

**MINUTES**  
**CANBY PLANNING COMMISSION**  
7:00 PM – Monday, October 9, 2017  
City Council Chambers – 222 NE 2<sup>nd</sup> Avenue

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**PRESENT:** Commissioners John Savory, John Serlet, Larry Boatright, Derrick Mottern, Shawn Varwig, and Tyler Hall  
**ABSENT:** Commissioner Andrey Chernishov  
**STAFF:** Bryan Brown, Planning Director, and Laney Fouse, Recording Secretary  
**OTHERS:** Robert Taylor, Allen Manuel, Pat Sisul, Charlie Yankus, Terri Yankus, Regina Taylor, Carol Hill, Wayne Fetters, Stephanie Boyce, Ed Netter, Gwyn Benson, George Beauadoin, Clint Barber, Brian Nava, Larry Graff, Bonnie Edwards, Jeannine Wibbels, Lee Wibbels, Liz Rossberg, and Jackie Jones

**1. CALL TO ORDER**

Chair Savory called the meeting to order at 7:00 pm.

**2. CITIZEN INPUT – None**

**3. MINUTES**

a. Approval of September 25, 2017 Planning Commission Minutes

*Motion:* A motion was made by Commissioner Varwig and seconded by Commissioner Hall to approve the September 25, 2017 Planning Commission minutes. The motion passed 6/0.

**4. NEW BUSINESS – None**

**5. PUBLIC HEARING:**

a. Consider a request for a Zone Change, Conditional Use, and Subdivision application for property at 533, 553 & 583 S Ivy St to create 4 new townhome lots and 6 new single family lots. **(ZC 17-02/CUP 17-05/SUB 17-04 S Ivy Park Subdivision, Allen Manuel)**

Chair Savory opened the public hearing and read the public hearing format. He asked if any Commissioner had a conflict of interest or ex parte contact to declare.

Commissioner Boatright said he greeted Larry Graff outside as they were old friends.

Bryan Brown, Planning Director, entered his staff report into the record. The applicant was requesting a zone change from R-1, low density residential, to C-R, commercial residential. The property was surrounded by low density residential, however there was C-R zoning close by. The C-R zone was intended to be a bridge between higher density and lower density areas. The Comprehensive Plan map did designate this property as C-R for future redevelopment. There were many Comprehensive Plan policies that talked about accommodating for the projected 20 year population growth. In order to make that happen, there had to be places in the community that were chosen for redevelopment for the future population. The C-R zoning was one of those designated areas. There were not many areas in the City that had this designation, and this was one of the first opportunities to deal with this zoning district. It was a mixed zoning district and allowed light commercial uses. The applicant's intent was not for light commercial, but a higher intensity of residential. He

had also submitted a subdivision application and conditional use application to make that happen. There was one existing home on each of the three tax lots and the lots were in excess of the maximum R-1 zone lot size. In the original application, the applicant used lot averaging which was allowed in the Code to make some of the lots less than the minimum lot size in the R-1.5 zone. There was a provision in the Code that allowed the Planning Commission to consider more lots that were under the minimum size if there was a public benefit to doing so. However the applicant revised the application to create only one lot that would be below the minimum lot size. The Code allowed up to 10% of the proposed lots to be under the minimum size and staff thought the application complied. The applicant had proposed eight detached single family homes, which included keeping two of the existing homes. One existing home would be demolished. The lots for the two existing homes were larger than what was allowed in the R-1.5 zone due to setbacks. There was an exception for allowing larger lots when saving existing homes. The lot averaging allowed for that as well as long as the overall average of the lots did not exceed the minimum and maximum. The way the lot averaging had been calculated had come into question. Some of the written public comments were from people not convinced that the way the lot averaging was done was a proper method. One questioned whether the street itself should be included in the lot averaging. In this case the applicant did include the street area. The Code was silent on this issue. For a normal subdivision that had public streets, the street access areas were excluded in lot averaging. This was a private street and was an access easement which meant the road was part of the adjacent lots. There was nothing in the Code that stated they could not utilize the street as part of the lot averaging. By doing so, they were able to get more lots than they would otherwise. It did cause some problems with meeting the R-1.5 zoning development standards. Lot 5 was slightly over the 70% impervious surface area that was permitted. However, that could be easily remedied by shrinking the footprint of the house or using permeable pavers on the driveway to solve the issue. Townhomes in the C-R zone were not an outright permitted use. They were only allowed through a Conditional Use Permit. A neighbor in his written comments pointed out that conditional uses in the C-R zone had to use the development standards for townhomes in the R-2 zone. The applicant made an attempt to do that. The area proposed for townhomes came out to 3.8 units and 4 were required. The applicant was proposing 4 units. There were Comprehensive Plan policies for areas of special concern and this was Special Concern Area C in the Plan. It was noted that in Area C there needed to be caution regarding traffic issues on S Ivy Street and caution regarding access. The applicant had proposed access onto S Ivy, but there was a standard that no direct access onto arterials was allowed. Currently there were four existing driveways on S Ivy, and staff had requested that all of the driveways be removed and access would be on SW 6<sup>th</sup> Avenue. Some road improvements were going to be made in this area that would help address traffic issues and alleviate some of the conflicts as there was concern about increasing density and traffic. A traffic study was not done because of the size and scope of the development. The applicant did do a Transportation Planning Rule analysis which indicated the rezone was accounted for in the Transportation System Plan and no special projects were needed other than the signal light at Township and Ivy. That did not lessen the fact that there was more traffic going onto the residential street. It impacted some properties more than others. There was a written testimony from the owners of the house across from this property on SW 6<sup>th</sup> Avenue who were concerned about exiting their driveway. This was a concern, but they had to find a balance. The question the Planning Commission had to ask was did it meet Code requirements. No public street was proposed because of the shape of the lots and the amount of right-of-way a public street took. The applicant thought detached single family homes were an appropriate use rather than a commercial use or duplexes or triplexes. The use of the townhomes made sense to maximize the output. It also made sense in light of Comprehensive Plan policies that talked about moving toward a variety of housing types. There would be individual ownership of the lots which typically were better maintained than rentals. Even though the density was increased, the detached single family area was within the bounds of the R-1.5 development standards. The Conditional Use was a discretionary decision and the rezoning had some discretion as well. The strongest basis for rezoning was if it was in compliance with the Comprehensive Plan map, and in this case it was.

Mr. Brown explained the preliminary plat was revised so that no more than one lot was less than the normal minimum lot size of 5,000 square feet when utilizing lot size averaging. All of the internal homes had access

to an ADA compliant five foot wide sidewalk that would take them out to either S Ivy Street or SW 6<sup>th</sup> Avenue. There was a mailbox grouping on the property that served homes on the other side of Ivy Street. Staff did not know if the mailboxes would be moved. That decision was up to the USPS. The applicant proposed the mailboxes be moved to SW 6<sup>th</sup> Avenue, but he would have to work with the USPS on this issue. There was a request to restrict parking close to the intersection on the north side of SW 6<sup>th</sup> Avenue. Traffic studies said in the first 20-22 feet of a street intersection that on street parking should be restricted. He thought that could be added as a condition. It would limit the overall public parking, but the safety aspect overrode that. Another issue was the private street was the minimum width allowed, 20 feet. Canby Disposal had submitted testimony stating they would have trouble accessing internally to this development and all the trash receptacles would have to be lined up on the local street. The applicant worked with an engineer to devise radiuses that would allow trash trucks and emergency vehicles to access the site. He had submitted a revised drawing showing where trash receptacles could be located in one area rather than at each house. Another issue was their earlier proposal did not have an access to an internal sidewalk for every house. The applicant also revised the plan to include sidewalks. There was sidewalk two feet from the wall of two of the proposed houses. That was not the norm and it showed that it was a tight squeeze on the property. It did meet standards. There would be no parking on the private street. There were four visitor parking spots planned for the development and every unit had two parking spaces. There might not be enough parking for visitors and they might either park on the private street or 6<sup>th</sup> Avenue. Staff recommended the Planning Commission recommend approval of the zone change to the City Council and approve the subdivision and conditional use subject to conditions. He entered a letter into the record that was submitted a few hours ago from the Housing Land Advocates and Fair Housing Council of Oregon who discussed complying with Statewide Planning Goal 10 and making sure there was adequate and appropriate supply of affordable housing. They thought the staff report did not provide an adequate analysis for how this rezoning affected housing and recommended the Commission defer their decision until the Goal 10 findings were added to the staff report. He thought the recommendation was in error and unreasonable because this application for rezoning was in accordance with the Comprehensive Plan designation. It was a tremendous amount of work to do that analysis which was typically done for Comprehensive Plan amendments, and this application was not amending the Comprehensive Plan. He discussed the need to revise the Comprehensive Plan in the future so the requirements in the Plan would be transferred into the Development Code. There was concern about basing the decision on a Comprehensive Plan policy that did not correspond to Development Code requirements. The Commission could postpone the decision to find out the answer to this issue.

**Applicant:** Allen Manuel said this was a plan to redevelop 1.31 acres into medium density residential use. If the plan moved forward, one home would be removed and 10 new homes would be added. Access would move from S Ivy to SW 6<sup>th</sup> Avenue. The timing of the project coincided with the improvements on S Ivy which would include sidewalks, drainage improvements, and new signal at Township and Ivy. The improvements would be completed by 2019. He planned to have this project completed simultaneously with the improvements so the streets would not be torn up twice. This was three applications, a zone change, subdivision, and conditional use. The rezone matched the Comprehensive Plan designation and he thought it should be automatically approved. There was testimony that said this development was too hasty and the property should be used for R-1 development. The Comprehensive Plan was adopted in 1981 and 25 years later he purchased the property and 11 years after that he was proposing development. He did not think it was hasty. The Comprehensive Plan allowed for intermediate uses on the property, but those uses were intended to be applied where there were not sufficient public utilities to develop the property to its full density. He had been working with staff since December on this and had gone through many iterations. Many of the public comment concerns had been addressed. The request to subdivide the property was due to the difficult shape of the land. He was proposing a mix of housing types and a private road. The property was not conducive to flag lots. All access would be taken off of Ivy. He also submitted a utility plan that entailed how the stormwater system would work. There had been discussion regarding this area as it was an area of special concern. He thought that meant that more focus should be given to the C-R zone as it went along Ivy to make sure traffic flows and parking were addressed. He thought they had done that through moving the access off of Ivy and all

the lots had two parking spaces as well as overflow parking. Sidewalks were not originally included, and the plan had been modified to include them. There would be five foot sidewalks that would be ADA compliant. Regarding the mailboxes, they were not on his property. They were five feet beyond his property line and in the public right-of-way. He thought when the City and County rebuilt Ivy they would take care of that issue. The conditional use request was to put four townhome lots on the property. Townhomes were widely used and well done around the City. There was a considerable amount of dislike for them from the neighbors. He was proposing townhomes because they were the only thing that would fit. They also created a mix of housing types and helped achieve some of the goals of the Comprehensive Plan. He had relied on the Comprehensive Plan when he bought the property and had tried to follow what was in the Plan. He requested approval.

Commissioner Varwig thought some of the concern with the townhomes was height and visibility into the single family home yards. He asked if there was a way to restrict the height. Mr. Brown said that was a possibility. There were height restrictions for R-1.5, which was 35 feet.

Mr. Manuel had envisioned two story townhomes, however he was planning to sell the lots to a developer who would build the townhomes.

Pat Sisul, Engineer, discussed the drainage proposed for the property. It would be a private stormwater system. The plan was to handle the drainage through drywells and he explained the standards that they would follow.

**Proponent:** Ed Netter, local developer and builder, liked the variety of homes that was being proposed. There was a need for lots like this in Canby as it gave people a chance to buy a home in Canby who normally would not have a chance. It also opened up new lots developers could purchase to build. He thought having no parking on the private road could be enforced and would not be a problem. He was in favor of the subdivision for future homeowners and builders.

**Opponents:**

Carol Hill, Canby resident, questioned how the fire engines and emergency responders would get in and out of the development. The street was narrow and they would have difficulty turning around. If someone was parked where it was prohibited, would they be able to get in?

Mr. Brown said staff believed the application met the Fire Department requirements because the radiuses were expanded. He explained how the trucks would turn around.

Clint Barber, Canby resident, submitted pictures of how the rain flooded the storm drains in front of his house and his neighbor's house. The street sweeper was not keeping the street clean. He was a former fire fighter and had driven fire and garbage trucks as well. He thought the fire trucks would fit, but if the Fire Department thought it was a danger to the truck, it would not go in and the fire fighters would walk in. Garbage trucks might damage the sidewalks or curbs trying to get in and they would have to pay for that. This kind of situation was not something these service providers would be comfortable with. There was limited parking and it would make it difficult for people to have birthday parties and family gatherings. He thought the overflow parking would go on 6<sup>th</sup> Avenue. He thought the electric and water rates would go up the more the services were used. There would be traffic impacts on 6<sup>th</sup> and with all the new development he was concerned Canby would outgrow itself. The timing of the traffic report was in August when school was not in session. They had more growth than they could keep up with and they needed to preserve what they had. He was against this development.

Brian Nava, Canby resident, said one of the appeals to Canby was the small town feel. The Code was important, but the words that caught his attention were minimal, intense, and haste. Information had been

received tonight and he thought they could do better than the minimal. He was concerned there would not be enough parking and people would use 6<sup>th</sup>. He was a volunteer fire fighter, and if the Fire Department said the truck would fit, then it would probably fit. The higher density population made it riskier for safety. On a school day there were many children walking and biking to and from school. There were significant risks in adding more vehicles to the roads with the children. It would also add more students to already crowded classrooms. He questioned whether these units would be affordable housing. He did not think there was much public interest in the neighborhood for this development. The water drainage problem was a health issue. He encouraged the Commission to review the public testimony and oppose the development.

Robert Taylor, Canby resident, lived across the street from where the new private road would exit onto 6<sup>th</sup> Avenue. He was concerned about traffic, parking, and livability. He understood every property owner had the right to develop their property within certain limitations. The first proposal had a lot of issues and the changes to the proposal had been done last minute. The original traffic report that was done said there would be 42 exits and ingresses onto Ivy and that changed to 142 exits and ingresses onto 6<sup>th</sup>. There was 150 feet from the corner of Ivy and 6<sup>th</sup> to the lot directly to the west which was the absolute minimum separation from Ivy. He thought the traffic problems on Township would move south towards 6<sup>th</sup>. There was no way to tell that without a good traffic study. He questioned how the no parking on the private street would be enforced. There were issues with the stormwater. They had to make sure the drains were located on the lowest area of the property and that there would be curbs to prevent the water from running into neighbor's yards. Traffic would increase and there were safety concerns with sidewalks, street lighting, and street trees.

Regina Taylor, Canby resident, submitted a one page handout. She was speaking on behalf of the following people: Charlie Yankus, Terri Yankus, Gwyn Benson, Larry Graff, Stephanie Boyce, and Wayne Fetters. She had submitted written comments previously and the applicant had made some design changes after her comments were submitted. The one page handout was in response to the changes that had recently been made. She appreciated the changes. She read from the staff report regarding lot sizes and lot size averaging in the R-1.5 zone. She disagreed that the criteria for lot size and lot size averaging had been met with an average lot size of 5,646 square feet and one lot below the minimum lot size standard. In the Code it stated the Planning Commission could approve an exception to the minimum and maximum lot area standards if certain standards had been met. One of those standards was the average area of all the lots excluded the land in public areas and areas where building was not permitted. She thought this included the private street, which was also the utility easement, and she read the definition of a street. The applicant utilized the Code for joint and cross access. The use of joint and cross access was a savvy design maneuver, but it did not remove the need to follow other standards, such as lot size averaging calculations. If the street was included, the average lot size would be 4,407 square feet which was below the required 5,000 square feet minimum. Six of the eight single family residences would not be in compliance. The average lot size numbers were also skewed by the two existing homes that would not be torn down. If they did not include the sidewalks and visitor parking area as public areas, the average lot size for single family residences was 4,752 square feet, still below the minimum. The staff report stated they did not include the common wall lots in the lot size average calculations. However, these lots did not meet the 3,000 square foot minimum if they were calculated the same as other single family dwellings. She was also concerned that gross lot size was used instead of net lot size. A public benefit had to be demonstrated to allow more than 10% of the lots to be outside of the minimum or maximum lot area. A revised plan submitted by the applicant showed only one lot below the minimum which was within the 10% allowed. She disagreed that the criteria had been met since all of the townhomes and six of the single family homes were out of compliance with the lot size. The single family lots and townhomes were not out of character with the neighboring properties, but they were at a significant increased density. The design of the entire subdivision was not satisfactory as currently presented regardless of the market. A queuing analysis would be needed to know how much delay was caused by school buses on 6<sup>th</sup> and she hoped one would be requested. She did not know why staff applied the sidewalk standards when this was a subdivision application and the subdivision design standards should be applied which required sidewalks on both sides of the street. That had mostly been met by the application except for lot 10. There were other subdivision design standards

that had not been applied to this application such as street alignment, intersection angles, marginal access streets, utility easements for all street lot lines, street lights, and street trees.

**Rebuttal:**

Mr. Manuel thought the lot size averaging had been done correctly. This was a reasonable plan that generally met the Code. He had addressed most of the complaints from the original application. It came down to whose calculations they were going to use. If this project was not done, there would still be four accesses onto Ivy. He did not know what would happen to the houses on the property in the future.

Chair Savory closed the public hearing at 9:14 p.m.

Commissioner Boatright asked whose calculations were right. Mr. Brown said he had made the determination that the calculations proposed were right. He thought there was evidence that the townhomes were not counted as there was a different development standard for townhomes than detached single family homes. They always excluded public streets for lot size averaging, but this was a private road and every aspect of the road was private. He was comfortable that it was included.

Commissioner Serlet asked if they were requiring a fire hydrant next to lot 1 as suggested by the Fire Department. Mr. Brown said they could make sure that was included in the final construction plan.

Mr. Brown said another issue with private roads that were easements was whether setbacks applied internally, especially front setbacks.

Commissioner Boatright thought they were bending over backwards to create a housing density at this location just because several years ago the Comprehensive Plan designated it as such. Mr. Brown replied the intent was to balance urban sprawl and accommodate future growth. The plan tried to find the most suitable areas for higher density. The question was whether it was time for a transition to the higher density on this property, and the applicant thought it was. The idea was to look at the highest and best use of the property.

Commissioner Mottern would like to see a recalculation of the lots. He thought it was trying to put a square peg in a round hole.

Commissioner Serlet said there had been a lot of public opposition and this development did not seem to fit. He was not in favor of it.

Commissioner Varwig thanked all of those who came to testify. The Commission had to decide whether applications met the Code or not. He thought the community should grow, but did not know if this application fit. There were many questions left unanswered.

**Motion:** A motion was made by Commissioner Varwig and seconded by Commissioner Serlet to postpone making a decision on the application until some of the confusion could be clarified. The motion passed 4/2 with Chair Savory and Commissioner Boatright opposed.

Chair Savory thought there was an inadequate traffic study to show the traffic impact, which he thought would be more than what was indicated. He thought the parking was also inadequate. He was not satisfied with the idea of including the street in the lot size averaging. Several last minute items were submitted that he did not have a chance to put into context. He would have voted no on the application.

Mr. Brown said unless it was postponed to a date certain it would have to be re-noticed and the process would start over. He also needed direction on the questions that needed to be answered. Did they want staff to look at a different way to do the lot averaging and have the applicant redesign the property with fewer lots?

Commissioner Boatright also would have voted no. He was unclear whether or not the road should be included in the averaging. He thought they should make a decision on the application tonight.

Commissioner Varwig said the applicant had put in a lot of work, and he did not want to see it denied outright. He thought some of the issues needed to be clarified and the application needed to be amended to fit the neighborhood better.

Chair Savory re-opened the public hearing and asked the applicant if he would be willing to amend the application.

Mr. Manuel said the issue came down to economics. If they took the road out of the lot size averaging calculation, that would eliminate three lots. If traffic safety was a worry and they would accept the lot size calculations, he would be willing to pay for a traffic study. If the calculations were unacceptable, he asked that the Commission approve the zone change only and he would rethink the subdivision.

Chair Savory closed the public hearing.

Commissioner Hall thought they could make a decision tonight and approve the zone change only.

Commissioner Mottern was concerned about the Comprehensive Plan issue and he was not ready to approve the zone change at this time.

Commissioner Serlet thought the application needed to be changed. Decreasing the number of lots was a financial burden, but they had to balance that with the quality of life for citizens.

Mr. Brown reminded the Commission that the zone change would be forwarded on to the City Council. This was just a recommendation to the City Council.

Commissioner Varwig withdrew his motion to postpone the decision. He stated the applicant had the right to do something with this land, but this was not the right fit.

**Motion:** A motion was made by Commissioner Boatright and seconded by Commissioner Serlet to deny **ZC 17-02/CUP 17-05/SUB 17-04 S Ivy Park Subdivision, Allen Manuel**. The motion passed 6/0.

**6. FINAL DECISIONS - None**

**7. ITEMS OF INTEREST/REPORT FROM STAFF**

Mr. Brown said the next Planning Commission meeting would be held on Monday, October 23, 2017 which would be the continuation of the proposed subdivision on N Maple.

**8. ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION**

Commissioner Mottern asked what the procedure was to make the changes to the Comprehensive Plan as staff had suggested. Mr. Brown stated these policies had been placed in the Plan so they didn't have to change the regulations. Legislation passed in 1991 that said that was not allowed. They might need to consult with a land use attorney to get a ruling on it. It would take Council approval to make the amendments to the Comprehensive Plan as it was an expensive process and took a lot of staff time.

Commissioner Mottern suggested holding a work session on the topic. Mr. Brown would send him some of the documentation regarding this issue.

**9. ADJOURNMENT**

The meeting was adjourned at 9:52 pm.