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*The meeting location will be accessible to the public. Public comments may be made, via email up to two hours before the meeting start time at [info@cityofdepobay.org](mailto:info@cityofdepobay.org) or you can also dial in to attend using your telephone (888) 204-5987, access code 9599444.*

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## **AGENDA**

- I. Call Meeting to Order and Establish a Quorum
- II. Approval of Minutes: September 8, 2021, Regular Meeting
- III. Public Hearings
  - A. Case File: #2-CS-PC-21 (Continued)  
Applicant: Dan and Jeri Fouts  
Application: Coastal Shorelands Development, Exception to the Area of Visual Concern Standard  
Zone, Map and Tax Lot: Residential R-1, 09-11-17-BC #02100  
Location: 1947 SW McDonald Avenue
  - B. Case File: #3-CS-PC-21  
Applicant: Better Way, LLC  
Application: Coastal Shorelands Development, Request for Variances: Setback for Coastal Erosion, Setback for Visual, Front Yard Setback, Deck Encroachment Into Back Yard  
Zone, Map and Tax Lot: Residential R-4, 09-11-05-CA #13500  
Location: Approximately 130 NW Sunset Street
  - C. Case File: #2-VAR-PC-21  
Applicant: Mark Lisac  
Application: Development in Retail Commercial C-1 Zone. Request for Variances: Sidewalks, Pedestrian Amenities, Building Main Entrance Orientation, Parking  
Zone, Map and Tax Lot: Retail Commercial C-1  
09-11-05-CD #02800, #03100, #03200, #03300, #03301, #03400  
Location: NW corner intersection HWY 101 and NE Bradford Street
- IV. Unfinished Business
- V. New Business
  - A. Code Violations
    - Whale Watch Ph. 1 – Transient Room Tax - 730 Lillian Lane – Nick Hoogendam
- VI. Public Comments – Items Not on Tonight's Agenda
- VII. City Council Liaison Report (October: Hayes; November: Phillips)
- VIII. Planner's Report
- IX. Planning Commission Concerns
- X. Adjourn

1 Depoe Bay Planning Commission  
2 Regular Meeting  
3 Wednesday, October 13, 2021 – 6:00 PM  
4 Depoe Bay City Hall  
5

6 PRESENT: G. Steinke, R. Moreland, F. Ruby, J. Faucett, J. Hayes  
7 ABSENT: M. Phillips  
8 STAFF: City Planner J. White, Recording Secretary C. Duering  
9

10 I. CALL MEETING TO ORDER  
11

12 Faucett called the meeting to order and established a quorum at 6:00 PM.  
13

14 II. APPROVAL OF MINUTES: September 8, 2021, Regular Meeting  
15

16 Motion: Steinke moved to approve the minutes of the September 8, 2021, regular meeting as written. Ruby  
17 seconded.  
18

19 Vote: Motion passed.

20 Ayes: Steinke, Moreland, Ruby, Faucett

21 Abstain: Hayes  
22

23 III. PUBLIC HEARINGS  
24

25 Faucett noted there are three public hearings on the agenda, and the following statement applies to all three.  
26

27 Faucett said testimony and evidence given must be directed toward criteria described by the City Planner, or other  
28 criteria in the code that the testifier believes apply to the request. Failure to raise an issue, accompanied by  
29 statements or evidence sufficient to afford the Commission and the parties an opportunity to respond to the issue  
30 precludes appeal to the State Land Use Board of Appeals on that issue. Application materials or other evidence  
31 relied upon by the applicant had been provided to the City and made available to the public.  
32

33 Faucett explained the hearing procedure: Applicants will have the opportunity to present information relevant to  
34 their application, followed by testimony in support of the application, then testimony in opposition, with the  
35 applicant having the opportunity for rebuttal. Unless there is a request to hold the record open, testimony will be  
36 closed, and the Commission will enter into deliberations on the application.  
37

38 A. Case File: #2-CS-PC-21 (Continued)

39 Applicant: Dan and Jeri Fouts

40 Application: Coastal Shorelands Development

41 Exception to the Area of Visual Concern Standard

42 Zone, Map and Tax Lot: Residential R-1, 09-11-17-BC, Tax Lot #02100

43 Location: 1947 SW McDonald Avenue  
44

45 Faucett asked if any Commissioner had ex-parte contact, conflict of interest, or bias to declare.  
46

47 Moreland stated that she has become aware that the State of Oregon says a site visit is an ex-parte contact. Although  
48 site visit is not defined. She declared that she has been on public property (i.e., Rocky Creek State Park and public  
49 street) and viewed the subject lot and surrounding area.  
50

51 There was no objection to any Planning Commissioner hearing the case.  
52

53 White reminded the Commission that the public hearing was continued at the last meeting. He presented slides of  
54 the subject lot and surrounding area from various perspectives (copies attached to the original of these minutes).

1 He summarized his memorandum dated October 13, 2021, and additional information provided by Dan and Jerri  
2 Fouts, and Tom Golden (copies attached to original of these minutes). Written public testimony was received in  
3 support of the application from Michael and Donna Barrett and Ralph and Terri Tornatore (copies attached to  
4 original of these minutes).

5  
6 Discussion ensued regarding (1) The Fouts purchased a lot to the south in 2002 with the understanding that they  
7 would maintain a green buffer zone and not build any structure that exceeded the current height of their home; (2)  
8 The applicant's proposal expands the footprint but will not encroach any further into the Area of Visual Concern  
9 than the existing home; and (3) The garage is set back from the coastal bluff.

10  
11 Dan and Jeri Fouts referred to the document prepared and submitted by Tom Golden – A photo of the existing house  
12 with the proposed house outlined. Testimony included: (1) Their love of the tree along the coastal bluff; (2) The  
13 proposed construction to the right is set back further from the ocean than the existing house; (3) The natural buffer  
14 of green provides privacy; (4) This is a special place and you won't find better stewards or guardians of the coast  
15 as is evidenced in the information that was provided; (5) Their commitment to maintaining the natural environment  
16 since they purchased their home in 2001; and (6) The existing home is very small with no garage and needs to be  
17 repaired – They are proposing a larger 2,800 sq. ft. home (average size compared to the 6,500 sq. ft. home next  
18 door).

19  
20 Discussion followed regarding the exception to the Area of Visual Concern Standard – *(b) Disruption of the visual*  
21 *character has been minimized*; and how the applicant is meeting the standard. The applicant is proposing more  
22 subtle and muted tones than the existing home, use of natural materials (wood and stones), similar to a home in  
23 Little Whale Cove designed by Tom Golden (photograph attached to original of these minutes).

24  
25 There was no testimony in support or opposition of the application and no request to keep the record open.

26  
27 The public hearing was closed, and deliberations began.

28  
29 The Commission discussed: (1) The new construction is in the Area of Visual Concern but does not encroach further  
30 than the existing home; (2) The applicant has attempted to minimize the disruption of the visual character; (3) The  
31 proposed home is reasonably sized; (4) The data regarding building permits and Coastal Shoreland applications  
32 issued after 2004 was helpful; and (5) People come from all over the world to view Whale Cove - We all need to  
33 be good stewards, and the Fout's know that too.

34  
35 Motion: Ruby moved to approve Case File #2-CS-PC-21 (Coastal Shorelands Development, Exception to the Area  
36 of Visual Concern) and adopt Conditions of Approval (1. Thru 9.) as prepared by the City Planner. Steinke  
37 seconded.

38  
39 Vote: Motion passed.

40 Ayes: Moreland, Ruby, Faucett, Hayes, Steinke

41  
42 Faucett thanked the applicant.

43  
44 B. Case File: #3-CS-PC-21

45 Applicant: Better Way, LLC

46 Application: Coastal Shorelands Development, Request for Variances: Setback for Coastal  
47 Erosion, Setback for Visual, Front Yard Setback, Deck Encroachment into Backyard  
48 Zone, Map and Tax Lot: Residential R-4, 09-11-05-CA, Tax Lot #13500  
49 Location: Approximately 130 NW Sunset Street

50  
51 Faucett asked if any Commissioner had ex-parte contact, conflict of interest, or bias to declare.

52  
53 Moreland, Ruby, Faucett, Hayes, and Steinke declared that they viewed the subject lot and surrounding area. They  
54 did not walk on the property.

1 There was no objection to any Planning Commissioner hearing the case.

2  
3 White presented slides of the subject lot and surrounding area from various perspectives (copies attached to original  
4 of these minutes). He summarized the Staff Report (copy attached to original of these minutes). Written public  
5 testimony was received in opposition to the application from Doris Beman (Knox) (included in the staff report).  
6 Written public testimony was received after preparation of the Staff Report in support of the application from Ray  
7 Cotton and in opposition of the application from Don and Cristie Betz, Fran Recht, Roger and Gail VanZyl, and  
8 Jean Ohl (copies attached to original of these minutes).  
9

10 Discussion ensued regarding (1) The depth to the top of the sea cave; (2) The Coastal Erosion Setback and Area of  
11 Visual Concern standards and the staff analysis; (3) The rights of a property owner to build on their property; (4)  
12 To develop the subject property Exceptions/Variations to the standards would be necessary; (5) The potential and  
13 history of erosion in the area and how does that relate to State of Oregon Goal 18.; and (6) Condition of Approval  
14 *9. Declaration. The Applicant/Property Owner shall complete and sign the Declaration of Covenants and*  
15 *Conditions of Responsibility and Indemnity (The Declaration) provided by the City. Prior to issuance of a building*  
16 *permit, the Applicant or Property Owner shall execute and record the Declaration in the deed records of Lincoln,*  
17 *County, Oregon.*  
18

19 Gabe Headrick, the Architect, introduced the property owner Manuel Castaneda, and Jim Imbrie Geotechnical  
20 Engineer. Testimony included: (1) Manuel has owned the property since 2006 intending to build a home on the  
21 property; (2) They have provided very valid reasons for requesting the Variations i.e., extraordinary site; constraints  
22 of the property; adherence to the calculated Area of Coastal Erosion setback would make the lot unbuildable; (3)  
23 Proposal includes an extremely robust structural system. The property owner owns a business that specializes in  
24 this type of stability on steep slopes, and he is confident they can meet the concerns of surrounding property owners  
25 regarding erosion control; (4) Aware that street parking is an issue in the neighborhood. A double-car garage and  
26 two off-street parking spaces are proposed which necessitates encroachment into the 25' Area of Visual Concern;  
27 (5) The existing homes on either side of the subject property do not meet the front yard setback standards (average  
28 3'5" and 7'3"); The applicant is proposing a 10' front yard setback; (6) The back of the proposed house is set back  
29 parallel to the house to the east and set back further from the coastal bluff than the house to the west; (7) The  
30 proposed deck averages 25" in height. The robust guardrails will keep people away from the cliff; (8) When the  
31 25' Area of Visual Concern and Coastal Erosion setback standards went into effect the properties on the south side  
32 of Sunset Street were thrown into non-conformance; and (9) The compromise of the front and rear setbacks resulted  
33 in the necessity of the Variance requests.  
34

35 James Imbrie stated: (1) The references that were used, and cited erosion rates were 1-2.8"/year but were rounded  
36 to 1-2"/year because he does not like implied accuracy; (2) His biggest concern was the caves. He was in the caves  
37 about 20-years ago and recommended that Manuel hire a geophysicist to map the caves. The locations of the caves  
38 in the Geotech Report are accurate – A previous map provided to him by the city is incorrect; (3) When you measure  
39 where the drilled base of the piles are to the actual sandstone cliff there is over 50' of distance – It would take quite  
40 a bit of time for it to erode to the 50' distance at a rate of 1-3"/year; and (4) He and his wife own five properties in  
41 Depoe Bay and have gone through this process – As Depoe Bay residents they agree with granting the Variance  
42 requests and approval of the proposed home as presented.  
43

44 Discussion followed regarding erosion control and cave stability.  
45

46 Manuel Castaneda stated he and his wife purchased the property in 2006 with the hopes to one day bring their  
47 family and extended family to Depoe Bay. Testimony included: (1) His company specializes in soil stability work  
48 and difficult sites all along the Oregon Coast including the construction of the seawall in the Depoe Bay Harbor, an  
49 Army Corp. of Engineers project; (2) He had concerns with the geology, caves, and erosion and followed Imbrie's  
50 advice to hire a geophysicist crew to map the caves and offered to share the information with the city; (3) The cave  
51 through his property is less significant – Only 6-9' tall and is very narrow. He would be more concerned with the  
52 collapsed cave at 110 NW Sunset Street –20' tall, gets very wide, and crosses the street; (4) Proposing a mass slab  
53 over the cave; (5) He and his wife were unaware of the rules when they purchased the subject lot. They saw the  
54 surrounding homes and assumed they could build a similar home with similar setbacks. After reading the rules they



1 agreed to prepare a proposal that is not any closer to the street or the coastal bluff than the neighboring properties;  
2 (6) He asked the Planning Commission to approve the application; and (7) The foundation piles will be drilled not  
3 driven. This is the same system utilized in downtown Portland and would be zero risks to adjacent neighbors'  
4 structures/property. As the owner of PLI Systems, they will be doing their work.  
5

6 Discussion ensued comparing the subject home to surrounding homes –The proximity to the street and coastal bluff  
7 of the proposed home is comparable, The square footage of the home. The footprint is comparable although the  
8 proposed home is 3-levels (about 2,500 sq. ft. each) and over one-third of the home is buried.  
9

10 There was no testimony in support of the application.  
11

12 Faucett called for testimony in opposition to the application.  
13

14 Gail Vanzyl, 123 NW Sunset Street, stated that she and her husband, Roger are requesting that the public hearing  
15 be continued. She stated the reasons for her request and summarized her objections to the application citing  
16 supporting sections of the Depoe Bay Zoning Ordinance (DBZO) and Comprehensive Plans as outlined in her  
17 written testimony (copy attached to original of these minutes). Testimony included: (1) The delay in receiving the  
18 materials to thoroughly review the application materials and adherence to Lincoln County, Depoe Bay Zoning  
19 Ordinance (DBZO) and Comprehensive Plan; and OPRD shoreline requirements; (2) Would like an opportunity to  
20 retain a land-use attorney to provide guidance and has an appointment scheduled on October 14, 2021; (3) No  
21 information has been provided regarding the impact to wildlife i.e. nesting birds and whales; (4) Wants to verify  
22 that the specific requirements for a geologic hazards report are being met; (5) Applicant submitted inaccurate front-  
23 yard measurements of adjacent properties; (6) Applicant states the subject property had an existing lot depth  
24 (average) just under 70-ft before the date of the Ordinance and that surrounding properties do not meet the coastal  
25 setbacks. No evidence has been provided; (7) Proposed home is 6,167 sq. ft. on a 70' depth lot therefore occupying  
26 84% of the lot; (8) The Fire Marshall confirmed that emergency vehicle access is a minimum of 20'; (9)  
27 Comprehensive Plan Goal 17 – Coastal Shorelands states: *Depoe Bay shall require that all construction on*  
28 *oceanfront properties be sufficiently set back to ensure that natural erosion will not threaten the structure during*  
29 *its expected lifetime; Depoe Bay shall prohibit the removal of vegetation necessary for stabilization of the shoreline;*  
30 *Development along the shoreline shall retain to the maximum extent possible the public's visual access to the ocean;*  
31 (10) Applicant did not address revegetation and additional requirements for removal of ocean/estuary riparian  
32 vegetation per DBZO Coastal Shoreland Overlay Zone standards; (11) DBZO states: Exceptional Aesthetic  
33 Resources: *Development in areas of exceptional aesthetic resources or coastal headlands shall not substantially*  
34 *alter the existing visual character of the area; 13.081 Prohibited Activities in Coastal Setback In the areas of coastal*  
35 *erosion no excavating, filling, or placement of retaining walls, deck posts, or other permanent structure is allowed;*  
36 (12) She agreed with the written testimony provided by Jean Ohl; and (13) Comprehensive Plan states Goal 5 –  
37 Natural and Aesthetic Resources Policies *To review all new development proposals, whether residential or*  
38 *commercial, to determine if siting and major design elements are compatible with the existing character of the*  
39 *Depoe Bay area. To preserve Depoe Bay's character as a coastal fishing resort village. She concluded her*  
40 *testimony stating the Planning Commission is assigned the responsibility to protect our community and its members.*  
41 *This home would put our neighborhood at risk, and you must not permit these variances and we must have additional*  
42 *time to review the plans.*  
43

44 A Commissioner asked how much time she was requesting. Vanzyl responded at least 60-days.  
45

46 A resident, 125-C NW Sunset Street, submitted written testimony into the record on behalf of the owner of the  
47 property located at 125 NW Sunset Street, a 3-unit complex. She said they are very concerned with the erosion  
48 factor at the subject site. The edge is already very scary, and rocks are falling, drilling will make it more erratic.  
49 She is also concerned with: (1) The safety of her grandchildren and grown children; (2) Erosion at the various scenic  
50 viewpoints located on North Point and the massive amount of erosion at 120; and (3) That the measures taken to  
51 construct on the subject site will be detrimental.  
52

53 Alex Feige and Katelyn Carnahan, owners at 220 NW Sunset Street, stated the briefing did not address disturbing  
54 the wildlife inside the cave. Testimony included: (1) Drilling is not the friendliest to people and animals; (2)

1 Fireworks displays are not allowed in the area; (3) Construction can sometimes take years to complete, we don't  
2 know how this will impact the natural population; (4) The house seems to be rather large and the applicant is asking  
3 for a lot of exceptions; (5) Some of the surrounding homes are grandfathered. Rules are in place for the safety of  
4 everyone; (6) Believe in owner property rights but also in preserving Depoe Bay, the beauty of Oregon, the wildlife,  
5 and the view corridors. It would be more reasonable to build a smaller home; and (7) Utilizing a photograph taken  
6 by the Planner they identified the amount of sediment movement/erosion caused by a large amount of wind (seafoam  
7 can be seen on SW Sunset Avenue) and rain since they moved into their home in November.

8  
9 A resident, 125-A NW Sunset Street, stated her concerns for the nesting birds, seals, and whale pods that can be  
10 seen offshore and the potential negative impacts to other creatures living in the caves caused by the drilling and  
11 anchoring. Testimony included: (1) NW Sunset is practically a one-way street – Vehicles have to maneuver around  
12 each other and emergency vehicles have access issues; (2) Tourists currently enjoy the beautiful view; and (3) She  
13 supports Vanzyl's request to continue the public hearing.

14  
15 White clarified that the letter submitted on behalf of the property owner of 125 NW Sunset Street is included in the  
16 Staff Report.

17  
18 Roger Vanzyl asked the Commission to clarify the point of measurement for the front-yard setback. The Planner  
19 responded utilizing the drawing provided by the applicant that the point of measurement is from the property line  
20 as surveyed and recorded in the deed records. Vanzyl clarified that one of the building footprints the architect  
21 referenced are 3 townhomes located at the corner of NW Sunset Street (1 unit) and NW Spencer Avenue (2 units).

22  
23 An audience member asked if she could speak in support of the Fout application. Faucett responded the application  
24 has been approved.

25  
26 Gabe Headrick clarified that the previous discussion regarding size was regarding a comparison of footprint not the  
27 square footage of the subject home to the neighborhood. He provided additional testimony including (1) The  
28 applicant has satisfied all the requirements and provided the required documentation and is not in favor of extending  
29 the public hearing; (2) They will comply with all city wildlife protection regulations; (3) He thanked the Planner  
30 for clarifying the edge of pavement versus property lines. The applicant hired a professional surveyor and the  
31 dimensions identified on the plans are based on the survey. Castaneda interjected that he paid extra to survey the  
32 neighboring properties; (4) The proposal is not exasperating the existing narrow street issues; (5) Depoe Bay  
33 regulations do not protect a homeowner's private view. Public views are being maintained – The applicant is not  
34 asking for a Variance to the side-yard setbacks. The request for Variances to the front and backyard setbacks do  
35 not affect view corridors; and (6) Regarding the existing character of the neighborhood, there is no consistent style,  
36 it is not a coastal fishing village. Asking the applicant to conform to a style that doesn't exist is unreasonable.

37  
38 Castaneda added that he wants to be a good neighbor. During construction activities, they plan to minimize the  
39 impact to neighbors including moving equipment/vehicles if they are obstructing access. He reiterated his  
40 company's vast experience with stabilization along the coastal shoreline bluffs and cliffs. They have taken all due  
41 diligence necessary in preparation for development on the subject lot and intend to do a good job.

42  
43 A Commissioner stated the proposed single-family home is over 6,000 sq. ft. including the garage which is not a  
44 typical size single-family home in Depoe Bay, it is more typical of an intended tourist commercial type use.

45  
46 Castaneda responded the bottom floor is almost all underground. He wants room to accommodate his 12 siblings  
47 and their families when they come to visit. He reiterated that the footprint is practically the same size as the house  
48 to the west.

49  
50 Headrick responded that the square footage includes the garage which is tucked under the home. The living space  
51 is 5,200 sq. ft. He has been designing homes for over 20 years in Oregon and this is not an unusual-sized home.  
52 The proposal is to construct a high-efficiency, sustainable home.

1 The Commission asked the Planner to clarify the process associated with a request to continue a public hearing  
2 versus a request to keep the record open. He explained the process and confirmed that the public hearing had been  
3 properly notified.

4  
5 Faucett called for a motion.

6  
7 Motion: Steinke moved to continue the public hearing. Moreland seconded.

8  
9 Faucett clarified if the public hearing is continued it would be to the next regular meeting and allow anyone to  
10 submit additional testimony.

11  
12 Vote: Motion passed.

13 Ayes: Faucett, Steinke, Moreland

14 Nays: Ruby, Hayes

15  
16 White stated the next meeting is on November 10, 2021, at 6:00, at City Hall. No further notification is required.

17  
18 Faucett announced she is recusing herself from the next case, the Planner will chair the next public hearing.

19  
20 Recess: 8:23 – 8:31 PM

21  
22 C. Case File: #2-VAR-PC-21

23 Applicant: Mark Lisac

24 Application: Development in Retail Commercial C-1 Zone, Request for Variances: Sidewalks,  
25 Pedestrian Amenities, Building Main Entrance Orientation, Parking

26 Zone, Map and Tax Lot: Retail Commercial C-1, 09-11-05-CD

27 #02800, #03100, #03200, #03300, #03301, #03400

28 Location: NW Corner intersection Highway 101 and Bradford Street

29  
30 White asked if any Commissioner had ex-parte contact, conflict of interest, or bias to declare.

31  
32 Moreland declared that she has driven by the property and has viewed the subject lot and surrounding area. She  
33 has not spoken with anyone about the subject property or application. Hayes declared he has viewed the property  
34 from his vehicle. Both specifically noted that they did not walk onto the property. White stated he has been on-  
35 site and taken photographs of the subject lot and surrounding area.

36  
37 There was no objection to any Planning Commissioner hearing the case.

38  
39 White presented slides of the subject lot and surrounding area from various perspectives (copies attached to original  
40 of these minutes). He summarized the Staff Report (copy attached to original of these minutes). Written public  
41 testimony was received from Steve and Wendy Hausotter in favor of using this opportunity to improve Williams  
42 Avenue and in opposition to the application from Griffith Holland (included in the staff report). Written public  
43 testimony was received after preparation of the Staff Report in opposition of the application from Fran Recht, Judy  
44 Faucett, Barbara Coffman, and Ron Walters (copies attached to original of these minutes). Public agency comments  
45 were submitted by the Oregon Department of Transportation (ODOT) (included in the staff report) and Chief Bryan  
46 Daniels, Depoe Bay Fire Department (copy attached to original of these minutes).

47  
48 Discussion items included: (1) 18-units with no sidewalks would force pedestrians to walk in the middle of  
49 Bradford; (2) Items addressed in a Traffic Impact Study (TIS) and/or Traffic Impact Report (TIR) and DBZO  
50 requirements; (3) Square footage of the units; (4) Correction to the Staff Report (page 12 of 21) C. Summary and  
51 Staff Analysis 1. Application ...~~The fourth and fifth and sixth~~ buildings are three-story; (page 20 of 21) D.  
52 Conclusions: 3. Bradford Street a. Sidewalk. A 5-foot sidewalk (including curb and gutter...; (5) Roadway  
53 widening; (6) DBZO Commercial Zone C-1 - Design Standards and Guidelines; (7) Adoption of the Conditions of  
54 Approval prepared by the City Planner ...if the Planning Commission finds the request satisfies the applicable

criteria; (8) Applicant has not submitted a geologic report; (9) Condition of Approval 3. *Bradford Street b. Roadway* ...*Final design of this element will be presented to the Planning Commission for final approval prior to issuing a building permit*; and (10) Requesting the applicant to provide additional information i.e., the feasibility of the amenities and a traffic study to make an informed decision.

Mark Lisac introduced his partner on the project, Ronnie Wilson. Testimony included: (1) He developed property on Williams Avenue – They are contractors; (2) He is requesting a decision from the Planning Commission before moving forward with the additional costs associated with a geological engineer, traffic study, etc.; (3) Removal of the natural rock wall may be cost-prohibitive or not feasible; (4) He agreed to install an ADA sidewalk on Bradford; (5) Proposing a residential townhouse use – Providing a bench or public use seems more appropriate for commercial use i.e. hotel, restaurant or retail; (6) Per a traffic engineer a townhome generates an average of 10.3 peak PM trips per hour; (7) The townhome development is designed to minimize the impact to surrounding property owners; and (8) They intend to work with the public agencies as the project progresses.

Ronnie Wilson stated they agree with the Planner's recommended Conditions of Approval. He explained: (1) If the Commission requires access off Highway 101 that modifies the parameters of the TIS and design; (2) They need the Commission to delineate the items so they can move forward with the other requirements; and (3) If the Commission agrees with access off Bradford and a 5-foot sidewalk width they can move forward with their next steps with a clear path.

Lisac stated they need to know this is a developable property that does not require the costly removal of a 250' long rock wall; final approval is based on the TIS. He reiterated their willingness to widen Bradford Street and install an ADA sidewalk.

Discussion followed regarding (1) Design of the townhomes facing Highway 101; (2) Proposal meets the DBZO building height and architectural standards; (3) Applicant is requesting site-related Variances due to the topography constraints of the subject site; (4) Relevance of providing pedestrian amenities – Townhomes are being proposed as tourist accommodations; (5) Existing water seepage on the subject property and the proposed stormwater and erosion control plan; (6) A geotechnical engineer will be hired as part of the building permit process; (7) Bradford Street traffic flow – Right-of-way is 30', existing asphalt is 15', and proposed improvements i.e. adding a 5' wide sidewalk on the north side of Bradford and extending the asphalt 5'; (8) Lots 3 and 4 provide a landscape buffer, no plans to develop; and (9) Building height point of measurement and the topography (42' of fall).

There was no testimony in favor of the application.

White called for testimony in opposition to the application.

Cheryl Dufrenne stated she is not against the development of the property. Her main concern is that she hopes the developer will take into consideration her view. She is also concerned with the increase in pedestrian and vehicular traffic in the neighborhood.

Judy Faucett referenced her written testimony stating the application is not complete. The information provided by the developer is more suited for a preliminary meeting. She summarized her written testimony (copy attached to original of these minutes). Testimony included: (1) The applicant has not provided renderings or a traffic impact study – Bradford Street is a one-lane wide, dead-end street accessing off of Highway 101 if only 24 additional cars come into the development that will increase the number of cars by 400%; (2) Her sister is the only permanent resident; and (3) Concerns for safety at the corner of Highway 101 and Bradford Street. She reiterated that the Commission should defer their decision or the application withdrawn until a TIS has been provided, drawings identifying the proposed width of the road, and compliance to the TIS and ODOT requirements are submitted. She encouraged the Commission to provide clear direction to the applicant as to what would be required for them to make an informed decision.

Discussion followed regarding (1) Asking the applicant to provide renderings illustrating the buildings and how they interface with the roadway and plans identifying the 5' pedestrian walkway along with a full TIS (due to the



1 intersection to Highway 101); (2) Allowing the public to comment on the submittals; and (3) The Fire Department's  
2 comment regarding marking Bradford as a fire lane on both sides.

3  
4 Lisac and Wilson stated they understand the concerns and reiterated they will be coordinating with ODOT Civil  
5 Engineers and Brady Wiedner, Depoe Bay Public Works Director who will dictate the design. Their approval is  
6 required before moving forward with construction.

7  
8 There was no request to keep the record open.

9  
10 The public hearing was closed.

11  
12 Discussion ensued regarding (1) The negatives associated with delaying completion of a TIS; (2) ODOT controls  
13 the configuration of Highway 101/Bradford Street intersection and Highway 101 traffic flow improvements i.e.,  
14 turn lanes, stop lights, etc.; (3) The application as submitted does not meet the Commercial C-1 Design Standards  
15 and provides vehicular access only; (4) The necessity of constructing a sidewalk for pedestrian access; (5) Bradford  
16 is a narrow street, the neighbors will be impacted; and (6) Continuing the public hearing and asking the applicant  
17 to submit architectural renderings; building elevations, an analysis of providing a sidewalk and pedestrian amenities  
18 at the corner of Bradford and Highway 101 including a geological investigation; and provide a TIS addressing the  
19 traffic impacts, and asking the City to provide comments clarifying future improvements to Bradford.

20  
21 The Commission asked the Planner to clarify the process associated with continuing a public hearing versus denying  
22 the application. He explained the process and confirmed that the applicant was provided the written testimony  
23 before the meeting.

24  
25 The Commission asked the Planner if he had enough information to convey their concerns to the applicant. He  
26 responded yes.

27  
28 Motion: Steinke moved to continue the public hearing. Ruby seconded.

29  
30 Vote: Motion passed.

31 Ayes: Hayes, Steinke, Moreland, Ruby

32  
33 White thanked the applicant and stated the next meeting is on November 10, 2021, at 6:00, at City Hall. He will  
34 meet with the applicant to discuss the items the Commission is requesting be provided

35  
36 Faucett returned to chair the meeting (10:46 PM).

37  
38 V. UNFINISHED BUSINESS

39  
40 There was none.

41  
42 V. NEW BUSINESS

43  
44 A. Code Violation

- 45  
46 • Whale Watch Phase 1 – Transient Room Tax – 730 Lillian Lane – Nick Hoogendam

47  
48 White summarized the violation to Case File #3-PD-PC-17 Findings, Conclusions, and Final Order highlighted  
49 sections (copy attached to original of these minutes). He explained, the City Recorder has asked him to present  
50 code violations to the Commission and to request a motion to pursue enforcement. Enforcement would include  
51 preparing a letter to the Homeowners Association (HOA) and the property owner identifying the violation and  
52 quoting applicable code.

53  
54 The Planner and Commission discussed the matter.



1 Motion: Hayes moved to proceed with enforcement of the violation. Ruby seconded.

2 Vote: Motion passed.

3 Ayes: Steinke, Moreland, Ruby, Hayes, Faucett

4  
5 VI. PUBLIC COMMENTS – ITEMS NOT ON TONIGHT’S AGENDA

6  
7 There were none.

8  
9 VII. CITY COUNCIL LIAISON REPORT

10  
11 Faucett reported that the city did not receive grant funding for updating the Comprehensive Plan and offered to  
12 answer any questions regarding her reports on September 21, 2021, and October 5, 2021, meetings (copies attached  
13 to original of these minutes). There were none.

14  
15 VIII. PLANNER’S REPORT

16  
17 White reviewed the Planner’s Report – Land Use and Building Permit Activity September 3, 2021 – October 8,  
18 2021 (copy attached to original of these minutes). He provided an update on the following projects: (1) Harbor/Park  
19 Silt Check Dam – Complete; (2) Community Hall Repairs – November; (3) Shell Improvements –Spring 2022; and  
20 (4) City Council approved the formation of a Steering Committee for the Harbor project.

21  
22 IX. PLANNING COMMISSION CONCERNS

23  
24 Steinke: The Council needs to address the City’s growth potential, plans for future infrastructure improvements,  
25 and workforce housing.

26  
27 Discussion followed. The Commission agreed to schedule a 1-hour workshop before the January regular meeting.

28  
29 Moreland: None.

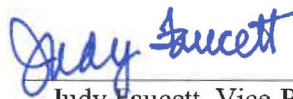
30  
31 Ruby: None.

32  
33 Faucett: The Lincoln County Assessor online database is only updated once a year. The Assessor’s Office records  
34 are current. The City utilizes the online database for collecting property ownership and address information for  
35 mailing public notices. This issue needs to be addressed.

36  
37 Hayes: Glad to be back.

38  
39 X. ADJOURN

40  
41 There being no further business, the meeting was adjourned at 11:14 PM.

42  
43  
44  
45 

Judy Faucett, Vice-President

46  
47  
48   
49 Carla Duerling, Recording Secretary

























































## STAFF REPORT

### Depoe Bay Planning Commission Action

**APPLICANT:** Mark Lisac

**REQUEST:** The applicant requests 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 includes variances for pedestrian amenities, location of main entrances, and sidewalks. A total of five (5) variances are requested:

1. Exception to pedestrian amenities along US HWY 101 or at corner of US HWY 101 and Bradford Street.
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 Bradford Street.
  - c. Exception to sidewalk requirement along Williams Avenue.

*\* The public notice had identified a variance request for parking in addition to the above requests. This was a misstatement by the City Planner. Parking requirements are further explained in Section C: Summary and Staff Analysis.*

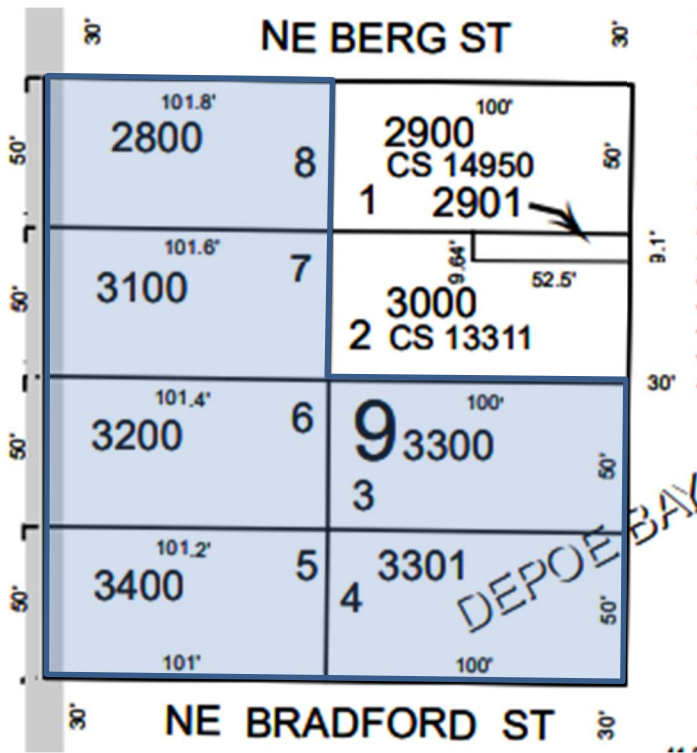
#### **A. RELEVANT FACTS:**

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.



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



6. **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

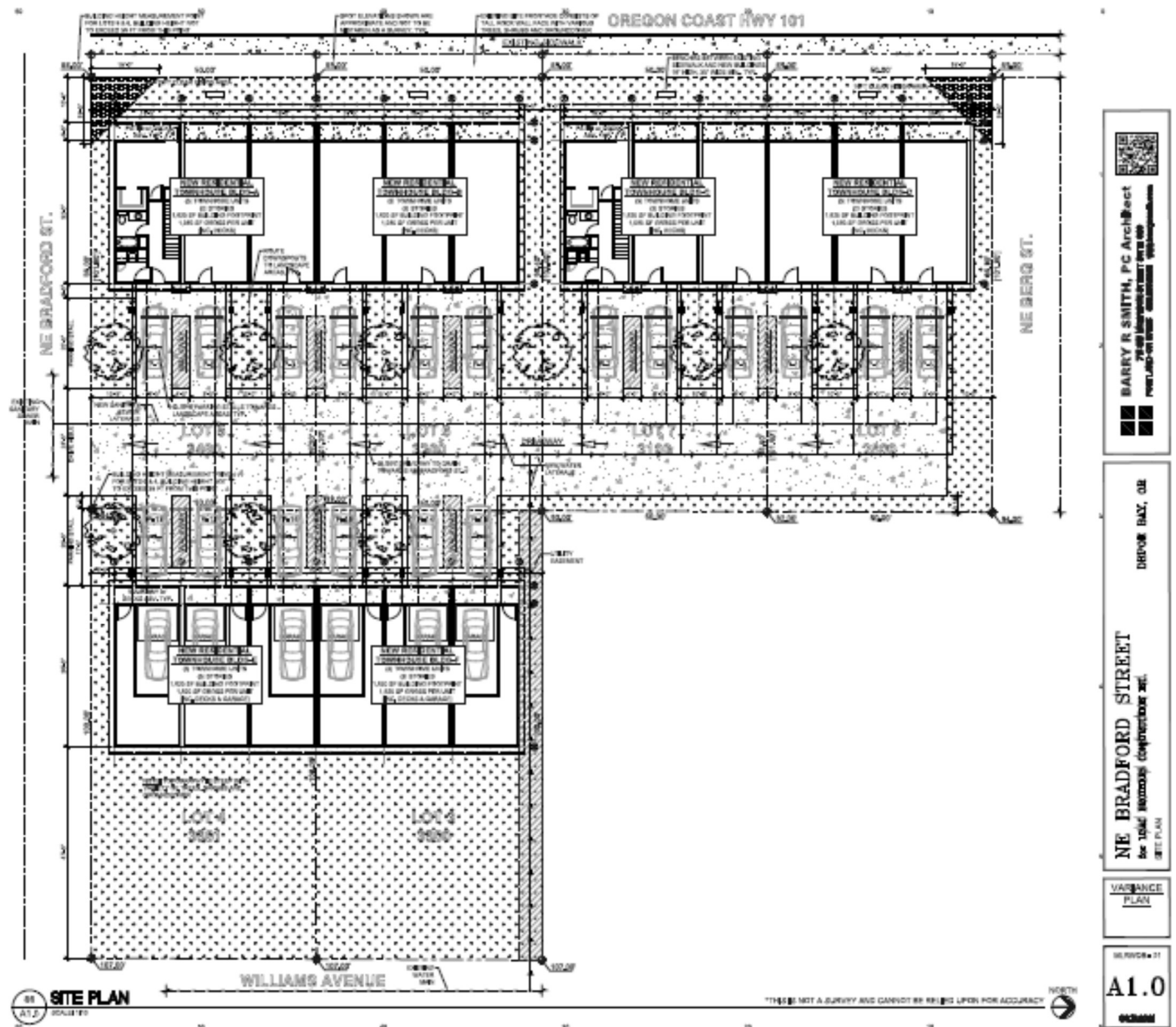
**B. EVALUATION OF THE REQUEST:**

1. **Relevant 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 requests approval for construction of 18 town-home style units on six tax lots. The applicant is requesting five variances to DBZO No. 24. The applicant submitted the following:

- Application form and fee/deposit for Variance
- Narrative addressing variance requests
- Site Plan
- Building elevations



**APPLICANT'S NARRATIVE** - The following is paraphrased from the applicant's submittal, complete narrative is attached.

Submitted September 14, 2021 by Mark Lisac, Lisac Brothers Construction, Inc., P.O. Box 2422, Clackamas, OR 97015.

**REVIEW** Zoning Code Variance(s) Request

• **PROPOSAL** The proposal is for (6) New Residential Townhouse Buildings developed over six tax lots along the Oregon Coast Hwy 101 and NE Bradford Street. The proposal includes (4), two-story, (3) unit townhouse buildings that face Hwy 101 for the purpose of Vacation Rentals. The fourth and fifth buildings are three-story, (3) unit townhouse buildings that are setback on the rear lots. Each dwelling unit proposes decks on the upper floors that face the Pacific Ocean. Vehicle and pedestrian access to these

buildings is proposed off NE Bradford Street. (18) open vehicle parking stalls are proposed at the rate of one-per-dwelling unit plus a garage for each of the six upper units.

• **SITE AND VICINITY** The site is located along Oregon Coast Hwy 101 and NE Bradford Street and is surrounded by a variety of single family residences, vacation rentals, hotels, restaurants, various small commercial businesses and shops. The site is covered in a variety of vegetation that includes trees, shrubs and ground cover and is sloped topographically with the frontage along Hwy 101 being a tall, rock wall.

### III. ZONING CODE SECTIONS FOR REQUESTED VARIANCES WITH FINDINGS FOR CIRCUMSTANCES

1. **Section 3.115 Commercial Zone C-1 – Design Standards & Guidelines, Subsection 3.B.2 – Maximum Front Yard Setback.** 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. (See also, Pedestrian Amenities Standards and Architectural Standards in this Section).

#### **Circumstances for Granting Variance**

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, topography, or other circumstances over which the applicant has no control.

#### **Finding:**

No usable public space with pedestrian amenities is proposed in the new development. The existing topography of the site, particularly between the front property line along Hwy 101 and the newly proposed structures is constraining and limits feasible development due to the relatively tall, natural rock wall formation that spans the project site frontage. This natural rock wall formation also stretches beyond the project site to the North in front of the Travelodge Hotel, where currently there are no usable public space with pedestrian amenities provided. ODOT also has a ten foot deep slope easement along the entire frontage on Hwy 101 preventing the development of a usable public space.

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.

#### **Finding:**

As mentioned in the finding above, the existing topography and ODOT slope easement presents challenges/constraints in developing the Hwy 101 frontage of the project site due to the natural rock wall formation at the existing sidewalk. To preserve property rights of the applicant as the same of other surrounding properties with similar geological topography, such as the Travelodge Hotel to the North, no usable public space with pedestrian amenities is 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.

#### **Finding:**

Granting the variance would not be materially detrimental to the purpose of this ordinance or to other properties in the vicinity or other development nearby, such as the aforementioned Travelodge. Additionally, no ground floor commercial space is proposed in the new development, thus no conflicts with city plans or objectives for pedestrian amenities exist.

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

#### **Finding:**

The hardship is not self-imposed due to the existing rock wall and topography of the site. Granting the variance would alleviate the extremely difficult hardship and construction difficulties of excavating the existing natural rock formation along the sites frontage.



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

**Finding:**

The hardship asserted as a basis for the variance is not from a violation of the Zoning Ordinance.

**2. Section 3.115 Commercial Zone C-1 – Design Standards & Guidelines, Subsection 3.D – Side Yard Setbacks.** 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. (See also, Pedestrian Amenities Standards and Architectural Standards in this Section).

**Circumstances for Granting Variance**

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, topography, or other circumstances over which the applicant has no control.

**Finding:**

The site is located on the corner of Hwy 101, NE Bradford Street, and NE Berg Street thus making it a corner lot, however no usable public space with pedestrian amenities is proposed in the area between the side property lines and the newly proposed structures. This is due to the existing ODOT slope easement and steep slope of NE Bradford Street and the fact that NE Berg Street does not connect to Hwy 101 because of the vertical rock wall at Hwy 101. Pedestrian amenities, such as the ones listed in the code section above, are not feasible nor desired to be placed on such a steep incline. Additionally, compliance with ADA requirements would be extremely challenging or impossible due to the natural, existing topography of the sites side yards.

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.

**Finding:**

As mentioned in the finding above, the existing ODOT slope easement and steep slope of NE Bradford Street and natural vertical rock wall between Hwy 101 and NE Berg Street makes developing the side yard street frontages difficult or impossible, especially in conforming to ADA requirements. None of the tourist accommodation developments in the vicinity of the site along Hwy 101 have public spaces between the road and buildings and would not be desirable given the fact that the project is not commercial in nature but residential.

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.

**Finding:**

Granting the variance would not be materially detrimental to the purpose of this ordinance or to other properties in the vicinity as other tourist accommodation developments nearby also do not have useable public space with pedestrian amenities along the side yard setback. Additionally, no ground floor commercial space is proposed in the new development, thus no conflicts with city plans or objectives for pedestrian amenities exist.

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

**Finding:**

The hardship is not self-imposed due to the existing ODOT slope easement, topography, rock wall, slope of NE Bradford Street, and non connectivity of NE Berg Street. Granting the variance would alleviate the difficult hardship of developing the steep or vertical side yards and would match similar tourist accommodation development in the vicinity of the project site.

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



**Finding:**

The hardship asserted as a basis for the variance is not from a violation of the Zoning Ordinance.

**3. Section 3.115 Commercial Zone C-1 – Design Standards & Guidelines, Subsection 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).
- 2) Alternatively, a building may have its entrance facing a side yard when a direct pedestrian walkway not exceeding 20 feet in length is provided between the building entrance and the street right-of-way.
- 3) On corner lots, buildings entrances may be oriented to the street corner.

B. Developments 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 reasonably safe, direct, and convenient access to building entrances and off-street parking.

**Circumstances for Granting Variance**

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, topography, or other circumstances over which the applicant has no control.

**Findings:**

The buildings primary entrances to the tourist accommodation/residential townhome units are proposed to face East towards a shared parking lot and driveway, which faces opposite of Hwy 101. This design is due to the geological and topographical constraints of the site along Hwy 101, NE Bradford Street, and NE Berg Street that make it insurmountable to provide primary entrances off these street frontages. Similarly, the Travelodge to the North utilizes this design, again as the existing, natural rock formation along Hwy 101 stretches beyond in front of the adjacent development. Walkways from the shared, interior parking lot are proposed to each unit between the designated/required vehicle parking stalls. In addition, decks are proposed in the townhome units that face Hwy 101 with doors from the units opening out so as to appear as entry doors. Off-street parking, driveways or other vehicular circulation are not proposed between the building and Hwy 101. Vehicle access to the proposed residential structures is proposed off NE Bradford Street.

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.

**Finding:**

As mentioned in the finding above, the existing topography presents an insurmountable constraint in providing primary unit entrances off the Hwy 101 frontage of the project site due to the natural rock wall formation at the existing sidewalk, in addition to the steep slope of NE Bradford Street. To preserve property rights of the applicant as the same of other surrounding properties with similar geological topography, such as the Travelodge Hotel to the North, primary entrances are located facing opposite of Hwy 101 to a shared, interior parking lot/court yard with walkways to each townhouse unit.

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.

**Finding:**

Granting the variance would not be materially detrimental to the purpose of this ordinance or to other properties in the vicinity as other development nearby, such as the aforementioned Travelodge which has a similar design due the similar geological topography. Additionally, the proposed development is residential in nature and provides a bit of privacy for the future tenants, yet at the same time meeting the objectives of the city plan by providing exterior doors to the proposed decks that do face Hwy 101.



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

**Finding:**

The hardship is not self-imposed due to the existing geological and topographical constraints of the site and the existing slope of NE Bradford Street.

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

**Finding:**

The hardship asserted as a basis for the variance is not from a violation of the Zoning Ordinance.

**4. Section 3.115 Commercial Zone C-1 – Design Standards & Guidelines, Subsection 8.A – Pedestrian Amenities in the C-1 Zone.** Pedestrian sidewalk 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 a city-approved surface material that is consistent with adjacent and nearby sidewalks. All sidewalks shall be ADA compliant to meet current laws.

**Circumstances for Granting Variance**

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, topography, or other circumstances over which the applicant has no control.

**Finding:**

No new sidewalks are proposed in the development due to the aforementioned geological and topographical constraints of the project site. There is currently an existing sidewalk along the Hwy 101 frontage that appears to be approximately 5 feet wide. Increasing the stated design standard width to 8 feet would be extremely difficult if not impossible and in addition would render the property undevelopable due to the cost of removing the tall, natural rock wall formation that spans the project site frontage. This natural rock wall formation also stretches beyond the project site to the North in front of the Travelodge Hotel, where currently it appears the same existing approximate 5 foot wide sidewalk extends. On NE Bradford Street, the existing slope is steep and not feasible and prevents the development of an ADA compliant sidewalk. NE Berg Street to the North is not developed and does not connect with Hwy 101 but ends short of the top of the vertical rock wall above Hwy 101. Williams Avenue to the East does not have sidewalks in front of the adjacent neighboring properties but instead has a tall retaining wall to support the street because of the steep downward slope and therefore does not connect with NE Bradford Street.

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.

**Finding:**

As mentioned in the finding above, the existing topography and geology presents challenges/constraints in developing the Hwy 101 frontage of the project site due to the natural rock wall formation at the existing sidewalk. To preserve property rights of the applicant as the same of other surrounding properties with similar geological topography, such as the Travelodge Hotel to the North, widening the sidewalk is not proposed. Additionally, new sidewalks are not proposed along the other street frontages of the site as the other neighboring properties in the vicinity do not have sidewalks and likely will not be able to install sidewalks in the future due to such aforementioned topographical and geological constraints.

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.

**Finding:**

Granting the variance would not be materially detrimental to the purpose of this ordinance or to other properties in the vicinity as other development nearby, such as the aforementioned Travelodge has what appears to be an identical sidewalk along Hwy 101 due to the similar geological topography. The same goes for the surrounding properties in the vicinity in relation to the other abutting streets and existing topography.



#2-VAR-PC-21 Lisac  
October 13, 2021 Planning Commission Meeting

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

**Finding:**

The hardship is not self-imposed due to the existing geological and topographical constraints of the site, the existing slope of NE Bradford Street, and the nonconnectivity of NE Berg Street.

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

**Finding:**

The hardship asserted as a basis for the variance is not from a violation of the Zoning Ordinance.

3. **Public Testimony.** At the time this staff report was written, the City had received two written testimonies.

a. **Received from Steve & Wendy Hausotter, 120 NE Williams Avenue, via US Postal Service Sept 24, 2021**

Jamie White

9/22/2021

Attn: Depoe Bay Planning Commission

PO Box 8 Depoe Bay OR 97341

Re: Application of Mark Lisac for tax lots 02800, 03100, 03200, 03300, 03301, 03400

Thank you for notifying us of the application referenced above. We are in favor of additional housing, as we know it is a serious need in Lincoln County. Our concern is the potential impact on Williams Avenue. If that is addressed, we are in favor of this development.

We live at 120 Williams, right above the area where the road narrows to one lane. There have been several near misses there because of the narrowness of the road.

Williams Avenue has become a major thoroughfare, both as a route for residents to the post office and as an alternative route to accessing 101.

Williams Avenue has needed widening and erosion support for a long time and the potential of 36 more cars traveling on it regularly (assuming two cars per planned unit) is of concern.

We are strongly in favor of using this opportunity to improve this part of Williams Avenue. See photo below showing (from our driveway looking down) the current convergence of driveways just as Williams narrows; we assume the location of driveways for the new dwellings will increase an already dangerous situation unless Williams is widened.



Williams narrows just on the other side of the trees on the left side of this photo. This photo is taken from 120 Williams driveway, looking down onto Williams; just past the current convergence of driveways is where it narrows to one lane. Adding 18 dwellings must include attention to Williams Avenue in our opinion.

Thank you for allowing us to have input.



**City Planner response:** The main comment is concern with impacts to Williams Avenue from additional traffic and driveways connecting to Williams Avenue. The applicant proposes access to the development from Bradford Street. Therefore, the development will not directly impact Williams Avenue other than from an increase in population and tourism to the city.

**b. Received from Griffith Holland, 155 NE Bensell Avenue, via email October 2, 2021**

*Applicant: Mark Lisac*

*RE: Lincoln Co. Tax ID. No. 09-11-05-CD-02800, 03100, 03200, 03300, 03301, 03400*

*The plan is to build 6 New townhouses with 3 units in each for a total of 18.*

*As a point of reference, I am a resident in this neighborhood and have been since 2012. I moved to this city of Depoe Bay because it was a nice bedroom community. I doubt Mr. Lisac lives in Depoe Bay or plans to, but that is an assumption on my part.*

*My concerns are that we are allowing our community to bring in high density housing in such a small area. This creates problems with traffic, the environment and crime. I left Portland because of this and didn't want it to follow us here. Granted we aren't a city but we really don't want those problems here.*

*I realize this brings in tax revenue for the county, but you have to ask yourself at what cost.*

*My specific concerns are that Mr. Lisac adheres to the 35' height of the condo units from the base of the existing property without any landfill being added to increase the height of these structures. I further question whether the lots bordering Williams should be considered commercial tax lots v. Residential.*

*The other concern we should have is the traffic on Williams. Williams is very narrow at the curve bordering this property and I believe it would be hazardous to build an access way to the property in question from Williams. We know the locals both pedestrian and vehicular traffic use this route quite a bit to avoid the main Highway.*

*Another concern to us should be, is what impact this project will have on our local infrastructure to include water, sewage and electricity.*

*Finally, there is quite a bit of drainage that comes off the hill through this property. I've noticed walking along Highway 101 that there is water seepage through the rocks bordering the property in question. I'm not pretending to be an engineer or a geologist but it might be a concern to a city if a structure of this size is allowed.*

*From a personal perspective, I sure hate to see our town loose the beautiful trees that are on this property. It's a nice quiet neighborhood and I sure don't want to see that change. Once this project is completed we can never get that back. I did contact the owner of this property to see if*



*I could afford to buy it, but it wasn't affordable for me. I was afraid someone like Mr. Lisac would come in and do exactly what we should all fear and transform this bedroom community into something we shouldn't support. Thanks for your attention.*

*Respectfully,  
Griffith F Holland*

**City Planner Response:** Response to comments in order as they appear in Mr. Holland's letter.

- Density - The Retail Commercial C-1 Zone allows multi-family residential or tourist accommodation units. There is no maximum or minimum lot coverage requirement or density requirement. A change to the existing City Code would be required to add a density restriction or requirement.
- Building height – By code, buildings in the C-1 zone can not be over 35' in height. Also by code, fill cannot be added to "artificially" heighten the ground elevation.
- All lots included in the application are in the C-1 zone. Williams Avenue is the divider between the residential zone to the east and the commercial zone to the west.
- Impacts to Williams Avenue from additional traffic and driveways connecting to Williams Avenue - The applicant proposes access to the development from Bradford Street. Therefore, the development will not directly impact Williams Avenue other than from an increase in population and tourism to the city.
- Impact to local infrastructure - The City Superintendent (Public Works) will verify capacity of water, sewer, and storm drain during the approval process for final design and building permit application.
- Drainage – The applicant will coordinate with ODOT and the City to ensure that additional drainage from proposed improvements is adequately addressed.

#### 4. Public Agency Comments.

- a. The Oregon Department of Transportation (ODOT) provided comments through emails and conversations with the applicant and the City Planner.

ODOT does not typically require sidewalk improvements along state highways unless the local jurisdiction requires improvements. If so, then ODOT's design, permitting, and construction requirements are triggered. The DBZO, through the City's 2017 Transportation System Plan, requires 8-foot sidewalks along US HWY 101. Current conditions include a 4' sidewalk, parallel parking, and curb bulb outs at intersections. The rock outcropping is immediately to the east of the sidewalk. An 8-foot sidewalk at this location would require removal of the rock outcropping 4' to the east, or widening the sidewalk 4' to the west which would remove 8 to 10 existing parking spots. The first option could be extremely disruptive to the surrounding community as well as being cost prohibitive. Reducing existing parking along US HWY 101 is not an option since parking is in such high demand and low supply along this section of the highway and the City's main downtown area.

- b. The Depoe Bay City Superintendent, Brady Weidner, has identified locations of the nearest water and sewer utilities. Connections are available in Bradford Street to the



south. The City Superintendent stated that the existing utilities in the area have the capacity to accommodate the new development.

Storm drain is also available in Bradford Street and US HWY 101. The City will work with the applicant so storm drainage measures & facilities are included in the final design. This will include a pre- and post-development analysis of storm runoff quantities. Permits will be required by ODOT for discharges to US HWY 101.

- c. Fire Dept. A request for comments was sent to the Depoe Bay District Fire Chief. A response had not been received at the time this staff report was prepared.

**C. SUMMARY AND STAFF ANALYSIS:** The Planning Commission reviews the proposal for conformance with the appropriate standards of the Depoe Bay Zoning Code. To facilitate review, staff identifies the following issues:

1. **Application.** The applicant proposes six (6) new townhouse-style buildings developed over six tax lots along US Hwy 101 and NE Bradford Street. The proposal includes four (4), two-story, three (3) unit townhouse buildings that face US Hwy 101. The fourth and fifth buildings are three-story, three (3) unit townhouse buildings that are setback on the rear lots next to Williams Avenue. Each unit proposes decks on the upper floors that face the Pacific Ocean. Vehicle and pedestrian access to these buildings is proposed off Bradford Street. Eight-teen (18) open vehicle parking stalls are proposed at the rate of one-per-unit plus a garage for each of the six units adjacent to Williams Avenue.

The four buildings that front US HWY 101 will be used exclusively for Vacation Rentals (aka - short term rentals, tourist accommodations).

The applicant requests variances for the following:

- Exception to pedestrian amenities along US HWY 101 or at corner of US HWY 101 and Bradford Street.
  - Exception to orientation of building main entrances so as to not face US HWY 101.
  - Exception to sidewalk requirements:
    - a. Exception to sidewalk requirement along US HWY 101.
    - b. Exception to sidewalk requirement along Bradford Street.
    - c. Exception to sidewalk requirement along Williams Avenue.
2. **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.

- All structures will be a maximum of 35' in height.
- 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.

3. **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) states...“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 property line”. This applies to:  
a. the area along the front property line (US HWY 101); and, since this is a corner lot, b. the area along Bradford Street.

**The applicant is requesting a variance to not provide pedestrian amenities along the adjacent streets: a. US HWY 101, b. Bradford Street.**

A variance may be granted only in the event that all of the following circumstances exist. The circumstances are stated in *italics* and followed by a staff analysis.

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.*

STAFF ANALYSIS: A large rock outcropping exists across the properties. The west property line consists of a vertical rock wall that varies in height from a few feet up to 8 feet. Bradford Street runs along the south and is fairly steep. Bradford dead ends at the retaining wall for Williams.

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

- a. **US HWY 101** - Current conditions include a 4-foot sidewalk, parallel parking, and curb bulb outs at intersections. 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 could 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.
- b. **Bradford Street** – Because of its steepness, a sidewalk along Bradford Street would not be ADA compliant. However, this would not be a unique situation given the overall topography of the City. Bradford Street is also quite narrow at this location, with a width of approximately 15 feet curb to curb at the intersection with US HWY 101. The ODOT slope easement will also impact the ability to



place permanent structures at this location.

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.

It is the opinion of staff that given the above circumstances, 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.

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.*

STAFF ANALYSIS: Geological challenges similar to those of this proposed development exist to the properties to the north. Those properties, e.g., Travelodge, have developed without pedestrian amenities along US HWY 101 or Bechill Street. Bechill Street has a sidewalk that connects to the highway.

It is the opinion of staff that, given the challenges presented by the circumstances described in item 1. above, providing additional pedestrian amenities along US HWY 101 is logistically difficult.

At a minimum, a 5-foot sidewalk along the north side of Bradford Street from HWY 101 to the development driveway should be required as a pedestrian amenity.

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.*

STAFF ANALYSIS: 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 4-foot sidewalk along US HWY 101, it is the opinion of staff that, given the challenges presented by the circumstances described in item 1. above, providing additional pedestrian amenities along US HWY 101 is logistically difficult.

At a minimum, a 5-foot sidewalk along the north side of Bradford Street from HWY 101 to the development driveway should be required as a pedestrian amenity.

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

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

It is the opinion of staff that given the above circumstances, and the nature of the development (tourist accommodations without retail), a landscaped strip as described in Section 3.115 (8)(B)(4), and a 5-foot sidewalk along Bradford Street would be more appropriate to the proposed development and are the minimum variance which would

alleviate the hardship.

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

STAFF ANALYSIS: City Staff notes the requested variance does not arise from a violation of the Zoning Ordinance. The property is currently undeveloped.

4. **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.**

A variance may be granted only in the event that all of the following circumstances exist. The circumstances are stated in *italics* and followed by a staff analysis.

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.*

STAFF ANALYSIS: A large rock outcropping exists across the properties. 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 proposes to orient the buildings to the interior as provided by DBZO code, without a direct pedestrian access to US HWY 101.

It is the opinion of staff that orienting the buildings to US HWY 101 and providing pedestrian access directly from the west could be cost prohibitive to the proposed development.

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 face US HWY 101 and are accessed from the east.

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.”

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.*

STAFF ANALYSIS: 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.

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.*

STAFF ANALYSIS: DBZO Section 3.115 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, the proposed development is consistent with the above two statements.

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

STAFF ANALYSIS: 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 maintained. An alternate pedestrian access would need to be provided such as a sidewalk along Bradford to US HWY 101.

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

STAFF ANALYSIS: City Staff notes the requested variance does not arise from a violation of the Zoning Ordinance. The property is currently undeveloped.

5. **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 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 requesting a variance to not provide sidewalks or sidewalk improvements along the adjacent streets: a. US HWY 101, b. Williams Avenue, c. Bradford Street.**

A variance may be granted only in the event that all of the following circumstances exist. The circumstances are stated in *italics* and followed by a staff analysis.

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.*

STAFF ANALYSIS: A large rock outcropping exists across the properties. The west property line consists of a vertical rock wall that varies in height from a few feet up to 8 feet. 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.

- a. **US HWY 101** - Current conditions include a 4-foot sidewalk, parallel parking, and curb bulb outs at intersections. The rock outcropping is immediately to the east of the sidewalk. An 8-foot sidewalk at this location would require removal of the rock outcropping 4 feet to the east, or widening the sidewalk 4 feet to the west. Widening to the west would remove 8 to 10 existing parking spots. The first option could be extremely disruptive to the surrounding community as well as being cost prohibitive. Reducing existing parking along US HWY 101 is not an option since parking is in such high demand and low supply along this section of the highway and the City's main downtown area.
- b. **Williams Avenue** – 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 could require a retaining wall similar to the wall at the end of Bradford Street. Placing a sidewalk along the existing edge of asphalt could 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.
- c. **Bradford Street** – Because of its steepness, a sidewalk along Bradford would not be ADA compliant. However, this would not be a unique situation given the overall topography of the City. Bradford Street is also quite narrow at this location, with a width of approximately 15' curb to curb at the intersection with US HWY 101.

Since one of the intents of DBZO Section 3.115 is to encourage walking, not providing or improving pedestrian amenities such as sidewalks could conflict with the City's code.

However, since there is an existing 4-foot sidewalk along US HWY 101, it is the opinion of staff that, given the challenges presented by the circumstances described above, providing additional pedestrian amenities along US HWY 101 such as an 8-foot sidewalk is logistically difficult. A new sidewalk along Williams Avenue would present similar challenges.

At a minimum, a 5-foot sidewalk along the north side of Bradford Street from HWY 101 to the development driveway should be required 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.*



STAFF ANALYSIS: Geological challenges similar to those 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. However, Bechill Street has a sidewalk to the highway and the pedestrian connectivity is maintained.

At a minimum, a 5-foot sidewalk along the north side of Bradford Street, similar to Bechill Street, from HWY 101 to the development driveway should be required as a pedestrian amenity.

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.*

STAFF ANALYSIS: Since one of the intents of DBZO Section 3.115 is to encourage walking, not providing or improving pedestrian amenities would conflict with the City's code.

However, since there is an existing sidewalk along US HWY 101, and, if a sidewalk is provided along Bradford Street, 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.*

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

It is the opinion of staff that, since there is an existing sidewalk along US HWY 101, and, if a sidewalk is provided along Bradford Street, the variance requested is the minimum which would alleviate the hardship.

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

STAFF ANALYSIS: City Staff notes the requested variance does not arise from a violation of the Zoning Ordinance. The property is currently undeveloped.

6. **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.

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.

Conditions of approval will reflect the level of impact, if any, by the proposed development to the transportation system and the level of improvements required to alleviate these impacts.

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.

- D. **CONCLUSIONS:** In evaluating the request, the Planning Commission bases its decision on compliance with the applicable code standards. If the Planning Commission finds the request fails to satisfy the ordinance standards, it can move to deny the request, articulating the basic conclusions and rationale for the decision and directing staff to prepare findings for adoption.



If the Planning Commission finds the request satisfies the applicable criteria, it can move to approve the request and direct staff to prepare findings for adoption. In the event of an approval, staff suggests the following conditions of approval be attached.

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 or at corner of US HWY 101 and Bradford Street.**
    - 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.
    - Applicant will submit landscaping plans with Final design for approval as part of the building permit application.
  - 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 HW 101 will not be required.
    - 2) **Exception to sidewalk requirement along Williams Avenue.**
      - A sidewalk along Williams Avenue will not be required.
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.** Bradford street is approximately 15' wide at this location. Given the geologic and topographic challenges of the site, the applicant will coordinate with ODOT and the City to widen the roadway while providing a sidewalk and landscaped strip as described above. Final design of this element will be presented to the Planning Commission for final approval prior to issuing 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.

- b. Storm Drainage capacity from Bradford to HWY 101.

**6. 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. **Traffic.** A Traffic Impact Study shall be provided as per DBZO 14.045. The TIS shall show if the existing transportation system will be impacted by the proposed use and make recommendations for improvements to offset the impacts such as paving, curbing, installation or contribution to traffic signals, construction of sidewalks, bikeways, access ways, paths, or streets.

The recommendation for improvements would include, but may not be limited to, those identified in paragraphs 3(b) and 5(a) above.

- 9. **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.
- 10. **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.
- 11. **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.
- 12. **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.

Submitted by,

Jaime White,  
City Planner

Enclosure: Vicinity Map  
Site Plan  
Building Elevations  
Applicant Narrative  
Public Testimony



Jamie White

9/22/2021

Attn: Depoe Bay Planning Commission

PO Box 8 Depoe Bay OR 97341

Re: Application of Mark Lisac for tax lots 02800, 03100, 03200, 03300, 03301, 03400

Thank you for notifying us of the application referenced above. We are in favor of additional housing, as we know it is a serious need in Lincoln County. Our concern is the potential impact on Williams Avenue. If that is addressed, we are in favor of this development.

We live at 120 Williams, right above the area where the road narrows to one lane. There have been several near misses there because of the narrowness of the road.

**Williams Avenue has become a major thoroughfare, both as a route for residents to the post office and as an alternative route to accessing 101.**

Williams Avenue has needed widening and erosion support for a long time and the potential of 36 more cars traveling on it regularly (assuming two cars per planned unit) is of concern.

We are strongly in favor of using this opportunity to improve this part of Williams Avenue. See photo below showing (from our driveway looking down) the current convergence of driveways just as Williams narrows; we assume the location of driveways for the new dwellings will increase an already dangerous situation unless Williams is widened.



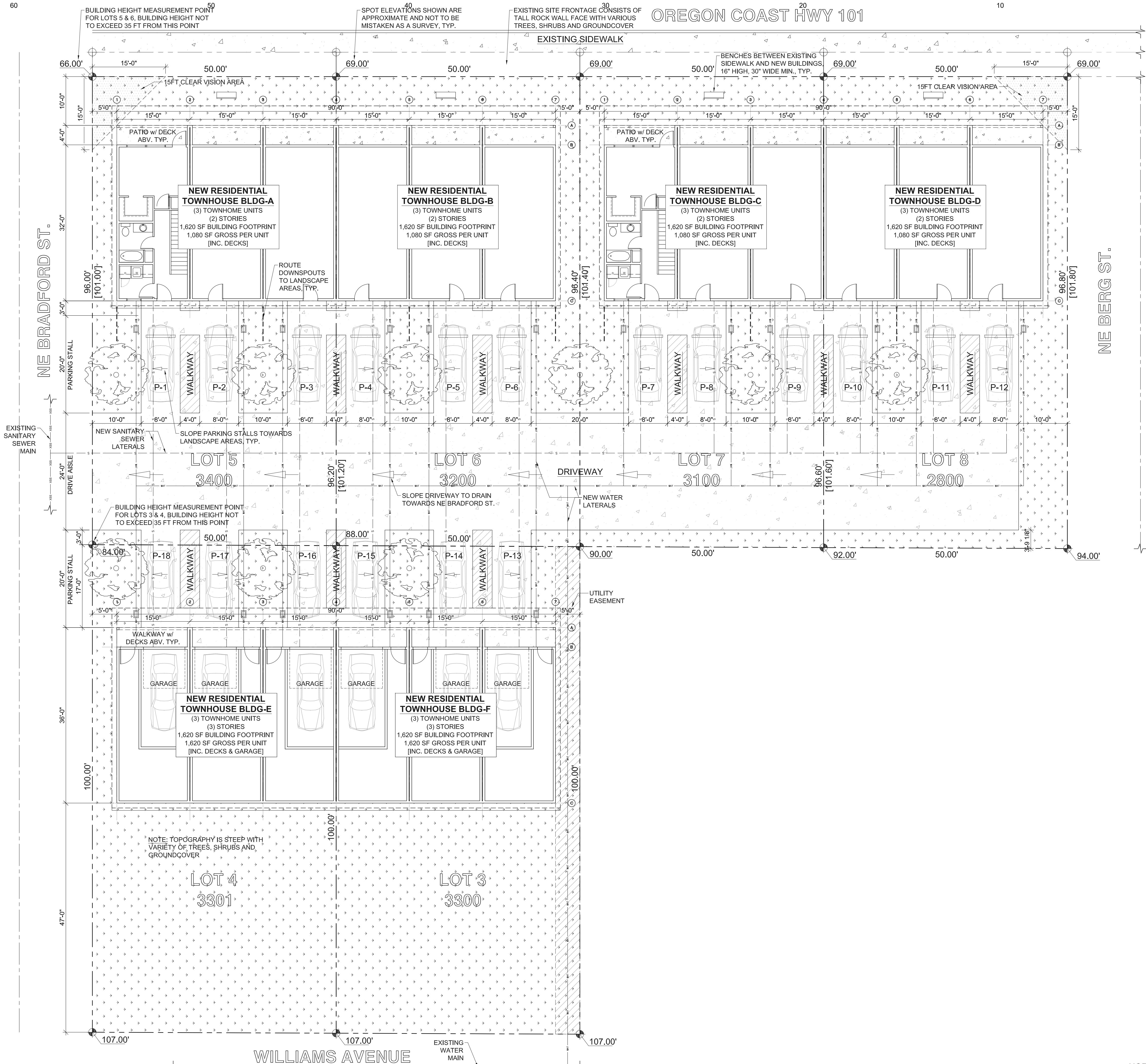
Williams narrows just on the other side of the trees on the left side of this photo. This photo is taken from 120 Williams driveway, looking down onto Williams; just past the current convergence of driveways is where it narrows to one lane. Adding 18 dwellings must include attention to Williams Avenue in our opinion.

Thank you for allowing us to have input.

Steve and Wendy Hausotter 120 NE Williams Ave PO Box 430 503-510-1117

*SH* *WH*

SEP 24 2021



66  
A1.0  
SCALE: 1:10  
SITE PLAN

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

NORTH

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

**NE BRADFORD STREET**  
for LISAC BROTHERS CONSTRUCTION INC.  
SITE PLAN

**VARIANCE PLAN**

MLRWDB - 01  
**A1.0**  
09.10.2021



**BARRY R. SMITH, PC, ARCHITECT**

715 SW Morrison Street Suite 909

Portland, Oregon 97205-3105

Tel: 503.295.6261

e-mail to: [barry@barryrsmith.com](mailto:barry@barryrsmith.com)

**ZONING CODE VARIANCE NARRATIVE**

**I. GENERAL INFORMATION**

**Applicant**

Lisac Brothers Construction, Inc.  
PO Box 2422  
Clackamas, OR 97015  
Contact: Mark Lisac  
503-970-7223  
[mlisac@comcast.net](mailto:mlisac@comcast.net)

**ARCHITECT**

Barry R. Smith, PC, Architect  
715 SW Morrison Street Suite 909  
Portland, Oregon 97205-3105  
503.295.6261(o)  
Contact: Barry R. Smith  
[barry@barryrsmith.com](mailto:barry@barryrsmith.com)  
see [www.barryrsmith.com](http://www.barryrsmith.com)

**LOCATION**

Northeast Corner of Oregon Coast Hwy 101 and NE Bradford Street  
Depoe Bay, Oregon 97341

**PROPERTY ID**

Lots 3-8 - 3300, 3301, 3400, 3200, 3100 & 2800

**ZONING DESIGNATIONS C-1**

**REVIEW**

Zoning Code Variance(s) Request

- **PROPOSAL** The proposal is for (6) New Residential Townhouse Buildings developed over six tax lots along the Oregon Coast Hwy 101 and NE Bradford Street. The proposal includes (4), two-story, (3) unit townhouse buildings that face Hwy 101. The fourth and fifth buildings are three-story, (3) unit townhouse buildings that are setback on the rear lots. Each dwelling unit proposes decks on the upper floors that face the Pacific Ocean. Vehicle and pedestrian access to these buildings is proposed off NE Bradford Street. (18) open vehicle parking stalls are proposed at the rate of one-per-dwelling unit plus a garage for each of the six upper units.
- **SITE AND VICINITY** The site is located along Oregon Coast Hwy 101 and NE Bradford Street and is surrounded by a variety of single family residences, vacation rentals, hotels, restaurants, various small commercial businesses and shops. The site is covered in a variety of vegetation that includes trees, shrubs and ground cover and is sloped topographically with the frontage along Hwy 101 being a tall, rock wall.



**VICINITY PHOTO**



**STREET VIEW LOOKING NORTHEAST**





### **STREET VIEW LOOKING SOUTHEAST**

## **II. SECTION 8.020 CIRCUMSTANCES FOR GRANTING A VARIANCE**

A variance may be granted only in the event that all of the following circumstances exist:

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, topography, or other 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.
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.
4. The hardship is not self-imposed and the variance request is the minimum variance which would alleviate the hardship.
5. The hardship asserted as a basis for the variance does not arise from a violation of the Zoning Ordinance.

### **III. ZONING CODE SECTIONS FOR REQUESTED VARIANCES WITH FINDINGS FOR CIRCUMSTANCES**

1. **Section 3.115 Commercial Zone C-1 – Design Standards & Guidelines, Subsection 3.B.2 – Maximum Front Yard Setback.** 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. (See also, Pedestrian Amenities Standards and Architectural Standards in this Section).

#### **Circumstances for Granting Variance**

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, topography, or other circumstances over which the applicant has no control.

##### **Finding:**

No usable public space with pedestrian amenities is proposed in the new development. The existing topography of the site, particularly between the front property line along Hwy 101 and the newly proposed structures is constraining and limits feasible development due to the relatively tall, natural rock wall formation that spans the project site frontage. This natural rock wall formation also stretches beyond the project site to the North in front of the Travelodge Hotel, where currently there are no usable public space with pedestrian amenities provided. ODOT also has a ten foot deep slope easement along the entire frontage on Hwy 101 preventing the development of a usable public space.

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.

##### **Finding:**

As mentioned in the finding above, the existing topography and ODOT slope easement presents challenges/constraints in developing the Hwy 101 frontage of the project site due to the natural rock wall formation at the existing sidewalk. To preserve property rights of the applicant as the same of other surrounding properties with similar geological topography, such as the Travelodge Hotel to the North, no usable public space with pedestrian amenities is 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.

##### **Finding:**

Granting the variance would not be materially detrimental to the purpose of this ordinance or to other properties in the vicinity or other development nearby, such as the aforementioned Travelodge. Additionally, no ground floor commercial space is proposed in the new development, thus no conflicts with city plans or objectives for pedestrian amenities exist.

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

##### **Finding:**



The hardship is not self-imposed due to the existing rock wall and topography of the site. Granting the variance would alleviate the extremely difficult hardship and construction difficulties of excavating the existing natural rock formation along the sites frontage.

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

**Finding:**

The hardship asserted as a basis for the variance is not from a violation of the Zoning Ordinance.

2. **Section 3.115 Commercial Zone C-1 – Design Standards & Guidelines, Subsection 3.D – Side Yard Setbacks.** 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. (See also, Pedestrian Amenities Standards and Architectural Standards in this Section).

**Circumstances for Granting Variance**

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, topography, or other circumstances over which the applicant has no control.

**Finding:**

The site is located on the corner of Hwy 101, NE Bradford Street, and NE Berg Street thus making it a corner lot, however no usable public space with pedestrian amenities is proposed in the area between the side property lines and the newly proposed structures. This is due to the existing ODOT slope easement and steep slope of NE Bradford Street and the fact that NE Berg Street does not connect to Hwy 101 because of the vertical rock wall at Hwy 101. Pedestrian amenities, such as the ones listed in the code section above, are not feasible nor desired to be placed on such a steep incline. Additionally, compliance with ADA requirements would be extremely challenging or impossible due to the natural, existing topography of the sites side yards.

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.

**Finding:**

As mentioned in the finding above, the existing ODOT slope easement and steep slope of NE Bradford Street and natural vertical rock wall between Hwy 101 and NE Berg Street makes developing the side yard street frontages difficult or impossible, especially in conforming to ADA requirements. None of the tourist accomodation developments in the vicinity of the site along Hwy 101 have public spaces between the road and buildings and would not be desirable given the fact that the project is not commercial in nature but residential.

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.

**Finding:**

Granting the variance would not be materially detrimental to the purpose of this ordinance or to other properties in the vicinity as other tourist accommodation developments nearby also do not have useable public space with pedestrian amenities along the side yard setback. Additionally, no ground floor commercial space is proposed in the new development, thus no conflicts with city plans or objectives for pedestrian amenities exist.

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

**Finding:**

The hardship is not self-imposed due to the existing ODOT slope easement, topography, rock wall, slope of NE Bradford Street, and non connectivity of NE Berg Street. Granting the variance would alleviate the difficult hardship of developing the steep or vertical side yards and would match similar tourist accommodation development in the vicinity of the project site.

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

**Finding:**

The hardship asserted as a basis for the variance is not from a violation of the Zoning Ordinance.

3. **Section 3.115 Commercial Zone C-1 – Design Standards & Guidelines, Subsection 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).
  - 2) Alternatively, a building may have its entrance facing a side yard when a direct pedestrian walkway not exceeding 20 feet in length is provided between the building entrance and the street right-of-way.
  - 3) On corner lots, buildings entrances may be oriented to the street corner.
- B. Developments 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 reasonably safe, direct, and convenient access to building entrances and off-street parking.

**Circumstances for Granting Variance**

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, topography, or other circumstances over which the applicant has no control.



**Finding:**

The buildings primary entrances to the tourist accommodation/residential townhome units are proposed to face East towards a shared parking lot and driveway, which faces opposite of Hwy 101. This design is due to the geological and topographical constraints of the site along Hwy 101, NE Bradford Street, and NE Berg Street that make it insurmountable to provide primary entrances off these street frontages. Similarly, the Travelodge to the North utilizes this design, again as the existing, natural rock formation along Hwy 101 stretches beyond in front of the adjacent development. Walkways from the shared, interior parking lot are proposed to each unit between the designated/required vehicle parking stalls. In addition, decks are proposed in the townhome units that face Hwy 101 with doors from the units opening out so as to appear as entry doors. Off-street parking, driveways or other vehicular circulation are not proposed between the building and Hwy 101. Vehicle access to the proposed residential structures is proposed off NE Bradford Street.

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.

**Finding:**

As mentioned in the finding above, the existing topography presents an insurmountable constraint in providing primary unit entrances off the Hwy 101 frontage of the project site due to the natural rock wall formation at the existing sidewalk, in addition to the steep slope of NE Bradford Street. To preserve property rights of the applicant as the same of other surrounding properties with similar geological topography, such as the Travelodge Hotel to the North, primary entrances are located facing opposite of Hwy 101 to a shared, interior parking lot/court yard with walkways to each townhouse unit.

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.

**Finding:**

Granting the variance would not be materially detrimental to the purpose of this ordinance or to other properties in the vicinity as other development nearby, such as the aforementioned Travelodge which has a similar design due the similar geological topography. Additionally, the proposed development is residential in nature and provides a bit of privacy for the future tenants, yet at the same time meeting the objectives of the city plan by providing exterior doors to the proposed decks that do face Hwy 101.

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

**Finding:**

The hardship is not self-imposed due to the existing geological and topographical constraints of the site and the existing slope of NE Bradford Street.

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

**Finding:**

The hardship asserted as a basis for the variance is not from a violation of the Zoning Ordinance.

4. **Section 3.115 Commercial Zone C-1 – Design Standards & Guidelines.**  
**Subsection 8.A – Pedestrian Amenities in the C-1 Zone.** Pedestrian sidewalk 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 a city-approved surface material that is consistent with adjacent and nearby sidewalks. All sidewalks shall be ADA compliant to meet current laws.

**Circumstances for Granting Variance**

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, topography, or other circumstances over which the applicant has no control.

**Finding:**

No new sidewalks are proposed in the development due to the aforementioned geological and topographical constraints of the project site. There is currently an existing sidewalk along the Hwy 101 frontage that appears to be approximately 5 feet wide. Increasing the stated design standard width to 8 feet would be extremely difficult if not impossible and in addition would render the property indevelopable due to the cost of removing the tall, natural rock wall formation that spans the project site frontage. This natural rock wall formation also stretches beyond the project site to the North in front of the Travelodge Hotel, where currently it appears the same existing approximate 5 foot wide sidewalk extends. On NE Bradford Street, the existing slope is steep and not feasible and prevents the development of an ADA compliant sidewalk. NE Berg Street to the North is not developed and does not connect with Hwy 101 but ends short of the top of the vertical rock wall above Hwy 101. Williams Avenue to the East does not have sidewalks in front of the adjacent neighboring properties but instead has a tall retaining wall to support the street because of the steep downward slope and therefore does not connect with NE Bradford Street.

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.

**Finding:**

As mentioned in the finding above, the existing topography and geology presents challenges/constraints in developing the Hwy 101 frontage of the project site due to the natural rock wall formation at the existing sidewalk. To preserve property rights of the applicant as the same of other surrounding properties with similar geological topography, such as the Travelodge Hotel to the North, widening the sidewalk is not proposed. Additionally, new sidewalks are not proposed along the other street frontages of the site as the other neighboring properties in the vicinity do not have sidewalks and likely will not be able to install sidewalks in the future due to such aforementioned topographical and geological constraints.

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.

**Finding:**

Granting the variance would not be materially detrimental to the purpose of this ordinance or to other properties in the vicinity as other development nearby, such as the aforementioned Travelodge has what appears to be an identical sidewalk along



Hwy 101 due to the similar geological topography. The same goes for the surrounding properties in the vicinity in relation to the other abutting streets and existing topography.

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

**Finding:**

The hardship is not self-imposed due to the existing geological and topographical constraints of the site, the existing slope of NE Bradford Street, and the nonconnectivity of NE Berg Street.

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

**Finding:**

The hardship asserted as a basis for the variance is not from a violation of the Zoning Ordinance.

**info**

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**From:** planner  
**Sent:** Tuesday, October 12, 2021 2:48 PM  
**To:** bdaniels@depoebayfire.com  
**Cc:** info  
**Subject:** RE: Depoe Bay - New development

Understood, thank you

Jaime White, City Planner  
City of Depoe Bay  
planner@cityofdepoebay.org  
541-765-2361 x15  
(Tuesday & Wednesday Only)

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**From:** bdaniels@depoebayfire.com  
**Sent:** Tuesday, October 12, 2021 2:14 PM  
**To:** planner <planner@CityofDepoebay.org>  
**Subject:** RE: Depoe Bay - New development

Last item, Bradford should also be marked a fire lane as well. For both sides of the road.

Bryan Daniels, FSCEO  
Fire Chief  
Depoe Bay Fire District  
Headquarters – Station 21  
325 US-101  
Depoe Bay, OR 97341  
541-764-2202  
[depoebayfire.com](http://depoebayfire.com)

**DEPOE BAY**



**FIRE DISTRICT**

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**From:** planner <[planner@CityofDepoebay.org](mailto:planner@CityofDepoebay.org)>  
**Sent:** Tuesday, October 12, 2021 2:11 PM  
**To:** [bdaniels@depoebayfire.com](mailto:bdaniels@depoebayfire.com)  
**Cc:** info <[info@CityofDepoebay.org](mailto:info@CityofDepoebay.org)>  
**Subject:** RE: Depoe Bay - New development

Received, thank you

Jaime White, City Planner  
City of Depoe Bay



[planner@cityofdepobay.org](mailto:planner@cityofdepobay.org)

541-765-2361 x15

(Tuesday & Wednesday Only)

**From:** [bdaniels@depobayfire.com](mailto:bdaniels@depobayfire.com)

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

**To:** planner <[planner@CityofDepobay.org](mailto: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](http://depobayfire.com)

**DEPOE BAY**



**FIRE DISTRICT**

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**From:** planner <[planner@CityofDepobay.org](mailto:planner@CityofDepobay.org)>

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

**To:** Bryan Daniels ([bdaniels@depobayfire.com](mailto:bdaniels@depobayfire.com)) <[bdaniels@depobayfire.com](mailto: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.

The units will face to the interior where there will be a shared parking area. Access will be from the south at Bradford Street.

The Planning Commission will hold a public hearing next week, Wed Oct 13, to hear testimony and decide whether to permit the project.

If you have comments please provide those to me by next week, thanks.

Jaime White, City Planner  
City of Depoe Bay  
[planner@cityofdepoebay.org](mailto:planner@cityofdepoebay.org)  
541-765-2361 x15  
(Tuesday & Wednesday Only)



To: Depoe Bay Planning Commission

Via email to: [planner@cityofdepobay.org](mailto:planner@cityofdepobay.org), [info@cityofdepobay.org](mailto:info@cityofdepobay.org)

October 11, 2021

Dear Planning Commissioners:

This application as submitted to was deemed complete by the Planner since that was all the applicant chose to provide. However, it is incomplete and does not comply with Depoe Bay ordinances. Section 10.015 of the DBZO requires that the application "shall be accompanied by proposed plans, specification and other such information as specified on the application form or by this article. ...An applicant must apply at one time for all approvals required by this chapter for a development project,..." The applicant did not include any detailed plans, specifications, site elevations etc. to the application so how can the Planning Commission perform a complete and thorough review of the development in the Commercial zone or even just the variances?

In the conditions for approval, the staff report notes that, if you approve, you need to get a Traffic Impact Study. However, this is contrary to the requirements of our ordinance. The Traffic Impact Study is just one of the pieces of information that is required to be part of the application. How can the Planning Commission review this application without information on required traffic upgrades, safety, circulation, connectivity, etc.?

Additionally, even if the variances could be evaluated without the required information, I do not believe that the variances requested meet the standards for approval and should be denied.

Please deny this request for a variance based on insufficient information to make relevant findings. Once the applicant has all the required material, he can reapply for a variance and for development approval in the commercial zone.

I have included details below (pages 2-7) on the flaws and problems with this application, that must be corrected before review of the application can properly be had.

Thank you for your attention.

Fran Recht  
P.O. Box 221  
Depoe Bay, OR 97341  
541-765-2234

Continued information regarding Fran Recht's opposition to granting Variance  
Application #2-VAR-PC-21

1. APPLICATION MUST BE DENIED SINCE THERE IS INSUFFICIENT  
INFORMATION TO REVIEW FOR COMMERCIAL ZONE COMPLIANCE AND FOR  
VARIANCES

I request that you deny the application before you for Case File #2-VAR-PC-21 as the application wasn't complete as filed and cannot be evaluated as such.

The application was deemed complete by the planner the day it was filed (Sept 15, 2021) since there was no more information forthcoming from the applicant; however such a decision was in error as the application is missing information required by law to be in front of you at this stage. This includes the traffic safety study and an ODOT access permit, a letter from the owner if the applicant is not the owner of the property approving the application, site plans that show (10.025 (2))the locations to drainage, any easements, and legal descriptions of the lots, and connections to roadways (e.g. the proposed sidewalks are not shown on the plans), and an actual property survey (to show compliance with setback requirements (10.017)). Additionally, since the Planning Commission must review development in the Commercial zone for compliance, complete site drawings, surveys, and building elevations must be provided.

That is, the application should have not been considered complete and you must deny the application since you don't have full information for review.

However, if you want to ask the applicant for the required information, you cannot do this without assuring that the time clock for decisions required by Oregon Land Use Law (and our code) is stopped. This requires a formal request for (or formal agreement to) the continuance or extension, by the applicant, of the time limits set on acting on quasi judicial land use applications (10.060(9)). It would also require you to continue the hearing to a date certain, giving enough time, e.g. for the required information to be submitted and to provide 20 days before the hearing for review. (See section 10.060 for procedures).

In addition to the materials required to be provided in other sections, the Variance Procedure Section 8.030(1) itself, allows the Planning Commission "to request other drawings and material essential to an understanding of the variance request."

2. PROCEDURAL MISSTEPS ARE CONSEQUENTIAL AND MUST BE REMEDIED. I ask you to deny the application before you for other procedural missteps that are consequential; (In fact these matters, and the one noted above, are grounds for remand by the Land Use Board of Appeals):
- a. Applications for land use decisions must be submitted by the property owner or the authorized agent. (10.025(2)(a)). If Mr. Lisac isn't the owner, the "application



shall be accompanied by a letter from the property owner which authorizes this action" (10.015). No such material is presented with the application.

- b. STANDARDS FOR DEVELOPMENT IN THE COMMERCIAL ZONE was not addressed by the applicant and no information was provided to allow such review. Without such information a review of even the appropriateness of the proposed development in meeting Depoe Bay code standards and requirements for Commercial uses, the Planning Commission can not determine consistency with the zoning ordinances and comprehensive plan of Depoe Bay. Furthermore, lack of information in the record precludes the ability of the public to review and perhaps appeal Planning Commission findings in this matter. The application is for new development in the Commercial zone and is therefore a type B permit that can be appealed to the Planning Commission. The Depoe Bay zoning code requires all applications for development to be submitted at the same time (10.015), therefore application requirements for development in the commercial zone and application for a variance should have been submitted at the same time for review.

Section 10.015. Application Procedures: Petitions, applications, and appeals provided for in this chapter shall be made on forms prescribed by the city. Applications shall be accompanied by final proposed plans, specifications, and such other information as specified on the application form or by this article. An application shall be deemed complete thirty (30) days after receipt of the material, unless the applicant received prior notice from the City that the application is incomplete. An applicant must apply at one time for all approvals required by this chapter for a development project, except as allowed by the Planning Commission. City action on a consolidated application is subject to the time limitations provided in ORS 227.178. If the applicant for an action is not the property owner, the application shall be accompanied by a letter from the property owner which authorizes the action.

- c. No traffic study or ODOT access permit provided (see 3, below).
- d. The staff report was made available to the public less than 5 days in advance—a period of at least seven day period is required (10.060(2)) (ORS 197.763(4b). The staff report was not available 7 days in advance. [I requested (and received) it on Thursday October 7 when the planner had completed it, but that is only 6 days in advance, but it wasn't posted or made available to planning commissioners or the public until 10/8 in the afternoon]
- e. Notice to property owners within a certain distance of the subject property are required to be sent BASED ON TAX ASSESSOR records (197.763 2(a).

opportunity to respond to each issue.

- (2) (a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

- (A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

However, the City erred in using a different database that is not kept up to date (i.e. is over a year old). I know at least one property owner (Coffman) who was not sent the proper notice due to this procedural error and it is uncertain how many other property owners were equally not informed, as required, of this proposed development. This procedural error needs correcting through re-notice and a new or continued application process.

### 3. TRAFFIC STUDY REQUIRED AT THE TIME OF APPLICATION; ODOT ACCESS PERMIT REQUIRED PRIOR TO APPROVAL.

Section 14.045 of our zoning code, approved July 2020, requires the traffic study, prepared by an Oregon registered professional engineer to be submitted with the land use application. No such application was submitted with the application

Reviewing it later, does not meet the letter or the purpose of the law. The Planning Commission isn't able to make an informed decision about whether to approve the development (or the variances) without this. The application should never have been deemed complete without a submitted study.

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

This code is intended to implement OAR 660-012-045:

- (2) Local governments shall adopt land use or subdivision ordinance regulations, consistent with applicable federal and state requirements, to protect transportation facilities, corridors and sites for their identified functions. Such regulations shall include:

This code also requires a traffic study at the time of application.

Additionally, the Planning Commission must insist on seeing that ODOT has approved a change in use permit (see information attached) for this large proposed increase in traffic accessing/exiting Bradford for this development. State law requires that an applicant FIRST OBTAIN written permission from ODOT (<https://www.oregon.gov/odot/Engineering/Pages/Access-Management.aspx> :

### Application for State Highway Approach

ODOT requires a highway approach permit because state law, ORS 374.305(1), requires anyone wanting to construct a new approach or change the use of an existing connection to first obtain written permission from ODOT.

#### Overview

The approach permit application process is fairly complex. Before completing the Application for State Highway Approach form, please read these brochures for an overview of the process and timeline.

- [Permit Process Overview](#) – Brochure
- [Timeline](#) – Brochure

#### Pre-application

An optional pre-application meeting is an opportunity to discuss your proposed approach and to learn about the application process and required information. An applicant may request a pre-application meeting prior to submitting an approach permit application by completing a Pre-Application Meeting Request form and contacting the delegated local ODOT District office.

How can the Planning Commission consider whether it's appropriate to give a variance for not having the buildings oriented to Hwy 101 or have pedestrian amenities or a sidewalk of proper width if we don't yet know if ODOT will require Berg St. to be improved and used? (i.e. entry only on Berg, exit only on Bradford?) Again complete information is necessary for you to consider not only the variances requested, but this whole development in the commercial zone.

#### 4. VARIANCE STANDARDS ARE NOT MET.



The applicant requests 5 variances. He relies on the same arguments for each variance.

Variance standards (Section 8.020) "may be granted ONLY IN THE EVENT that ALL the following circumstances exist:

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, topography, or other 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.
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.
4. The hardship is not self-imposed and the variance requested is the minimum variance which would alleviate the hardship.
5. The hardship asserted as a basis for the variance does not arise from a violation of the Zoning Ordinance.

I do not believe that the criteria for exceptional circumstances, property right preservation or hardship (criteria 1, 2, and 5) are met. Failure to meet ANY of these requires you to deny the variances. I assert these variance arguments are flawed as they apply to exception requests for pedestrian amenities along Hwy 101 etc. (request 1 from the staff report); Exception to orientation of building entrances so as not to face US Hwy 101 (request 2 from the staff report); and 3 a. and b. regarding exceptions to sidewalk requirements along US Hwy 101 and Bradford.

Criteria 1. Re exceptional circumstances is not met:

The applicant talks about the difficulty of removing the basalt rock wall and the properties' topography as constraining and over which he has no control. But in his argument he only compares his property to a developed property a block away to the north (the hotel) to say that he faces an exceptional circumstance that applies to his property which do not generally apply to other properties in the same zone or vicinity. However, I have been in Depoe Bay since 1990 and have seen two long basalt rock walls removed to allow for the development we have today, despite the similar circumstance of the wall and ODOT Slope easements. These development have building main entrances at the level of Hwy 101. The removal of the basalt wall allowed for the construction of the block south of Clark for Larissa Plaza and the block south of Bradford for the Nash building and other buildings (see historic photographs), with doors and entrances located just east of the highway. Though NOT required at that time, which it is today, between Clark and Bradford, the buildings are set back enough so that

there is a public use boardwalk of sorts in front of each with the inclusion on some of benches and planters (in the slope easement). Therefore, asserting that it's an exceptional circumstance that applies to the applicant that doesn't to others in the zone or vicinity is factually wrong. Additionally, this variance criteria requires lot size or shape to be constraining. The lot size or shape IS NOT constrained by topography in the vicinity of Highway 101.

He could remove the basalt wall to provide pedestrian amenities along Hwy 101 and to orient the front townhouses main entrances to face Highway 101. There are no exceptional circumstances pertaining to this property. The variance must be denied.

Criteria 2—requires that 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 property right that is at issue here is the right for him to build in the tourist commercial zone as others have done. There is nothing that is constraining that property right. Just because the applicant doesn't want to meet standards, so he can maximize his profit, it doesn't mean that the applicant is being denied a property right. All property owners in the zone or vicinity met the standards that were in place at the time and now it's the developer's obligation to do the same.

If you went with the argument provided by the applicant, it is him saying that you're taking away his property rights because you're make him comply with code requirements that others didn't have to at the time; i.e. arguing that he's being denied a property right by having to adhere to codes in effect now, that weren't in effect then.

That is the applicant is saying if other buildings didn't have to comply with earthquake standards or new building codes (that weren't in place at the time) I don't either. That's an absurd reading of "property rights preservation". The variance is not necessary for the preservation of a property right that were given to other. It doesn't meet this standard.

Criteria 3—requires that the hardship not be self-imposed and is the minimum variance that would alleviate the hardship. He asserts that the hardship results from existing geological and topographical constraints of the site, the existing slope of NE Bradford St. and the non-connectivity of NE Berg St.

The hardship is self- imposed since the applicant, like so many other have done, could remove the basalt rock wall—it hasn't been a hardship for others. NE Berg isn't developed now, but it certainly could be, and in fact, might be required for circulation and safety by ODOT or fire marshal. The applicant will be extensively grading the site to allow construction of the units so he can deal with the slope of the entrance from Bradford during his work. Additionally, the applicant has not addressed the minimum necessary criteria, so there are no findings that support the criteria that these variance requests are the minimum necessary; a required standard. Therefore this criteria cannot be met and the variance denied.

In regards to the request for the variance for a sidewalk on Williams (Staff report 3.c.), I do believe the application meets the variance standards here, but ONLY if, as I am assuming, that he is not removing the trees or the soil at the back of the lot that abuts Williams. However, if I am wrong, (there is no grading plan to review), and he does do such removal, it's likely he'll need a retaining wall along Williams, and in that case, a sidewalk should be required to be placed here and the variance denied. However, such a variance can't be evaluated until we can see his grading or tree removal plans and potentially an engineering analysis of any alteration or removal of Williams Avenue sub-adjacent support.

Thank you for your attention.

#### Attachments

Traffic Safety Ordinance

Photographs that I have marked up with arrows showing where rock walls were removed to allow development of commercial buildings at the level of Hwy 101.





Depoe Bay Circa 1961—from Oregon State Archives



Rock wall visible—this is where the Larissa Plaza is now, north of Collins and south of Bradford street  
From Army Corps of Engineers June 21, 1990.

After I moved here in 1990, the basalt walls fronting Depoe Bay were jack hammered away to allow the development we see now with frontages on Hwy 101. These include the whole block for Larissa Plaza south of Clark Street and later for the Nash Building (where real estate office is) and the buildings to the north (what was Fuddy Duddy fudge and the building on the S. corner of Bradford and Hwy 101 that houses a counseling business).

These are similar properties zoned the same way that also had to meet the ODOT slope access restrictions.

If they did this, Mr. Lisac can too to uphold the intent of our development guidelines and ordinances.



## **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

## Comments RE Case File #2-VAR-PC-21

My name is Judy Faucett and I am co-owner of the house at 30 Bradford Street. I am opposed to the development as proposed of the six tax lots at Highway 101 and Bradford and the requests for variance.

The applicant has requested five variances. Section 10.015 of the DBZO requires that an application be complete when submitted. There is a lot of information that is NOT in this application. How can the Planning Commission make an informed decision about whether to allow any of the variances without more information about the development? The only narrative provided is specific to the variances. There are no plans other than the one rendering that is very difficult to read without a magnifying glass. There are no drawings to show how the townhouses will look, either from 101 or the driveway. There is nothing about the access from Bradford into the development. How can the Planning Commission put the variances into context without this information? Most importantly, nowhere in the application are the issues of safety, access and congestion addressed. Given the magnitude and complexity of these three issues alone, discussion of variances is moot until and unless those are resolved.

### PARKING

The proposed development is for 18 units of 2- and 3-bedroom townhomes with 24 designated parking spaces. While this meets Depoe Bay's parking requirements for transient dwellings, it is likely inadequate. There are vacation rentals along Williams that are 3 bedrooms with a garage and space for a car in the driveway. During the summer, there were occasions when 1-3 cars would be parked on the street, reducing the space for traffic to one lane.

If there are additional cars, where will they go to park? Parking along the driveway in the development will block the fire lane. Parking along Bradford would block access for all vehicles. There is a small parking lot on Bradford but it is owned by a local business. Further, no overnight parking is permitted in any parking lot in the city.

### TRAFFIC SAFETY

Currently a limited number of cars use Bradford on a daily basis. If only 24 additional cars come into the development, that will increase the number of cars by at least 400%. The number of extra trips will also increase at least that much, possibly much more, and some of these trips will likely occur during peak hours for traffic along 101. It will add to the congestion of turning onto or off of Highway 101. In addition to Bradford being only one-lane, this is where 101 goes from two lanes to one. Visibility may be blocked by high-profile vehicles parked at the corner of 101 and Bradford. There is signage prohibiting that but it doesn't prevent people from parking these vehicles there. Brady told me that ODOT put the sign up because of concerns regarding visibility and traffic safety.

Significantly more cars at an intersection with limited visibility and congestion from the merging lanes will only increase the likelihood of an accident. One of the conclusions of the staff report is that there should be a traffic study. Shouldn't this traffic study be part of this application?

According to DB Ordinance 326-20, a Traffic Impact Study (TIS) is required to be submitted with the application if the proposal is expected to generate 10-30 peak hour trips. Further, 2.b and 2.e require a study to be submitted with the application if the development is adjacent to an intersection functioning at a low level of service or the development may contribute to operational or safety concerns. Any development that proposes to increase traffic by at least 400% on a one-lane, dead-end road that ODOT has already indicated has safety and congestion issues certainly falls into the category of requiring a TIS. An application that doesn't include such a study is incomplete.

#### CONSTRUCTION VEHICLES

Construction vehicles present another challenge. Given the width and steepness of Bradford, access may be difficult. Until the property is cleared, where will they park? And afterward? What special problems do they create for the access between 101 and Bradford? I have seen as many as six construction vehicles parked along Williams and Lillian during recent developments. This has narrowed the roadway to one lane for passing traffic. Similar parking is not an option along Bradford.

#### SIDEWALKS FOR PEDESTRIAN SAFETY

I strongly support the city planner's recommendation for a sidewalk along Bradford down to 101. Yes, it is steep. But we have other steep streets in the city that provide sidewalks. Pedestrians from the parking lot currently walk down to 101 in the middle of the road. An increase in the number of cars will mean an increase in the number of pedestrians. They should have a safe place to walk, even if it's not ADA-compliant. The requirement of a handrail would help. When the sidewalk is put in, inclusion of other amenities such as flower boxes or benches along the sidewalk could be considered.

I would ask that the Planning Commission either disapprove the application for variance as submitted or ask that the applicant withdraw the application and resubmit it when it is complete.

Thank you for the opportunity to comment on this application.

Judy Faucett  
PO Box 1559  
Depoe Bay, OR



RE: Case File: #2-VAR-PC-21

My name is Barbara Coffman and I live at 30 Bradford Street which is where Bradford dead-ends. I am the only permanent resident on Bradford Street. I am opposed to the development proposed for the six tax lots at Highway 101 and Bradford and to the granting of variances for it.

Bradford may be the only city street off of Highway 101 that is not wide enough for two lanes of traffic and that has no outlet. At one point, the street is only 10' wide. The following picture shows a standard-size vehicle at that point. Assuming access to the townhomes is not on the slope, all new traffic (construction and rental) will need to pass through here.



There are currently only two vacation rentals, one small parking lot (owned by a nearby business) and my house located on Bradford. Even with that limited usage, I will need to wait for a car coming in or out of Bradford 10-15% of the time. The 24 proposed parking spaces will increase the number of cars by at least 400% and who knows how many additional trips. This is a significant increase for a one-lane road with no alternative access.

Further, it is difficult to enter 101 from Bradford because of the lanes merging on 101 and the parked cars. The corner is posted "No parking for vehicles over 5 feet". However, that doesn't

stop people with RVs and other high-profile vehicles parking there. A 400% or more increase in traffic on Bradford will only exacerbate the congestion and the safety risk

The proposal is for 18 units with 24 parking spaces. While this complies with the city's ordinance, it is likely not adequate. There were several instances this summer where vacation rentals along Williams had a car in the garage, another in the driveway and 1-2 cars parked along the street. Bradford is not wide enough to accommodate any on-street parking and should be signed "No Parking".

Given the limited access and limited parking, I am concerned that I will not be able to get to and from Highway 101 during construction or when the vacation rentals are operational. I have severe osteoporosis and issues with my balance and mobility. Walking to and from 101 is not an option for me. I must be able to drive.

The application requests a variance for a sidewalk to 101 because the road is too steep. People currently use the city parking lot and walk down to 101. Because it is so narrow, they are walking in the middle of the road. Right now it's only a few people each day. When the vacation rentals are operating, it could be dozens of people. For their safety, they should have a place to walk that is off the street. We have handrails on the first block of Collins because it is steep. The same could be done for pedestrians on Bradford.

There is also the issue of access by emergency vehicles. That's yet another reason that there should be no parking along Bradford. It's not clear how wide the road into the proposed development will be but if a car is parked other than in the designated space, it could block the fire lane.

I realize I am only one person. But I bought this property with the belief that I would be able to drive to and from it, whenever I need to. My health issues make it such that no other option is available to me.

I ask the Planning Commission not to approve any plan that does not provide for the safe use of Bradford whenever needed for cars, emergency vehicles and pedestrians, both during and after construction.

Thank you for the opportunity to comment.

Barbara Coffman  
30 Bradford St  
PO Box 1559  
Depoe Bay, OR

Jamie White, City Planner  
City of Depoe Bay  
P.O. Box 8  
Depoe Bay, Oregon 97341

October 11, 2021

Re: Case #2-VAR-PC-21  
Proposed Development and Application for Variances by Mark Lisac

Dear Mr. White,

Thank you for the opportunity to provide testimony regarding the proposed development of 18 units multi-family residential and tourist accommodations on Highway 101 in Depoe Bay. My wife Tonya and I are the owners and part-time residents of the residential property with tourist accommodations at 167 North Highway 101, directly across the street and downhill from the proposed development.

We understand the proposed development site is subject to special conditions that could make it physically difficult and financially infeasible for the developer to meet the existing code requirements without receiving variances.

That said, **we are opposed to the proposed development and requested variances as currently described in the staff report.** However, we could support the project with some reasonable conditions that would alleviate our concerns and those expressed by other members of the community:

1. **Soil erosion and water run-off** from the elevated site may cause physical damage and financial harm to neighboring properties
2. **Pedestrian and local resident safety** will be compromised by additional tourist automobile drivers unfamiliar with local roads
3. **Local quality of life** will be negatively impacted by additional tourist automobile traffic, increased demand for on-street parking, absence of sidewalks on previously low-traffic side streets, and greater use of nearby public waterfront parks.

We recommend the following conditions for approval:

1. **Environmental Impact Study** – The developer, in conjunction with the City of Depoe Bay, Lincoln County, and ODOT, should provide an environmental impact study to demonstrate the soil erosion and run-off with not negatively impact neighboring properties.
2. **Pedestrian Safety Measures** - The staff report states that it would be impractical to widen the sidewalk on Hwy 101 to the required 8 feet. However, the intent of the code – to provide a safe and pleasant pedestrian experience – can be met in other ways. In lieu of widening the sidewalk on Hwy 101, the developer should



be required to provide upgraded pedestrian lighting, sidewalk markings, signage, railings and/or other reasonable measures that will mitigate increased dangers to pedestrian safety on Hwy 101 and local side streets.

3. **Upgrade and maintain nearby parks** - In lieu of providing a usable public space with pedestrian amenities as required by the Pedestrian Amenities Standards and Architectural Standards, the developer should be required to upgrade and maintain the equivalent space in one of the two nearby public parks adjacent to the development site across from Hwy 101.

We believe these reasonable conditions for approval will largely mitigate the foreseeable negative impacts of the proposed development and set the stage for development that could contribute to the vitality of the neighborhood for residents, local businesses, and visitors alike.

Thank you for your consideration.

Best Regards,

Ron Walters

Jamie White

9/22/2021

Attn: Depoe Bay Planning Commission

PO Box 8 Depoe Bay OR 97341

Re: Application of Mark Lisac for tax lots 02800, 03100, 03200, 03300, 03301, 03400

Thank you for notifying us of the application referenced above. We are in favor of additional housing, as we know it is a serious need in Lincoln County. Our concern is the potential impact on Williams Avenue. If that is addressed, we are in favor of this development.

We live at 120 Williams, right above the area where the road narrows to one lane. There have been several near misses there because of the narrowness of the road.

Williams Avenue has become a major thoroughfare, both as a route for residents to the post office