

info

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

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

Barbara Chestler,

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

Christina Sydenstricker

JCNC Investments, LLC
408-203-8295

Sent from [Mail](#) for Windows

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

Dear Council,

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

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

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

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

Thank you,

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

To City Council members:

Re: Lisac Appeal hearing:

From: Fran Recht, appellant, 1/31/2022

An application, including for a variance, cannot be approved if all City codes and standards are not met.

Despite the applicant now trying to “fix” some of the prior deficiencies that were pointed out by the appeal and should have been addressed before the planning commission approved the application (e.g. in regards to meeting fire requirements, specifying the amount of landscaping, TIS discrepancies, etc.) there are serious deficiencies that remain that the staff report (based, it seems, on Jaime White’s letter into the record) has failed to address.

The application must be denied based on failure to uphold the letter and intent of the laws that apply.

STANDARD	CODE LANGUAGE	FINDING
In the C-1 zone Front yard setbacks along Hwy 101 the developer is required to provide “useable public space with pedestrian amenities”	<p>Section 3.115 section 3.B. Front Yard setbacks</p> <p>2) Maximum 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</p> <p>Between the building and front property line. (see also Pedestrian Amenities Standards and Architectural Standards in this Section).</p> <p>Section 11.010. <u>Interpretation</u>. Where the conditions imposed by any provision of this ordinance are less restrictive than comparable conditions imposed by any other provisions of this ordinance or of any other ordinances, resolution, or regulation, the provisions which are more restrictive shall govern.</p> <p>The staff report sites to Section 3.115(8)(B)(4) regarding Pedestrian Amenities Standards) that says “that tourist accommodations that don’t have a majority of retail ... on the ground floor shall have a minimum of 8 ft of landscaped grounds between the building(s) and the sidewalk” to say that this standard is met. However this section is subservient to the 3.115 Section 3.B.2 cited above since that section refers to this section and additionally is less restrictive.</p>	<p>Section 3.115 section 3.B.2 requires usable public space to be provided. The landscaping proposed by the developer is not usable public space as it is elevated above the sidewalk and not accessible or usable by the public. This standard is not met.</p> <p>Section 3.115(8)(B)(4) standard is superseded by this more restrictive standard.</p>

<p>Variances- (Please see full arguments in appeal letter)</p> <p>(Related to removal of rock wall to meet current code requirements of an 8' sidewalk and pedestrian amenities along Hwy 101 and the requirement to not provide direct pedestrian access to Hwy 101). The 5 conditions for variances ALL have to be met for a variance to be approved. All criteria cannot be met because there are no exceptional circumstances (see 8.020(1) that apply to this property that haven't applied to others in the vicinity (despite not being required to by current ordinance), other property owners in the past, despite the cost and slope, have removed the rock wall and provided an 8' sidewalk and</p>	<p>Section 8.020. Circumstances for Granting a Variance. A variance may be granted only in the event that all of the following circumstances exist:</p> <ol style="list-style-type: none"> 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. 	<p>The City Council finds that the requirements for a variance for sidewalks and pedestrian amenities and direct pedestrian access to Hwy 101 from the development are not met since there are no exceptional circumstances that apply to this property that have not been faced by and overcome by others in the same zone or vicinity; that the applicant maintains the same property rights as others in the same zone possesses, and that there is no evidence that the applicants or planning commission addressed the standard of "the minimum variance necessary to alleviate the hardship."</p>
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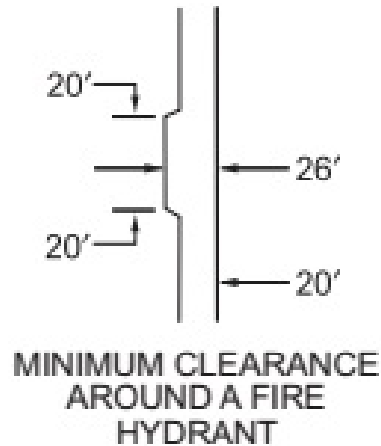
<p>pedestrian amenities within the ODOT slope easement).</p> <p>Additionally, variance criteria 4. requires that the variances be the minimum necessary.</p> <p>There is no evidence in the record that any discussion of minimum variance necessary was considered. They just stated it was. What about removing only a portion of the rock wall 50% or 30% to allow some improved public amenities or a widened sidewalk closer to Bradford or a direct pathway from Hwy 101 to the entrances of the units? The hardship being claimed is that it is cost prohibitive, yet removal of part of the wall which would reduce cost was not considered.</p>		
<p>Fire Requirements</p> <p><u>Subsequent</u> to the filing of my appeal and the concerns that were raised, the applicant had discussions with</p>	<p>D.103.1 “Minimum Specifications” of the Oregon fire code requires that the fire hydrant must be placed on a fire access road that is 26' wide for a distance of 20' on either side of the fire hydrant (for a total distance of 40'). This provision cannot be waived unless there was a sprinkler system installed. Mr. Lisac said there would not be a sprinkler system. So, whether the fire hydrant is placed on the fire access road through the development or on Bradford Street, that road would need to be</p>	<p>The plans do not show compliance with D 103.1 regarding the road widths necessary for placement and protection of fire-hydrant access on either Bradford or the access road into the development.</p> <p>The application submitted must be denied due to lack of compliance (which should have been</p>

the fire chief to discuss fire safety issues (see email conversations dated January 5.)

While the planner said (2nd hearing tape about 70 minutes in) that the fire chief had explicitly approved the road through the development as not requiring a turnaround or cul-de-sac and said that the road could be up to 150' without a turnaround and the driveway was 85' from the roadway so the fire department explicitly said was okay. However, this information given to the planning commission was in error as only in January was the turn around not required for the 152' roadway).

Also, the fire chief required a fire hydrant be placed in the development due to its high density, which Mr. Lisac agreed to provide in January.

widened beyond what is in the plans provided to, or subsequently approved by, the Planning Commission.



resolved BEFORE the planning commission made its decision).


The planning commission approved plans that did not have the required cul-de-sac turn around and the waivers were not in place before the application was approved.

<p>The applicant has now agreed to provide a fire hydrant to serve the development. However placement of a fire hydrant requires them to be placed on a fire access road that is 26' wide for a distance of 20' on either side of the fire hydrant (for a total distance of 40'). So whether the fire hydrant is placed on the access road through the development or on Bradford Street, that road would need to be widened beyond what is in the plans provided to, or subsequently approved by, the Planning Commission.</p>		
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STANDARD	CODE LANGUAGE	FINDING
Lots must be accessed by a public street or easement approved by the City	<p>Zoning code definitions: 1.030</p> <p>92. <u>Lot</u>: A parcel of land of at least sufficient size to meet minimum zoning requirements for use and area, and to provide such yards and other open spaces as are herein required. Lots shall have frontage on a public street or easement approved by the city.</p> <p>96. <u>Lot Frontage</u>: The front of a lot shall be construed to be the portion nearest the street.</p> <p>1. <u>Access</u>: The way or means by which pedestrians and/or vehicles enter and leave property.</p>	The frontage of the lots in this application are facing a new street to be created off Bradford. It must be a public street or easement approved by the City. No public street or easement has been approved by the City so the application must be denied.
Dedication of public streets requires following the land division ordinance (Article 14) even though this is not a subdivision or partition	<p>Section 14.050. Dedication of Public Streets Application. Any person wishing to create a public road or street which is not a part of a subdivision shall make written application to the City Council. The application shall consist of a letter addressed to the Council requesting acceptance of the dedication; a dedication deed with a proper description of the proposed dedication <u>signed by all owners of the property being dedicated</u>; a map showing the proposed road and property intended to be served by the road.</p> <p>This dedication of a public street through the development will also require property line adjustments (Section 14.110 Standards and Procedures for Property Line Adjustments) which is separate from property line adjustments in Subdivisions and Partitions (Section 14.120)</p>	Section 14. The land division ordinance applies and Sections 14.050 and 14.110 are not met. There is no public road or public easement into the development from Bradford, as required. No application, deed or description has been received from all owners of the property. Additionally, no property line

		<p>adjustments have been approved to accommodate such a road. Therefore, the application cannot be approved.</p> <p>(Also note that Section 14.045, Transport Impact Study was listed as an applicable criterion in the staff report so this Article 14 is applicable).</p>
<p>Lots in this development could be further re-divided so the City can require the minimum street design standards to be conformed with.</p>	<p>Section 14.040. General Requirements and Minimum Standards of Development Design: ...</p> <p>2.b. Relation to adjoining street system:</p> <p>When a tract is divided into lots or parcels of a size which could allow for further re-division under current zoning, the City may require an arrangement of lots and streets such as to permit a later redivision in conformance with the street requirements and other requirements contained in this Article.</p> <p>(note: Each lot can be divided many times as there is no minimum lot size in a commercial zone; e.g. each townhouse unit can be partitioned off separately as developers have done on other recent developments in town, or the configuration of the development could change fully over time with further division.</p>	<p>The street into the development should have been required to conform to the street standards and other conditions as set out in Article 14.</p> <p>The planning commission erred in not applying these standards and the road is of substandard width:</p> <p>The minimum standards in</p>

		<p>Article 14 are a developed surface of 28' and the developer shows a developed surface of only 24'.</p> <p>Additionally a cul-de-sac is required since this is a dead end street. No such cul-de-sac is provided</p>
<p>The street into the development must be public (not private) since it is a collector from Bradford Street to Hwy 101 AND will be used to serve the two lots not subject to this application.</p>	<p>Section 14.040. General Requirements and Minimum Standards of Development Design:</p> <p>4.a No street or road which would serve as a collector from existing public streets shall be approved as a private street.</p> <p>4.c 6. No road or street shall be approved as a private road in a case where such a road or street presently is or will in the future be needed to provide access to development on adjacent properties or to serve as a collector for other subdivisions or partitions in the area.</p> <p>Definition 1.030. 154. <u>Road (Street)</u>: A public or private way created to provide vehicular access to one or more lots, parcels...</p> <p>b. <u>Collector</u> or Secondary Street: A street designed to carry traffic between minor streets and the arterial system, to function as primary traffic carriers within a neighborhood, to carry traffic to local traffic generators, and in commercial and industrial areas, provide access to commercial and industrial properties.</p>	<p>The road into the development is required to be a public street or easement and must be dedicated as such (procedure outlined in 14.050, as noted above). No such street has been dedicated or approved. The application must be denied.</p>
<p>Depoe Bay's Transportation system plan adopted April 18, 2017 specifies street widths</p>	<p>The design standards are provided in this diagram: Developed road width is 32', sidewalks 5' and planter width is 5'</p>	<p>The planning commission approved the application without requiring the proper road</p>

<p>which are not met—the new road into the development is classified as a local streets in this TSP. These standards were also applied as standards to the Hudnall application.</p>	<p>Figure 12c: Local Design Standards</p>  <p>Note: conceptual design – subject to change, not to scale</p>	<p>widths according to the TSP. The width of the approved roadway is 24' width. It needs to be at least 32' in width to accommodate travel and parking.</p>
<p>The road into the development is not a “driveway” and interior parking court. As noted above it must be a public street.</p>	<p>The staff report opines that Section 3.115 5 B allows driveways and interior parking lots however, this does not negate the need to comply with the requirement that all lots front on public roads or the standards for parking lots.</p> <p>By definition a “parking space” (1.030.126) is “An off-street enclosed or unenclosed surfaced area ..., connected with a street or alley which affords access for automobiles.” This “driveway” cannot be an alley since “Alley” is defined (1.030.5) as “A public way, providing a secondary means of access to property.” Since what the developer refers to as a driveway is the only means of access, this “driveway” must be considered a street.</p> <p>Our code calls a parking lot a “parking area”. By definition a parking area (1.030.125) is “A designated area containing four or more parking spaces that has access and provides maneuvering area external of the road right-of-way. The access shown on the plans would require parked cars in front of each townhouse to back into the road to maneuver and therefore this area cannot be considered a parking lot. (This requirement for maneuvering outside of the street is reinforced by the off-street parking requirements of 4.030.12—that “groups of more than four parking spaces shall be served by a driveway so that no backing movements or other maneuvering within a street, other than an alley, will be required.”). I.e. if this were a parking lot, then there would have to be a driveway off the street that accesses the parking area.</p> <p>Additionally, DBZO 4.030.17 requires all parking lots shall be designed with spaces for handicapped drivers as provided for in the Uniform Building Code. This states that for parking lots with less than 25 spaces, one handicapped space must be provided. Further, it must be van accessible. No such space is indicated.</p> <p>Additionally, just on its face, this is not a driveway into a parking lot. These parking spaces have none of the characteristics of a parking lot. There is no communal parking or option of where to park. Each of the 12</p>	<p>The access into the development is required to be a street and is not by definition a parking lot.</p> <p>A parking lot for more than 4 parking spaces would require a driveway or other means of maneuvering area external to the road right of way.</p> <p>Additionally, a parking lot would require a handicapped access space that is van accessible and none is provided.</p>

	rental units has one designated parking space. Each lot, having three units, has three parking spaces, none of which is contiguous. To call this a parking lot is like saying the driveway to my home that has three private parking spaces is a parking lot.	
<p>Bradford is a local street (collector street) that according to the Traffic Impact Analysis would be widened to City standards.</p> <p>No variance was applied for and the road does not meet standards. This exact same issue was addressed in the Hudnall application (case file #1-C1-PC-21) regarding Lane Street and the City requirements outlined there are copied into the next column (in italics).</p>	<p>(from Case File #1-C1-PC-21 Planning Commission Final Orders): <i>The Depoe Bay City Council adopted the Depoe Bay Transportation System Plan (TSP) on April 18, 2017. The TSP identifies typical cross sections for city streets which include sidewalks, park strips, paved areas, travel lanes, etc. Per the TSP, typically improvements are to be done within street right-of-ways (ROW). The TSP identifies Lane Street as a "Local Street" requiring 54' ROW with 32' of paved surface for travel lanes and parking. The controlling ordinance (specifically DBZO Section 3.115.8.A) states the sidewalk shall be 5' and makes no mention of inside or outside of the ROW.</i></p> <p><i>Unfortunately, the existing Lane Street ROW is 20' and pavement width is 19'. Accommodating the proposed TSP Local Street cross section would require an additional 34' of ROW. The additional ROW would have to come from the applicant's property since the north side of Lane is already developed, potentially rendering the applicant's property undevelopable per current City codes. In addition, recent surveys show the road currently encroaches approximately 4' onto the applicant's property. In order to avoid a costly and time-consuming ROW acquisition process and further impacting the City and the applicant, a compromise was reached where the applicant will provide a 4' wide sidewalk on his property so setback and sight line requirements can still be met and the property can be developed as planned. It is the opinion of the City that although the proposed sidewalk width does not meet the required width, the intent of the code is met.</i></p> <p>-----</p> <p>Responding to a November 24 note from the Planning Commission Chair asking about the width of the sidewalk on Bradford street.</p>	<p>The planning commission erred in allowing Bradford St. to be widened only to "hopefully 23-24 feet" when the Bradford right of way is 30'. City standards for such roads are, as noted in the Hudnall application to be 32' of paved width and a 5' sidewalk and with a right of way width of 54'.</p> <p>No variance was requested for this substandard road and no "compromise" was reached about placing the sidewalk on the</p>

	<p>info</p> <hr/> <p>From: planner Sent: Tuesday, November 30, 2021 7:50 AM To: Michael Phillips Cc: info Subject: RE: Depoe Bay Planning Commission - Lisac Variances - #2-VAR-PC-21</p> <p>5' is what code requires for side streets, so that's what was proposed. We will have the developer make the road as wide as possible and still give us a 5' sidewalk and stay within the existing right-of-way, that should hopefully get us a 23' or 24' road.</p> <p>Did you get a chance to review the findings for the denial of variances for the Sunset Street Hopuse?</p> <p>Thanks, jlame</p>	
<p>Road versus Driveway</p> <p>Planner was asked (see tape of 2nd meeting at 67 minutes) about testimony about the issue of whether this was a road versus a driveway. Planner said he didn't look at this as anything except a driveway into a parking area and hadn't considered the possibility that it</p>	<p>See standards above and below. The planner had not considered or applied the standards regarding this issue, but the planning commission did not ask for the further research and approved the application anyway.</p>	<p>The road into the development must be developed to City codes standards for a road and must be dedicated as a public street or easement.</p>

was an alley or a roadway. He also said that this was a good point that had been raised and he would have to research it (primary vs secondary access).		
State law allows for Cities to apply current standards to undeveloped subdivisions...e.g. roads, setbacks, etc.	<p>92.205 Policy. (1) The Legislative Assembly finds that many subdivisions for which plats have been approved and recorded have not been developed and that many such subdivisions were approved prior to the adoption of a comprehensive plan, zoning regulations and ordinances and modern subdivision control standards by the jurisdiction within which the lands described in the subdivision plats are situated.</p> <p>(2) The Legislative Assembly finds, therefore, that it is necessary for the protection of the public health, safety and welfare to provide for the review of undeveloped subdivisions for the purpose of modifying such subdivisions, if necessary, to comply with the current comprehensive plan, zoning ordinances and regulations and modern subdivision control standards, or, if such modification is not feasible, of vacating the nonconforming, undeveloped subdivisions and to vacate any lands dedicated for public use that are described in the plat of each such vacated subdivision. [1973 c.569 §1]</p>	It is in the City's interest to make sure undeveloped subdivisions comply with current comprehensive plans, ordinances and regulations and modern subdivision control standards. This would include making sure that the streets, curbs and gutters, cul-de-sacs, and sidewalks are developed to current standards