

ARTICLE 14. LAND DIVISION

(4/6/76-ORD 24-EFFECTIVE DATE, amended 4/6/04-ORD 256-LAND DIVISION, formerly PARTITION & SUBDIVISION ORD 57-6/4/79, ORD 87-3/15/82, ORD 111-5/21/84, ORD 153-7/16/90, ORD 155-9/17/90, 5/4/10-ORD 287)

Section 14.010. Purpose: As authorized by law, including ORS Chapter 92, the following requirements and standards relating to the division of land apply to all land within the City of Depoe Bay. This Article is necessary for the protection of the health, safety and welfare of the city's citizens, and is designed to promote coordinated and appropriate development of land and to carry out the City's comprehensive plan. These regulations have the following objectives:

1. To allow for the proper location of utilities.
2. To specify the width, location and improvement of streets.
3. To provide for adequate sewage disposal facilities.
4. To provide for adequate water supplies.
5. To provide for adequate drainage facilities.
6. To reduce danger from geologic hazards, floods, fire and pollution.
7. To provide for adequate open space.

Section 14.011. Exceptions for Section 3.410 - Planned Developments: The provisions of Article 14, Sections 14.010 through 14.080, shall be applicable to Section 3.410, Planned Developments, unless expressly contrary to a specific provision of Section 3.410.

Section 14.020. Approval Of Partitions:

1. A partition of land shall not be valid until it has been approved and recorded as provided for in this Article. No person shall convey any interest in a parcel in any partition, or replat of a partition, until the plat of the partition has been recorded as provided for in this chapter. A person may negotiate to sell any parcel in a partition or replat of a partition upon approval of the tentative plan of the partition.
2. A person may negotiate to sell any parcel in a partition prior to the approval of the tentative plan for such partition, however, no person may sell any parcel in a partition prior to tentative approval
3. No building permits shall be approved for any parcel in a partition until the partition has been recorded.
4. Partitions shall not be approved that will create a lot smaller than the minimum lot dimensions for the zone in which the partition occurs. If a road divides a parcel, the land on each side of the road shall be considered separately for purposes of calculating minimum lot sizes.

Section 14.030. Approval of Subdivisions:

1. No plat or replat of a subdivision of land shall be recorded or have any validity unless and until it has the approval of the City, as provided for in this article.
2. No person shall negotiate to sell any lot in a subdivision until a tentative plan of that subdivision has been approved, however, no person shall sell any lot in the subdivision prior to final subdivision approval.
3. No person shall dispose of, transfer, or sell any lot in any subdivision until final approval is obtained and the plat of that subdivision recorded.
4. Approval of Property Line Adjustments: No person shall accomplish a property line adjustment without having first secured the approval of the city as provided for in this chapter.
5. Approval of Street or Road Creations.
 - a. No person shall create a street or road for the purpose of partitioning an area or tract of land without the approval of the City as provided for in this chapter.
 - b. No instrument dedicating land to public use shall have any validity unless such instrument bears the approval of the City as accepting such dedication.

Section 14.040. General Requirements and Minimum Standards of Development Design: The following are the minimum requirements and standards to which subdivisions and partitions must conform:

1. Conformity to the Comprehensive Plan: All subdivisions and partitions shall conform to applicable portions of Article 13, the City's Development Guidelines, and the purposes of the goals and policies of the Comprehensive Plan.
- ~~2. Performance Agreement: (deleted 5/4/10-ORD 287)~~
2. Relation to Adjoining Street System: If development of a subdivision or partition would otherwise impede or interfere with access to or through existing streets and rights of way, a subdivision or partition shall provide for the continuation of said streets and rights-of-way. If physical conditions make such continuation impractical, exceptions may be made.
 - a. If the City finds that the off-site effects of a subdivision warrant the necessity of improved streets or rights-of-way, the City may require that the subdivision or partition provide for them. If no such off-site effects are found, the City may require that the lay-out of the subdivision or partition take into account the future development of streets and rights-of-way with regard to setback, access, parks and open spaces, as well as other requirements of this Article.
 - b. When a tract is divided into lots or parcels of a size which could allow for further re-division under current zoning, the City may require an arrangements of lots and streets such as to permit a later redivision in conformance with the street requirements and other requirements contained in this Article.

3. Access:

- a. A subdivision, partition or replat shall provide each lot or parcel with not less than 25 feet of frontage on a public or private road or street, except that where necessitated by adverse sight distances or other factors, greater frontage may be required.
- b. A subdivision or partition shall consider vehicular access to the parcel off existing or proposed roads that addresses traffic congestion, speed, stop signs and turn lanes for the orderly development of traffic accessing the area.

4. Private Streets:

- a. No street or road which would serve as a collector from existing public streets shall be approved as a private street.
- b. The establishment of a private street shall not be allowed if it will deny the public access to public areas such as beaches or parks.
- c. No road or street shall be approved as a private road in a case where such a road or street presently is or will in the future be needed to provide access to development on adjacent properties or to serve as a collector for other subdivisions or partitions in the area.
- d. All private streets or roads established for the purpose of subdividing, partitioning or replatting land shall be surveyed and monumented.
- e. Yard setbacks shall be determined from the road right-of-way or access easement line in instances where private roads are considered.
- f. Private road rights-of-way may be approved of less than 50 feet in width but in no instance shall the road right-of-way be less than 30 feet, except that a private road to two lots may be 20 feet in width. In instances where the road access to more than three lots is less than 50 feet in width, utility/slope easements may be required.
- g. Private road standards shall be the same as those for public streets. No more than three lots shall be exempt from standards for improvements.

5. Public Streets:

- a. Right-of-way and improvement requirements for public streets shall conform to the widths as specified in Sections 14.070 and 14.080 of this Article.
- b. If topographical requirements necessitate either cuts or fills for the proper grading of roads, additional right-of-way or slope easements shall be provided.
- c. The layout of streets shall give suitable recognition to surrounding topographical conditions in accordance with the purpose of this ordinance.
- d. Street improvements, street grades and center line radii on curves shall meet the minimum requirements as specified in Sections 14.070 and 14.080 of this Article.

- e. The City of Depoe Bay shall only be responsible for maintenance of a public street when the street is accepted by the City Council through dedication. A street that is accepted by the City Council through dedication shall be referred to as a "City Street." *(added 5/4/10-ORD 287)*

6. Street Intersections.

- a. Streets shall intersect one another at an angle as near to a right angle as is practical considering the topography of the area and previous adjacent layout.
- b. Intersections shall be designed so that no danger to the traveling public is created as a result of staggered intersections.

7. Cul-de-Sacs and Turnarounds.

- a. Dead-end (cul-de-sac) streets in partitions and subdivisions shall terminate in a turnaround with a minimum property line radius of forty (40) feet, or other type of turnaround approved by the City.
- b. Approved turnarounds shall be provided on all dead-end streets.
- c. No dead-end street may be established without Fire Marshall approval.

- 8. Easements. Where alleys are not provided, easements of not less than six (6) feet in width may be required on each side of the rear line or side line for necessary utility lines, wires, conduits, storm and sanitary sewers, gas and water. Easements of the same or greater widths may be required along boundary lines or across lots or parcels where necessary for the extension of utility lines, waterways, and walkways, and to provide necessary drainage ways or channels.

- 9. Blocks. Normally no block shall be longer than six hundred (600) feet between street lines. Approval for longer blocks can be given where topographical conditions constrain development.

- 10. Public Access Ways. When necessary for public convenience and safety, the Planning Commission may require the developer to dedicate to the public reasonable access ways to connect to cul-de-sacs, pass through oddly shaped blocks, provide for networks of public paths according to adopted plans, or to provide access to schools, parks, beaches or other public areas, or for other such design and location as reasonably required to facilitate public use. A subdivision, partition or replat shall maintain existing public access points to shore lands as required by Section 3.360.5.d. Such access points shall be ascertained as follows:

- a. By examination of a standard title report;
- b. By consulting City inventory of such points; or
- c. Through presentation of other lawful information.

11. Lots and Parcels.

- a. Every lot/parcel shall abut a public street or private road. A flag lot with the staff that does not comply with the required minimum lot widths for the zone it is located in is permitted, but the staff measurement shall not be less than 25 feet minimum frontage.

- b. Each side line shall be as close to perpendicular to the adjacent street/road or radial to a curved street/road as possible.
 - c. Lots/parcels with double frontage shall not be permitted unless, in the opinion of the City, the physical characteristics of the land prohibit any other plan for a subdivision.
 - d. The staff portion of a flag lot shall not be used in computing lot size for zoning and building purposes.
12. Utility Easements.
- a. Where alleys are not provided, easements of not less than ten (10) feet in width may be required on side or rear lines if determined to be necessary for utility lines, wires, conduits, storm and sanitary sewers, gas and water.
 - b. Easements of the same or greater widths may be required along boundary lines or across lots where necessary for the extension of utility lines, waterways, and walkways, and to provide necessary drainage ways or channels.
13. Water. No partition or subdivision shall receive final approval unless the City has received and accepted:
- a. A certification by the City Superintendent, or such other City official as the City may designate, that water will be available to the boundary line of each and every lot or parcel depicted in the proposed Subdivision or partition; or
 - b. A performance agreement, bond, contract or other assurance that a water supply system will be installed to the boundary line of each and every lot or parcel depicted in the proposed subdivision or partition.
14. Sewer. No partition or subdivision shall receive final approval unless the City has received and accepted:
- a. A certification by the City Superintendent, or other officials as the City may designate, that sewer will be available to the boundary line of each and every lot or parcel depicted in the proposed subdivision or partition; or
 - b. A performance agreement, bond, contract or other assurance that sewage disposal lines will be installed by or on behalf of the developer to the boundary line of each and every lot or parcel depicted in the proposed subdivision or partition.
15. Surface Drainage and Storm Sewer.
- a. Drainage facilities shall be provided within subdivisions and partitions, and to connect the subdivision or partition drainage to drainage ways or storm sewer outside the subdivision or partition. The connection to the city system shall be engineered using standard practices and shall be approved by the city.
 - b. Design of drainage within subdivisions and partitions shall consider the capacity and grade necessary to maintain unrestricted flow from areas draining through the development as well as to allow extension of the system to serve those areas.

16. Phase Development. A plat may be filed on a portion or phase of an approved tentative plan. Each phase of a subdivision must be able to qualify for approval independent of the balance of the approved tentative plan.
17. Geologic Hazards. All land divisions shall comply with the procedures and standards set forth in Article 13, where applicable.
18. Parks and Open Spaces. Excluding streets and parking, at least 35% of the land will be dedicated or reserved for outdoor recreation, park or natural land, for use by the residents of the subdivision.

Section 14.050. Dedication of Public Streets Application. Any person wishing to create a public road or street which is not a part of a subdivision shall make written application to the City Council. The application shall consist of a letter addressed to the Council requesting acceptance of the dedication; a dedication deed with a proper description of the proposed dedication signed by all owners of the property being dedicated; a map showing the proposed road and property intended to be served by the road.

Section 14.051. Review. The City Council shall refer the dedication application to the following:

1. The City Superintendent, or other designated person, who shall check the proposal for grade and conformance to City road standards;
2. A title insurance company for a standard preliminary title report;
3. The City Planning Commission which shall review the proposal for compatibility with the City's Comprehensive Plan, Transportation Plan, and any adjacent approved tentative plans, plats, or maps.

Section 14.052. Approval.

The above reports shall be forwarded to the City Council along with the application for dedication. The dedicator shall furnish a standard title insurance policy insuring title of the dedicated street to the City. A public street will not be maintained by the City unless that street is accepted by the City into the City's road system.

Section 14.060. Procedure for Insuring Completion of Roads and/or Utilities in Subdivisions and Partitions

1. The developer's engineer will prepare cost estimates for completion of roads and/or utilities. Road cost estimates shall be based upon road standards as designated herein. All cost estimates shall be stamped by a registered professional engineer, licensed in the State of Oregon.
2. All estimates shall be submitted to the City Superintendent; water and/or sewer cost estimates shall be sent to the water and sewer department for review and approval.

3. The City Superintendent shall notify the developer as to the amount of bond or other performance agreement required and as to any changes necessary for bond acceptance or other performance agreement.
4. The developer shall submit the bond or performance agreement and three copies thereof written in favor of the City of Depoe Bay to City Hall for approval.
5. Upon completion of construction of roads and utilities, the applicant's engineer shall certify that such improvements are built to the standards approved. This certification of completion shall be submitted prior to the release of any bond or performance agreement.

Section 14.070. Street Width in Subdivisions and Partitions.

TYPE OF STREET	RIGHT OF WAY WIDTH	SURFACE WIDTHS +
1. Arterials	80' to 150' ++	40' to 52' ++
2. Collector Streets and all streets other than Arterials	40' to 50' ++	28' to 38' ++
3. Cul-de-Sacs	40'	28'
4. Circular Ends of Cul-de-Sacs	80' +++	60' +++

+ Surface width is that measured from face to face of curbs or shoulders.

++ The Planning Commission may require a width within the limits shown based upon adjacent physical conditions, safety of the public and the traffic needs of the community.

+++ Measured by diameter of circle constituting circular end.

Section 14.080. Street Improvements in Subdivisions and Partitions. Improvements shall meet the following minimum standards unless increased at the request of the Planning Commission:

1. All streets shall be rough graded for the full surface width.
2. All streets shall have a minimum of eight (8) inches of base material to a minimum width of twenty eight (28) feet.
3. All streets shall have a leveling course of 3/4" crushed rock, two (2) inches deep compacted.
4. All streets shall be paved with two (2) inches of asphalt concrete to a minimum of the width required by the Planning Commission.

Section 14.090. Procedure for Subdividing, Partitioning or Replatting Land:

1. Pre-Application Conference: Prior to submitting a tentative plan of a subdivision, partition, or replat, the applicant should confer with the City Planner regarding the requisites of the tentative plan application and the applicable standards and criteria of the Depoe Bay Zoning Ordinance.
2. Tentative Plan Requirements: The submitted tentative plan for a subdivision, partition, or replat shall contain all of the information listed on the applicable City of Depoe Bay application form. If the proposal includes new access from a state highway, the applicant shall submit documentation that the Oregon Department of Transportation will be willing to issue the requested road approach permits.
3. Tentative Plan Application and Review for Subdivisions and Partitions: The procedure for application and review of the tentative plan of a subdivision, and the procedure for application and review of the tentative plan for a partition shall be as set forth in Article 10, Section 10.025(3). *(replaced 5/4/10-ORD 287)*
4. Tentative Plan Application and Review for Replats:
 - a. The procedure for review and approval of the tentative plan shall be set forth in Article 10, Section 10.025(3).
 - b. For replats of previously recorded partition plats, the procedure for review and approval of the tentative plan shall be as set forth in Article 10, Section 10.025(1).
5. Time Limit for Tentative Approval: Approval of a tentative plan in accordance with this section is valid for a period of three years. A single time limit extension may be granted by the Planning Commission only if the development is substantially completed within the three year time period. A development is deemed to be substantially completed when utilities, streets, and drainage are in and stubbed to the lot line.
6. Revision of Tentative Plan: If an approved tentative plan for a subdivision is revised in any way, the Planning Commission shall review the proposed revisions to determine if a new application for tentative approval will be required. Such review will be limited to those issues impacted by the revision. If an approved tentative plan is substantially revised, such revision shall be filed as a new application for tentative plan approval.
7. Certifications Required for Final Approval: Requests for final approval of a subdivision, partition, or replat shall be accompanied by the following:
 - a. A copy of all covenants and restrictions.
 - b. Copies of all legal documents required for dedication of public facilities and/or for the creation of a homeowner's association.
 - c. The certification, bond, performance agreement, or statement regarding the installation of water and sewer services.
 - d. As-built certifications for all required roads and/or utilities unless otherwise guaranteed by a bond or performance agreement.

- e. A plat and one exact copy meeting the requirements of Section 14.100 and the applicable statute of the latest ORS. *(replaced 5/4/10-ORD 287)*
 - f.
 - f. When access from a State Highway is proposed, a copy of the approach road permit issued by the Oregon Department of Transportation confirming that all required improvements have been satisfactorily completed.
 - g. Such other information as is deemed necessary by the City Planner or Commission to verify conformance with the conditions of tentative approval.
8. Procedure for Final Approval of Partitions:
- a. The procedure for application and review of a request for final approval of a partition shall be as set forth in Article 10, Section 10.025(1). All such applications shall be accompanied by the certifications set forth in Section 14.090(7).
 - b. Upon granting of final approval, the City Planner shall sign the plat and its exact copy.
 - c. Upon signing, the City Planner shall deliver the plat and its exact copy to Lincoln County Surveyor who shall follow established procedures for obtaining recordation of the plat.
9. Procedure for Final Approval of Replats:
- a. If the proposed replat involves three (3) lots or less and is for the purpose of lot boundary changes only, procedure for review of final approval shall be as set forth in Article 10, Section 10.025(1).
 - b. If the proposed replat involves four (4) lots or more or includes changes to street rights-of-way, utilities, or any other features besides boundary lines, procedures for review of final approval shall be as set forth in Article 10, Section 10.025(2).
 - c. Following the signature of the City Planner or Planning Commission Chairperson, the City shall deliver the replat and its exact copy to the Lincoln County Surveyor who shall follow established procedures for obtaining recordation of the plat.
10. Procedure for Final Approval of Subdivisions:
- a. When the City Planner determines that all of the certifications set forth in Section 14.090(7) have been met and that the plat conforms in all respects to the tentative plan as approved, consideration of the plat will be placed on the agenda of the next scheduled meeting of the Planning Commission for determination that all requirements have been met. The Commission shall then approve, disapprove for cause, or, when further information is required, postpone a decision on the plat.
 - b. Unless appealed, the decision of the Planning Commission shall become effective 15 days after the decision is rendered. When the approval becomes effective, the Planning Commission Chairperson shall sign the plat and its exact copy.
 - c. Following the Planning Commission Chairperson's signature, the City shall deliver the plat and its exact copy to the Lincoln County Surveyor. The County Surveyor shall review the plat for conformance with the requirements of Section 14.100 and the provisions of the applicable statute of the latest ORS. *(amended 5/4/10-ORD 287)*

- d. Upon approval of the County Surveyor, subdivision plats shall be circulated for signing to the following officials:
 - (1) The County Treasurer, whose signature shall certify that all taxes on the property have been paid;
 - (2) The County Assessor, whose signature shall certify that the plat is signed by the owner or owners of record.
- e. Upon signing by the County Treasurer and County Assessor, subdivision plats shall be delivered to the County Clerk for recording.
- f. The signature of the Chairperson on the final subdivision plat shall be valid for a period of one year. If a plat has not been recorded within one year of the date of the Chairperson's signature, the final approval of the plat shall expire, and a new request for final approval shall be required.

Section 14.100. Plat Requirements:

- 1. Requirements of Survey Plats: The surveys and plats of all subdivisions, partitions and replats shall be made by a registered professional land surveyor and shall conform to the requirements of the applicable statute of the latest ORS. (*amended 5/4/10-ORD 287*)
- 2. Encroachment or Hiatus: In the event that any encroachment, hiatus or property line discrepancy exists on the property to be platted, such encroachment, hiatus or discrepancy shall be clearly shown on the plat.
- 3. Elevation Bench Marks: Where required, the location, name and elevation of any elevation bench marks shall be indicated on the face of the plat. The name, year, and elevation of the bench mark upon which the elevation is based shall also be shown.
- 4. Easements: All recorded and proposed easements will be shown on the plat, along with the following information:
 - a. The specific location and size by dimensions or description.
 - b. If previously recorded, the County Clerk's recording reference.
 - c. The purpose or type of easement and whether it is a public or private easement and, if private, who benefits from the easement. Any public or private easement to be created, or any other restriction made, shall be noted in the declaration. Public easements shall include language in the declaration which dedicates the easement to the use of the public.
- 5. Exceptions:
 - a. Parcels created in excess of 80 acres need not be shown on a partition plat.
 - b. Parcels in excess of ten acres created by partition plat need not be surveyed or monumented.

Section 14.110. Standards and Procedures for Property Line Adjustments:

1. Tentative Approval:

- a. The procedure for application, review, and tentative approval of property line adjustments shall be as set forth in Section 10.025(1).
- b. A property line adjustment shall be tentatively approved provided that:
 - (1) No additional lots or parcels will be created; and
 - (2) The subject lots, parcels or tracts of land will not be reduced in size to below the minimum area required by the applicable use zone; and
 - (3) The proposed lots, parcels or tracts of land as adjusted will comply with any required minimum width requirement as set forth in the applicable use zone; and
 - (4) The proposed property line adjustment will not reduce any yard or other setback below that required under applicable zoning; and
 - (5) The proposed property line adjustment will not reduce the street or road frontage of the subject lots or parcels to below that required by the City of Depoe Bay Code; and
 - (6) The proposed property line adjustment will not reduce any setback for an existing on-site sewage disposal system or approved replacement area below the required minimum; and
 - (7) The proposed property line adjustment will not increase the degree of non-conformity on vacant lots, parcels, or tracts that do not conform to lot size, width, or depth requirements, or on developed lots if the increase in non-conformity results in adjacent property becoming further dividable. The proposed property line adjustment will not increase the degree of non-conformity for required yards.
- c. Tentative approval of a property line adjustment is valid for a period of one year. Tentative approval may be extended by the City Planner prior to expiration of tentative approval. Requests shall specify reasons for requiring a time extension, along with a specific plan and timeline for completion. Only one (1) time extension of up to one (1) year may be granted.

2. Final Approval:

- a. The procedure for application, review and final approval of property line adjustments shall be as set forth in Article 10, Section 10.025(2).
- b. Final approval of a property line adjustment shall be granted upon submittal of the following:
 - (1) A copy of a filed survey of the property line adjustment in accordance with the applicable statute of the latest ORS and in substantial conformance with the tentative approval, except that property line adjustments where all lots, tracts or parcels affected are greater than 10 acres need not be surveyed or monumented. (amended 5/4/10-ORD 287)

- (2) Copies of recorded conveyances conforming to the tentatively approved property line adjustment and containing the names of the parties with proper acknowledgment.
- (3) Such other documentation as may be required by the City Planner to verify conformance with any requirements or conditions of the tentative approval.

Section 14.120. Property Line Adjustments in Subdivisions and Partitions:

- 1. Except as provided for herein, all property line adjustments within recorded plats shall be accomplished by replatting in accordance with Section 14.090.
- 2. Property lines within a recorded plat may be adjusted in accordance with the procedure for property line adjustments rather than by replatting, when the City Planner determines that:
 - a. The property line or lines to be adjusted will not result in a substantial reconfiguration of the affected lots or parcels so as to render them unsuitable for their previously approved purpose;
 - b. The property line or lines to be adjusted will not result in an increase in lots;
 - c. The property line or lines to be adjusted will not reduce the common open space or park and recreational acreage;
 - d. All of the other requirements for property line adjustments set forth in Section 14.010 will be met.

ORDINANCE NO 326-20

AN ORDINANCE ADDING A NEW SUBSECTION TO ARTICLE 14 LAND DIVISION IN ORDINANCE NO. 24 (ZONING ORDINANCE) AS SUBSECTION 14.045 TRANSPORTATION IMPACT STUDY REQUIREMENTS

WHEREAS, the Depoe Bay Planning Commission last amended Article 10 May 4, 2010, by Ordinance 287; and

Whereas, the Depoe Bay Planning Commission held public hearings on November 13, 2019, to obtain public comment on proposed revisions to the zoning ordinance; and

Whereas, the Depoe Bay City Council held a public hearing on May 19, 2020, and has concluded deliberations on the recommended changes to the Zoning Code, including considering public testimony and staff recommendations.

NOW, THEREFORE, the City Council of the City of Depoe Bay ordains as follows:

1). Ordinance No.24 Adding a New-Subsection to Article 14 Transportation Impact Study (TIS)

Section 14.045. Transportation Impact Study (TIS): The purpose of this section of the code is to implement Section 660-012-0045(2)(b) and (e) of the State Transportation Planning Rule that requires the City to adopt standards to protect the future operations of roadways and transit corridors and a process to apply conditions to development proposals in order to protect and minimize adverse impacts to transportation facilities. This section establishes when a TIS must be submitted with a land use application in order to determine whether conditions are needed to minimize impacts to and protect transportation facilities.

1. **Applicability – TIS letter.** A TIS letter shall be required to be submitted with a land use application if the proposal is expected to generate 10 to 30 peak hour trips or 100 to 300 daily trips.
2. **Applicability – TIS report.** A TIS report shall be required to be submitted with a land use application if the proposal is expected to involve one or more of the following:
 - a. The proposed development would generate more than 30 peak hour trips or more than 300 daily trips.
 - b. The proposal is immediately adjacent to an intersection that is functioning at a poor level of service, as determined by the City.
 - c. An increase in use of any direct property approach road to US 101 by 10 vehicles or more per day that exceed 20,000 pounds gross vehicle weight.
 - d. A new direct approach to US 101 is proposed.
 - e. A proposed development or land use action that the road authority states may contribute to operational or safety concerns on its facility(ies).
 - f. An amendment to the Depoe Bay Comprehensive Plan or Zoning Map is proposed.
3. The TIS letter or TIS report shall be prepared by an Oregon registered professional engineer qualified to perform traffic engineering analysis and will be paid for by the applicant. The TIS Letter or Report shall include trip generation estimates that are based on the Institute of Transportation Engineers (ITE) Trip Generation Manual.


4. Consistent with the City's Traffic Impact Study (TIS) Guidelines, the City will determine the project study area, intersections for analysis, scenarios to be evaluated, and any other pertinent information concerning the study that must be addressed in either a TIS letter or a TIS report.
5. Approval Criteria. When a TIS Letter or Report is required, a proposal is subject to the following criteria:
 - a. The TIS addresses the applicable elements identified by the City, consistent with the Traffic Impact Study Guidelines;
 - b. The TIS demonstrates that adequate transportation facilities exist to serve the proposed development or, in the case of a TIS report, identifies mitigation measures that resolve identified traffic safety problems in a manner that is satisfactory to the City and, when state highway facilities are affected, to ODOT;
 - c. For affected non-highway facilities, the TIS report establishes that mobility standards adopted by the City have been met; and
 - d. Proposed public improvements are designed and will be constructed consistent with City street design standards and access standards in the Transportation System Plan.
6. Conditions of Approval.
 - a. Where the existing transportation system will be impacted by the proposed development, dedication of land for streets, transit facilities, sidewalks, bikeways, paths, or access ways may be required to ensure that the transportation system is adequate to handle the additional burden caused by the proposed use.
 - b. Where the existing transportation system is shown to be impacted by the proposed use, improvements such as paving, curbing, installation or contribution to traffic signals, construction of sidewalks, bikeways, access ways, paths, or streets that serve the proposed use may be required.
 - c. Improvements required as a condition of development approval, when not voluntarily provided by the applicant, shall be roughly proportional to the impact of the development on transportation facilities. Findings in the development approval shall indicate how the required improvements directly relate to and are roughly proportional to the impact of development.

WHEREAS, the adoption of this ordinance is necessary to preserve the peace, health, safety, and welfare of the citizens of the City of Depoe Bay. This ordinance shall be in full force and in effect thirty days upon its adoption by the City Council of the City of Depoe Bay.

Introduced and passed the first reading in a regular meeting of the City Council of the City of Depoe Bay on this 7TH day of JULY, 2020.

Passed at the second reading, placed on final passage, and adopted by the City Council of the City of Depoe Bay on this 7TH day of JULY, 2020.

Approved by the Mayor of the City of Depoe Bay this 7TH day of JULY, 2020.



Mayor

Attest: 

City Recorder

APPEAL OF DEPOE BAY PLANNING COMMISSION DECISION

I, the undersigned, hereby appeal to the Depoe Bay City Council the decision of the Depoe Bay Planning Commission to approve the following request:

Case File #2-VAR-PC-21

This request was heard at the Planning Commission meeting Dated: Oct 13; Nov 10, 2021
Vote of the Planning Commission members on this request as follows:

VOTING TO APPROVE

F. Ruby

M. Phillips

J. Hayes

G. Steinke

R. Morland

VOTING TO DENY

I recused: J. Favett

In filing this appeal, I, the undersigned, hereby acknowledge the requirements for an appeal as established in the Depoe Bay Zoning Ordinance, and have submitted the materials as specified therein to accompany this appeal.

Date: 12/9/2021

Property Owner(s) Signature

Fred Reht

PO Box 221, Depoe Bay, OR 97341

Appeal Filing Date: 12/9/21 Non-Refundable \$276.00 (plus a \$1,725.00 deposit)
Receipt # 5581 Fee collected by Carla Downing

Section 10.015: All petitions, applications, and appeals provided for in this ordinance shall be made on forms prescribed by the City. Applications shall be accompanied by plans and specifications, drawn to scale, showing the actual shape and dimensions of the lot to be built upon, the sizes and locations on the lot of the buildings and other structures, existing and proposed, the existing and intended use of each building, structure, or part thereof, the number of families, if any, to be accommodated thereon, and such other information as is needed to determine conformance with this ordinance.

Appeal of Application 2 VAR-PC-21 by Fran Recht

Dear City Council:

It's awkward to file an appeal of a decision of our planning commission. We know the hard work that the planning commission and staff do and we know they work hard to get things right. Applying the land use laws that have been enacted by ordinance is complicated because it requires great attention to detail: specifically, the details about what standards apply and the exact wording of the ordinances. If we can apply these ordinances correctly we treat everyone fairly and create the safe and desirable community that has been envisioned. But mistakes are sometimes made as was the case with this application. It allows the applicant, who is thinking of buying the property, to jam too many buildings into too small a space by:

ignoring the applicable standards for streets;

ignoring standards in the C-1 zone for landscaping

ignoring standards in the C-1 zone for pedestrian amenities and

for allowing multiple variances to the development standards that pervert the intent of the variance ordinance through flawed rationale and findings.

If the City Council lets this substandard application move forward, a development will be allowed that has safety and aesthetic impacts, exports its traffic and parking impacts beyond its boundaries, and makes light of the intent of the development guidelines adopted by the City Council. The mistakes are too numerous and weighty to try to "fix"; since a whole re-design of the development is required to meet standards. Therefore, I am asking the City Council to uphold the appeal and deny this subdivision and these variances.

If you read the staff report you will see (page 3 of 18) that there is no mention of the land division ordinance as a relevant criterion except for Section 14.045 regarding the transportation impact study (TIS). During the hearings in front of the planning commission there was testimony from me and others about the failure to comply with the required land division street widths (requires 28' paved road surface widths) and the requirements for a cul-de-sac on the dead-end road that the developer is creating. There was also testimony brought up about required amounts of landscaping in this area. These standards were all ignored and this development application does not meet them and cannot be approved as such (I've attached and highlighted the applicable codes at the end of this letter). Additionally, the variance standards were not met because, among other things, comparison was made to developments completed long before current ordinances were in place to argue that

existing ordinances shouldn't have to apply to this development.

Application Approved in Error since NE Bradford Street Does Not Meet Standards.

NE Bradford Street is the street on Hwy 101 where the two northbound travel lanes narrow to one in the downtown area right across from the whale statue. It is where people speed in the right lane to pass the car in the left lane and is where the cars accessing this development would turn. Bradford's paved surface is really narrow now, though it has a right of way width of 30'. Currently it only serves a house and provides parking behind a few businesses and vacation rentals. With this development of eighteen townhouse like units on six lots, it would be required to be widened to meet the requirements (14.070.2) which is a 28' paved width. In fact, the analysis done for the Traffic Impact Study assumed that Bradford Street would be widened to City standards (i.e. a 28' paved surface).

Project Improvements

As part of the development project, the applicant will make the following improvements to the surrounding property:

- A managed landscaped strip will be constructed that will encompass the front of the property line and will be considered a pedestrian amenity;
- A five-foot-wide sidewalk, including an ADA compliant curb and gutter will be constructed along the north side of NE Bradford Street from US 101 to the development driveway;
- NE Bradford Street will be widened to the City's standards.

However, the planning commission only required the developer to "maximize the available right-of-way" to widen the roadway, provide curb and gutter and provide a 5' sidewalk..." (finding 3.b.). According to the staff in his email to the planning commission chair, that would mean Bradford would only be 23'-24' wide (i.e. five or six feet shy of requirements). The developer could have been required, as Mr. Hudnall was (for his property at the end of Williams and Lane) to put the required sidewalk on his property, rather than in the right of way, but this wasn't done. Instead the development was approved with a substandard road width that is out of compliance with the city code.

Application Approved in Error Since the Road into the Development Does Not Meet Standards

The purpose of the Land Division ordinance (Article 14) is, among other things, to "Specify the width, location and improvement of streets." (14.010.2).

14.040.3 requires that each lot or parcel be provided with not less than 25 feet of frontage on a public or private road or street.... [14.040.11.a. also says that "every lot/parcel shall abut a public street or private road"]. This means that the lots and their

parking must be accessed off a street (not a driveway as staff and the developer have argued).

Further, the width of these roads is specified in 14.070. Because the street that accesses these lots is shown as a dead-end it is required (14.040.7) to have certain rights of way widths and paved surface widths and a turn-around (as other developments do, e.g. at Cardinal Street and Pine Court in South Point and at Whalesong in the Stonebridge development). The developer's plans do not show any cul de sac turnaround and the width of the street into the development is also quite undersized (appears to be 24') and does not meet standards. (For roads ending in cul-de-sacs, the minimum road surface width is 28' with a right of way width of 40'. The cul-de-sac turnaround is required to have a surface width of 60' and a right of way width of 80'). It does not.

The standard that seemed to be applied, in error, was the requirements for a fire lane, though this is necessary, it is not sufficient. The fire chief said that " 1. The driveway looks appropriate for a single lane approach, but the entire driveway becomes a fire lane by default and would need to be marked as such. "No Parking - Fire Lane". Further, the fire chief also requires a turn-around. The property is described as consisting of six lots, each approximately 50' by 100'. On the west side where there are four lots, the length is approximately 200' which would be the length of the road through the development. In his email of October 12, Chief Daniels said that "If the driveway is in excess of 150' (to the first parking spot of lot 8), the FD would ask for a turnaround area or a hammerhead ending perhaps at the north end of lot 8". Given that the first three lots would be 150', the first parking space of lot 8 would be more than 150' and a turnaround would be required. Finally the fire chief wanted A copy of Chief Daniels email is attached.

[Alternatively, the developer could have worked with the City to improve and tie into Berg St. so it wasn't a dead-end road.

When the Planning Commission asked staff about the applicability of these street criteria that had been raised, staff said it hadn't been considered since the developer called the road a driveway into a parking lot and he was treating it as such and that it met those parking standards (they actually do not). The Planning Commission just accepted that explanation. However, calling it something doesn't make it so. Our parking definitions also show that a street is required to be provided, not a "driveway":

A certain amount of parking spaces are required to be provided by our code¹ .
By definition a "parking space" (1.030.126) is "An off-street enclosed or

¹ because the townhouse ordinance was never finalized it only currently requires 1 parking space per each of the 12 town house tourist accommodations and 2 per each of the 6 townhouse residential units for a total of 24

unenclosed surfaced area ..., connected with a street or alley which affords access for automobiles.” This “driveway” cannot be an alley since “Alley” is defined (1.030.5) as “A public way, providing a secondary means of access to property.” Since what the developer refers to as a driveway is the only means of access, this “driveway” must be considered a street. The applicable definition of street here (1.030.154.c.) is “Cul-de-Sac or Dead-End Street” which is “A minor street with only one outlet which provides a vehicular turn-around.” (and would need to meet the standards as noted above)

Further, this parking “lot” doesn’t even meet the standards for one. Our code calls a parking lot a “parking area”. By definition a parking area (1.030.125) is “A designated area containing four or more parking spaces that has access and provides maneuvering area external of the road right-of-way. The access shown on the plans would require parked cars to back into the road to maneuver and therefore this area cannot be considered a parking lot. (This requirement for maneuvering outside of the street is reinforced by the off-street parking requirements of 4.030.12—that “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.”). I.e. if this were a parking lot, then there would have to be a driveway off the street that accesses the parking area. Finally if this area was a “parking lot” a handicapped space would need to be provided as per the off-street parking requirements in 4.030 (17) and there is no such space provided for.

Finally, if this is a driveway, it does not meet the standards that allow a development to have its orientation away from Highway 101 (3.115.5.A.2). Such orientation is only allowed:

b) ...when a direct pedestrian walkway not exceeding 20 feet in length is provided between the building entrance and the street right-of-way.

That is, this provision also does not allowed a building entrance to just be connected to a driveway.

The development does not meet the standards for streets within the development and must be denied.

parking spaces for the 18 units. While the developer meets those standards we all know that there is more than one vehicle that will use the tourist accommodations and because the “driveway” is so narrow and doesn’t meet code standards (and will, in addition, require a 20’ fire lane signed no parking” it will not have any “extra” space to provide any overflow parking – so parking will overflow onto Bradford (which is also to be designated a fire lane according to the fire chief --which requires signs for no parking) or onto the private parking lot owned by another business or onto Highway 101).

Application Was Approved in Error because Landscaping Requirements Were Not Addressed

There is a clear requirement spelled out in Section 3.115.7.d. for a certain amount of landscaping (15% of the property- which I calculated to be 4574 square feet) to be provided in this specific area (N. of Bradford). The staff and Planning Commission never addressed this requirement and there is no evidence in the record that shows that this standard is met. Again, failure to meet applicable standards is grounds for application denial.

Application Was Approved in Error because Provision of Usable Pedestrian Amenities along Hwy 101 weren't provided

Section 3.115.3.b.2. requires "a usable public space with pedestrian amenities...shall be provided in the entire area between the building and front property line" along Highway 101.

The staff made a finding that the design standards for pedestrian amenities was met because "proposed site plans show a ten foot setback from the edge of the US Hwy 101 right-of way. This area is the ODOT slope easement and will be landscaped." However, since the planning commission was asked to granted a variance to not widen the sidewalk (or take out the rock wall) the landscaped area along the whole of Hwy 101 fronting the development is not usable public space for pedestrians as required.

The standard for usable public amenities along the full frontage of Hwy 101 isn't met. (the bench along Bradford on the corner lot does is not included in this standard, but a separate one).

Application Approved in Error Since Variance Standards were not met regarding requirements to provide a sidewalk along US Hwy 101.

The zoning ordinances for this area (3.115) are designed to create a safe, walkable, and inviting pedestrian area in this defined downtown core area. The planning commission approved the variance to allow the applicant to not provide the required 8' sidewalk along Highway 101 to be followed as others have done for ALL the blocks to the south between Bradford and the bridge. Additionally, just recently Mr. Hudnall provided a sidewalk of 8' along Hwy 101 to the north of this development. Providing this sidewalk as required would require removing the rock wall, again, something that others to the south have done. However, various members of the Planning Commission preferred keeping the rock wall rather than having the sidewalk widened as required by ordinance.

Variances by their nature are attempts to get around applying the rules that the City has set out and therefore the City has allowed them to be granted BUT only if they actually meet all of the 5 criteria that apply (my summary: see the full variance ordinance wording attached):

Exceptional circumstances

Preservation of property right substantially the same as others
Detrimental to purposes of ordinance or to property in vicinity
Hardship not self-imposed and is minimum necessary
Hardship asserted is not due to zoning ordinance violation

You will note that inconvenience, costs and disruption caused by removing the rock wall or that some people like the looks of a rock wall are not legitimate bases for a variance though these were reasons the developer and planning commission have given.

The findings (prepared by staff but never discussed by the planning commission before they were signed) assert other things as well that do not accurately address the standards. By not rigorously applying the standards to this development and excusing the obligation to provide the wide sidewalks and other pedestrian amenities that others have done to the south, the Planning Commission has forever locked in the narrow sidewalk here which curtails the opportunity to enact the zoning code's intent to expand this walkable area with pedestrian amenities further along Highway 101.

1. The Exceptional Circumstances standard is not met—the properties to the south removed the rock walls and widened the sidewalk and provided pedestrian amenities even before ordinance 3.115 was enacted that required them. They too faced the slope easement requirement². Therefore, this developer does not face any exceptional circumstances that others have not faced and overcome. Instead the finding notes the cost of removal, disturbance of other properties, considering the rock wall as a landscaping amenity, and providing privacy to his units as reasons he shouldn't have to do this; however, not wanting to do something doesn't make the circumstances exceptional, since others have done the exact same. The variance cannot be approved without this standard being met.
2. The Preservation of a Property right standard is not met (“the variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess”). The findings regarding this standard reference the geological conditions that faced the Travel Lodge to the north that were developed without the required pedestrian amenities. Reference to buildings erected long before these design standards were enacted does not relate to maintaining property rights or we could never update our codes! A property right is the right to develop a

² The findings seem to argue that since providing the required sidewalk width would require a railing on the slope easement and that a railing is a permanent structure, it wouldn't be allowed. However, if the rock wall was removed, the land could be graded so as not to require hand railings, within this 10' strip adjacent to the right of way.

property allowed by the zone, which is NOT being curtailed here. The applicant can develop his property to C-1 standards, but doesn't want to bear the costs of applying current requirements: The finding says that because the rock wall provides challenges, providing additional pedestrian amenities along Hwy 101 is logistically difficult and would prevent the applicant from developing the property. Logistic difficulties to developing private property is NOT a curtailment of property rights. This standard was not properly applied and cannot be met. The variance cannot be approved without this standard being met.

3. The Standard requiring the variance to not be detrimental to purposes of ordinance or to property in vicinity is not met.

The finding says that 'Since one of the intents of DBZO 3.115 is to encourage walking, not providing or improving pedestrian amenities could conflict with the City's code. However, since there is already an existing sidewalk along Hwy 101 the area is already considered "walkable." So "The Planning Commission finds that not improving the existing sidewalk along US HWY 101 would not conflict with the objectives of any City plan or policy (emphasis mine). This finding is flawed since they only addressed one part of the purpose of this ordinance. There are other purposes set out by this ordinance that are undermined by granting the variance and detrimental to the purposes in the code. Granting the variance does not allow the following other purpose of the ordinance to be met and therefore is detrimental to its purpose:

"To create a social and approachable streetscape...The addition of these pedestrian amenities serves as informal gathering places for socializing, resting, and enhanced enjoyment of the commercial district."

The variance cannot be approved without this standard being met.

Application Approved in Error Since Variance Standards were not met regarding requirements to provide a direct pedestrian access to Hwy 101 and that the western buildings are not oriented to U.S. Hwy 101.

The granting of this variance to not provide direct pedestrian access to Hwy 101 relies on the flawed variance above related to not requiring the widening of the sidewalk (and rock wall removal so direct pedestrian access to Hwy 101 could be provided) so the failure to meet those variance standards apply here as well apply.

Additionally, allowing a variance to the facing of the buildings to Hwy 101 cannot be properly approved, since variance criteria 3 (the variance not materially detrimental to the purpose of the ordinances) is not met. The only standard addressed by the finding addresses the criteria that "Development may be configured to provide a driveway or interior parking court. If interior parking courts are created, then pedestrian pathways shall be provided between buildings from the street right of way to interior parking

courts to ensure safe, direct, and convenient access to building entrances and off street parking.” (3.115.5.B)

The planning commission found that “not orienting the buildings to US Hwy 101, while providing pedestrian access via Bradford Street, would not conflict with the objectives of any City plan or policy (emphasis mine). However, by allowing this variance to not have the building orientation on Hwy 101, another code standards have been ignored and is not met and therefore granting this variance would be detrimental to the purposes of the ordinance. This “Building orientation on arterials (Highway 101) section (3.115.5.A) requires that orientation unless buildings are entered from a pedestrian plazas or breezeway/courtyard. Buildings as shown on the plans are only entered from a parking lot. Allowing a variance without addressing this standard conflicts with and detrimental to the purpose of the ordinance.

5. Building Orientation on arterials (Hwy. 101).

A. Buildings shall have their primary entrance(s) oriented to (facing) Hwy 101, except as noted below;

- 1) Building entrances may include entrances to individual units, lobby entrances, entrances oriented to pedestrian plazas, or breezeway/courtyard entrances (i.e., to a cluster of units or commercial spaces).

The variance cannot be approved without this standard being met.

As laid out above, there are numerous flaws with the approval of this application as submitted. Meeting the standards will take a full redesign of the development. Please take action to uphold the appeal and deny the approval of application #2-VAR-PC-21.

Thank you

Fran Recht
PO Box 221
Depoe Bay, OR 97341
541-765-2234

Attachments below

Relevant Ordinances re Street Widths

DBZO 14.040

7. Cul-de-Sacs and Turnarounds.

- a. Dead-end (cul-de-sac) streets in partitions and subdivisions shall terminate in a turnaround with a minimum property line radius of forty (40) feet, or other type of turnaround approved by the City.

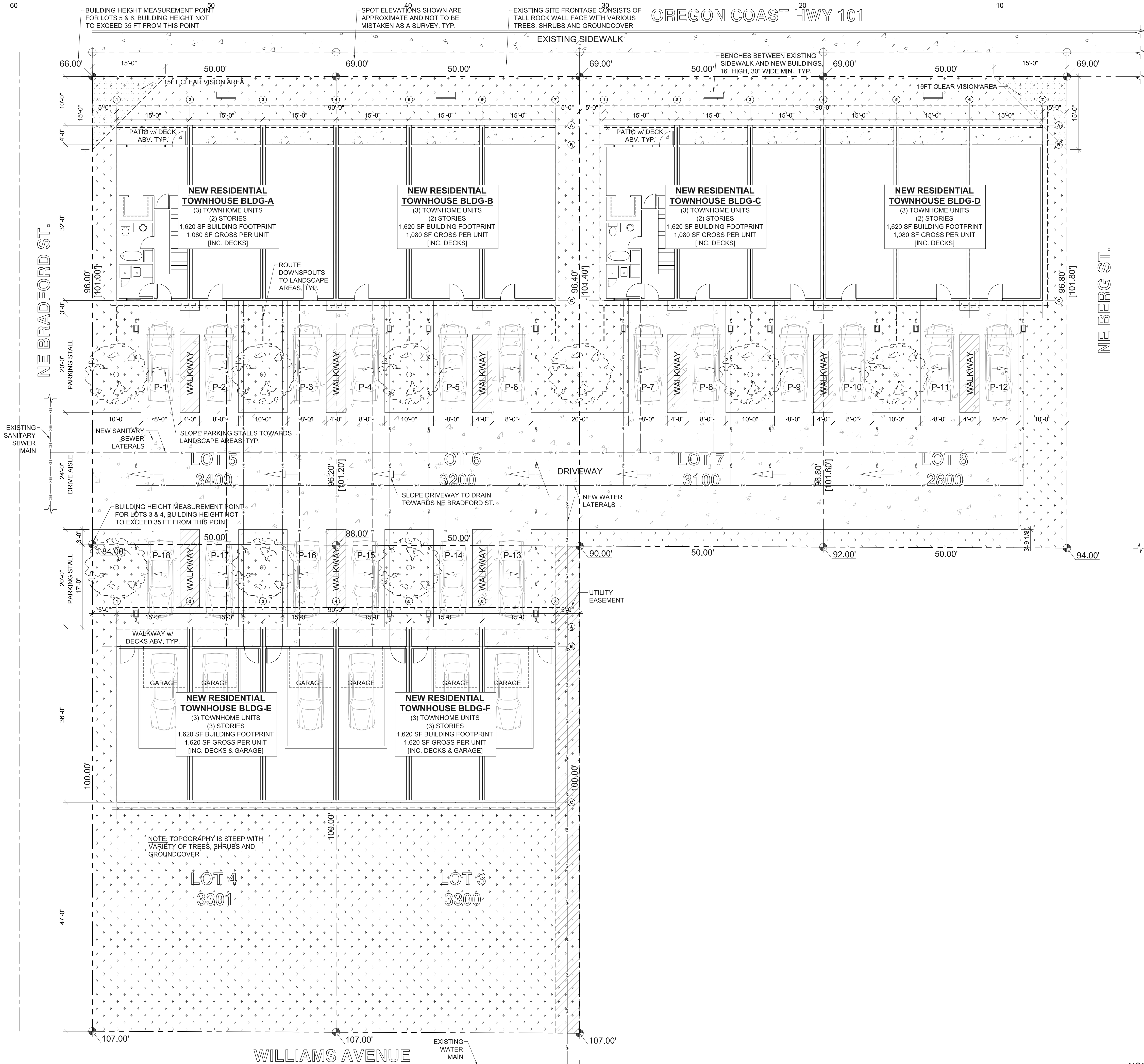
DBZO 14.070—street width

14.070

Section 14.070. Street Width in Subdivisions and Partitions.

<u>TYPE OF STREET</u>	<u>RIGHT OF WAY WIDTH</u>	<u>SURFACE WIDTHS</u> +
3. Cul-de-Sacs	40'	28'
4. Circular Ends of Cul-de-Sacs	80' +++	60' +++

Street into the development from Bradford. Code requires a street-- it is not a driveway and parking lot



66
A1.0
SCALE: 1:10
SITE PLAN

*THIS IS NOT A SURVEY AND CANNOT BE RELIED UPON FOR ACCURACY



BARRY R SMITH, PC Architect
715 SW MORRISON STREET SUITE 909
PORTLAND OR 97205 503.295.6261 www.barryrsmith.com

DEPOE BAY, OR

NE BRADFORD STREET
for LISAC BROTHERS CONSTRUCTION INC.
SITE PLAN

VARIANCE
PLAN

MLRWDB - 01

A1.0

09.10.2021

planner@cityofdepobay.org

541-765-2361 x15

(Tuesday & Wednesday Only)

From: bdaniels@depobayfire.com

Sent: Tuesday, October 12, 2021 2:03 PM

To: planner <planner@CityofDepobay.org>

Subject: RE: Depoe Bay - New development

I see some items for clarification on the drawing, below are DBFD's comments:

1. The driveway looks appropriate for a single lane approach, but the entire driveway becomes a fire lane by default and would need to be marked as such. "No Parking – Fire Lane".
2. If the driveway is in excess of 150' (to the first parking spot of Lot 8), the FD would ask for a turnaround area or a hammerhead ending perhaps at the north end of Lot 8. (to accommodate a 3 point turnaround). If the driveway is less than 150', it would not be required but appreciated.
3. The FD would like to see both corners to the driveway entering from Bradford to be radiused to allow a better approach angle for traveling in to the complex, this given the width of Bradford.
4. The FD would like to know if these units are sprinklered, and what the developer's plans are for an on site water source. Given the high density, the FD would likely ask for a hydrant to be placed at or on site given required fire flow and access.

Bryan

Bryan Daniels, FSCEO

Fire Chief

Depoe Bay Fire District

Headquarters – Station 21

325 US-101

Depoe Bay, OR 97341

541-764-2202

depobayfire.com

DEPOE BAY



From: planner <planner@CityofDepobay.org>

Sent: Wednesday, October 6, 2021 9:17 AM

To: Bryan Daniels (bdaniels@depobayfire.com) <bdaniels@depobayfire.com>

Subject: Depoe Bay - New development

Bryan,

The City has received an application for construction of 18 town-home style residential units to be located at the north east corner of the intersection of US HWY 101 and Bradford Street. The development will back onto Williams avenue on the east. The development will consist of 6 separate buildings with 3 units each. Half the units will be 2-story, the rest will be 3-story.

See highlighted area for purpose of standards in addition to purpose to require walking...

Section 3.115 Commercial Zone C-1 - Design Standards & Guidelines

Sections:

1. Applicability
2. General Information
3. Building Setbacks
4. Lot Coverage of Buildings on Arterials (Hwy 101)
5. Building Orientation on Arterials (Hwy 101)
6. Building Height on Arterials (Hwy 101)
7. Building Architectural Standards
8. Pedestrian Amenities in the C-1 Zone
9. Special Standards for Certain Uses in the C-1 Zone
10. Parking, Garages, and Driveways in the C-1 Zone

1. Applicability

- A. The provisions of this Section 3.115 shall be applicable to Section 3.110 Retail Commercial Zone C-1. The provisions of this Section 3.115 shall override any conflicts between provisions of Section 3.115 and 3.110.
8. Any structure lawfully permitted which is made nonconforming by adoption or amendment of this chapter is a nonconforming structure. Existing structure non-conformities may continue indefinitely (grandfathered). Normal maintenance and repairs are permitted that do not result in the alteration of the footprint, volume, or height of the structure.

2. General information

- A. In the Commercial Zone C-1 on arterials (specifically Hwy. 101), these commercial guidelines help create a vibrant pedestrian environment by slowing traffic down, providing a storefront business friendly character to the street, and especially by encouraging walking for the enjoyment of residents and visitors. To create a social and approachable "streetscape" the setback standards are flexible to encourage public spaces between sidewalks and building entrances (e.g., extra-wide sidewalks, plazas, squares, outdoor dining areas, and pocket parks). The addition of these pedestrian amenities serves as informal gathering places for socializing, resting, and enhanced enjoyment of the Depoe Bay commercial district.
8. The standards encourage the formation of solid blocks of commercial and mixed-use buildings for individual walkable districts that are tied to the overall business district.
- C. Along Highway 101 frontage, landscaping, building setbacks, and other pedestrian amenities sustain the feel of a small community located between two Oregon State parks and vegetated corridors. These amenities will distinguish Depoe Bay from many cities and towns that have arterial development dominated by pavement, parking lots and stark building facades immediately adjacent to narrow sidewalks.

requires 4' sidewalk on Hudnall property and 8' Hwy 101 sidewalk

C. Findings:

The Planning Commission finds:

1. Request: The applicant requests approval to construct a 3 bedroom single family residence at the Southeast corner of US HWY 101 and Lane Street, Depoe Bay.
2. C-1 Retail Commercial Standards: The C-1 zone does not specify a minimum required lot area, lot width, lot depth, or yards (building setbacks). The C-1 zone has a maximum building height of 35 feet.

The C-1 lot standards and the proposed building request are identified below.

Standard	Requirement	Proposed
Front Yard	No minimum requirement	16'
Rear Yard	No minimum requirement	24'-4"
North Side Yard	No minimum requirement	12'-2"
South Side Yard	No minimum requirement	4'
Building Ht.	Max. 35'0"	32'-8"

The above table demonstrates that C-1 standards are met.

3. Commercial Zone C-1 - Design Standards & Guidelines: DBZO Section 3.115.8.A states: Pedestrian sidewalks shall be provided on all street sides of buildings, parking areas, etc. in the entire C-1 zoned area. **These sidewalks shall have a minimum 8 foot width along Highway 101**, and minimum 5 foot width elsewhere. Sidewalks shall be concrete with city-approved surface material that is consistent with adjacent and nearby sidewalks. All sidewalks shall be ADA compliant to meet current laws.

US HWY 101 - The proposed development will provide an 8' sidewalk along US HWY 101 as per ODOT's Urban design guide. Applicant will coordinate with ODOT and the City for exact location of sidewalk.

Lane Street - The proposed development will provide a 4' sidewalk along Lane Street. The Depoe Bay City Council adopted the Depoe Bay Transportation System Plan (TSP) on April 18, 2017. The TSP identifies typical cross sections for city streets which include sidewalks, park strips, paved areas, travel lanes, etc. Per the TSP, typically, improvements are to be done within street right-of-ways (ROW). The TSP identifies Lane Street as a "Local Street" requiring 54' ROW with 32' of paved surface for travel lanes and parking. The controlling ordinance (specifically DBZO Section 3.115.8.A) states the sidewalk shall be 5' and makes no mention of inside or outside of the ROW.

Unfortunately, the existing Lane Street ROW is 20' and pavement width is 19'. Accommodating the proposed TSP Local Street cross section would require an additional

34' of ROW. The additional ROW would have to come from the applicant's property since the north side of Lane is already developed, potentially rendering the applicant's property undevelopable per current City codes. In addition, recent surveys show the road currently encroaches approximately 4' onto the applicant's property. In order to avoid a costly and time-consuming ROW acquisition process and further impacting the City and the applicant, a compromise was reached where the applicant will provide a 4' wide sidewalk on his property so setback and sight line requirements can still be met and the property can be developed as planned. It is the opinion of the City that although the proposed sidewalk width does not meet the required width, the intent of the code is met.

DBZO Section 3.115.10.C requires all off-street paved vehicle areas along US HWY 101 be accessed from alleys or a side or back street. The proposed development will be accessed from a shared driveway that will extend from Lane Street to the rear (east) of the property.

DBZO Sections 3.115.7. and 3.115.8 require architectural/design features, landscaping features, and pedestrian amenities. As presented, the proposed single-family residence has the potential to fully meet the requirements.

4. **Clear Vision Area:** Clear Vision Area shall conform to DBZO Section 4.010 Clear Vision Areas. Specifically, in a non-residential zone, the distance measured is 15' from the corner along the property lines. The triangle created by joining the 2 line segments is the clear vision area. The proposed residence is not within the clear vision area.
5. **Parking:** Parking requirements within the C-1 Zone shall conform to DBZO Section 4.030 Off-Street Parking and Off-Street Loading Requirements. The proposed residence includes a 2-car garage and 24' paved driveway. This meets the required 2 parking spot requirement.

D. Conclusions:

The record and findings support the conclusion that:

1. Substantial evidence in the record demonstrates that the site is suitable for the proposed single-family residence.
2. Substantial evidence in the record demonstrates that the proposed single family residence is consistent with applicable standards set forth under Section 3.110 C-1 Retail Commercial Zone, Section 3.115 Commercial Zone C-1 -Design Standards & Guidelines, Section 4.010 Clear Vision Areas, and Section 4.030 Off-Street Parking and Off-Street Loading Requirements.
3. Approval of the proposed single family residence is consistent with applicable standards and procedures of the Depoe Bay Zoning Ordinance.

E. Order:

It is ORDERED by the Depoe Bay Planning Commission that Case File #1-CI-PC-21 be APPROVED subject to the following conditions:

January 26, 2022

Dear Depoe Bay City Council,

Thank you for your time to review our application for a townhouse project in beautiful Depoe Bay. The homes will be a lovely addition and provide much needed housing for guests to enjoy.

Mr. Michael Phillips – President, Ms. Ruth Moreland, Mr. Fred Ruby, Mr. Jim Hayes, and Mr. Greg Steinke of the City of Depoe Bay Planning Commission unanimously voted to approve the variance after having discussions in two meetings and review of additional information supplied as asked. The final order signed by Mr. Phillips summarized “the record and findings support the conclusion that: approval of the proposed variance is consistent with applicable standards and procedures of the Depoe Bay Zoning Ordinance Article 8 Variances and other applicable ordinance sections.”


We wholly agree with the Planning Commission’s unanimous decision and the current Staff Summary to City Council. The Staff Summary, which was reviewed by the City of Depoe Bay Attorney, clearly addresses and rebuts all appellant arguments based on fact, zoning code, and variance criteria.


Please see the attached documents for clarification which further address all safety concerns:

- 1) Mr Daniels, Depoe Bay Fire Chief, has approved the development as submitted. We will install a new fire hydrant (a benefit to all neighbors as well), no parking striping, and a larger radius entrance to the parking lot as agreed upon.
- 2) Jennifer Danziger, a Senior Transportation Engineer with Lancaster Mobley, clarified that a 20’ wide paved width on NE Bradford St plus a 5’ wide sidewalk “should be sufficient to support the function of this low volume roadway.” In addition, a full ADA ramp will be installed on the corner of HWY 101 and NE Bradford St further increasing the safety for the community and guests.
- 3) The architect verified that the landscaped areas are 28 percent of the site which is 186 percent greater than required by code.

We believe Depoe Bay City Staff based on the Staff Report findings, and the Depoe Bay Planning Commission by unanimous vote all support approving the variance as submitted.

Regards,


Mark Lisac, Applicant


Ronnie Wilson, Applicant

info

From: Jennifer Danziger <jennifer@lancastermoble.com>
Sent: Thursday, January 6, 2022 4:08 PM
To: planner
Cc: Nick Mesler; mlisac@comcast.net; Elizabeth Shumaker
Subject: NE Bradford Street Townhomes

Jaime,

I'm writing to address your question about the bullet conclusion stating "“No-further transportation-related mitigation is necessary.....the proposed improvements to be constructed....are anticipated to be sufficient.” That conclusion was based on an assumed cross-section of 20 feet plus the 5-foot sidewalk. This cross-section should be sufficient to support the function of this low volume roadway.

Regards,
Jennifer

--

Jennifer Danziger, PE
Senior Transportation Engineer



**lancaster
moble**

The most *effective* consulting team
you've ever worked with.

321 SW 4th Avenue, Suite 400 | Portland, OR 97204

Office: 503-248-0313 x327

Website: lancastermoble.com

Offices: Portland, OR | Bend, OR

info

From: planner <planner@CityofDepoebay.org>
Sent: Wednesday, January 5, 2022 11:55 AM
To: bdaniels@depoebayfire.com; mlisac@comcast.net
Subject: RE: Depoe Bay - Appeal question

I just wanted to make sure I can put in writing what you guys had agreed to.

Thanks for all your help
jaime

From: bdaniels@depoebayfire.com <bdaniels@depoebayfire.com>
Sent: Wednesday, January 5, 2022 11:52 AM
To: mlisac@comcast.net; planner <planner@CityofDepoebay.org>
Subject: RE: Depoe Bay - Appeal question

I believe I already have in the two prior e-mails yesterday and today. Jaime, do you need anything else from DBFD?

We have discussed these items and DBFD approves the changes mentioned below. Of the biggest concern, amenable by the developer, is the turning radius entry and exit to the driveway and fire hydrant placement. Both have been agreed upon in discussion and email.

Bryan

Bryan Daniels, FSCEO
Fire Chief
Depoe Bay Fire District
Headquarters – Station 21
325 US-101
Depoe Bay, OR 97341
541-764-2202
depoebayfire.com



From: mlisac@comcast.net <mlisac@comcast.net>
Sent: Wednesday, January 5, 2022 11:04 AM
To: 'planner' <planner@CityofDepoebay.org>
Cc: bdaniels@depoebayfire.com
Subject: RE: Depoe Bay - Appeal question

Hi Bryan,

Can you provide Jaime with an acceptance of the below responses if agreeable to the Fire Department?? I believe they represent our previous discussions, but if not, please let me know. Thank you much for the help.

Regards,

Mark Lisac | Vice President
Lisac Brothers Construction, Inc.
PO Box 2422 Clackamas OR 97015
503.970.7223 | mlisac@comcast.net

Fire requirements:

Below is Chief Daniels' email:

I see some items for clarification on the drawing, below are DBFD's comments:

1. The driveway looks appropriate for a single lane approach, but the entire driveway becomes a fire lane by default and would need to be marked as such. "No Parking – Fire Lane".

Agreed, will mark with No Parking – Fire Lane.

2. If the driveway is in excess of 150' (to the first parking spot of Lot 8), the FD would ask for a turnaround area or a hammerhead ending perhaps at the north end of Lot 8. (to accommodate a 3 point turnaround). If the driveway is less than 150', it would not be required but appreciated.

The Fire Department is acceptable with the 152' distance as proposed.

3. The FD would like to see both corners to the driveway entering from Bradford to be radiused to allow a better approach angle for traveling in to the complex, this given the width of Bradford.

Will provide an agreeable radius at plan submittal or onsite inspection during construction.

4. The FD would like to know if these units are sprinklered, and what the developer's plans are for an on site water source. Given the high density, the FD would likely ask for a hydrant to be placed at or on site given required fire flow and access.

The units are to be constructed under the Oregon Residential Specialty Code Townhouse section and do not require a sprinkler system.

Fran hits hard on these. Below are my responses and questions for you:

1. Easy to resolve – "No Parking – Fire Lane" signage will be posted and pavement marked as appropriate.
2. Driveway is 200'. Is there an opportunity to provide a hammerhead or turnaround as per the attached? OR can you provide automatic fire sprinkler system and could therefore be granted an exception to the turnaround exception? Fire Chief has the power to grant exceptions.
3. Easy to Resolve – Final plans will show radiused curb returns at driveway.
4. Easy to Resolve – Developer has already agreed to onsite fire hydrant.

From: mlisac@comcast.net <mlisac@comcast.net>

Sent: Wednesday, December 22, 2021 10:40 AM

To: planner <planner@CityofDepoebay.org>

Subject: RE: Depoe Bay - Appeal question

I have sent to Lancaster for comment. Let me know of any other questions.

Thanks,

Mark

From: planner <planner@CityofDepoebay.org>

Sent: Wednesday, December 22, 2021 9:56 AM

To: mlisac@comcast.net

Subject: Depoe Bay - Appeal question

Mark,

I'm starting to review Fran's appeal and have a question, I'm sure this will be one of many today.

Traffic impact letter – Fran claims that the traffic study analysis/modeling assumed a 28' paved width on Bradford. I believe she is wrong. I believe the section of the impact letter she is referring to summarizes what you were agreeing to and nothing to do with the actual traffic analysis.

Can you or your traffic engineer verify that the last bullet of the conclusion says "No-further transportation-related mitigation is necessary.....the proposed improvements to be constructed....are anticipated to be sufficient", are actually referring to the 5' sidewalk along Bradford and at the time we were discussing 20' of asphalt and not 28'?

thanks

Jaime White

City Planner

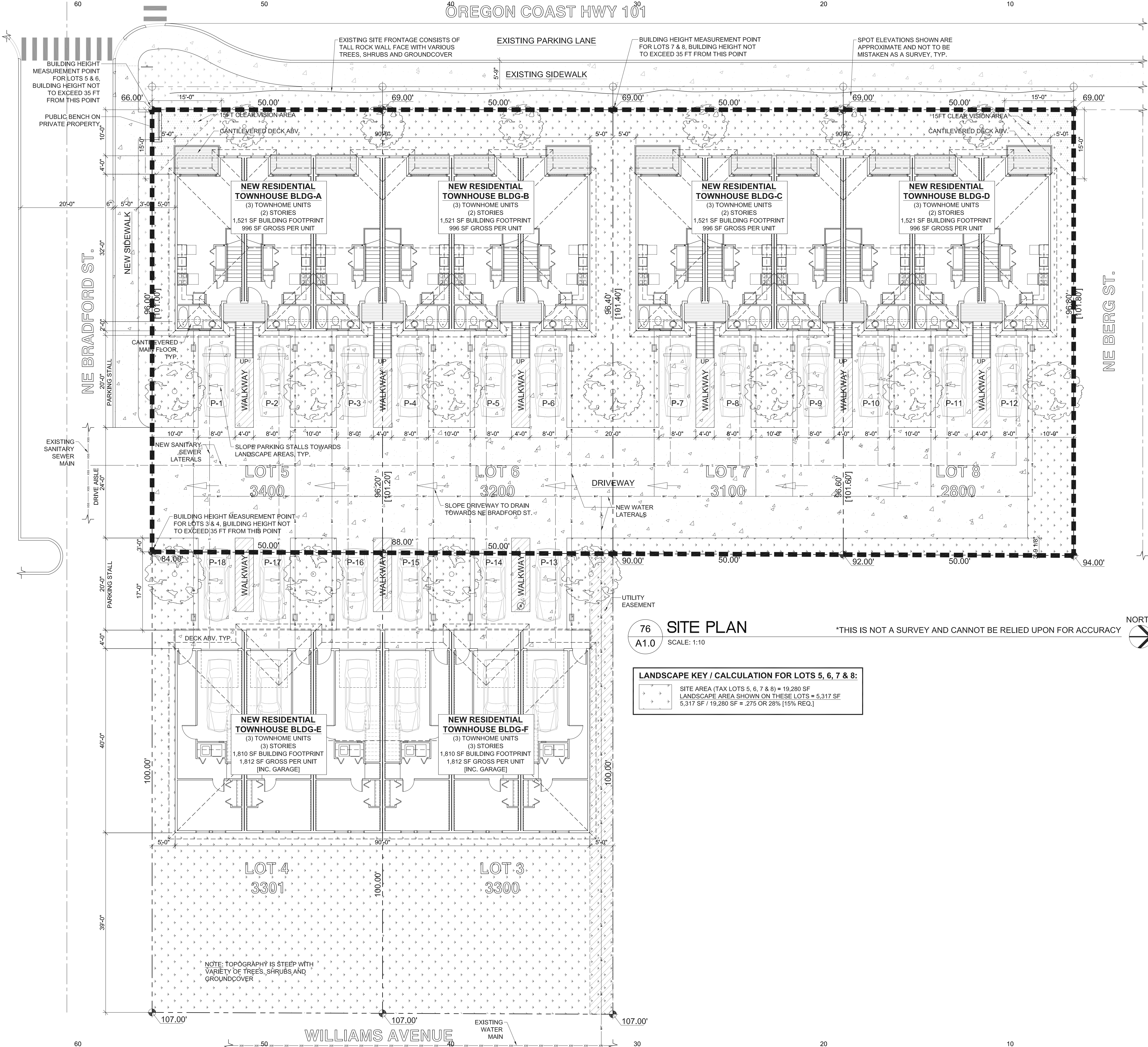
City of Depoe Bay

(541)765-2361 x15

planner@cityofdepoebay.org

Tuesdays and Wednesdays only

This message may contain confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure, or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. Any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the district.



BARRY R SMITH, PC Architect
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PORTLAND OR 97205 503.295.6261 www.barryrsmith.com

NE BRADFORD STREET TOWNHOMES
for LISAC BROTHERS CONSTRUCTION INC.
DEPOE BAY, OR
SITE PLAN

January 24, 2022

Dear City Council,

This is in regard to the appeal of Case File #2-VAR-PC-21. I am writing in support of the Depoe Bay Planning Commission's approval decision and request you deny Ms. Recht's appeal.

The appellant (Ms. Recht) claims the applicant is being allowed to "jam too many buildings into too small a space by:

- ignoring the applicable standards for streets;
- ignoring standards in the C-1 zone for landscaping
- ignoring standards for pedestrian amenities and
- for allowing multiple variances to the development standards that pervert the intent of the variance ordinance through flawed rationale and findings."

The appellant goes on to claim"a development will be allowed that has safety and aesthetic impacts, exports its traffic and parking impacts beyond its boundaries, and makes light of the intent of the development guidelines adopted by the City Council....Therefore, I am asking the City Council to uphold the appeal and deny this subdivision and these variances."

First, this proposed development is not a "subdivision". No property is being subdivided, partitioned, consolidated, and no existing property lines or tax lots will be altered or manipulated in any way.

Second, the C-1 code dictates building setback and height restrictions only. The C-1 code is silent on building densities, percent lot coverage, number of units in a multi-unit development, etc. The proposed development meets all the C-1 codes for setbacks and heights. Therefore, Ms. Recht's claim that the applicant is jamming too many buildings into too small a space is strictly her opinion and irrelevant to these proceedings.

As for the above bullets:

- *ignoring the applicable standards for streets* - The appellant claims the street standards in Article 14 of the DBZO should be applied. As explained later in this document, Article 14 does not apply. The other standards that might apply are those adopted as part of the 2017 Depoe Bay Transportation System Plan (TSP). The TSP identifies "local" streets as having a 54-foot right-of-way, Bradford is a local street. Bradford's existing right-of-way is 30 feet. Unfortunately this situation is not unique to Bradford. Applying the current TSP as a standard could set a precedent making future development in Depoe Bay very difficult.
- *ignoring standards in the C-1 zone for landscaping* - All standards for landscaping have been met. The appellant's claim is false and does not apply.
- *ignoring standards for pedestrian amenities* - The standards have not been ignored. The applicant has provided pedestrian amenities where possible and requested variances for the others. This is the basis of the variance request Case File #2-VAR-PC-21.
- *for allowing multiple variances to the development standards that pervert the intent of the variance ordinance through flawed rationale and findings* - DBZO Article 8. VARIANCES dictates procedures and circumstances for granting variances. The code is silent on the number of variances that can be requested by an applicant at any given time. It is the appellant's opinion, not based on code, that too many variances were requested and allowed.

Furthermore, the appellant's claims that "a development will be allowed that has safety and aesthetic impacts, exports its traffic and parking impacts beyond its boundaries", are purely her opinion and not based on the DBZO. As explained later in this document, the applicant was not required by code to provide a transportation impact study (TIS) but did so when requested by the Planning Commission. The applicant is providing the appropriate number of parking spots as required by the proposed use and the DBZO. The TIS concluded that "No further transportation-related mitigation is necessary or recommended for the proposed development. The proposed improvements to be constructed by the project applicant are anticipated to be sufficient in providing safe and efficient movement around the site in a manner that is proportionate to the development and consistent with the surrounding transportation environment."

It is unfortunate that Ms. Recht has chosen to cite snippets and partial sentences from the Depoe Bay Zoning Ordinance (DBZO) and applicant material and erroneously using them to bolster her opposition to the project and the false accusations of improper procedure and application of code by staff and the Depoe Bay Planning Commission.

Ms. Recht states that Article 14 Land Division was not mentioned as relevant criterion. All of Ms. Recht's arguments revolving around Article 14 are irrelevant since Article 14 Land Division does not apply for the following reasons:

- The applicant proposes to develop six (6) legally existing tax lots. No new tax lots will be created, deleted, altered, etc.
- The applicant can develop any one of the single lots as a stand-alone project, one at a time, without having to develop the other lots at the same time. The applicant is choosing to develop all six lots at the same time.
- Article 14 applies to Land Divisions, Partitions, Subdivisions, Property Line Adjustments, and Replatting. The proposed development is none of these and Article 14 does not apply.

The appellant's narrative identifies six (6) Arguments.

Argument #1 – Application Approved in Error Since NE Bradford Street Does Not Meet Standards
The appellant bases her statements on Article 14 of the DBZO. **As described above Article 14 does not apply to this proposed development.**

The developer did not originally provide a TIS, since it was not required, but subsequently provided the TIS after the Planning Commission requested it at the first Public Hearing.

Ms. Recht erroneously states the Traffic Impact Study (TIS) assumed a 28' paved width. The fact is the analysis does not differentiate between a 20' or 28' paved width. The analysis included a 5' sidewalk and enough road width for 2 cars to pass. The TIS concludes:

Conclusions

The analysis presented in this memorandum concludes:

- The trip generation calculations show that the proposed 18-unit development is projected to generate 9 new morning peak hour trips, 10 new evening peak hour trips, and 130 new average weekday trips.
- No significant trends or crash patterns were identified at any of the site access study intersections. Accordingly, no specific safety mitigation is recommended.
- Based on the access evaluation, the most direct access links on US 101 are expected to operate safely.
- No further transportation-related mitigation is necessary or recommended for the proposed development. The proposed improvements to be constructed by the project applicant are anticipated to be sufficient in providing safe and efficient movement around the site in a manner that is proportionate to the development and consistent with the surrounding transportation environment.

The appellant also refers to a recent land use application to prove her point for street standards. Case File #1-C1-PC-21 presented a completely different set of circumstances as described in the below excerpt from the Planning Commission Final Orders:

The proposed development will provide a 4' sidewalk along Lane Street. The Depoe Bay City Council adopted the Depoe Bay Transportation System Plan (TSP) on April 18, 2017. The TSP identifies typical cross sections for city streets which include sidewalks, park strips, paved areas, travel lanes, etc. Per the TSP, typically improvements are to be done within street right-of-ways (ROW). The TSP identifies Lane Street as a "Local Street" requiring 54' ROW with 32' of paved surface for travel lanes and parking. The controlling ordinance (specifically DBZO Section 3.115.8.A) states the sidewalk shall be 5' and makes no mention of inside or outside of the ROW.

Unfortunately, the existing Lane Street ROW is 20' and pavement width is 19'. Accommodating the proposed TSP Local Street cross section would require an additional 34' of ROW. The additional ROW would have to come from the applicant's property since the north side of Lane is already developed, potentially rendering the applicant's property undevelopable per current City codes. In addition, recent surveys show the road currently encroaches approximately 4' onto the applicant's property. In order to avoid a costly and time-consuming ROW acquisition process and further impacting the City and the applicant, a compromise was reached where the applicant will provide a 4' wide sidewalk on his property so setback and sight line requirements can still be met and the property can be developed as planned. It is the opinion of the City that although the proposed sidewalk width does not meet the required width, the intent of the code is met.

The above statement clearly identifies a situation that does not bear resemblance to Case File #2-VAR-PC-21. Mr. Hudnall was not required, as Ms. Recht states, to place the sidewalk on his property, but rather had no choice since the City's road encroaches on Mr. Hudnall's property and there was no where else to put the sidewalk except on Mr. Hudnall's property.

In this case, the developer is providing a 5-foot sidewalk along Bradford Street within the existing City's road right-of-way. This leaves enough existing right-of-way to widen the street from the existing approximately 15' width to 24' or 25' in width without taking any of the developer's property. Vehicle

travel lanes are typically 12 feet wide. A minimum of 24 feet of asphalt would allow for two travel lanes, one in each direction.

Argument #2 – Application Approved in Error Since the Road into the Development Does not Meet Standards

The appellant bases her statements on Article 14 of the DBZO. **As described above Article 14 does not apply to this proposed development.**

Section 3.115 (C-1) does apply:

- Section 3.115.5.B – allows driveway and interior parking court
- Section 3.115.10.c – allows for driveway/alley for front facing buildings, access from behind by street or alley, and corner lots can be accessed from side streets (Bradford) via driveways.

Section 4.030.12 also applies – four or more parking spaces will use driveway.

Parking lot vs road

Ms. Recht's claims about the Parking Area/Lot, turning maneuvers into roadways and driveways, are all FALSE. The Parking Area/Lot meets DBZO Diagram A standards including 8'x20' parking stalls and a 24' drive aisle. The 24' drive aisle provides ample space for vehicles to back out of parking spots and maneuver within the Parking Area/Lot without having to "back into the road" as Ms. Recht falsely claims.

Section 4.030(12) states "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." The code is silent on the size of Parking Areas/Lots other than what is shown in Diagram A. Additionally, the 24' drive aisle incorporated into Diagram A and the development plans more than meet the width requirements of a typical alley (10'-30'). Therefore, the Parking Area/Lot as shown, including the 24' driveway from Bradford Street, meets the DBZO definitions and standards of a Parking Area/Lot.

The appellant also discusses comments from the Depoe Bay Fire District requiring turnarounds if the driveway is in excess of 150', along with other requirements. What the appellant failed to mention is that the Oregon fire code allows the local Fire Chief to adjust these requirements. The applicant and the Fire Chief discussed the above requirement and other elements of the development, such as internal fire hydrants, and came to a solution that allowed the Fire Chief to sign off on the project.

And finally for this argument, Ms. Recht states that even if this was a driveway, it does not meet the code since a direct pedestrian walkway is not provided. Correct....this item is one of the variances originally requested by the applicant.

Argument #3 – Application Was Approved in Error Because Landscaping Requirements Were Not Addressed

Again, Ms. Recht has taken the code out of context. Section 3.115.7.d applies to properties that face US HWY 101, not all properties in the C-1 Zone. Therefore, this section applies to the 4 lots facing HWY 101, not all 6 lots. Section 3.115.7.d states "a minimum 15% of C-1 properties with HWY 101 frontage north of Bradford Street and south of Evans Street shall be landscaped with native vegetation including a mix of trees, shrubs, and ground cover."

As per the plans, landscaping for the 4 lots facing HWY 101 is 28%. Landscaping for all 6 lots is 35%.

Therefore, the landscaping requirements have been met and the appellants argument is not relevant.

Additionally, Condition of Approval #4 from the Planning Commission Final Orders states “Retail Commercial Zone C-1 Standards. Except for the variances identified in Condition of Approval #2 above, the proposed development shall meet all other DBZO Retail Commercial Zone C-1 standards.”

The assumption is that items, such as landscaping percentages and makeup, that outright meet the design standards, in this case exceed, are covered by the above statement and do not necessarily need to be addressed in the staff report or during Planning Commission Public Hearings unless specifically addressed by testimony or inquiry from the Planning Commission.

Argument #4 – Application Was Approved in Error Because Provision of Useable Pedestrian Amenities Along HWY 101 Weren’t Provided

Ms. Recht uses Section 3.115.3.b.2 as a basis for her argument that pedestrian amenities have not been provided. Section 3.115.3.b.2 also states “...(See also Pedestrian Amenities Standards and Architectural Standards in this section).”

Section 3.115.8.B Pedestrian Amenities in the C-1 Zone, states “Every building and development on arterials (HWY 101) shall provide one or more of the “pedestrian amenities” listed in subsection below:

- 4) Multi-family housing and tourist accommodations that do not have a majority (greater than 75%) of retail on the ground floor shall have a minimum of 8 feet of landscaped grounds between the buildings and the sidewalk.”

Since the proposed development is tourist accommodations with 0% retail, and 10 feet of landscaping is proposed between the building and sidewalk, **the above condition is met and the appellant’s argument is not relevant.**

Arguments #5 & #6 – Application Approved in Error Since Variance Standards Were Not Met

The appellant claims the variance standards have not been met and links her two arguments to the removal of the rock wall. In her arguments Ms. Recht makes misleading and false statements regarding the proposed development, the rock wall, existing site conditions, previous developments, and application of the Depoe Bay Zoning Ordinance. The below discussion revolves around those statements and leaves description of the variance standards subsequent decisions to the applicant and City Council.

Ms. Recht argues that the zoning ordinances for this area (Section 3.115) are designed to create a safe, walkable, and inviting pedestrian area in this defined downtown core area. This is correct. The appellant’s argument fails to acknowledge the existing sidewalk along US HWY 101 until about halfway through her argument, and then infers that the existing sidewalk is substandard and does not currently meet the above or the other purposes of the code “To create a social and approachable streetscape...The addition of these pedestrian amenities serves as informal gathering places for socializing, resting, and enhanced enjoyment of the commercial district.”

There is an existing sidewalk along US HWY 101. The sidewalk is approximately 6 feet in width and in fair condition. Although not the 8 feet required by Section 3.115, it is wider than required sidewalks on non-arterial roads and the majority of sidewalks along HWY 101 with the exception of the main commercial area. It is difficult to understand the appellant’s inference that this is not currently a walkable

or safe area. The existing sidewalk runs the full length of the properties and provides a continuous link to sidewalks to the north and south. And, the parked cars act as a buffer between pedestrians and traffic providing both a sense of safety and physical barrier.

As described in Argument #4 above, Section 3.115.8.B allows for pedestrian amenities other than what would typically be associated with gathering places for socializing or resting such as landscaped plaza, courtyards, sitting spaces, or weather protection.

The 8-foot sidewalk requirement along US HWY 101 was included in Ordinance No. 319 signed on October 2, 2019. Prior to that, the 8-foot sidewalk was not a requirement. However, given the inconsistent location of property lines and fronts of buildings with respect to the HWY 101 right-of-way, and location of existing traffic/travel lanes, curb and gutter, and parking along HWY 101, it is logical to surmise that the sidewalk area in the main commercial district filled in to span the area between parked cars and store fronts.

Ms. Recht also states that ALL the properties to the south have removed the rock wall for their developments and therefore this developer should do the same. Removal of the rock wall, or grading of property in general, is not a City requirement. One can only speculate that because the buildings to the south are primarily retail stores, restaurants, or offices, their developers wanted to be at street level for easier access and walk-in business.

Ms. Recht again refers to Case File #1-C1-PC-21 to try to prove her point. Mr Hudnall is providing an 8-foot sidewalk along his property fronting HWY 101. Ms Recht fails to point out that Mr. Hudnall's property has no physical constraints, i.e. rock wall or steep slopes, and is relatively flat. Therefore, placement of an 8-foot sidewalk is relatively straightforward and not a fair comparison to this situation.

Ms. Recht states that variances "...are attempts to get around the rules that the City has set out..." . This statement implies that Ms. Recht has an anti-development agenda and does not believe in variances and takes exception to all developments that request variances or that are not to her liking.

Ms. Recht also states "Inconvenience, costs and disruption" are not legitimate basis for variances. In fact, they are. It is up to the Planning Commission and City Council to determine if the level of "Inconvenience, costs and disruption" meet the five conditions of variance requirements. In this case the Planning Commission decided they did.

On page 6, 2nd paragraph, Ms Recht states that the findings were never discussed by the Planning Commission. The Planning Commission held two Public Hearings lasting several hours each including public testimony and discussion. I do not understand how Ms. Recht can claim that the Findings, or any other aspect of the development, were not discussed.

Ms. Recht's discussion on why to deny the variances revolves around previous development prior to enactment of the C-1 amendments. Her argument is not relevant. In fact, she seems to contradict herself by stating "...Reference to buildings erected long before these design standards were enacted does not relate to maintaining property rights or we could never update our codes!"

Page 7, item 3 – Ms. Recht is correct on the purpose of DBZO Section 3.115. However, her discussion does not apply since Section 3.115.8.B, as discussed above, allows "non-retail" developments provide

pedestrian amenities in the form of a 8-foot landscaped area between the building and sidewalk. This development complies with this provision.

I agree with Ms. Recht that this development could use some minor redesign to incorporate more of a pedestrian plaza or breezeway or courtyard. However,

- All units have individual entrances facing the parking area
- Since there is 0% retail, pedestrian activity is mainly from guests staying at the development and the development is oriented to benefit its guests.
- Similar to other tourist accommodations along HWY 101, orientation of living spaces are to provide maximum ocean viewing experience. This includes those accommodations not at ground level along the central business district. These are mainly accessed from the rear via parking areas and entryways..

As I have stated above, Ms Recht makes misleading and false statements regarding this development and application of the Depoe Bay Zoning Ordinance. I urge the City Council to dive into the DBZO as well as application materials and come to its own conclusion regarding the validity of Ms. Recht's claims and the decision made by the Planning Commission.

Thank you,

Jaime White
P.O. Box 151
Depoe Bay, OR 97341

Susanne L Cerven, Howard Charles Sparks

PO Box 74672

Fairbanks, AK 99707

January 26, 2022

We the undersigned are providing Testimony concerning Fran Recht's Appeal of Planning Commission Approval: Application for Development in the Retail Commercial Zone and Request for Variances.

By: Susanne Lyn Cerven & Howard Charles Sparks, owners of Sundowne Addn. to Depoe Bay, Block 2, Lots 4 & 5.

We strongly support Fran Recht's appeal of the Planning Commission's approval for the subject development of 18 vacation rentals on Tax Lots: 02800, 03100, 03200, 0330, 03301, and 03400.

Our residential lots are less than a block from the proposed development which is the subject of this appeal. As we recall a variance was granted earlier allowing increased density of housing units for these parcels. It makes absolutely no sense to allow this proposed development another variance from the required compliance with City standards pertaining to street access/parking, landscaping and C-1 pedestrian amenities that would otherwise apply to any other development. As property owners, and taxpayers to the City of Depoe Bay, OR we strongly reject the Planning Commission's decision to grant these variances for this development. This is a sizable development-18 units-that will have a considerable impact on the adjacent neighborhood this impact will be lessened if applicable standards are upheld. Beyond the immediate development, providing a wavier for developments like this create an expectation by other developers for similar treatment. Is this the message that Depoe Bay wants to send?


Susanne Lyn Cerven


Howard Charles Sparks

info

From: Christina Sydenstricker <jcncinv@gmail.com>
Sent: Thursday, January 27, 2022 7:35 PM
To: info
Cc: Jim Filice; Nick Filice
Subject: Concerns Regarding Proposed Development

LOCATION: The subject properties are bounded by US HWY 101 on the west, NE Bradford Street on the south, and NE Williams Avenue on the east, and are further identified on Lincoln County Assessor's Map 09-11-05-CD as tax lots 02800, 03100, 03200, 03300, 03301, and 03400

Barbara Chestler,

I am a member of JCNC Investments, LLC, of 116 NE Hwy 101. Our driveway is on Bradford Street, and that raises concern for this new proposed development. How will this affect Bradford street, and will it be used as an entrance to the proposed townhomes? Would the street be widened, and what will be the parking situation, plan for sidewalks, and street parking? Our unit is multi-use with retail below and residential above, and I am concerned with the level of construction noise that will take place that could disturb our tenants. I went to the website for the City of Depoe Bay and were unable to find any impact studies or additional information about this proposal. Thank you for your time and consideration.

Christina Sydenstricker

JCNC Investments, LLC
408-203-8295

Sent from [Mail](#) for Windows

COMMENTS ON APPEAL, File #2-Var PC-21

Dear Council,

Regarding the appeal by Fran Recht, I implore the city to examine it closely in order to avoid the costly planning and irreversible design mistakes we have witnessed too often in Depoe Bay, including several within eyesight of City Hall.

The staff report is well written and illustrates a vortex of VRD and C1 zoning issues that transcend sidewalks and landscape standards, important as they are. For example, the appeal inadvertently highlights the shrinking availability in Depoe Bay of commercial land suitably zoned for VRDs (vacation rental dwellings).

In this case, the developer states that just four of 18 units will be available to tourists; I would object to such a limitation and am confused why this assertion would be accepted under C1 rules allowing for VRDs. The other 14 units should also qualify as licensed and regulated vacation rentals, if the new owners desire.

Without a tax base, Depoe Bay relies on TRT income to pay for streets, parks, harbor and salaries — needs which will only increase in months and years to come. It is therefore appropriate to weigh the impact on vulnerable city finances when considering land use issues involving VRDs and their pivotal role in subsidizing the town.

Thank you,

Rick Beasley, resident
P.O. 947
Depoe Bay, OR 97341

CITY of DEPOE BAY

Post Office Box 8 + Depoe Bay, Oregon 97341
Phone (541) 765-2361 + Fax (541) 765-2129
TDD# 1-800-735-2900



November 30, 2021

Mark Lisac
P.O. Box 1931
Clackamas, OR 97015

Via Email: mlisac@comcast.net

**Re: Case File #2-VAR-PC-21 Application For Variances
Northeast Corner of U.S. Highway 101 & Bradford Street, Depoe Bay, OR 97341
Tax Map 09-11-05CD, Tax Lots 02800, 03100, 03200, 03300, 03301, and 03400**

Dear Mr. Lisac:

On Wednesday, November 10, 2021 the Depoe Bay Planning Commission voted to approve the above request for variances. The Findings, Conclusions and Final Order are enclosed.

This decision will become effective on Wednesday, December 15, 2021 at 5:00 p.m. unless an appeal is filed at Depoe Bay City Hall. In order to appeal the decision of the Planning Commission, it is necessary to submit a fee/deposit of \$2,001.00, along with a written statement explaining the reason for the appeal.

Please contact me if you have any questions.

Sincerely,

Jaime White
City Planner

Enclosure: Findings, Conclusions, and Final Order

BEFORE THE PLANNING COMMISSION

OF

DEPOE BAY, OREGON

Request for Approval of a Variance

) Case File: 2-VAR-PC-21

) Findings, Conclusions, and Final Order

Applicant: Mark Lisac

A. NATURE OF THE APPLICATION

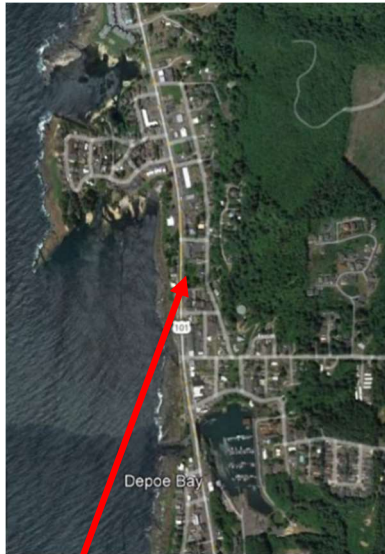
The applicant requested approval for construction of six (6) new townhouse-style buildings, each with three (3) units for a total of 18 units in the Retail Commercial Zone (C-1). The proposed development includes six (6) tax lots. The request included variances for pedestrian amenities, location of main entrances, and sidewalks. A total of four (4) variances were requested:

1. Exception to pedestrian amenities along US HWY 101.
2. Exception to orientation of building main entrances so as to not face US HWY 101.
3. Exception to sidewalk requirements:
 - a. Exception to sidewalk requirement along US HWY 101.
 - b. Exception to sidewalk requirement along Williams Avenue.

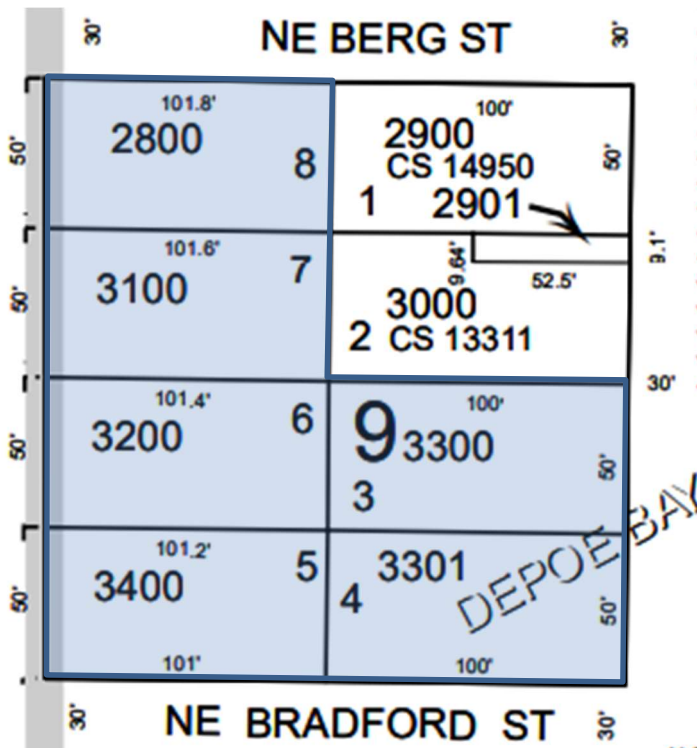
B. RELEVANT FACTS

1. **Property Location:** The subject properties are bounded by US HWY 101 on the west, NE Bradford Street on the south, and NE Williams Avenue on the east, and are further identified on Lincoln County Assessor's Map 09-11-05-CD as tax lots 02800, 03100, 03200, 03300, 03301, and 03400.
2. **Lot Size and Dimensions:** All lots are rectangular in shape approximately 50'x100'. All lots are approximately 0.12 or 0.11 acres in size, for a total of 0.70 acres. All lots are contiguous or abutting. Total development would have 200' of frontage on US HWY 101, 201' along Bradford Street, 100' along Williams Ave., and 202' along Berg Street (city street platted but not existing).
3. **Zoning Designation:** C-1 Retail Commercial
4. **Plan Designation:** Retail Commercial
5. **Surrounding Land Use:** Single family residential uses are located to the north, east, and southeast. Commercial uses are located to the south and west.

**#2-VAR-PC-21 Lisac
Findings, Conclusions, and Final Orders**



Lincoln County Tax Id. No. 09-11-05-CA-02800,
03100, 03200, 03300, 03301, 03400



- Topography and Vegetation:** The lot steps down from east to west, beginning with a substantial drop from Williams Avenue to the property, level for a portion, then another steep drop to US HWY 101. The properties are heavily vegetated with stands of mature trees towards Williams Ave. and along HWY 101 with dense shrubs and bushes throughout.

The west edge of the property is marked by a rock outcrop immediately behind the existing sidewalk that ranges in height from a few feet up to approximately 8 feet.

7. **Existing Structures:** None
8. **Utilities:** The following utilities currently serve the subject property:
 - a. Sewer: City sewer service.
 - b. Water: City water service.
 - c. Electricity: Central Lincoln P.U.D.
9. **Development Constraints:**
 - a. Site Topography
 - b. Rock Outcropping
 - c. Ten-foot ODOT slope easement along US HWY 101
10. **Background**

The applicant had originally requested five (5) variances. The applicant removed one of the variance requests (exception to sidewalk along Bradford Street) after the October 13, 2021 Planning Commission Public Hearing.
11. **Public Hearing, Notice and Testimony:** A public hearing was held on October 13, 2021 before the Depoe Bay Planning Commission with a continuance on November 10, 2021. Property owners within the notice area were duly notified of the public meeting. All interested parties were given an opportunity to provide written and oral testimony. At the October 13, 2021 and November 10, 2021 Planning Commission meeting, the applicants provided oral testimony and answered questions.

Ten written testimonies in opposition to the proposed development were received, two of which expanded on previously submitted written testimonies.

At the October 13, 2021 meeting, two people provided oral testimony in opposition to the proposed development, some reiterating previously submitted written testimony.

At the November 10, 2021 meeting, two people provided oral testimony in opposition to the proposed development, some reiterating previously submitted written testimony.

All testimony is herein incorporated into the record.

C. RELEVANT CRITERIA

1. **Relevant Depoe Bay Zoning Ordinance (DBZO) Criteria:**

Depoe Bay Zoning Ordinance (DBZO) No. 24 (as amended)

 - a. Section 3.110: Retail Commercial Zone C-1
 - b. Section 3.115: Commercial Zone C-1 – Design Standards and Guidelines
 - c. Section 4.030: Off-Street Parking
 - d. Article 8: Variances
 - e. Section 14.045: Transportation Impact Study (TIS)

2. **Applicant's Proposal:**

The applicant requested approval for construction of 18 town-home style units on six tax lots. The applicant requested four (4) variances to DBZO No. 24. The applicant submitted the following:

- Application form and fee/deposit for Variance
- Narrative addressing variance requests
- Site rendering from southwest corner (intersection of Bradford Street and HWY 101) looking to the northeast. Rendering includes buildings, sidewalk on Bradford, pedestrian amenities on corner (landscaping and bench), and roadway improvements on Bradford.
- Site Plans, Floor Plans, and Building Elevations
- Traffic Impact Study letter dated 10/27/2021.

All submitted documents are herein incorporated into the record.

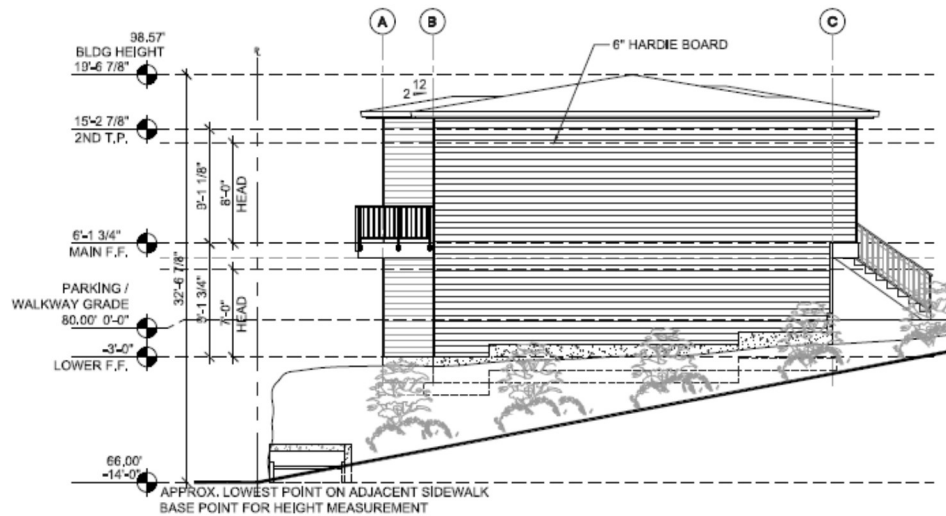
RENDERING



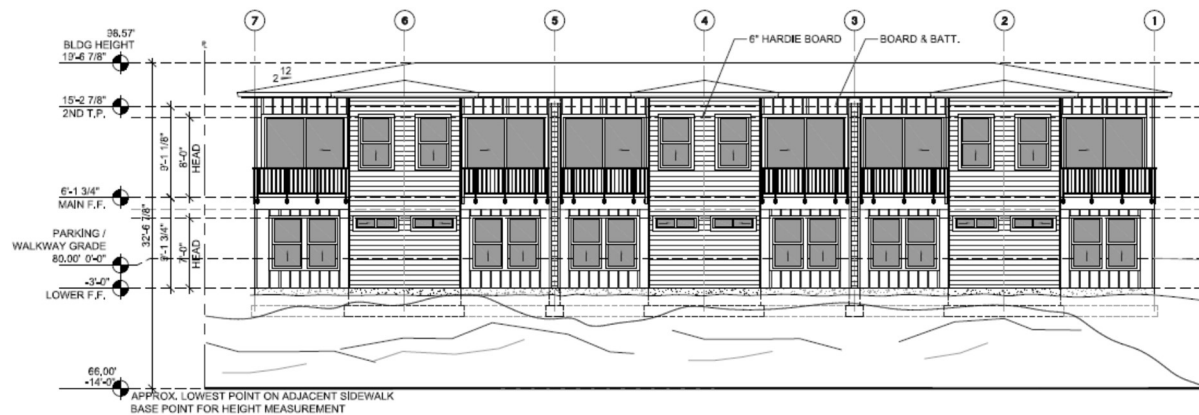
Rendering – From Southwest corner looking Northeast.

- 5' sidewalk on north side of Bradford Street.
- Pedestrian amenities at corner – bench, landscaping.

BUILDING ELEVATIONS

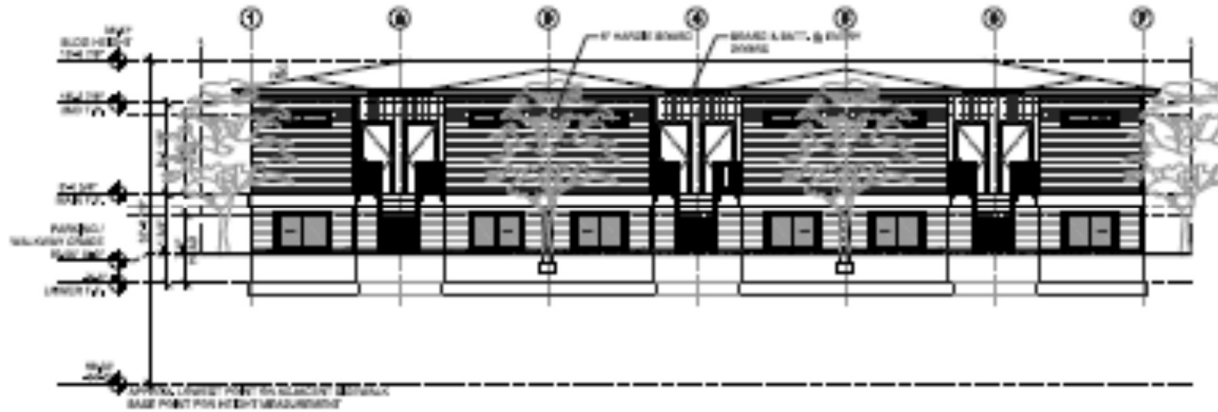


South Elevation for Buildings Along US HWY 101. Elevations are measured from HWY 101 sidewalk (66') to top of building (98.57'). **Total building height is 32.57'.**

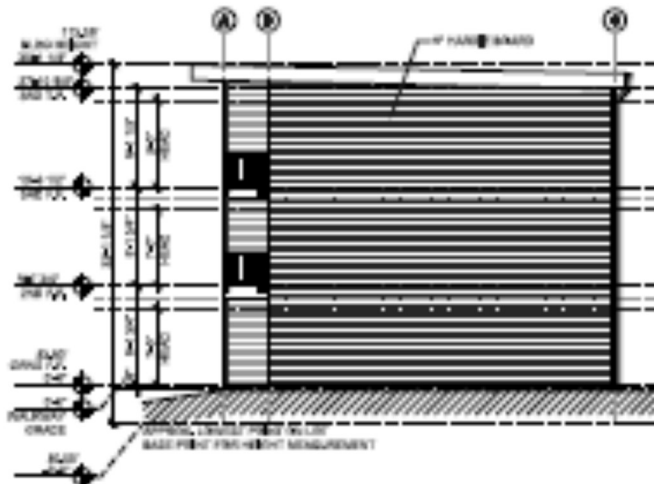


West Elevation for Buildings Along US HWY 101.

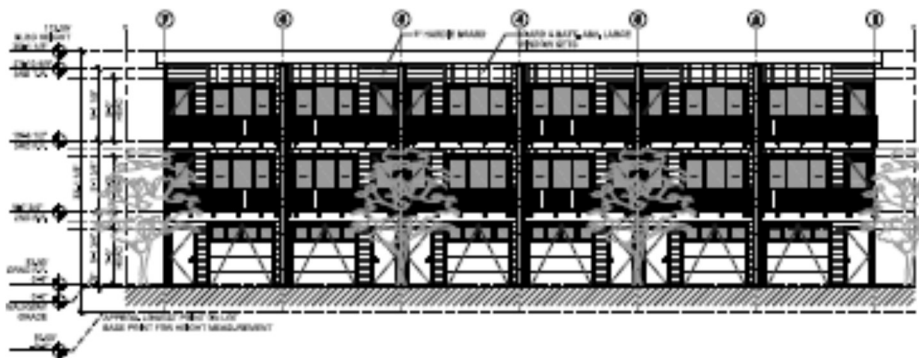
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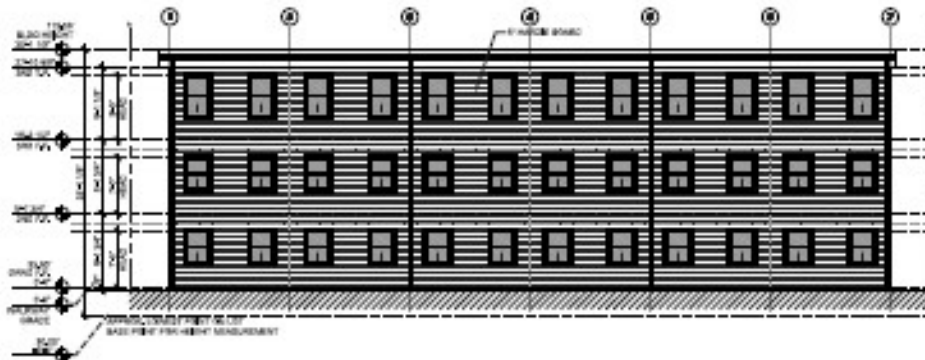
East Elevation for Buildings Along US HWY 101.



South Elevation for Buildings along Williams Avenue. Elevations are measured from lowest point on Bradford Street (80') to top of building (113.09'). **Total building height is 33.09'.** Elevations of Williams Avenue range from 100' to 110' (County Assessor maps).



West Elevation for Buildings along Williams Street.



East Elevation for Buildings along Williams Street.

D. FINDINGS

The Planning Commission finds:

1. **C-1 Retail Commercial Standards:** DBZO Section 3.115 does not specify a minimum required lot area, lot width, lot depth, or yards (building setbacks). The C-1 zone has a maximum building height of 35 feet.

The proposed townhomes will all have access from Bradford Street to the south. All units will face inward to a shared driveway/parking area.

- The structures on the four tax lots along US HWY 101 will be 15' from the highway right-of-way, 5' from the south and north property lines, and 44' from the east property line. The 44' will consist of 20' long parking spots and a 24' driveway.
- The structures on the two tax lots adjacent to Williams Avenue will be 47' from Williams, 5' from south and north property lines, and 17' (parking) from the west property line.
- Building heights.
 - **Buildings along US HWY 101.** Elevations are measured from HWY 101 sidewalk (66') to top of building (98.57'). **Total building height is 32.57'.**
 - **Buildings along Williams Avenue.** Elevations are measured from lowest point on Bradford Street (80') to top of building (113.09'). **Total building height is 33.09'.**
- Clear Vision Area shall conform to DBZO Section 4.010 Clear Vision Areas. Specifically, in a non-residential zone, the distance measured is 15' from the corner along the property lines. The triangle created by joining the 2 line segments is the clear vision area. The proposed buildings are not within the clear vision area.

Based on the above, the C-1 design standards are met.

2. **C-1 Retail Commercial Standards – Pedestrian Amenities:** Ordinance No. 319 added Section 3.115 Commercial Zone C-1 Design Standards and Guidelines to the DBZO. Part of the intent of these new guidelines is to “help create a vibrant pedestrian environment” and “encourage walking for the enjoyment of residents and visitors.”

DBZO Section 3.115 (3)(B)(2) states...*“There is no maximum front yard setback required, but a usable public space with pedestrian amenities (e.g., plaza, pocket park, managed landscaping, outdoor dining area or town square with seating) shall be provided in the entire area between the building and front property line”.*

This applies to the area along the front property line (US HWY 101).

DBZO Section 3.115 (3)(D) states...*“There is no minimum side yard setback required but in the case of a side yard on a corner lot, a usable public space with pedestrian amenities (e.g., extra-wide sidewalk, plaza, pocket park, managed landscaping, outdoor dining area or town square with seating) shall be provided in the entire area between the building and side property line”.*

This applies to the area along Bradford Street – corner lot.

DBZO Section 3.115 (8)(B) states...*“Every building and development on arterials (Hwy. 101) shall provide one or more of the “pedestrian amenities” listed in subsection below.*

- 1) A managed landscaped plaza, courtyard, square or recessed area next to the building;*
- 2) Sitting space, such as; dining area, benches, or sitting ledges (minimum of 16 inches in height and 30 inches in width) between the building and sidewalk*
- 3) Building canopy, awning, pergola, or similar weather protection (minimum projection of 4 feet over a sidewalk or other pedestrian space, and minimum 8 foot above the sidewalk or other pedestrian space).*
- 4) Multi-family housing and tourist accommodations that do not have a majority (greater than 75%) of retail on the ground floor shall have a minimum of 8 feet of landscaped grounds between the building(s) and sidewalk.”*

Proposed site plans show a ten (10) foot setback from the edge of the US HWY 101 right-of-way. This area is the ODOT slope easement and will be landscaped.

The applicant is proposing a five (5) foot sidewalk along the north side of Bradford Street. The applicant is also proposing a bench and landscaping for the corner of Bradford and HWY 101. Sidewalk and corner amenities are shown on the rendering.

Based on the above, the C-1 design standards for yard setbacks and pedestrian amenities are met.

3. **C-1 Retail Commercial Standards – Building Orientation:** DBZO Section 3.115(5) requires that buildings have their primary entrances oriented to US HWY 101.

All proposed buildings will be interior facing to a shared parking area and access driveway. **The applicant requests a variance to not provide a direct pedestrian access to US HWY 101 and that the western buildings are not oriented to US HWY 101.**

4. **C-1 Retail Commercial Standards – Pedestrian Amenities (Sidewalks):** Ordinance No. 319 added Section 3.115 Commercial Zone C-1 Design Standards and Guidelines to the DBZO. Part of the intent of these new guidelines is to “help create a vibrant pedestrian environment” and “encourage walking for the enjoyment of residents and visitors.”

DBZO Section 3.115(8)(A) requires sidewalk and pedestrian amenities be provided for new development along all streets. Sidewalks are to be 8 feet wide along US HWY 101 and 5 feet wide elsewhere.

The applicant is proposing a five (5) foot sidewalk along the north side of Bradford Street. The applicant is also proposing a bench and landscaping for the corner of Bradford and HWY 101. Sidewalk and corner amenities are shown on the rendering.

The applicant is requesting a variance to not provide sidewalk improvements along US HWY 101, and a variance to not provide a sidewalk along Williams Avenue.

5. **Parking:** Parking requirements within the C-1 Zone shall conform to DBZO Section 4.030 Off-Street Parking and Off-Street Loading Requirements.

DBZO Ordinance No. 24, Section 1.030 Definitions provides the following:

47. Dwelling: *A building or portion thereof which is owned or occupied in whole or in part as a residence by one or more families but excluding tourist accommodations.*

177. Tourist Accommodation: *A structure or building, or part of a structure or building, occupied or designed for occupancy:*

1. *By transients for lodging or sleeping, regardless of whether or not non-lodging goods, services or meals are included as a part of the occupancy, and for which the transient lodging within the structure:*
 - a. *is for the direct or indirect compensation of the owner, lessee or operator of the structure; or*
 - b. *is intended to result in the pecuniary benefit to the owner, lessee or operator of the structure; or*
 - c. *requires the owner, lessee or operator of the structure to either obtain a city business license or collect transient room taxes under city ordinances.*

“Tourist Accommodation” shall include the use and terms “bed and breakfast establishment”, “hotel”, “motel”, “inn”, “vacation rental”, or any other form of transient or short-term occupancy of a structure.

DBZO Section 4.030 requires off street parking in the amount of one (1) space for each guest accommodation and two (2) spaces per residential unit. The applicant proposes to use the four buildings fronting US HWY 101 for Tourist Accommodations. Each unit will have one (1) dedicated parking space totaling 12 parking spaces. The units adjacent to Williams Avenue will have a garage on the ground floor and one (1) dedicated parking space for each unit totaling 12 parking spaces (2 per unit).

A total of 24 parking spaces will be provided. Based on the above, the parking requirements for the proposed land use are met.

6. **Variances.** DBZO Section 8.020 states that a variance may be granted only in the event that all of the circumstances described exist. The circumstances are stated in *italics* and followed by Planning Commission findings.

Exception to pedestrian amenities along US HWY 101. Exception to sidewalk requirement along US HWY 101.

1. *Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this ordinance, or other circumstances over which the applicant has no control.*

PLANNING COMMISSION FINDING: A large rock outcropping exists across the properties along US HWY 101. The west property line consists of a vertical rock wall that varies in height from a few feet up to 8 feet.

In addition, the Oregon Department of Transportation (ODOT) has a slope easement on the first ten feet of the properties along US HWY 101.

Current conditions include a 5-foot \pm sidewalk, slot drain at the base of the rock outcropping, parallel parking, and curb bulb outs at the intersection of US HWY 101 and Bradford Street. The rock outcropping is immediately to the east of the sidewalk. The edge of the highway right-of-way is approximately 5 feet to the east of the sidewalk. Any pedestrian amenities at this location would require removal of a portion of the rock outcropping to the east. The ODOT slope easement prohibits placement of any permanent structures within the first ten feet of the property. Because of the height of the rock wall, safety measures/structures such as railings would be required.

The ODOT slope easement and rock outcropping could be considered exceptional circumstances that do not generally apply to other properties in the same zone with the exception of the properties immediately to the north. These properties do not currently have pedestrian amenities. Properties to the south, as presented through anecdotal evidence and historic photographs, had varying degrees of rock outcropping prior to development. The properties to the south are primarily commercial, i.e. retail/souvenir stores and restaurants. With the exception of driveways, alleyways, and other vehicle access, the DBZO does not require final grade of structures be the same as adjacent existing public right-of-way. It can be surmised that properties to the south wanted to be at street level based on their use

and removed the rock outcropping as part of their development and not because of a DBZO requirement.

The applicant has stated that removal of the rock outcropping would be cost prohibitive to the development and would create significant disturbance to adjacent properties. The applicant also stated that the rock outcropping can be considered a landscaping amenity and will provide privacy to the units since they will be “elevated” above street level.

Given the above circumstances, the nature of the development (tourist accommodations without retail), and since there is an existing sidewalk along US HWY 101, a landscaped strip as described in DBZO Section 3.115 (8)(B)(4) would be more appropriate to the proposed development as a pedestrian amenity.

2. *The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess.*

PLANNING COMMISSION FINDING: Geological challenges similar to those of this proposed development exist to the properties to the north. Those properties, e.g., Travelodge, have developed without additional pedestrian amenities along US HWY 101.

Given the challenges presented by the circumstances described in item 1. above, providing additional pedestrian amenities along US HWY 101 is logistically difficult and would prevent the applicant from developing the properties.

3. *The variance would not be materially detrimental to the purposes of this ordinance, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy.*

PLANNING COMMISSION FINDING: Since one of the intents of DBZO Section 3.115 is to encourage walking, not providing or improving pedestrian amenities could conflict with the City’s code.

However, since there is an existing sidewalk along US HWY 101, this area is already considered “walkable”. Given the challenges presented by the circumstances described in item 1 above, providing additional pedestrian amenities along US HWY 101 is logistically difficult. The Planning Commission finds that not improving the existing sidewalk along US HWY 101 would not conflict with the objectives of any City plan or policy.

4. *The hardship is not self-imposed and the variance requested is the minimum variance which would alleviate the hardship.*

PLANNING COMMISSION FINDING: The hardship is not self-imposed since the rock outcropping is a naturally occurring feature and the ODOT slope easement cannot be removed.

Given the above circumstances, the existing walkability of the area, and the nature of the development (tourist accommodations without retail), a landscaped strip as described in Section 3.115 (8)(B)(4), would be more appropriate to the proposed

development.

The Planning Commission finds the hardship is not self-imposed and the variances requested are the minimum to alleviate the hardship.

5. *The hardship asserted as a basis for the variance does not arise from a violation of the Zoning Ordinance.*

PLANNING COMMISSION FINDING: The Zoning Ordinance has not been violated. The property is currently undeveloped.

The applicant requests a variance to not provide a direct pedestrian access to US HWY 101 and that the western buildings are not oriented to US HWY 101.

1. *Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this ordinance, or other circumstances over which the applicant has no control.*

PLANNING COMMISSION FINDING: A large rock outcropping exists across the properties along US HWY 101. The west property line consists of a vertical rock wall that varies in height from a few feet up to 8 feet. Providing access over/through the rock could be challenging and cost prohibitive. The ODOT slope easement prohibits placement of any permanent structures within the first ten feet of the property. Because of the height of the rock wall, safety measures/structures such as railings would be required.

The applicant has stated that removal of the rock outcropping would be cost prohibitive to the development and would create significant disturbance to adjacent properties. The applicant proposes to orient the buildings to the interior as provided by DBZO code, without a direct pedestrian access to US HWY 101.

The ODOT slope easement and rock outcropping could be considered exceptional circumstances that do not generally apply to other properties in the same zone with the exception of the properties immediately to the north. These properties do not currently have pedestrian amenities. Properties to the south, as presented through anecdotal evidence and historic photographs, had varying degrees of rock outcropping prior to development. The properties to the south are primarily commercial, i.e. retail/souvenir stores and restaurants. With the exception of driveways, alleyways, and other vehicle access, the DBZO does not require final grade of structures be the same as adjacent existing public right-of-way. It can be surmised that properties to the south wanted to be at street level based on their use and removed the rock outcropping as part of their development and not because of a DBZO requirement.

The code allows for a different building orientation as long as “pedestrian pathways are provided that ensure reasonably safe, direct, and convenient access to building entrances and off-street parking.” The proposal is to orient the buildings to an interior parking area and shared driveway. The development would be linked by sidewalks from the entryways, through the parking area, and a 5-foot sidewalk along the north side of Bradford Street to the existing sidewalk on US HWY 101.

Given the above circumstances, the proposed sidewalk and roadway improvements on Bradford Street, and the existing sidewalk on US HWY 101, The Planning Commission finds that pedestrian pathways provided will ensure reasonably safe, direct, and convenient access to building entrances and off-street parking.

2. *The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess.*

PLANNING COMMISSION FINDING: Geological challenges of this proposed development exist to the properties to the north. Those properties, e.g., Travelodge, have developed orienting away from US HWY 101 and do not have direct pedestrian access to the highway. The applicant requests the ability to situate structures on the properties similarly to adjacent properties.

The applicant has stated that removal of the rock outcropping would be cost prohibitive to the development and would create significant disturbance to adjacent properties. Orienting the buildings to the interior as provided by DBZO code, without a direct pedestrian access to US HWY 101, would allow development of the properties.

3. *The variance would not be materially detrimental to the purposes of this ordinance, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy.*

PLANNING COMMISSION FINDING: DBZO Section 3.115(2)(D) states “Higher density residential uses, such as multi-family buildings and attached townhomes, are permitted to encourage affordable, amiable housing for families that desire to play and live in Depoe Bay.”

DBZO Section 3.115(5)(B) states “Development may be configured to provide a driveway or interior parking court. If interior parking courts are created, then pedestrian pathways shall be provided between buildings from the street right-of-way to interior parking courts, to ensure safe, direct, and convenient access to building entrances and off-street parking”.

Although the applicant proposes short-term rentals for a portion of the development, the proposed development is consistent with the above two statements. Therefore, the Planning Commission finds that not orienting the buildings to US HWY 101, while providing pedestrian access via Bradford Street, would not conflict with the objectives of any City plan or policy.

4. *The hardship is not self-imposed and the variance requested is the minimum variance which would alleviate the hardship.*

PLANNING COMMISSION FINDING: The hardship is not self-imposed since the rock outcropping is a naturally occurring feature and the ODOT slope easement cannot be removed. DBZO allows for re-orienting of the buildings as long as pedestrian accesses are provided.

Given the circumstances previously described, the existing walkability of the area,

and the proposed interior walkways and proposed sidewalk along Bradford Street, the Planning Commission finds the hardship is not self-imposed and the variance requested is the minimum to alleviate the hardship.

5. *The hardship asserted as a basis for the variance does not arise from a violation of the Zoning Ordinance.*

PLANNING COMMISSION FINDING: The Zoning Ordinance has not been violated. The property is currently undeveloped.

The applicant is requesting variance to not provide a sidewalk along Williams Avenue.

1. *Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this ordinance, or other circumstances over which the applicant has no control.*

PLANNING COMMISSION FINDING: Williams Avenue to the east sits above the property 8 to 10 feet with a retaining wall at the end of Bradford Street. Bradford Street runs along the south and is fairly steep. Bradford dead ends at the retaining wall for Williams.

Williams Avenue at this location is constricted by a steep slope on the east and steep drop off to the west. The road is quite narrow, reduced to about a single lane in width. There are no sidewalks anywhere along Williams Ave. Placement of a sidewalk along the western edge of the road right-of-way would require a retaining wall similar to the wall at the end of Bradford Street. Placing a sidewalk along the existing edge of asphalt would require a smaller wall but would require widening the roadway to the east and require cutting into the slope and a retaining wall as well as reconfiguration of several driveways.

The Planning Commission finds that the topography and current configuration of Williams Avenue at this location present exceptional and extraordinary circumstances over which the applicant has no control.

2. *The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess.*

PLANNING COMMISSION FINDING: Given the challenges presented by the circumstances described in item 1. above, providing additional pedestrian amenities along Williams Avenue is logistically difficult. The applicant has stated that improvements required to provide a sidewalk along Williams Avenue would be cost prohibitive to the development.

The Planning Commission finds that the topography and current configuration of Williams Avenue at this location present exceptional and extraordinary circumstances over which the applicant has no control and that the variance requested is necessary to develop the properties as proposed.

3. *The variance would not be materially detrimental to the purposes of this ordinance, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy.*

PLANNING COMMISSION FINDING: Since one of the intents of DBZO Section 3.115 is to encourage walking, not providing sidewalks along Williams Avenue would conflict with the City's code.

The applicant proposes to orient the buildings to an interior parking area. Access to the development would be from Bradford Street. No access is proposed from Williams Avenue. The development would be linked by sidewalks from the building entryways, through the parking area, and a 5-foot sidewalk along the north side of Bradford Street to the existing sidewalk on US HWY 101.

Since pedestrian access will be provided to US HWY 101 and the "walkability" of the main commercial zone is maintained, the variance would not be materially detrimental to the purposes of this ordinance or to property in the zone, or otherwise conflict with the objectives on any City plan or policy.

4. *The hardship is not self-imposed and the variance requested is the minimum variance which would alleviate the hardship.*

PLANNING COMMISSION FINDING: Given the challenges presented by the circumstances described in item 1. above, providing additional pedestrian amenities along Williams Avenue is logistically difficult. The applicant has stated that improvements required to provide a sidewalk along Williams Avenue would be cost prohibitive to the development.

The Planning Commission finds that the topography and current configuration of Williams Avenue at this location present exceptional and extraordinary circumstances over which the applicant has no control, the hardship is not self-imposed, and that the variance requested is necessary to develop the properties as proposed.

5. *The hardship asserted as a basis for the variance does not arise from a violation of the Zoning Ordinance.*

PLANNING COMMISSION FINDING: The Zoning Ordinance has not been violated. The property is currently undeveloped.

7. **Traffic.** DBZO Section 14.045 requires a Traffic Impact Study (TIS) for a proposed development or land use action that the road authority states may contribute to operational or safety concerns on its facility(ies). A TIS Letter is required if the proposed development is expected to generate 10 to 30 peak hour trips or 100 to 300 daily trips. A TIS Report is required if the proposed development would generate more than 30 peak hour trips or more than 300 daily trips.

A TIS Letter was prepared dated October 27, 2021. Below is a brief summary of the findings and conclusions from the TIS Letter.

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Table 1: Trip Generation Summary

Land Use	ITE Code	Size	Morning Peak Hour			Evening Peak Hour			Weekday Total
			In	Out	Total	In	Out	Total	
Single-Family Attached Housing	215	18 DU	3	6	9	6	4	10	130

Although the trip modeling was based on single-family attached housing, the traffic engineer stated that the expected peak hour trip generation for vacation traffic would be lower.

No more than three (3) new trips are expected for any movement during any hour of a typical day. This equates to one (1) vehicle every 20 minutes, which is extremely low and is not expected to add significant delay at the intersection. Additionally, it is expected that the peak hour trip generation will realistically be lower, as the proposed use will be primarily vacation traffic staying locally in Depoe Bay, rather than functioning as a typical multi-unit residential building.

Conclusions

The analysis presented in this memorandum concludes:

- The trip generation calculations show that the proposed 18-unit development is projected to generate 9 new morning peak hour trips, 10 new evening peak hour trips, and 130 new average weekday trips.
- No significant trends or crash patterns were identified at any of the site access study intersections. Accordingly, no specific safety mitigation is recommended.
- Based on the access evaluation, the most direct access links on US 101 are expected to operate safely.
- No further transportation-related mitigation is necessary or recommended for the proposed development. The proposed improvements to be constructed by the project applicant are anticipated to be sufficient in providing safe and efficient movement around the site in a manner that is proportionate to the development and consistent with the surrounding transportation environment.

The TIS Letter states..."No further transportation-related mitigation is necessary or recommended for the proposed development. The proposed improvements to be constructed by the project applicant are anticipated to be sufficient in providing safe and efficient movement around the site in a manner that is proportionate to the development and consistent with the surrounding transportation environment."

Bradford Street. The proposed improvements mentioned in the TIS Letter include:

- 1) Five-foot sidewalk along the north side of Bradford Street from the intersection with HWY 101 to the driveway entrance of the proposed development.
- 2) Bradford Street will be widened.
Bradford Street has a 30-foot wide right-of-way. The existing asphalt pavement

is approximately 15 feet wide at the intersection with US HWY 101. The applicant will maximize the available right-of-way to widen the roadway, provide curb and gutter, and provide a 5-foot sidewalk without impacting adjacent properties or existing/proposed utilities.

- 3) ADA ramps and curb returns at the intersection of HWY 101 and Bradford Street will adhere to ODOT standards.

Based on the above, the traffic analysis and traffic mitigation requirements are met.

8. **Archaeological Resources.** The site is identified in the Comprehensive Plan Inventory as having potential archaeological resources. The DBZO Section 3.360(5)(b)(1) states that development on identified archaeological sites shall be conducted in a manner so as to minimize site disturbance and prevent irreversible loss of archaeological resources. This does not require the property owner to hire an archaeologist, however, it does require the property owner to be cognizant of archaeological resources when developing the site. The applicant needs to be aware of potential archaeological resources and take feasible action to minimize site disturbance and prevent irreversible loss of archaeological resources.

E. CONCLUSIONS

The record and findings support the conclusion that:

Approval of the proposed variance is consistent with applicable standards and procedures of the Depoe Bay Zoning Ordinance Article 8 Variances and other applicable ordinance sections.

F. ORDER

It is ORDERED by the Depoe Bay Planning Commission that Case #2-VAR-PC-21 be APPROVED subject to the following conditions:

1. Building Permit. Development shall be accomplished in conformance with the approved plan. The applicant shall obtain a valid building permit prior to commencement of construction.
2. Variances. The following variances will be granted with conditions (if applicable):
 - a. Exception to pedestrian amenities along US HWY 101.
 - Landscaped grounds shall be provided between the buildings and the sidewalks.
 - Topography and geology of the site will be taken into account during landscape design.
 - b. Exception to orientation of building main entrances so as to not face US HWY 101.
 - Buildings will orient to an interior shared drive and parking area. Concrete walkways will connect the parking area to each unit.
 - c. Exception to sidewalk requirements:
 - 1) Exception to sidewalk requirement along US HWY 101.
 - Improvements to the existing sidewalk, e.g., widening sidewalk, along US HWY 101 will not be required.
 - 2) Exception to sidewalk requirement along Williams Avenue.
 - A sidewalk along Williams Avenue will not be required.

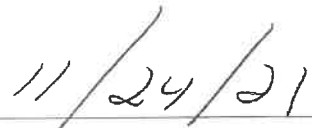
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3. Bradford Street.
 - a. Sidewalk. A 5-foot sidewalk (including curb and gutter) will be provided along the north side of Bradford Street from US HWY 101 to the driveway entrance of the development parking area. The sidewalk will require coordinating and permitting with ODOT for tie-in to the existing sidewalk along the highway, including required ADA ramps and curb and gutter improvements.
 - b. Roadway. The applicant will maximize the available right-of-way to widen the roadway, provide curb and gutter, and provide a 5-foot sidewalk without impacting adjacent properties or existing/proposed utilities. The City Public Works Director shall review and approve roadway plans prior to issuance of a building permit.
4. Retail Commercial Zone C-1 Standards. Except for the variances identified in Condition of Approval #2 above, the proposed development shall meet all other DBZO Retail Commercial Zone C-1 Standards.
5. ODOT. The applicant will coordinate (permit) with ODOT for the following:
 - a. Bradford Street sidewalk tie-in at US HWY 101 including ADA ramps, curb and gutter, roadway widening.
6. Final plan review and approval from the Depoe Bay Fire District Chief.
7. Parking. Parking shall be provided at one parking spot per tourist accommodation (12 units) and 2 spots per residential unit (6 units), for a total of 24 parking spots.
8. Drainage and Erosion Control. The City Public Works Director shall review and approve plans for erosion control and storm drainage prior to issuance of a building permit.
9. Archaeological Resources. Development shall be conducted in a manner so as to minimize site disturbance and prevent irreversible loss of archaeological resources. Before and during excavation, any discovery of archaeological resources shall mean that the applicant shall cease excavation activities, notify the State Historic Preservation Office and Confederated Tribe of Siletz Indians, and meet State statutes before proceeding.
10. Tourist Accommodations. Prior to completion of construction the applicant will obtain a City Business License and register for Transient Room Taxes as per City codes.

Any future change of use not identified in this approval will require adherence to DBZO Section 4.030 parking requirements.
11. Time Limit. The variance shall be void after one year unless substantial construction has taken place. The Planning Commission may extend the variance for an additional one year, upon request.



Michael Phillips, President
Depoe Bay Planning Commission


Date