



APPROVED September 27, 2010

**CITY OF ALBANY  
HEARINGS BOARD**  
City Hall Council Chambers, 333 Broadalbin Street  
Monday, August 2, 2010  
4:15 p.m.

**MINUTES**

Hearings Board Members present: Dala Rouse, Cordell Post and Larry Tomlin

Hearings Board Members absent: None

Staff present: Community Development Director Greg Byrne, Community Planner Janet Morris, City Planner I Evan Fransted, and Administrative Assistant I Sheena Dickerman

Others present: 9 others in audience

**CALL TO ORDER**

Chair Dala Rouse called the meeting to order at 4:15 p.m.

**PLEDGE OF ALLEGIANCE TO THE FLAG**

**ROLL CALL**

**QUASI-JUDICIAL PUBLIC HEARING, Case Files CU-02-10**

Chair Rouse called to order a public hearing on Planning File CU-02-10, Conditional Use to allow a storage warehouse building for FISH of Albany. The applicant is FISH of Albany.

Declarations: None

Staff Report:

Planner Evan Fransted summarized the written staff report. The application is for a Conditional Use to allow the construction of a 1,200-square-foot storage warehouse building that will be used by FISH of Albany. The property contains an existing single-family house that is used by FISH as a shelter for single women and families called the FISH Guest House. The property is located on the corner of 12th Avenue and Penn Street in SW Albany (1140 12th Avenue SW). The owner of the property and applicant is FISH of Albany.

A conditional use application is necessary for this project to consider the potential impacts to the surrounding area. Other examples of conditional uses in RS-6.5 zones are: educational institutions, churches, assisted living facilities and community services.

The first review criterion requires that the proposed use is consistent with the intended character of the base zone and the operating characteristics of the neighborhood. The FISH property is zoned RS-6.5 (Residential Single Family). The Development Code says the RS-6.5 zoning district is intended primarily for low-density urban single-family residential development. Community services are defined as uses of a public, nonprofit, or charitable nature generally providing a local service to people of the community. Community services, like the FISH Guest House, are sometimes located in residential neighborhoods.

The operating characteristics of this neighborhood include people living at the existing shelter and activities associated with the surrounding residential neighborhood. Activities in residential neighborhoods typically occur

between about 6:00 a.m. and 11:00 p.m. People drive to and from their homes and are outside doing maintenance and recreational activities.

The proposed storage warehouse will store furniture, supplies, and non-perishable food for the FISH Food Pantry and the Guest House. The building is expected to be used from 10 a.m. to 3 p.m. about three times a week. The application says no vehicles larger than a box van will utilize the facility. The building will be used to store several tons of canned food collected during FISH's annual food drive. The food is expected to be delivered in two or three vehicle trips and unloaded by six or eight people within a couple hours.

Staff found that the storage warehouse is associated with the FISH food pantry and shelter that are classified as a community service. The hours of use are similar to the hours typical of a residential neighborhood. In conclusion, the proposed use is consistent with the intended character of the base zone and to the characteristics of those in the surrounding neighborhood, as well as the shelter on the property.

The proposed building will be 1,200 square feet and 15 feet tall. The existing two-story house on this property is around 3,400 square feet and 20 feet tall. The proposed building will have wood siding and a composition roof to match the existing house. The site plan shows the location of the proposed building would be on the lot line between Lot 5 and Lot 6 of Rose Addition Subdivision. A condition approval requires the applicant to submit a subdivision replat application to remove existing subdivision lot lines. Once the subdivision lot lines have been removed, the building will not encroach into any setback. The project will be required, as a condition of approval, to add more landscaping to property near Penn Street. The building will be setback 10 feet from the east and south property lines. Buffering and screening will be required in those areas.

The City does not require a traffic study for projects that generate less than 50 new vehicle trips at the peak traffic hour. According to the application, the proposed use will generate an estimated 3 vehicle trips per week.

The 12th Avenue street frontage along the site is constructed to City standards. The Penn Street frontage of the development is not constructed to City standards. The City Engineer has determined that improvement of the Penn Street frontage of the site is not now timely. A recommended conditional of approval is to require the applicant to sign a Petition for Improvement/Waiver of Remonstrance should there be a request to form a Local Improvement District (LID) for street improvements on Penn Street. In conclusion, the public street system can accommodate the proposed development.

Public sanitary sewer, water facilities and storm drainage are available to the site and are adequate to accommodate the proposed building. The Oregon Fire Code (OFC) requires all portions of buildings constructed in the City to be located within 400 feet of a fire hydrant. The proposed building will be located approximately 580 feet from the closest fire hydrant located at Tadena Street SW and 12th Avenue SW. The Fire Department requires that the building either install a fire hydrant on 12th Avenue or install fire sprinklers in the building. Public Works has indicated that the 6-inch water main on 12th Avenue would not have the optimal capacity to install a fire hydrant. As a result, a recommended condition of approval requires the applicant to install an adequate fire sprinkler system per Oregon Structural Specialty Code requirements.

The fifth review criterion requires that the proposal will not have significant adverse impacts on the livability of nearby residentially zoned lands due to noise, glare, odor, litter, hours of operation, privacy and safety issues. Once construction is complete, the proposed addition is not expected to create a significant amount of litter, noise, or odor. The hours of operation will be similar to the neighborhood. Buffering and screening will reduce privacy and safety issues. The application says that "exterior motion-detection lighting" will be installed. A recommended condition approval requires that any lights must be arranged to reflect the light away from any abutting or adjacent residential district.

The sixth and final review criterion requires that any special features of the site have been adequately considered and utilized. There are no special features of this site to be considered, so this review criterion is not applicable.

Rouse asked about page 9, Findings 4.2, if the applicant would be connecting to the house or having a new meter. Morris stated that the applicant did not propose it at the time of submittal. The decision to either put a fire hydrant or a sprinkler system has come during the process and the applicant will need to accommodate providing water for fire

protection. A fire hydrant cannot be supported on the existing water line. Post said that the applicant would probably want to hook into the current system rather than paying for a new main. Rouse asked for staff to be clearer on this.

APPLICANT TESTIMONY:

Annette Hobbs, 3047 SE 30<sup>th</sup>, FISH of Albany is hoping to build an oversized garage, in order to store food for the food pantry program. The garage will save FISH storage fees and will be more convenient for personnel. FISH has designed and scaled the building to preserve the beauty of the property and according to Albany's DC. From the neighbors' perspective, the building will look like a garage. It will be frequented less often than typical garages and no public business will be conducted there.

Hobbs stated that the City of Albany's Planning Department regards their proposed building as commercial because FISH will be storing canned food. This classification is causing extra expense to a non-profit organization that relies on community donations and benefits the needy.

Hobbs addressed the conditions for a conditional use permit listed in the staff report. Starting with 2.1, the replat, she said the existing house was built and landscaped across three lots from the Rose subdivision. For nearly 100 years the boundary lines have given the FISH property a 55 foot by 200 foot lot. Now the City is requiring a replat that is costing FISH \$4, 500, for fees and a survey, to erase lines.

Hobbs continued to item 2.2, landscaping, she handed out a diagram (Exhibit A) showing what FISH intended to do with landscaping the setback on Penn Street. FISH intends to add at least one tree and 10 to 15 shrubs. FISH is hoping to move 2 cedar trees in back. If moving the trees is unsuccessful they plan to plant new trees.

Hobbs moved on to 2.3, screening. The proposed building meets City standards for scale and style. It will not create odor or unsightly materials. She asked what FISH was screening the neighbors from. She commented that the south property owner was allowed to building on the property line. She noted that their structure is buffering the site of FISH's property already. The east side will be fenced, and will be landscaped with shrubs and bark to beautify the blank wall that the proposed building will have. She said that she did not understand the buffering. There shouldn't be any interference with the neighborhood, in regards to lighting, odor, etc. She stated that the guest house was the best maintained property in the area and FISH intends to keep it that way.

Hobbs said that in September volunteers from United Way Linn County will be coming to put in PVC piping which will allow underground sprinkling for the entire property. FISH had hoped to have the building in place but will work around this.

Hobbs said that the landscape plan, Exhibit A, is a quick sketch, FISH will get a professional copy to the planning department as soon as possible.

Hobbs said that the existing fence is a 4-foot chain link fence that was installed by volunteers from the City of Albany maintenance department headed by Dick Connelly and is up to code. FISH is planning to turn part of the fencing to enclose the backyard but to exclude the setback on Penn Street for landscaping.

Hobbs stated that FISH will submit a signed and notarized Petition for Improvement/Waiver of Remonstrance prior to issuance of a building permit.

Hobbs said that regarding the fire sprinkler system, quoted Albany Fire Department personnel "the neighborhood is currently underserved by fire hydrants. The current Oregon Fire Code requires the maximum distance between existing fire hydrants to be 550 feet." The current spacing between the two closest fire hydrants on 12<sup>th</sup> Avenue SW, that serve this property, is approximately 933 feet. The water works on 12<sup>th</sup> Avenue needs to be at least 8 inches to support a fire hydrant. The pipes are 6 inches. She stated that in her opinion the problem appears to be the City of Albany's problem and not FISH of Albany's. FISH is working with the fire department to come up with a plan that will meet code. The southwest corner of the proposed building will be 570 feet from the fire hydrant at 12<sup>th</sup> Avenue and Takena Street. The existing building, the guest house has an early warning detection system in place, which is wired and operational 24 hours and which can be extended to the proposed building. She asks that the conditional use permit not be held up regarding this matter, in order that FISH can continue to negotiate with the fire department

to come up with a plan. FISH plans on using exterior motion detection lighting which will be directed along building walls in a downward slope.

Hobbs concluded with that FISH would like to consider the City of Albany as being a partner in the endeavor of this project rather than a barrier.

Post said there were a lot of conditions for a garage. Rouse agreed. Fransted explained that according to building code the proposed building is considered to be a commercial building. Morris stated it was not a *residential* accessory building associated with the use of the building on the site.

Rouse asked if doing the first section of review criteria 2, "size, building scale, and style, intensity, setbacks, and landscaping" would still require FISH having to do setbacks. Morris explained that the mitigation portion always deals with landscaping. Rouse commented that her concern was the screening being required, not the landscaping. Fransted explained that the screening was required because it was a commercial building in a residential area. The ADC states that if it is a commercial use it requires a 10-foot buffer with screening. Morris explained that if it was a residential garage that was accessory to the guest house it would not be a commercial building and would have met the setbacks of a detached accessory building. She added that the proposed building is over 750 feet and buffering may have been required anyway. Once a building is over 750 feet the City requires a site plan review. It would have been a site plan review if it was a residential use. The proposed building is a warehouse independent of the use of the property. Rouse asked if the proposed building was in scale with a garage in the neighborhood. Fransted said that it is in scale with the residential houses in the neighborhood.

Post asked if any variances were explored for the requirements. Morris replied that FISH had not applied for any variances. She stated that FISH had a preapplication meeting that discussed the issues in April. She explained that some of the buffering and screening could be waived if the Hearings Board (HB) felt that it was being met by the adjacent property.

Post asked about the sprinkler system being used versus using the early warning system already in place. Morris replied that the condition use criteria requires a finding that police and fire service can serve the property. Currently that has not been determined that simply being able to drive there is sufficient. The fire department says that they cannot serve this use. Planning is agreeable to anything the Fire Department will accept. She said that the condition should be amended to say "or as determined by the Fire Marshal." A mitigation that has been accepted in the past is that if a development could not provide a fire hydrant then provides a sprinkler system. One building provided a water tank. Post recommends that the condition be flexible if the Fire Department is able to come up with an alternative.

Tomlin asked if the building would have new electrical service or tied to existing. Hobbs replied it would be tied to existing.

Post asked about the screening. Morris explained that the code allows for providing only half of the screening if it is provided on adjacent property. If it is screened then the property owner does not have to provide the shrubs. She noted that if FISH was able to work around the existed property lines it would not need a replat but it does not work for FISH to be able to do this. Post said it looked the property lines were solid lines and not dotted. Fransted replied that there are four property lines within the property that were platted by a former subdivision. This was verified by Chuck Gibbs (Linn County Surveyor).

#### Testimony In Favor:

Darrell Fisher, 1021 Morse Lane; of Fisher Construction services has tried to help FISH with this project. He asked the Hearings Board to think about this project from a community standpoint, is this the best use of funds. All FISH's funds come from donations. He wanted to address the buffering and the fire department requirements. He explained that staff is asking for screening on the south and what FISH would be screening is the other property's building that is on the property line. On the east side of FISH's property they would be screening the other property's backyard. He stated that if he owned the FISH's guest house and built the proposed building he would not have these issues. He asked that the fire department requirements to remain open to discuss with the fire department.

Opposing Testimony:

Robert Fletcher, 1094 13<sup>th</sup> Avenue, expressed that he had no objections with FISH as an organization, but has objects to a commercial storage warehouse going in a residential zoned area. He stated that there is rental storage property in Albany available. He was concerned with the traffic caused by the commercial building. He commented that others could come in and ask for a commercial building and property value will go down.

J.D. Towery, 1073 SW 13<sup>th</sup> Avenue; stated that he came with his father, James Towery. His father has lived in the house for 30 years. They live at the end of Penn street. There have been many problems on Penn Street. He is opposed to having a warehouse in the neighborhood. He noted that his father has been involved with the community, FISH, the Boys and Girls club, etc and is not opposed to community service programs. He agreed with Fletcher regarding FISH leasing another warehouse. He is concerned with the traffic. Rouse explained that it was a van that will come 3 times during the daylight hours.

Rachel Seiders; 1069 SW 13<sup>th</sup>; stated that the proposed building is bigger than her house. She is concerned about her property value with a commercial building being built. She is also concerned about how it will affect their neighborhood and the traffic on Penn Street.

Seiders said that she would not be opposed if FISH subdivided their property and a home was built. Rouse explained that traffic would be less for the proposed building; a house averages 9 trips a day.

Seiders commented that FISH would not need to do buffering near their property line.

Rouse asked if Seiders accessed her garage off Penn street. Siders affirmed.

Applicants Rebuttal:

Hobbs mentioned that the proposed building would not increase traffic on Penn Street. She stated that if FISH goes out of business the property would be sold as a house. The garage will look like the house, be smaller and well maintained.

Hobbs commented that the house across the street is the same distance from the fire hydrant and fire department is able to address a fire at that location. Morris explained that the fire code is the State Fire Code. The Fire Marshal has the authority to mitigate something that is acceptable. She presented a modified condition to condition 4.1. Before an occupancy permit for the new building will be issued by the City's Building Division the applicant must install a fire prevention system that is has been approved by the Fire Marshal and meets Oregon Structural Specialty Code requirements if applicable. She added that for the buffering and screening, ADC 9.210 says that the director may waive the buffering and screening requirements if provided on an adjoining property in accordance with this code. The Hearings Board could make the requirement to do less.

Chair Rouse closed the public hearing at 5:10 p.m.

Board Discussion:

MOTION: Post moved to approve with conditions as modified with the first modification as described by Morris to condition 4.1, and an additional modification to remove the buffering and screening requirement to the southern boundary of the property of the application. Tomlin seconded it.

VOTE: Motion **passed** unanimously.

**QUASI-JUDICIAL PUBLIC HEARING, Case Files PA-04-10**

Chair Rouse called to order a public hearing on Planning File PA-04-10, at 5:15 pm.

Declarations: None

Staff Report:

Planner Evan Fransted summarized the written staff report. The application is for a Partition Tentative Plat that would divide a 38,125-square-foot parcel of land into two separate parcels. The property proposed to be divided is located on the south side of Spencer Mountain Road, west of North Albany Road in North Albany. The property is owned by Marjan Amesbury. The partition plat and application were done by K&D Engineering. A geotechnical investigation was submitted with the application. The property where the subdivision is proposed is zoned RS-10, which is Residential Single Family. The minimum average lot size in RS-10 zoning districts is 10,000 square feet. The partition plat shows that the Parcel 1 will be 19,158 square feet. Parcel 2 contains the existing house and will be 18,967 square feet.

The proposed partition will divide the entire 38,125-square-foot parcel owned by Marjan Amesbury, there will be no remainder. The properties to the north, across Spencer Mountain Drive NW, have access to Spencer Mountain Drive. The adjoining property to the south and east has access to Spencer Mountain Drive NW. The adjoining property to the northwest has access to Broadway Street by an existing driveway shared with the abutting property to the north. The adjoining property to the southwest has access to West Thornton Lake Drive by an existing driveway that runs through the properties to the south.

Spencer Mountain Drive NW is classified as a local street and is constructed to City standards with curb, gutter, and sidewalk. The City does not require a traffic study for projects that generate less than 50 new vehicle trips at the peak traffic hour. The proposed development will add about 10 new vehicle trips to the street network. Albany's Transportation System Plan (TSP) does not identify any level of service or congestion problems on streets adjacent to the proposed subdivision.

The staff report originally stated that this site did not share in the cost of constructing the street improvements along its frontage on Spencer Mountain Drive. The applicant's representative provided a letter written by Bud Spencer, who paid for the improvements on Spencer Mountain Drive. The letter states that the property did share in the cost of constructing the street improvements. In light of this late information, staff recommends removing Condition 3.1 that says "Before the City will approve the final plat, the applicant must pay a street connection fee to the City based on the overall site's frontage on Spencer Mountain Road NW".

All public utilities (sanitary sewer, water, and storm drainage) exist along the full frontage of the proposed parcels, so no public main extensions are needed. A recommended condition of approval requires that the applicant must connect the existing house to the public sanitary sewer system. In conjunction with this work, the existing private septic system must be decommissioned.

The property does not have wetlands, wildlife habitat or archeological sites. The property is not located in the 100-year floodplain or in an historic district. There are some large trees on the property that include fir, maple, oak, alder and madrone trees. There are 15 trees larger than 8 inches in diameter identified on the tentative plat. The partition plat approval does not require removal of any existing trees, but the placement of a house on Parcel 1 in the future may require tree removal and will be addressed at that time.

There are steep slopes located on the property. The applicant was required to submit a geotechnical report with the application. The report concludes that the lots in the partition are suitable for the proposed development." The Geotechnical Investigation includes recommendations for building construction. A condition of approval of the partition will be that the recommendations be followed. Post recommended that the Albany Development Code should be changed to not require a public hearing for a land division on a property with steep slopes.

Other recommended conditions of approval include: A requirement that drainage from roofs, driveways, and parking areas must be directed to a City storm drain or other City-approved drainage system. And a grading permit must be obtained from the City's Engineering Division if more than 50 cubic yards of material are to be excavated or filled on slopes steeper than 12 percent. Fransted noted that neighbors would also receive a notice and an opportunity to comment when the grading permit application is submitted.

Post suggested that staff add to the ADC list of changes to have hillside land division be a staff decision. Morris affirmed. She explained that if it was a Type I-L, the same as other partitions not in the floodplain, it would be a staff decision and appealed to LUBA.

APPLICANT TESTIMONY:

Jack Burrell, K&D Engineering, representing Marjan Amesbury, stated that with the elimination of condition 3.1, as recommended by staff, the applicant agrees with the conditions of approval and asks for the Hearings Board's approval.

Chair Rouse closed the public hearing at 5:27 p.m.

Hearings Board Action:

Post moved to approve the application with conditions as modified to remove condition 3.1. Tomlin seconded it. Motion **passed** unanimously.

NEXT MEETING DATE: TBD.

ADJOURNMENT

Hearing no further business, Chair Rouse adjourned the meeting at 5:30 p.m.

Submitted by

Reviewed by

*Signature on file*

*Signature on file*

Sheena Dickerman  
Administrative Assistant I

Janet Morris  
Community Planner