the beginning of the hearing.

6
7 Musial closed the public testimony portion of the public hearing for Planning Commission
8 deliberations

9
10 Musial explained the options the Planning Commission has at this point, which included
11 deliberate and vote, continue the hearing to a date or reopen the public hearing to receive
12 further testimony.

13
14 The Planning Commission deliberated each of the criteria separately.

15
16 **A. Exceptional or extraordinary circumstance apply to the property that do not apply**
17 **generally to other properties.**

18
19 The applicant has said that the narrow front lot line, impaired access and the wind and weather
20 conditions as the exceptional circumstances.

21
22 Anderson said that if you live in Yachats you have to deal with the wind.

23
24 Musial asked the City Planner for clarification regarding the lots.

25
26 Lewis said that there were two lots on which one house was built. When the house was
27 removed the owners reestablished the two tax lots. The City does not have anything to say
28 about that type of request since that is something that is done through the County.

29
30 When the City was considering the changes to the Code the owner realized that any new
31 construction would have to meet the new standards so they requested an exception to the new
32 Code standards so they could build based on the Code that was in place when they had the
33 house removed.

34
35 Lewis said that the City standard requiring a minimum of 7,500 square feet was adopted after
36 the original two lots were platted. The lots are pre-existing non-conforming lots.

37
38 There was consensus that the criteria for hardship has been met due to the size and shape of
39 the lot.

40
41 Scott said that there is no guarantee that all property owners are able to build a three-bedroom
42 home on a small lot, so while she agrees that they met the criteria, she also believes that a
43 home could be built without the variance.

44
45 **B. Variance necessary for the preservation of the property right substantially the**
46 **same as owners of other property in the same zone or vicinity.**

47
48 Urban said that the owners would be able to build a house without the variance so he does not
49 believe the City would be taking away a property right if the variance is denied.

1 After further discussion, the Commission could not arrive at a conclusion and will continue the
2 discussed on this criterion later.

3
4 **C. The variance would not be materially detrimental to the purposed of the Code or**
5 **to the property in the zone or vicinity in which the property is located or otherwise**
6 **conflict with the objectives of any City plan or policy.**
7

8 When asked, Lewis said that he does not believe a structure built 5 feet closer to the stream
9 bank should further affect the stream.

10
11 Urban said that if the Planning Commission grants the variance they would not be granting
12 anything that would allow a structure substantially closer to the creek than any other structure in
13 the area.

14
15 There was consensus that the Planning Commission could approve the request based on this
16 criterion.

17
18 **D. The variance requested is the minimum variance which would alleviate the**
19 **hardship.**
20

21 Anderson said that she does not understand what the problem is with backing up 60 feet.

22
23 Shrock said that she has a problem with a 2,200 square foot home on such a small lot.

24
25 Lewis said that the proposed home does not exceed the lot coverage limit.

26
27 Anderson said that the average home size in the area is less than the home they are proposing.

28
29 Scott and Musial each said that the Commission should only consider the lot coverage limit in
30 the Code.

31
32 Scott said that she does not believe the variance request is the minimum to alleviate the
33 hardship because they could still build a house without a variance.

34
35 Lewis asked the Planning Commission to consider the applicant's response to this criteria in
36 which they reference a previous variance granted another property owner.

37
38 When asked, the applicant said that the hardship is that she does not believe she should be
39 required to back up 60 feet when others do not.

40
41 The Commission could not arrive at a consensus and will continue the discussed on this
42 criterion later.

43
44 **E. The hardship asserted as a basis for the variance does not arise from a violation**
45 **of the zoning ordinance.**
46

47 There was consensus this criteria was met by the applicant.

48
49 Discussion returned to:

50 B. Variance necessary for the preservation of the property right substantially the same as
51 owners of other property in the same zone or vicinity.

1
2 Lewis explained that the other lots in the area are small as well.

3
4 Scott said that the question of hardship then becomes the shape of the lot rather than the size.

5
6 Urban said that he could agree that this criterion has been made although he also has to
7 backup quite a way at his house.

8
9 Aebi said that he understands the process of discussing each of the criterions separately, but he
10 believes the Planning Commission needs to look at the application as a whole. The variance
11 will make it safer and he cannot find a reason to not grant the variance.

12
13 Aebi said that he came to the meeting prepared to deny the variance but after listening to the
14 applicant he has changed his mind.

15
16 Scott said that she would vote no because she believes there are other ways the applicant
17 could build without a variance.

18
19 Musial said that the Planning Commission could vote on the variance and could include some
20 restrictions. Lewis has recommended some possible restrictions in his staff report.

21
22 Lewis said that during the deliberations he thought he heard some concerns raised and he
23 would like some clarification. Lewis reminded the Commission that further restrictions could be
24 imposed.

25
26 Discussion followed regarding additional conditions, including that the roof line be built as
27 proposed in the application and creation of a deed restriction preventing any future changes to
28 the construction that require exceptions or variances to the Municipal Code.

29
30 Motion to approve the variance request, including the following conditions:

- 31 1. Variance Approval. Development shall be in accordance with the submitted plans and R-1
32 standards except for the approved variance that allows the following:
- 33 a. Five (5) foot rear yard setback.
 - 34 b. 8'-9" east side yard setback for the southeast corner of the building.
 - 35 c. Approximate 33 foot setback from the top of stream bank at the northeast corner of
36 the building.
- 37 2. Ocean Protection Standards. Per the August 2012 adopted Findings and Conclusion
38 regarding the exception to ocean protection standards:
- 39 2a. Any structure built on the 67 Windy Way property (Tax Lot 8800 of Tax Map 14-
40 12-34AC) shall be in accordance with an Oregon certified engineering geologist's
41 recommendations and no closer than seven (7) feet to the top of the bluff.
 - 42 2b. Development of the property shall be in accordance with all provisions of the
43 Yachats Zoning and Land Use Code except for the setback from the top of bluff
44 as described in the Exception Findings and approved variances.
 - 45 2c. Prior to development and in accordance with Yachats Zoning and Development
46 Code Section 9.52.050.3, a geologic hazards report completed within the past
47 five years (from the date the application for development is submitted) by a state
48 of Oregon certified engineering geologist shall be submitted to the City.
 - 49 2d. Prior to approval of a building permit for 67 Windy Way, an Oregon certified
50 engineering geologist shall provide a letter to the City of Yachats stating that they

- 1 have reviewed final plans and that final plans are in accordance with the
2 engineering geologist's recommendations.
- 3 2e. At the time of completion of development and in accordance with Yachats Zoning
4 and Development Code Section 9.52.050.3, the developer shall provide
5 certification from an Oregon certified engineering geologist stating that the
6 conditions and recommendations of the report have been met.
- 7 3. Drainage Way Protection Standards. Development of the subject property shall not
8 increase the amount or flow rate of surface water runoff destined for Gender Creek.
- 9 4. Flood Damage Prevention Regulations. At the time a building permit application is
10 submitted the property owner will need verify the elevation of the property. If the
11 property is determined to be within the flood hazard zone, new construction shall be in
12 accordance with YMC Section 9.54 Flood Damage Prevention Regulations.
- 13 5. Time Limit of Variance Approval. Authorization of this variance shall be void after one
14 year unless substantial construction pursuant thereto has taken place. However, the
15 Planning Commission may extend authorization for an additional period not to exceed
16 one year, on request.
- 17 6. The house shall be constructed with a sloping roof line, as shown in the elevations
18 shown in the application.
- 19 7. Owner shall place a restriction on the deed prohibiting any future development on the lot
20 requiring a variance or exception to the Yachats Municipal Code.

21
22 Findings and Conclusions to be prepared for the Planning Commission to review for adoption at
23 the February meeting, Aye – 4, No – 2 (Anderson, Scott), Absent – 1 (Guenther).

24
25 **VI. Planner's Report – Larry Lewis – Attached, in writing.**

26
27 **VII. New Business – None.**

28
29 **VIII. Other Business**

30 **A. From the Commission – None.**

31
32 **B. From Staff – None.**

33
34
35 The meeting was adjourned at 6:10 p.m.

36
37
38
39 _____
Katherine Guenther, Chair

40
41
42
43 _____
Nancy Batchelder, City Recorder