

Minutes of the Veneta Planning Commission

September 2, 2014

Present: James Eagle Eye, Len Goodwin, Kevin Conlin, and Calvin Kenney

Absent: Lily Rees

Others: Kay Bork, Community Development Director; Lisa Garbett, Associate Planner; Ric Ingham, City Administrator; Darci Henneman, Assistant City Recorder, and Jesse Lovrien of Hayden Homes

I. Review Agenda

Chair James Eagle Eye opened the Veneta Planning Commission meeting at 7:04 p.m. and reviewed the agenda.

II. Public Comment

None

III. Approval of Minutes

MOTION: Len Goodwin made a motion to approve the July 1, 2014 Planning Commission minutes. Kevin Conlin seconded the motion which passed with a vote of 4-0.

IV. Public Hearing – Variance Request, V-1-14

Variance request to Veneta's Wetland Protection Ordinance found in Veneta Municipal Code (VMC), Chapter 18.10 per Veneta Land Development Ordinance 493, Section 4.12(3) (k) for new residential development proposed to impact the Greenway Overlay Zone (GW).

1. Chair James Eagle Eye opened the Public Hearing at: 7:06 p.m.

2. Declaration of Conflict of Interest or Ex-Parte Contacts
None

3. Staff Report

Garbett reviewed the applicant's variance request which if approved, would impact wetlands and Greenway Overlay Zone within the Applegate Landing Phase 3 including lots 109 through 113, and 141. Lot 109 is completely encumbered by the Greenway Overlay Zone and contains a small wetland. The applicant is requesting variance approval for approximately 307 sq. ft. of wetland impact and approximately 40,000 sq. ft. of Greenway Overlay Zone impact. If granted, the variance will allow development of single family residential (SFR) homes including fences. She said if the variance is not granted, staff would then apply the Greenway Overlay Zone at the time building permits were issued and legal counsel recommends we add the provision from the VMC 18.10.060 (1) "for parcels that have no usable building site through application of the requirements, a variance may be granted to allow development on the parcel; provided that the design of the development minimizes impact to the wetland" to the Land Development Ordinance under Section 4.12.

In response to a question from James Eagle Eye, Garbett said an approved variance would allow single family development in the Greenway Overlay Zone including fencing and minor building activities.

Garbett said this property is part of the Southwest Area Plan (SWAP) which was amended and approved on April 10, 2006 along with the SWAP Wetland Variance. She said the Greenway Overlay Zone code language which included the 50 ft. buffer from wetlands was approved on July 24, 2006 – three months later. Garbett said the SWAP Wetland variance allowed wetland impacts

for road construction and connectivity (pedestrian pathway) but didn't address stormwater infrastructure or development on individual lots.

Garbett said approval criteria would include the Wetland Protection Ordinance in VMC 18.10.060 (1). She said public hearing notices were published in the Fern Ridge review and posted at City Hall at least 10 days prior to today's hearing. No public comment(s) were received.

Garbett said staff is recommending approval of the variance given the close timing of the three approvals of the Greenway Overlay Zone Amendment, SWAP Amendment, and SWAP Wetland Variance. She said after reviewing staff reports and minutes from that time, staff concluded that buffer averaging occurred with the SWAP. She said at that time, staff was updating the Greenway Overlay Zone language and as part of the SWAP Amendment, significant wetlands were retained. She said based on the new wetland delineation with Phase 3 there are Greenway Overlay Zones on some of the lots that were approved with the tentative plan and it was staff's best guess that the Greenway Overlay Zone was accommodated during the SWAP Amendment.

Bork said looking back at the record, it wasn't clearly stated how the Greenway Overlay Zone would be applied other than in the records staff recently reviewed, the buffering was considered during the open space layout and the delineation did show wetlands. She said there was some trading going on back and forth, where the wetlands would be and where the buffer would be. She said but at the same time the Greenway Overlay Zone was being considered, discussions took place on setting the buffering distance anywhere from 15 ft. to 50 ft. and as we now know, a 50 ft. buffer was approved. She said it's not clear how the Greenway Overlay Zone was intended to apply to individual lots after reviewing the final order of the SWAP Wetland variance. She said the Greenway Overlay Zone can apply to those lots if the Planning Commission desires because that code provision is in effect. However, there is a record that the Greenway Overlay Zone was already considered during the SWAP amendment.

James Eagle Eye said when the SWAP was developed, it focused on the larger wetlands and how to achieve continuity with the road system. He said he felt a lot of the talk about the Greenway Overlay Zone focused around the existing wetlands at the time and creating the road system. He said we knew as each phase was put it in, delineation would be addressed at that point.

Garbett said another finding from the SWAP Wetland Variance was that staff and the Planning Commission tried to address overall impacts balanced with public need. She said the SWAP Wetland Variance only applied to roads and connectivity so the applicant also requested approval to construct a pedestrian path as part of the site plan review.

In response to a question from James Eagle Eye, Bork said the original variance in 2006 was for transportation infrastructure and didn't deal with individual lots.

4. Public Testimony

Jesse Lovrien, Hayden Homes, 2456 S.W. Glacier Place, Ste. 110, Redmond, OR

Mr. Lovrien said he is in support for the requested variance. He said when they applied for the variance, they felt it was the best way to put the SWAP in line with what the current standard is. He said Hayden Homes conducted a new wetland delineation which did reveal some of the wetland boundaries had shifted. He said the requested variance found to be the best way to bring the layout prescribed in the SWAP to the current wetland boundary. He also said the wetland impacts they are proposing will be mitigated to offset the impacts and they will take the appropriate steps and will also be approved by the Dept. of State Lands and the Army Corps. of Engineers which is already underway.

In response to questions from Len Goodwin, Mr. Lovrien said development of those impacted lots depends on what comes out of this meeting. He said typically a home is built to include front yard landscaping and the backyard is left to the home buyer. He said if the Planning Commission wants to do something different, they will take part in that discussion. He said Hayden Homes wants to minimize the impacts to the greatest extent possible to any wetland. However, they do want to try to develop the site in conformance to the SWAP which shows lots in the wetland as well as the pathway. He said that's an example of what they felt put them in a bind between minimizing wetland impacts or conform to the SWAP. Once they do the delineation, that pedestrian pathway, which they consider to be an amenity for the community and not just for residents, would be in that new wetland area. He said they're hoping to get that pathway through and mitigate the impacts with the variance. He said along with backyard landscaping, they would like to leave that up to the home buyers but if there are restrictions in place, that's the Planning Commissions' decision to make.

In response to a question from Len Goodwin, Mr. Lovrien said with regard to lots 111 through 113, Hayden Homes would try to place the house footprint on lots where possible with the least amount of impact.

5. Chair James Eagle Eye closed the Public Hearing at 7:21 p.m.

6. Questions from the Planning Commission

Len Goodwin said back when we began to approve the SWAP, we were concerned not so much about the specific buffering and wetlands per lots but in terms of maximizing the benefit of the entire area. He said we did use buffer averages for basic approval of the SWAP. He said in this case, we have discovered that perhaps the averaging wasn't the best because delineation has produced additional wetlands. He questions that 317 sq. ft. is truly a wetland. He said in most cases it was a puddle that existed when the examination was done. He said the developer has provided clear indication of their intent to minimize impact to the greenway buffer. He said in looking at the diagrams, he concludes that can happen without too much difficulty. He said if it becomes necessary at permit time, to deal with restrictions on how a backyard is used or designed, to assure the Greenway Overlay Zone buffer is protected, we could consider that but frankly it's so modest, he didn't know if it would be worth the effort. He said he would support the variance.

Calvin Kenney said the original buffering was done in 2006 and because wetlands expand and contract over time, it may not even have been there at that time.

James Eagle Eye said he is concerned with setting a precedence to some degree. He said the Greenway Overlay Zone ordinance was approved with a 50 ft. buffer and a variance system to address situations where it may impose on existing lots, dwellings, and fences that would be in a wetlands. He said at this point we would be speaking specifically to lot 109 which is completely in the greenway. He said this would allow a home to be built in the greenway. He said this was not the intent of the greenway. He said he has concern with that lot being an issue.

Kevin Conlin said it's likely that lot is entirely in the Greenway Overlay Zone because of the averaging methods used in the adoption of the 50 ft. buffer. He understands how difficult it is to come up with rules and he appreciates the flexibility to recognize that some of the assumption made at that time may need to be revisited. He said we need to act in a flexible manner so we don't do more harm than good. He said in this case it's important to remember with respect to the issue of setting precedence, this is a variance. We're not rewriting any existing rules and if we do this appropriately and responsibly then if and when this issue come up for discussion, the record will show that the appropriate steps were taken to review this issue. He said overall it seems to be fairly modest and the proposed order is a conditional approval. He said given that, staff's report, and the history of the piece, he felt in this instance, the best way to do the greater good and the

least harm is to approve it.

James Eagle Eye said the Planning Commission approved the whole site and the buffer averaging. He said if the site had been built out at that time, it would have moved forward with code at that time. He said in an attempt to improve the City's wetlands and stormwater drainage, we came up with new code (the overlay). He said it's important to keep in mind, now that we're looking at approving it, and we've gone with what the original SWAP called for and we delineated Phases 1 and 2 but now have new codes in place which he felt that bears some consideration.

Len Goodwin said he recognizes the concern and understands it but on the other side, it's almost as though the developer could raise a goal post argument if we denied the variance. He said the Greenway Overlay Zone setback was formally adopted in the code afterwards. He said there may be good grounds to argue against it, you could see a developer arguing that the plan was fixed at that time and subsequent code changed the rules on them, which is not something they can legitimately be held responsible for. He said he felt it could likely go either way. He said had this phase been developed when the SWAP was approved, it would have been approved because we didn't have any reason to believe there were wetlands on lot 109. He said nor would we have had to deal with a rigid buffer. He said he felt the best course of action is to move forward. He said it is a variance and not a change in the code, so it demands a showing that there are some unusual circumstances that arose. He suggested we add an additional condition of approval that the development makes the best effort to avoid building footprints in the Greenway Overlay Zone buffer.

Calvin Kenney said he agrees with Len Goodwin but he is more concerned about the 400 ft. of roadway built in the buffer zone than he is about the house footprint.

7. Deliberation and Decision

MOTION: Len Goodwin made a motion to approve the variance with conditions of approval based on the findings in the Proposed Final Order; to minimize placing building footprints in the where feasible. Kevin Conlin seconded the motion which passed with a vote of 3-1. James Eagle Eye noted no.

V. Request for Site Plan Review, SR-2-14 Applegate Landing Phase 3

- a. Request approval of site plan review for proposed storm water facilities to be located within wetlands per Veneta Municipal Code (VMC) 18.10.040(2) (g) and Veneta Land Development Ordinance (VLDO) 493, Section 4.12(3) (b).

Garbett said stormwater facilities can be located in the newly delineated wetlands, which are a permitted use in the Greenway Overlay Zone but subject to site plan review in the Veneta Municipal Code. She said on August 5, 2014 notice was mailed to all property owners within 300 ft. for the entire contiguous site and on August 6, 2014, the notice was posted at the property in accordance with VLDO 493, Section 2.13.

Garbett said the City Engineer noted that any trees planted near the existing power lines in the stormwater facility will be subject to approval by the utility company that owns the power lines. She said the southern stormwater pond is illustrated to impact wetland area. Wetland impacts are subject to approval by the U.S. Army Corps. of Engineers and the Oregon Dept. of State Lands.

Stormwater quality treatment facilities are permitted within wetlands, subject to Site Plan Review per VMC and are permitted within the Greenway Overlay Zone when constructed to City standards. She said stormwater detention and pre-treatment facilities excluding piping and outfall structures may be located no closer than 15 ft. from any significant wetland, unless the facility will enhance

wetland values. Garbett reviewed VMC definitions for “enhancement”, “functions” and “values” to be used to assist in making that distinction. The applicant will use a bio filtration system and native plantings will be vine maples, ponderosa pine, ash trees, and native ground cover to enhance the area which is currently void of trees. She said the proposed plant medium would help provide water quality treatment for impervious areas within the Applegate Landing Phase 3.

Garbett said for any proposed development impacting significant wetlands or within 50 ft. of identified significant wetlands, the applicant shall be required to conduct a wetland delineation to determine the precise wetland boundary for application of the Removal-Fill Law, and if applicable, the nature and extent of development impacts on adjacent wetlands. The application has submitted a wetland delineation prepared by Allen Martin of Geo Resources, LLC.

Garbett said the request also includes extending a proposed pedestrian pathway that was already permitted through the approval of a Variance Request for the Southwest Area Specific Plan (SWAP) in 2006 and also addressed in the Phase 3 of Applegate Landing Tentative Subdivision, Condition of Approval. She said approval of a site plan review must comply with VLDO Section 6.05 – Approval Criteria.

Staff is recommending, based on the findings, conditional approval of the Site Plan Review request.

Len Goodwin said an underground irrigation system was mentioned several times in the staff report which will be provided and privately maintained. He said he’s concerned about assurances or guarantees that there will be adequate resources and a party who will be responsible for that maintenance. He said we’ve had issues with private maintenance of detention ponds in the past and he is concerned it may become the responsibility of the City because that original party is no longer available. He said a private irrigation system is more complex so how are we providing the assurance to the residents of that development as well as to all City residents that they won’t be supporting that system.

Bork said Phases 1 and 2 required the homeowners’ association be responsible for the system. She said the City does maintain facilities but not in the Hayden subdivisions, so now we require them to be owned and maintained by the homeowners’ associations. She said we can add that as a condition of approval.

In response to a question from Calvin Kenney, Bork said Schauer and the Public Works crew keeps an eye on the conditions of the swales to make sure the system is functioning. She said homeowners are really good about notifying the City when the swales aren’t being properly maintained. She said Schauer’s main concern was that the City would not be responsible for maintaining the swales. Bork said the City’s stormwater standards require the plants be irrigated.

MOTION: Len Goodwin made a motion to approve the Site Plan Review with specified conditions of approval based on the findings in the Proposed Final Order and to include a condition to require the Homeowners’ Association to be responsible for maintenance of the stormwater and irrigation system. Kevin Conlin seconded the motion which passed with a vote of 4-0.

VI. Land Use Approval Extension Requests: SR-3-08 (Self-storage, Herb Vloedman)

Garbett said on May 21, 2013 the Planning Commission approved an extension request for a site plan approval. She said this is the second and final extension request. Staff recommends the one year approval with the condition; construction drawings conform to the City’s current Stormwater Quality Standard.

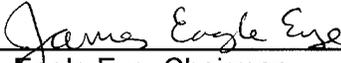
MOTION: Kevin Conlin motioned to approve a final one year extension for Veneta Self Storage, SR-3-08, with the new expiration date of August 4, 2015 and with the condition final construction drawings conform to the City's current Stormwater Quality Standards. Calvin Kenney seconded the motion which passed with a vote of 4-0.

VII. Other

Bork said staff had nothing further other than next month a site plan review will be on the agenda for the conversion of the Moose Lodge building on W. Broadway to a fitness center. She said the site plan will include a variance to request parking and landscaping changes.

VIII. Adjourn

Chair James Eagle Eye adjourned the Veneta Planning Commission to order at 7:45 p.m



James Eagle Eye, Chairman

ATTEST:



Darci Henneman, Assistant City Recorder