

**LINCOLN CITY PLANNING COMMISSION
MINUTES
May 18, 2021**

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, & ROLL CALL

Attendee Name	Title	Status	Arrived
Marci Baker	Chair	Excused	
Kim Blackerby	Commissioner	Present	
Patti Kroen	Commissioner	Present	
Lenny Nelson	Commissioner	Present	
Miles Schlesinger	Commissioner	Present	
MacNeale Smith	Commissioner	Present	

2. AGENDA CHANGES OR REVISIONS

None

3. MINUTES

3.1. Planning Commission - Regular Meeting - May 4, 2021 6:00 PM

MOTION:	Motion to approve the May 4, 2021 Planning Commission meeting minutes
MOVER:	Lenny Nelson, Commissioner
SECONDER:	MacNeale Smith, Commissioner
AYES:	Blackerby, Kroen, Nelson, Schlesinger, Smith
EXCUSED:	Marci Baker
RESULT:	Passed

4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS

None

5. PUBLIC HEARINGS/DELIBERATIONS

1. VAR 2021-01 Markin

Vice-Chair Patty Kroen introduced the hearing for file VAR 2021-01, and read the required statements.

Commissioner Blackerby declared an ex parte contact. He drove past the property after the May 4, 2021 meeting. Mr Appicello asked him to disclose the substance of anything he observed at the site. Commissioner Blackerby said that he observed the house and the deck. Mr Appicello asked if anyone present wished to rebut the disclosure. There was no rebuttal. Commissioner Blackerby stated that he was not prejudiced by his visit and is able to participate objectively.

There were no challenges from the audience to the qualifications or jurisdiction of the Planning Commission.

At Vice-Chair Kroen's request, Mr Mattison read the substantial criteria for the decision, which include Lincoln City Municipal Code Sections 17.17.070, 17.64.010(G), and 17.77.141.

Vice Chair Kroen summarized the public hearing procedures.

Vice-Chair Kroen invited Mr Mattison to present the staff report. Mr Mattison introduced the application, describing the location and the structure that is included in the variance request. The applicant is requesting a setback variance allowing them to rebuild their deck to meet the original setback rather than the one currently required in the code. Mr Mattison displayed comments received from a neighbor who was not opposed to the variance.

The deck was permitted at the same time as the house, and met required County setbacks in place at the time. Those same setback rules are still in place. The applicant went beyond a routine repair, and so is requesting a setback variance.

Mr Mattison presented the history of the project, including a difference between what was proposed and what was constructed. He presented the current rules of the Single Family Residential, Roads End (R-1-RE) Zone from the Lincoln City Municipal Code.

Mr Mattison presented the criteria for granting a variance from LCMC 17.77.140.

Vice-Chair Kroen asked what other properties in the area experience the same exceptional circumstances. Mr Mattison said that he would get to answers shortly in his presentation.

The original deck was existing as compliant prior to the property's annexation to the City.

Mr Mattison explained the variance criteria, and described the applicant's response to each criterion. In response to Criterion 1, staff agrees with the applicant's claim that this is an exceptional circumstance. In response to Criterion 2, other houses in the area have decks and other structures that do not meet the current setback requirements. Staff agrees that the criterion is met. In response to Criterion 3, there is no conflict because the deck footprint is unchanged, and supporting beams that were added do not impede view or access. Staff concludes that the criterion is met. In response to Criterion 4, granting the requested setback variance is the minimum that would alleviate the hardship - without the variance the deck will not be allowed because it is not designable or buildable.

Mr Mattison presented the recommended solutions: 1) approve the variance; 2) approve the setback with conditions; or 3) deny the request.

Vice-Chair Kroen said that she is having a hard time understanding how the response to the first criterion describes the situation as extraordinary, and the response to the second criterion describes the circumstance as being common in the area. She pointed out language in the code that refers to other properties in the same zone or vicinity, and said that there are many lots in the zone that are also weirdly sized.

Commissioner Blackerby asked to understand more of what happened - especially the distinction between repair and renovate. Mr Mattison displayed and read the definitions of repair and replace. Mr Blackerby confirmed that the dimensions are remaining the same. He asked whether it is the same deck that was built in 1985, where the line is between repairing to replacing, and why the City had to take the applicants to court over the matter. Mr Mattison said that it was the complete removal of the deck that made it a replacement rather than the repair. Mr Kim noted the last part of the code section being displayed - that repairs exceeded 50% of the value of the structure.

Commissioner Nelson said that her biggest concern when she read the meeting packet was criterion #2 - she did not see the right that the would be preserved if the variance were granted. She said that decks are not a property right - you can have them if you have room. Mr Appicello suggested that the applicant present her case.

Cathy Markin presented for the applicants. She said that the intent was always to repair the deck and not replace the deck. The replacement was because of excessive rot. Every time they walked on the deck it was shaky. The intention was to shore it up using vertical beams and replace the deck parts that were rotten. She deferred to David Watson, the contractor, to describe the work. Mr Watson agreed that it was always intended to be a repair. When the cantilevered deck was built, it was non-pressure-treated standard fir. They found a lot of unusable material, replacing everything that was rotten as they came across it. An engineer put time into all the parts and pieces, which was presented to the city during the process. He said that they thought that could get away with just replacing the joists, but there were two rotten beams that had to come out. Otherwise the replacement and repair would already have been done out to the existing structure. There is an existing access door that goes out to the deck. If the deck cannot be allowed, the door will not be useable.

Vice-Chair Kroen confirmed the timeline with the contractor, Mr Watson. He responded that the city did not find out that they were not in compliance until late in the process. The setback inspection was passed and so was footing. The applicant's understanding was that the issue at hand was a hot-tub on the plans, which was additional square footage over the original deck - they had the deck at a repair size plus the extension for the hot tub. Ms Markin talked with the setback inspector and also talked to Mr Mattison. She said that it was her understanding at the time that it was the extension for the hot tub that was at issue. She said that in terms of how this is extraordinary circumstances for them - it is true that there are many structures that are sitting right on the property line. But their [the Markins'] structure is falling apart. If they are not able to have the deck, they will have to move the access door to another side of the house, requiring that electrical there must be moved.

Commissioner Blackerby asked whether the lot is a smaller lot than a typical lot in the area. Mr Mattison said that the lot is 4,000 sf and the minimum lot in the area is 5,000 sf. Commissioner Blackerby asked when the applicants bought the house. Ms Markin responded that it was in the fall of 2017.

Vice-Chair Kroen said that they way the variance is presented in the meeting packet - talking about the two violations and then describing the variance as a remedy - makes sense as remedy for the first violation, but that she is not sure how it applied to the second violation. Mr Appicello said that when you do new construction you are expected to comply with the zoning code. New construction is supposed to comply with the setbacks. The applicant cannot claim legal nonconformity because there is new construction allowed, and the repair exceeded the protections

that would have been provided for a legal nonconformity. The only way left to gain compliance with the code is to request a variance for the R-1-RE requirements. He said that he will talk more about that when get to deliberations.

There were no additional questions.

There were no requests for the record to be left open or for a continuance in order to provide additional written testimony.

Commissioner Nelson asked whether the Markins had anything additional to say. Ms Markin said that Mr Mattison had given all of the details she wanted to share.

Commissioner Blackerby moved to close the hearing and the record. Commissioner Nelson seconded. All present were in favor.

The applicant waived the right to submit additional written testimony.

Deliberations:

Vice-Chair Kroen asked whether the City Attorney or staff had any comments to add.

Mr Appicello discussed the criteria. Regarding the first criterion, he pointed out that at least one commissioner had questioned the extraordinary circumstances. Criterion 2 requires that you identify the property right and identify in the same vicinity or zone that other owners have substantially the same right and you are being deprived of that. He gave the example of needing a variance to be able to build a home on your lot when everyone else is able to build. "I need a variance to have a right like they have." What has the applicant argued as the property right? Properties that were built to compliance with the County standards are legally nonconforming when they continue to comply with the county standards. Are there other properties in the area that have new construction or excessive repair that exceed the limits of the nonconformity. The question is whether there is sufficient evidence in the record showing there are other properties in the city that have the right and that they are denied the right. The denial is the hardship that is referred to in criterion 4.

Variances is for exceptional circumstances. The governing body expects that their legislative actions are upheld. Identifying the variance means identifying the property right. Vice-Chair Kroen asked Mr Appicello whether the answer for all 4 criteria needs to be yes. Mr Appicello confirmed that it is so. He also said that staff and the Planning Commission are not the opponent of the applicant. They are there only to decide whether the application meets all of the criteria.

Commissioner Nelson asked about procedure, when there is not an opportunity to go back and ask the applicant about the legal advice given by the City Attorney. Vice-Chair Kroen said that it is her understanding that the applicant can re-apply. Mr Appicello said that the applicant can appeal to the City Council, although the default is a hearing on the record. City Council can choose to have a de novo hearing, which allows the presentation of additional facts.

Commissioner Schlesinger asked Mr Mattison whether voting right now to approve the deck is the end of the process for the applicant. Mr Appicello said that if the Planning Commission approved the variance and it is not appealed, and the appeal period passes, the applicants would be able to proceed with their construction.

Vice-Chair Kroen said that she is not comfortable approving a variance without adequate information in the record to support the findings. She said that she does not believe there is sufficient information in the record to support the findings. She said that she does not find the location to be unique in Roads End.

Commissioner Blackerby disagreed and said that he believes the applicants have exercised reasonable care. He says that the property itself looks better, and that he believes the applicants have met the criteria.

Commissioner Schlesinger said that he believes the Markins deserve an apology from the city. They got into a mess during their repair and it was more of a job than they expected, and then they got mixed up with the Lincoln City hierarchy. He said that he agrees with Commissioner Blackerby that they should be approved and able to finalize their project.

Commissioner Smith said that he is concerned about the precedent it sets - that there is a lack of definition in some of the requirements in criterion 1 and criterion 2. He said that his main concern is whether that sets a precedent for later action. Will we follow our ordinances here or are we going to be a little more loose with that. He said that the Planning Commission needs a little more information to make an informed decision.

Commissioner Nelson said that one of the questions she has is whether the City Attorney sees these cases before they are presented. He confirmed that he gave legal advice to the planning department. Mr Kim said that he approved the staff report.

There were no additional comments from the planning commission.

Commissioner Blackerby moved to approve VAR 2021-01. Commissioner Schlesinger seconded. The motion failed, with commissioners Blackerby and Schlesinger voting yes and everyone else voting no.

Commissioner Nelson moved to deny the request. Commissioner Smith seconded. The motion passed, with commissioners Smith, Kroen, and Nelson voting yes, and commissioners Blackerby and Schlesinger voting no.

Commissioner Blackerby gave his reason for voting against denying the request, saying that he understands the criteria, and after reading the application thinks that they were met. He admitted to not being an expert, but said that Mr Mattison's recommendation and Mr Kim's approval should have a lot of weight. The Planning Commission has to comply with the quasi-judicial rules.

Commissioner Schlesinger said that he thinks that the Markins have gone the route with the city, and that it is not fair to them to hold them up. Would rather the deck be the right size. But it was granted by the county when it was built. It is a replacement made better according to the building permit because the standards - the decks are better now than they were originally built. They have the right to use their property and not have aggravation on aggravation. And unfortunately we have caused them a large amount of aggravation for this small project.

Commissioner Nelson said that she feels for the Markins here and thinks that things should have been laid out more clearly to the Markins, but that should not be the basis for approving the application.

5.1.1.

MOTION:	Motion to close the public hearing and the record for VAR 2021-01 Markin.
MOVER:	Kim Blackerby, Commissioner
SECONDER:	Lenny Nelson, Commissioner
AYES:	Blackerby, Kroen, Nelson, Schlesinger, Smith
EXCUSED:	Marci Baker
RESULT:	Passed

5.1.2.

MOTION:	Motion to approve VAR 2021-01
MOVER:	Kim Blackerby, Commissioner
SECONDER:	Miles Schlesinger, Commissioner
AYES:	Kim Blackerby, Miles Schlesinger
NAYS:	Patti Kroen, Lenny Nelson, MacNeale Smith
EXCUSED:	Marci Baker
RESULT:	Failed by Roll Call Vote

5.1.3.

MOTION:	Motion to deny VAR 2021-01
MOVER:	Lenny Nelson, Commissioner
SECONDER:	MacNeale Smith, Commissioner
AYES:	Patti Kroen, Lenny Nelson, MacNeale Smith
NAYS:	Kim Blackerby, Miles Schlesinger
EXCUSED:	Marci Baker
RESULT:	Passed by Roll Call Vote

6. OLD BUSINESS

7. NEW BUSINESS

7.1. A Work Session on “Element 1. Citizen Involvement” of the draft Comprehensive Plan - a work session with Planning Commissioners to review, discuss, and improve the Citizen Involvement Program for the draft Comprehensive Plan and future land use changes.

Mr Kim presented the Citizen Involvement element of the draft comprehensive plan. He explained that he is only concentrating on the Citizen Involvement section, including how the draft comprehensive plan will be distributed, and how the city will set up workshops in the future. He said that as we schedule the workshops, we will publish the draft on the Internet and send it to the planning commissioners. When we get into the review of each element, we will focus on each element rather than get into other sections.

This is in front of the Planning Commission because Planning Commission is the Committee for Citizen Involvement. Commissioner Schlesinger asked whether there had been a Citizen Involvement Committee that did the preparation for much of this work. He said that there were meetings held by a group that was presented to the city council. Mr Kim stated that there was a Citizen Involvement Committee in the past, but that City Council had modified it to be just the Planning Commission. Commissioner Nelson said that there had been a very active Citizen Involvement Committee, and that one of their outputs was a pamphlet about how to be involved in land use. Eventually the city had difficulty finding people who wanted to participate, and so made the Planning Commission into the CCI to comply with State Planning Goal 1.

Goal 1 is about broad citizen involvement in all phases of the planning process. Financial support for citizen involvement should be insured. There are some financial resources for the citizen involvement. Vice-Chair Kroen asked whether there is a line item specifically for citizen involvement related to the comprehensive plan. Mr Kim said that the budget is not specific to the comprehensive plan citizen involvement, but that the goal is also not limited to just the comprehensive plan.

Mr Kim presented some of the information from the draft comprehensive plan. A specific note was a need to involve students in the planning process. The Citizen Involvement Program will be abandoned after development of the new comprehensive plan. The CCI will have to establish a new one after adoption. Sending land use notifications to the neighborhood associations will continue.

Mr Kim presented the slides that were included in the Planning Commission meeting packet. Mr Kim asked whether the schools and the Rotary Club Mentoring Program are the best way to reach out to young people. Commissioner Schlesinger suggested that the neighborhood groups and the Devils Lake Water District be added to the outreach. Vice-Chair Kroen asked about the demographic distribution of the city, and suggested that senior citizens in Lincoln City are probably not an under-represented group. With limited funds and limited outreach ability, who are the people that we should be focusing our outreach on? There are other populations in the city who are not generally represented. Mr Kim said that there is a breakdown of the demographics in the draft plan, but it is not included here. Mr Kim said we are not going to go to each school and have a discussion about each element of the plan - just opening the door for participation. He said that he would contact the senior center to work out the best way to work with them. Vice-Chair Kroen suggested posting things at the post office and at the market because not everyone goes to the senior center.

Mr Appicello pointed out that one of the best ways we communicate - especially with the senior populations - is through the water billings. Goal 1 has us keeping a copy of information at the library, which is another means of working out with diverse groups. When we put things at the library, we will need to make sure that we have translations as well.

Vice-Chair Kroen suggested that the News Guard can still publish notices and meeting announcements.

In order to reach out to low-income people, Mr Kim said that he will reach out to Lincoln County Transit to post notices in the bus, or work with them to distribute notices. He will also reach out to Oregon Department of Human Services, the Social Security Administration, and the Housing Authority of Lincoln County. Mr Kim asked for other ideas, and Vice-Chair Kroen suggested the recreation centers at the largely multi-family developments.

Regarding people with disabilities, Mr Kim said that all of the workshops will be ADA compliant and we will make the website accessible. He said that he will also reach out to the Oregon Social Security Administration field office in Salem and ask their recommendations. For people with limited English proficiency, we will seek translation services, and we will make a note of those documents in the system. Commissioner Nelson noted that the college offers ESL classes, and that it would be a good place to reach people with limited English proficiency.

In order to reach the Tribal population, Mr Kim said that he would talk to the Siletz Tribal Business Corporation, the casino, the tribal gaming commission, and the Confederated Tribes of the Siletz Indians. Commissioner Nelson suggested that the most appropriate order would be to start with the Tribal Council.

To include business interests, Mr Kim read a list of associations and major employers that he has currently on the list. He said that he will add the Devils Lake Water District to the list. Vice-Chair Kroen said that she is confused because the list is titled Business Interests but is mostly neighborhood associates. Mr Kim said that he will split the list. Commissioner Blackerby suggested adding the neighborhood watch associations. Vice-Chair Kroen suggested using the Nextdoor application to share information with people in the city. Mr Appicello asked Vice-Chair Kroen to send a link to the application to him and Mr Kim.

Commissioner Nelson said that if the list is going to include the health district, the fire district should also be listed. Mr Kim said that because this is public involvement, government agencies have not been included.

Commissioner Smith said that most businesses in the city are not represented by the Chamber of Commerce. He said that there is not a central organization that many of the businesses belong to. A lot of the coordination has been word of mouth. He said that one of the ways he has seen the City connect with small businesses in town is by connecting with a few businesses and spreading the word that the city wants to get their involvement, and then there being a portal or some way to connect those businesses with the city. He said that the Chamber of Commerce does not represent the majority of businesses in town. Trying to connect with most main street businesses through the Chamber of Commerce will not get you the results that you want.

Vice-Chair Kroen referred to page 46 of the meeting packet and asked where middle-aged working people are on the list of targeted groups. Mr Kim said that we are already usually sending out notifications for that group. Vice-Chair Kroen said that separating out the targeted populations suggests that there are different ways to reach each of the groups listed. How do we get maximum involvement from groups working 8-5 or 9-6? She said that we say that we need maximum involvement and then when we get started someone gets left out. This list leaves out people who are not young but also are not old. Mr Appicello said that we are not leaving anyone out - we are identifying those who have been left out in the past and making sure to include them. However, it is worthwhile to have strategies identified for including all groups. He added that the city has an Occupational Tax Permit list - we have contact information that goes well beyond what the Chamber of Commerce list would be.

Mr Kim said that the scheduling of the workshops is not yet determined (e.g. whether they will be at Planning Commission meetings or held as separate meetings).

Vice-Chair Kroen pointed out the use of the word "others" in the summary of the CIP, and suggested changing it "outreach to all."

Mr Kim read the Objectives and Policies from the draft version of the comprehensive plan Goal 1. Vice-Chair Kroen said that the policies presented to not seem to follow from the objectives - that there are some that did not make sense to her. Mr Kim suggested that she send any recommendations to him. Commissioner Blackerby asked why the Objective 1.1 doesn't say that the Planning Commission has been identified as the CCI. Vice-Chair Kroen said that the language used seems to be broader than the Planning Commission. Commissioner Nelson said that the language is in an ideal world - there is no requirement for the CCI to be the Planning Commissioner, and that it is something that we can bring back into being if there are people who want to be involved. Mr Appicello confirmed that because of a difficulty to get people to participate in the CCI, a letter was sent to DLCDC saying that the City wanted to have the Planning Commission be the CCI.

Mr Kim said that right now the Planning Commission is the CCI. If the commissioners think that is too much, they can recommend that the City Council create a new CCI. Vice-Chair Kroen said she does not think that it is too much - that the problem is that the CCI has not been used. She said that there should be meetings, maybe once a month, where there is an open forum. She said that she does not think that the CCI has been used as described. Commissioner Nelson said that when the CCI was actually formed it was active and they did a lot of things, including presentations to the City Council. Over time people lost interest - many committees have that problem after some length of time. Vice-Chair Kroen pointed out that when you are using volunteers, the main thing is to make sure that you are not wasting anyone's time.

Looking at Objective 1.3, Vice-Chair Kroen suggested that a policy needs to be included for bilingual. She also suggested that 1.3.2 should be changed to "shall make available." She said that this also speaks to providing information to people who cannot leave work to look at information during business hours. She said that 2.1.4 is aspirational and does not belong here as a policy. She said that she is not comfortable with the human touch statement as it is something that is not measurable. She suggested that it is language that could be included in an intro. Commissioner Blackerby suggested that 2.1.5 be changed to say "will utilize" or something rather than consider.

Commissioner Blackerby asked whether the language of 2.2.2 could be included in 2.2. Vice-Chair Kroen said that all of the policies under 2.2 look like they belong somewhere else. She said that she does not like "fudge" words like assure or strive to. She said that we need concrete things that we are going to do. Why is it that the City should be active in encouraging the County rather than shall? She said that she is not sure what 2.2.4 has to do with outreach. Commissioner Nelson said that she would delete 2.2.5 and 2.2.6. Mr Appicello said that it is important that if you get involved in planning to know a little bit about local government. Vice-Chair Kroen said that she has some discomfort establishing a Lincoln City government education program. MR Appicello suggested a program on government relations.

Vice-Chair Kroen asked that "others" in 2.3.3 be replaced with "all," and that should in 2.3.4 be changed to "shall." Commissioner Blackerby suggested changing 2.3 to "celebrate" and strike "strive to express." He asked whether 2.3.5 can be made more general.

Commissioner Nelson said that the City is not in the business of encouraging events and festivals, referring to 2.3.6. She also agreed with making 2.3.5 more general. Mr Kim said that 2.3.5 and 2.3.6 came from Explore Lincoln City. He said that he would double check with ELC and clarify.

Mr Kim asked the Planning Commissioners how they want to move forward with the workshops - the schedule for dissemination and holding the workshops. He asked them when they would like to have a discussion at a public work session. The next session is the land use element. Vice-Chair Kroen asked whether she missed the session on what the outline looks like. She said that when comments were asked for earlier she provided a different outline. Mr Kim said that right now the format is following the statewide goals. He said that moving items around can be discussed at the end of the process. He said that he does not want things to get out of order with the state. Vice-Chair Kroen said that the state does not require us to follow their outline. Commissioner Blackerby says that he does not like the idea of following the state outline and changing it afterwards. Chair Kroen referred to comments by Lisa Phipps from DLCD that there is not a one way to go through the process. She emphasized that the plan should be useful to the city, rather than being useful for the state.

There was some discussion about the outline of the document and comments that were provided by the planning commission.

Mr Appicello pointed out that prior comments, especially those that are concerning the outline of the document, are another step that needs to be scheduled for discussion. The task for tonight is to take the comments that were made on Goal 1. He suggested moving forward with the next goals and doing as Commissioner Nelson suggested - to eat the elephant one bite at a time.

Mr Kim said that his recommendation is to review each goal one at a time so as not to confuse anything, and that if the Planning Commission wants to rearrange it later, then it can be arranged. Mr Appicello suggested that the outline of the document can be discussed when that is the discussion. Mr Kim asked whether the Planning Commission wants to have the discussion for Goal 2 at the Planning Commission meeting or as a separate meeting. Commissioners Kroen and Blackerby suggested doing it at Planning Commission meeting. Commissioner Nelson recommended implementing Goal 1 now as much as possible so that we can have as many people participating at each workshop as possible.

Mr Kim asked whether we want to look at Goal 1 after we have sent notice, etc? Mr Appicello suggested bringing back Goal 1 with a little more refinement and proceed into Goal 2. He said that he thinks we should start implementing it and go from there.

Commissioner Nelson asked whether any of Vice-Chair Kroen's work applies to the upcoming review. Mr Kim said that he would send out her comments if she does not have any objection to it.

8. PLANNING COMMISSION TRAINING

No training for the PC

9. PLANNER COMMENTS

None

10. FUTURE AGENDA ITEMS & NEXT MEETINGS

Commissioner Blackerby requested that we have listed in the future meeting agenda items what is coming up next and not just be surprised when it comes up on the agenda next time. He said that if

the commissioners were to want to have a group site visit they would have to know that it is coming. It would help to know what is coming more than 4 days before it is coming.

Commissioner Nelson said that she was impressed with the amount of information provided for the variance hearing.

11. ADJOURN

Adjourned at 8:54

Respectfully submitted,

James White
Assistant Planner

Marci Baker
Chair