



AGENDA

Lincoln City Planning Commission
Tuesday, November 2, 2021, 6:00 PM
Zoom, Streamed LIVE on Zoom
801 SW Highway 101 - 3rd Floor, Streamed LIVE on Zoom, Lincoln City, OR 97367

1. **CALL TO ORDER, PLEDGE OF ALLEGIANCE, & ROLL CALL**
2. **AGENDA CHANGES OR REVISIONS**
3. **MINUTES**
 - 3.1. Planning Commission - Regular Meeting - Oct 19, 2021 6:00 PM
4. **FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS**
 - 4.1. FO 2021-05 for CUP 2021-01
 - 4.2. FO 2021-06 for VAR 2021-02
5. **PUBLIC HEARINGS/DELIBERATIONS**
 - 5.1. ZOA 2021-05 Lighting Ordinance (continued to November 16, 2021)
6. **OLD BUSINESS**
7. **NEW BUSINESS**
8. **PLANNING COMMISSION TRAINING**
9. **PLANNER COMMENTS**
10. **FUTURE AGENDA ITEMS & NEXT MEETINGS**
11. **ADJOURN**

All information for this meeting is available on the City of Lincoln City website at www.lincolncity.org, and this meeting will be televised live on Charter Channel 4 Lincoln City and rebroadcast at various times. Planning Commission meetings are streamed live on the Internet through a link on the City of Lincoln City website, and can also be viewed following the meeting. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, for a hearing impaired device, or for

other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Cathy Steere, City Recorder, at 541-996-1203.

**LINCOLN CITY PLANNING COMMISSION
MINUTES
October 19, 2021**

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

Attendee Name	Title	Status	Arrived
Robert Vincent	Commissioner	Present	
Mellissa Sumner	Commissioner	Present	
Marci Baker	Chair	Excused	
Kim Blackerby	Commissioner	Present	
Lenny Nelson	Commissioner	Present	
Miles Schlesinger	Commissioner	Present	
MacNeale Smith	Commissioner	Present	

2. AGENDA CHANGES OR REVISIONS

3. MINUTES

3.1. Planning Commission - Regular Meeting - Sep 21, 2021 6:00 PM

MOTION:	Motion to approve the September 21, 2021 Planning Commission minutes as edited.
MOVER:	Robert Vincent, Commissioner
SECONDER:	Lenny Nelson, Commissioner
AYES:	Vincent, Sumner, Blackerby, Nelson, Schlesinger, Smith
EXCUSED:	Marci Baker
RESULT:	Passed

4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS

Commissioner Smith moved to approve Final Recommendations FR 2021-01, FR 2021-02, FR 2021-03, FR 2021-4. Commissioner Schlesinger seconded. Commissioners Vincent and Sumner abstained. All others approved.

1. FR 2021-04 for ZOA 2021-04
2. FR 2021-03 for ZOA 2021-03
3. FR 2021-02 for ZOA 2021-02
4. FR 2021-01 for ZOA 2021-01

4.5.

MOTION: Motion to approve final recommendations FR 2021-01, FR 2021-02, FR 2021-03, and FR 2021-04
MOVER: MacNeale Smith, Commissioner
SECONDER: Miles Schlesinger, Commissioner
AYES: Kim Blackerby, Lenny Nelson, Miles Schlesinger, MacNeale Smith
ABSTAIN: Robert Vincent, Mellissa Sumner
EXCUSED: Marci Baker
RESULT: Passed

5. PUBLIC HEARINGS/DELIBERATIONS

1. Continued to 11/2/2021: ZOA 2021-05 Lighting

5.1.1.

MOTION: Motion to continue the hearing to the November 2, 2021 meeting to allow staff to finish the ordinance
MOVER: MacNeale Smith, Commissioner
SECONDER: Robert Vincent, Commissioner
AYES: Vincent, Sumner, Blackerby, Nelson, Schlesinger, Smith
EXCUSED: Marci Baker
RESULT: Passed

2. VAR 2021-02 Excellence Inc 2219 NW Hwy 101

Vice-Chair Blackerby introduced the hearing and read the required statements. There were no declarations of ex parte contact, conflict of interest, or bias. Commissioners acknowledged that the site is regularly visible while traveling in Lincoln City. There were no challenges to the commission or any of the commissioners to hear the case.

Senior Planner David Mattison read the substantive criteria.

Vice-Chair Blackerby summarized the procedures.

Mr Mattison presented the staff report. The current application comes out of an on-going development review, SPR 2021-03, of the conversion of use of an existing building to an office use. The applicant is requesting a 4-foot variance for the placement of their parking, which will not fit on the site with the addition of a required buffer setback in addition to the otherwise required minimum setbacks. Staff feel that all the requirements for a variance have been met. No comments were received during the 14-day comment period. Staff is recommending approval.

Commissioner Smith asked whether the applicant had a specific use for the building other than what was covered in the agenda packet - specifically whether they had a tenant lined up. Mr Mattison said that there was none mentioned in the application.

Greg Wescott presented. He said that he has had a number of people express interest in leasing the space. His intention has been to finish the outside of the structure and then finish the inside based on the tenant's needs. He said that the proposed location of the parking spaces meets all of the requirements except for one - the front of the spaces encroaches into the rear setback by approximately 4 feet. The staff report demonstrates that the criteria are met.

Commissioner Nelson asked whether the applicant knew about the location of the structure on the lot when he bought it. He said that he did. Commissioner Nelson also asked about the removal of walls in the plans, in the sense of maintaining the building's assets. Mr Wescott said that he tries to save as much of the character of the building as possible.

Commissioner Nelson asked whether the discussion would get into the four approval criteria for a variance. Ms Skinner said that if the commissioners have any questions about the criteria, they should ask them before closing the hearing. During deliberation is the time to discuss whether the criteria are met.

Commissioner Schlesinger asked whether the application has received approval from the DEQ, because it was previously a service station. Mr Appicello reminded the commissioners that they need to focus on the approval criteria for the application in question.

Commissioner Schlesinger asked Ms Skinner whether the City of Lincoln City has any code for de-certifying service stations. Ms Skinner replied that there is not anything in Title 17, so if there is anything, it would be under the building code rather than the planning and zoning code. Vice-Chair Blackerby summarized that the question tonight is related specifically to the variance for the parking, and anything related to DEQ or building will be taken care of during the building permit.

No testimony was offered in support of the application.
 No testimony neutral to the application was offered.
 No testimony was offered in opposition to the application.
 There was no testimony from public agencies.

No continuance was requested. No request to leave the record open. .

The public hearing and record were closed by a motion and a vote (recorded below). Mr Appicello explained the applicant's right to submit final written argument. The applicant waived the right.

Mr Appicello did not have any specific comments on legal issues. Ms Skinner did not have anything to add either.

Deliberations:

Commissioner Nelson read the four criteria for approving a variance. Regarding exceptional or extraordinary circumstances in the first criterion, she said that when Mr Wescot bought the property, the structure was located where it is now, and that if he bought the property where it sits, he has no real reason to get a variance because the building is already there. Also if you look at the plans, there is not much of the building that is going to be left because they are replacing all four sides. If he goes to put the brick back up, the earthquake requirements will not allow him to anymore.

Regarding the second criterion, Commissioner Nelson said that nobody has a property right to complain about where their building is.

Commissioner Vincent said that right now the building is doing nothing. Especially if he is able to keep some of the original building and utilize it, he thinks that there is no problem with

Commissioner Nelson responded to Commissioner Vincent, saying that although utilizing the building, etc are good things, but they do not speak to the requirements.

Vice-Chair Blackerby said that if we look at the rear of the building, it is not going to be moving, and is still encroaching on the setback. The variance isn't about the building. Even though fixing an eyesore is not part of the criteria, I believe the criteria are met and so it is a win-win.

Commissioner Schlesinger said that Vice-Chair Blackerby's comments reflect his thoughts.

There were no additional comments.

Commissioner Vincent moved to approve the Commissioner Sumner seconded.

The application was approved by a motion and vote, as recorded below.

5.2.1.

MOTION:	Motion to close the public hearing and the record
MOVER:	Miles Schlesinger, Commissioner
SECONDER:	Robert Vincent, Commissioner
AYES:	Vincent, Sumner, Blackerby, Nelson, Schlesinger, Smith
EXCUSED:	Marci Baker
RESULT:	Passed

5.2.2.

MOTION:	Motion to approve VAR 2021-02
MOVER:	Robert Vincent, Commissioner
SECONDER:	Melissa Sumner, Board Member
AYES:	Vincent, Sumner, Blackerby, Schlesinger, Smith
NAYS:	Lenny Nelson
EXCUSED:	Marci Baker
RESULT:	Passed

3. CUP 2021-01 Dock 3000 NE 26th

Vice-Chair Blackerby opened the hearing, introduced the application, and read the required statements. There were no declarations of ex parte contact, bias, or conflict interest. There were

no challenges from the audience to the qualifications of any commissioner or the jurisdiction of the commission.

Mr Mattison read the applicable substantive criteria.

Vice-Chair Blackerby described the hearing procedures.

Mr Mattison presented the staff report. The application is for a new dock. One comment was received, from Carol Harris who is present to give testimony. The commissioners received a copy of that. LCMC 17.16 identifies docks in the R-1-7.5 Zone as a conditional use. There are two sets of criteria for the conditional use - the general conditional use criteria and conditional use criteria for docks. The applicants have met or will meet, with conditions, all of the criteria. Mr Mattison read the recommended conditions from the staff report and said that staff recommend approval with the conditions as read.

Commissioner Schlesinger said that he did not know that the city required a permit for a dock. Ms Skinner said that prior to the adoption of our dock ordinance the land use portion of approving a dock was under the jurisdiction of Lincoln County. When the City took that over several years ago, they adopted requirements for a conditional-use approval for land use. There are no other permits for a dock required by the City. After conditional use, the applicant must obtain permits from other jurisdictions as required.

Commissioner Vincent asked questions about the comment letter from Ms Harris raising concerns related to motorized boats. Ms Skinner said that there is not a way to get beyond the subject site before you hit Devils Lake Rd and the bridge.

Vice-Chair Blackerby referred to the map in the meeting packet and asked where the ramp would be located. Mr Mattison indicated the location. Vice-Chair Blackerby asked about the ownership of the canal. Mr Appicello said that the dock is adjacent to the city-owned property. The dock is on the applicant's private property. Ms Skinner explained the ownership represented in the map.

There were no additional questions for staff.

Mr and Mrs Kammermeyer spoke to the Planning Commission. The dock will be adjacent to the water. They wanted a place to launch their kayaks.

Commissioner Nelson asked whether the applicants looked into trying to stay out of the riparian area. Mrs Kammermeyer said that there isn't any area that they can get to the water without crossing the riparian area. The permit with DSL will require a construction phasing plan. Ms Skinner added that docks are allowed in riparian areas per the LCMC. The dock will have to go through a Natural Resources Development Review, which is the next step if the conditional use is approved. Preservation of the riparian area is one of the things that they will have to demonstrate. The dock is located on private property. It is not located within the waters of Devils Lake. However, one of the conditions of approval is that the applicants contact the Department of State Lands and receive any applicable permits from them.

There were no further questions for the applicants.

Carol Harris presented to the commissioners. She said that she has no concern about the Kammermeyer's dock.

The was no testimony in support of the application.
No additional testimony neutral to the application was given.
There was no testimony in opposition to the application.

No testimony from agencies.

No requests for a continuance or to leave the record open.
The applicants waived the right submit final written comment.

The public hearing and the record were closed with a motion and vote, as recorded below.

Mr Appicello did not have any specific comments. Neither did Ms Skinner.

The application for a conditional use permit was approved by a motion and a vote, as recorded below.

5.3.1.

MOTION:	Motion to close the public hearing and the record
MOVER:	Robert Vincent, Commissioner
SECONDER:	MacNeale Smith, Commissioner
AYES:	Vincent, Sumner, Blackerby, Nelson, Schlesinger, Smith
EXCUSED:	Marci Baker
RESULT:	Passed

5.3.2.

MOTION:	Motion to approve CUP 2021-01 with conditions as noted in the staff report
MOVER:	Robert Vincent, Commissioner
SECONDER:	MacNeale Smith, Commissioner
AYES:	Vincent, Sumner, Blackerby, Nelson, Schlesinger, Smith
EXCUSED:	Marci Baker
RESULT:	Passed

6. OLD BUSINESS

None

7. NEW BUSINESS

None

8. PLANNING COMMISSION TRAINING

None

Vice-Chair Blackerby said that it would be wonderful to get training from Public Works on how traffic studies are done.

Mr Appicello encouraged the new commissioners to call him or visit if they have questions.

9. PLANNER COMMENTS

Ms Skinner reported that she e-mailed the commissioners the items that were promised last meeting - the statewide planning goals and the current comprehensive plan. Although there are 600 pages or so, the actual Comprehensive Plan document is only the first 50 pages. The rest is amendments, studies, etc. For the statewide planning goals, Ms Skinner asked that the commissioners chose their top 5 in priority to address in the Comprehensive Plan update. She also asked that if the commissioners have any of the comments they made to the previous director on the previous draft, to please send them to her. She said that she had received Commissioner Blackerby's comments.

Commissioner Blackerby said that former commissioner Kroen submitted comments as well. Ms Skinner said that she will search through to find those comments.

Ms Skinner asked if any of the commissioners have any comments to make to the group. Commissioner Blackerby said that this was something that he noticed the City Council doing. He said that he thinks it is a good opportunity to provide any comments. He said that his perception is that this meeting went exceptionally better than other meetings in the recent past.

Commissioner Schlesinger did not have anything to add, except for thanking the City Manager for Ms Skinner's return.

Commissioners Nelson and Smith did not have any comments.

Commissioner Vincent thanked the group for all the help that he has gotten.

10. FUTURE AGENDA ITEMS & NEXT MEETINGS

As was noted at the beginning of the meeting, the lighting ordinance was continued to the November 2, 2021 meeting, and will likely be the only agenda item for that meeting. The rest of the meetings of the year, there is a meeting on Nov 16, December 7, and on Dec 21. Ms Skinner asked whether there is any conflict with those dates and commissioners' holiday schedules. After some discussion it was decided to leave those meetings on the calendar and adjust later if necessary.

11. ADJOURN

Respectfully submitted,

James White
Assistant Planner

Marci Baker
Chair

Planning Commission Communication

FO 2021-05 for CUP 2021-01

Meeting Date: November 2, 2021 Primary Staff Contact: AnneMarie Skinner
Department: Planning Commission E-Mail: ASkinner@lincolncity.org
Secondary Dept: Secondary Contacts:
Approval: Estimated Time:

Question:

Should the Planning Commission approve FO 2021-05 for CUP 2021-01 and authorize the Chair to sign?

Staff Recommendation:

Staff recommends the Planning Commission approve FO 2021-05 for CUP 2021-01 and authorize the Chair to sign.

Potential Motions:

Move to approve FO 2021-05 for CUP 2021-01 and authorize the chair to sign.

Attachments:

Final Order 2021-05 for CUP 2021-01 (PDF)

FINAL ORDER 2021-05
BEFORE THE PLANNING COMMISSION
CITY OF LINCOLN CITY, LINCOLN COUNTY, OREGON
November 2, 2021

In the Matter of Approval of a Conditional Use)
Permit Application [CUP 2021-01] for a dock) **FINDINGS OF FACT**
in the Single-unit Residential (R-1-7.5) Zone,) **CONCLUSIONS OF LAW**
located at 3000 NE 26th St, Lincoln City, Oregon) **AND ORDER**

Applicant: Knottworks Construction and Michael and Michelle Kammermeyer
Owner: Michael and Michelle Kammermeyer

I. NATURE OF PROCEEDINGS

This matter comes before the Planning Commission for the City of Lincoln City for *de novo* consideration of a Conditional Use Permit application for construction of a dock at 3000 NE 26th St.

The application materials were received on September 3, 2021, and deemed complete on September 17, 2021.

Notification of the October 19, 2021 public hearing before the Planning Commission was mailed, pursuant to Chapter 17, Lincoln City Municipal Code to area property owners within 250 feet of the site on September 28, 2021. *The News Guard* published the public hearing notice on Tuesday, October 5, 2021.

On October 19, 2021, the Planning Commission conducted a public hearing and considered the oral and written testimony presented, the staff report, and the record as a whole. The hearing was closed, and the record was closed. Based on the evidence presented at the public hearing on October 19, 2021, including the staff report and all properly submitted evidence and argument, the Planning Commission voted to approve the application with conditions. Based upon the evidence in the record, the Commission makes the following findings of fact and conclusions of law:

II. FINDINGS OF FACT

- 1) The Nature of Proceedings (Section I) set forth above is true and correct and is specifically incorporated herein by this reference.

COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
FO 2021-05 for CUP 2021-01

- 2) The subject of the above-referenced conditional use permit application is real property located within the City of Lincoln City ("City"), and described in the County Tax Assessor's maps as Tax Map 07-11-11-AC-00200 (the "Property"). The street address of the Property is 3000 NE 26th St, Lincoln City, Oregon. The site consists of approximately 12,197 square feet.
- 3) The Comprehensive Plan designation for the property is Medium-Density Residential District (R-7.5). The zoning classification of the site is Single-Family Residential (R-1-7.5).
- 4) The surrounding Land Uses and Zoning are as follows:
- North: NE 26th St, multiple-unit housing complex; (R-M)
 South: Canal waterway and undeveloped; (R-1-5 and R-1-7.5)
 East: vacant; (R-1-7.5)
 West: vacant; (R-1-7.5)
- 5) The applicants are:
- Knottworks Construction
 PO Box 197
 Otis, OR 97368
- Michael and Michelle Kammermeyer
 3000 NE 26th St
 Lincoln City, OR 97367
- 6) The Property is owned by:
- Michael and Michelle Kammermeyer
 3000 NE 26th St
 Lincoln City, OR 97367
- 7) The relevant substantive criteria include the following:
- LCMC Chapter 17.16 Single-Family Residential (R-1) Zone
- LCMC Chapter 17.44 Marine Waterway (M-W) Zone
- LCMC Chapter 17.60 Conditional Uses

LCMC Section 17.76.160 gives the Planning Commission authority to approve, approve with conditions, disapprove, or revoke conditional use permits subject to the provisions of LCMC Chapter 17.77.

- 8) The background in the staff report is incorporated herein and is accepted as true and correct.

III. FINDINGS APPLYING APPLICABLE CODE CRITERIA

- 1) The Planning Commission finds and determines that the relevant approval criteria are found or referenced in the Lincoln City Municipal Code, principally Title 17, Chapter 17.16 (Single-Family Residential Zone), Section 17.77.060 (Conditional Uses), and Chapter 17.44 (Marine Waterway Zone).
- 2) Chapter 17.16 (Single-Family Residential Zone) Section 17.16.040.L lists docks as a conditional use subject to the provisions of 17.44.040.
- 3) Chapter 17.77 (Applications), Section 17.77.060 provides:

D. Approval Criteria. In order to grant any conditional use, the planning commission must find, based upon evidence, both factual and supportive, provided by the applicant, that:

1. The proposal is in compliance with the comprehensive plan;
2. The site for the proposed use is adequate in size and shape to accommodate the use and all required setbacks, common spaces, retaining walls, parking and loading areas, landscaping, and other features required by this title;
3. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;
4. The proposed use will have minimal adverse impact upon adjoining properties and the improvements thereon. In making this determination, the review authority shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and mass of buildings, retaining walls, fences, landscaping, screening, exterior lighting, and signage;

5. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area.

E. Conditions of Approval. Pursuant to LCMC [17.76.120](#), the planning commission may impose, in addition to regulations and standards expressly specified in this title, other conditions found necessary to protect the best interests of the surrounding properties or neighborhood, or the city as a whole. These conditions may include, but not be limited to, the following:

1. Increasing required lot size, setbacks, common open spaces, or screening and buffering areas;
2. Requiring fences, screening walls, landscaping, or screening/buffering where necessary to reduce noise and glare from the use and maintain the property in a character in keeping with the surrounding area;
3. Requiring landscaping and maintenance thereof;
4. Increasing street widths and/or controlling the location and number of vehicular access points to the property for ingress/egress;
5. Requiring means of pedestrian/bicycle pathways to serve the property;
6. Increasing the number of off-street parking and loading spaces required; surfacing and proper drainage of parking area;
7. Limiting size, location, and number of signs;
8. Limiting the location, coverage, or height of buildings because of obstruction to view and reduction of light and air to adjacent properties;
9. Limiting or prohibiting openings in sides of buildings or structures;
10. Enclosure of outdoor storage areas and limitation of outside displays and/or storage of merchandise;
11. Requiring maintenance of grounds;
12. Regulation of noise, vibration, odors, etc.;

13. Regulation of time for certain activities;
14. Establishing a time period within which the proposed use shall be developed;
15. The requirement of a bond for removal of such use within a specified period of time;
16. Increase the size, type, or capacity of any or all utility services, facilities, or appurtenances;
17. Requirements under which any future enlargement or alteration of the use shall be reviewed by the review authority and new conditions imposed;
18. Requirements for providing the city a performance bond with a contractual agreement to assure its share of the development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers, or other necessary and essential public improvements to city standards; and/or
19. Any such other conditions that will make possible the development of the city in an orderly and efficient manner and conformity with the intent and purposes set forth in this title and the comprehensive plan.

4) Chapter 17.44 (Marine Waterway (M-W) Zone), Section 17.44.040 provides:

B. Standards for Uses Involving Construction, Addition or Reconstruction of a Pier, Dock, Boat House or Similar Facility.

1. Evidence shall be provided that the applicant has complied with, or fully intends to comply with, all standards of the Department of Environmental Quality, the Division of State Lands, and all other agencies having interests or ordinances applicable to the property in question.
2. The facility or any use related to it shall not allow any water pollution to occur to any nearby tidelands, marshlands, rivers, streams or other waterways used for the raising, production or preservation of marine life or other natural resources.
3. The facility shall not substantially alter the course of any channel or the natural movement of any waters or result in increased flood hazards, or the formation of appreciable bottom or sludge deposits deleterious to marine life, and shall meet all of the following requirements:

- a. No dock, pier or similar facility shall extend into any watercourse more than 25 feet from ordinary low water line nor 50 feet from ordinary high water line, unless it can be shown that such extension is necessary and will not increase flood hazards or create other problems such as the deterioration or destruction of marine life or wildlife habitat as a result of the extension.
 - b. No dock, pier or similar facility shall extend into the navigable channel any distance greater than required for safe moorage and shall be designed so as to minimize potential flood hazard and loss of navigable waterway area.
 - c. No pier, dock or similar facility shall extend into any watercourse more than five percent of the width thereof as measured perpendicular from the mean low water line on one side of the watercourse to the mean low water line on the opposite side.
4. No plumbing facilities for the handling of domestic or industrial waste shall be part of the facility unless approved by the city manager or design.
5. Application for a permit for a pier, dock, bulkhead, boat house, or similar facility shall include:
- a. The source of the applicant's right to construct the facility;
 - b. The purpose of the facility;
 - c. The legal description of the area where the facility will be located;
 - d. A map and drawings, showing the plan for construction of the facility. Such plan shall include a vicinity map drawn to scale showing location and design of similar facilities and other development within 250 feet of the parcel upon which the improvement is proposed;
 - e. The time when the project is scheduled to begin and to be completed.
6. Plans for a pier, dock, boat house, or similar facility shall meet the following requirements:
- a. In new subdivisions considered by the planning commission following the adoption of the ordinance codified in this title, docks having less than 10 moorage spaces will be approved only in the instance that no other public or

private means of launching or moorage is available or can be developed within 1,000 feet of the site in question.

b. Facilities being proposed in areas where it is likely that additional similar structures will be desired shall be designed to be combined into joint facilities whenever possible.

c. The design of moorages must provide sheer logs or similar devices for fending debris. Such improvements need not be maintained during periods where there is no danger of flood water.

d. Docks shall have the long dimension running parallel to the channel unless future development will result in pier construction or moorages being connected, necessitating facility design perpendicular to the channel. The width of those portions of such facilities shall be the minimum dimension required to provide safe access and moorage.

e. One dock shall not be closer to another dock than the length of the shorter structure or 25 feet, whichever distance is greater.

f. Additionally, docks allowed with conditional use approval in the GC, TVC, OS, P, RM, RC, and R1 zoning districts, must meet the following requirements and standards:

i. Total area of dock on water must not exceed 144 square feet with a width not exceeding six feet and a length not exceed 24 feet.

ii. No part of the dock can be covered or enclosed, such as but not limited to boat houses, sheds, fish cleaning stations, kayaks, canoes, hot tubs, and/or benches.

iii. Docks must have at least 50 percent of the float surface composed of grating containing at least 60 percent open space surface.

iv. The ramp/gangway of the dock must be 100 percent grated to allow light to pass through. Ramp width must not exceed five feet. The ramp square footage is not included in the total dock area square footage.

v. Grated surfaces on the docks must not be used for storage (e.g., boats, benches, kayaks, fish cleaning stations, etc.) or other purposes that will reduce natural light penetration through the dock.

vi. Treated wood is not allowed as a construction material for docks or ramps. Treated wood is lumber, pilings, and other wood products preserved with alkaline copper quaternary (ACQ), ammoniacal copper arsenate (ACA), ammoniacal copper zinc arsenate (ACZA), copper naphthenate, chromated copper arsenate (CCA), pentachlorophenol, or creosote.

vii. Oregon law requires encapsulation of expanded polystyrene foam flotation used in state waters. Encapsulation methods and materials must be approved by the Oregon State Marine Board prior to installation of foam flotation.

viii. All pilings must be fitted with devices to prevent perching by piscivorous birds.

ix. All work must be completed in accordance with the Oregon Department of Fish and Wildlife Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources.

x. There must be minimal disturbance to any buried, submerged, or floating woody debris removal during construction.

xi. For piling removal, dislodge the piling with a vibratory hammer, when possible, to avoid a pile break by twisting or bending. A floating surface boom may be necessary to capture floating surface debris. (Ord. 2019-23 § 1; Ord. 2010-05 § 3; Ord. 84-2 § 3.100(4))

5) The Commission finds that it has received all information necessary to make a decision based on the entire record, including the Staff Reports, exhibits, application materials, public hearing testimony, and other materials received. Except where conflicting findings are made herein, the Commission adopts and specifically incorporates the findings as articulated by the Planning Department staff report, as the basis for the decision on the requested conditional use permit.

6) The Commission finds and determines, and adopts as its own the following findings concerning the applicable criteria in Section 17.44.040:

1. Evidence shall be provided that the applicant has complied with, or fully intends to comply with, all standards of the Department of Environmental Quality, the

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Division of State Lands, and all other agencies having interests or ordinances applicable to the property in question;

The written staff report provides:

"The property owners have acknowledged, as part of this application submission, that all standards of the Department of Environmental Quality, the Division of State Lands, and all other agencies having interests shall be followed in the construction of the dock. After conditional use permit approval has been received, the Department of Environmental Quality and the Division of State Lands will be contacted for required permits, if any. Lincoln City's required natural resources development review will be completed after conditional use approval as well."

The Planning Commission finds and determines that the findings of both the staff and the applicant concluding that this criterion is met has not been subject to any adverse testimony.

- 2. The facility or any use related to it shall not allow any water pollution to occur to any nearby tidelands, marshlands, rivers, streams or other waterways used for the raising, production or preservation of marine life or other natural resources.**

The written staff report provides:

According to the applicant, the property owners are only constructing a dock. No activities are proposed that will involve any water pollution to occur. Dock construction and materials will adhere to all requirements to avoid water pollution. The property owners will place chairs on the dock for viewing enjoyment of the water and will use the dock to place kayaks in the water. These activities do not create any water pollution.

Based upon the staff report and the evidence provided by the applicant, the Planning Commission finds and determines that the criterion is met.

- 3. The facility shall not substantially alter the course of any channel or the natural movement of any waters or result in increased flood hazards, or the formation of appreciable bottom or sludge deposits deleterious to marine life, and shall meet all of the following requirements: a. No dock, pier or similar facility shall extend into any watercourse more than 25 feet from ordinary low water line nor 50 feet from ordinary high water line, unless it can be shown that such extension is necessary and will not increase flood hazards or create other problems such as the deterioration or destruction of marine life or wildlife habitat as a result of the extension. b. No dock, pier or similar facility shall extend into the navigable channel any distance greater than required for safe moorage and shall be designed**

so as to minimize potential flood hazard and loss of navigable waterway area. c. No pier, dock or similar facility shall extend into any watercourse more than five percent of the width thereof as measured perpendicular from the mean low water line on one side of the watercourse to the mean low water line on the opposite side.

The written staff report provides:

At 48 square feet, as described by the applicant, the dock has been designed to be as small as possible to minimize flood hazard and to avoid any altering of the course of the canal or its water movement. It is completely contained on the site.

According to the applicant, the dock will be completely contained on the site, and will not extend into the privately or publicly owned canal. The dimension of the dock from the southern edge of the site's water line to the site's southern property line is only 4 feet in depth.

The dock is completely contained on the site, and does not extend into the privately or publicly owned canal. There will be no loss of navigable waterway area due to placement of this dock. The dock has been designed to be as small as possible to minimize potential flood hazard, and the location of the dock is at a lower elevation than the house.

The Planning Commission finds and determines (concurring with staff and the evidence provided by the applicant) that this criterion is met.

4. No plumbing facilities for the handling of domestic or industrial waste shall be part of the facility unless approved by the city manager or design.

The written staff report provides:

The applicant proposes no plumbing facilities for the dock.

The Planning Commission finds that this criterion is met based upon the staff report and evidence submitted by the applicant.

5. If a fill is proposed of which any portion falls below mean higher high water or mean high water plus six feet, whichever is highest, and which is adjacent to or having potential access to a navigable waterway, the developer shall designate on the plan a portion of the parcel to remain unfilled for possible off-channel moorage or similar use. The size of the area to remain unfilled shall be determined on the basis of the need generated by proposed or anticipated uses on the fill, and shall be not less than 20 percent of that portion of the parcel lying below the

highest above-mentioned elevation. The location and design of the unfilled portion shall be approved by the planning department;

The permit application is for sediment removal and does not include any proposed fill activities. This criterion is not applicable.

- 6. Application for a permit for a pier, dock, bulkhead, boat house, or similar facility shall include: a) The source of the applicant's right to construct the facility; b) The purpose of the facility; c) the legal description of the area where the facility will be located; d) A map and drawings, showing the plan for construction of the facility. Such plan shall include a vicinity map drawn to scale showing location and design of similar facilities and other development within 250 feet of the parcel upon which the improvement is proposed; e) The time when the project is scheduled to begin and to be completed.**

The required map and information were provided by the applicant and were included as part of the record. The Planning Commission finds that this criterion is met.

7) The Planning Commission finds and determines, and adopts as its own, the following findings concerning the applicable criteria in Section 17.77.060:

1. The proposal is in compliance with the comprehensive plan;

The Planning Commission finds that this criterion is met based upon the staff report and evidence submitted by the applicant.

2. The site for the proposed use is adequate in size and shape to accommodate the use and all yards, spaces, wall and fences, parking, loading, landscaping and other features required by this title;

The written staff report provides:

The project proposes installation of a dock on the site. The 4'x12' dock meets the requirements of LCMC Chapter 17.44 as detailed earlier in this report. No setbacks, common spaces, retaining walls, parking and loading areas, or landscaping are required for a dock.

With application of the code requirements, this criterion is satisfied.

The Planning Commission finds that this criterion is met based upon the staff report and evidence submitted by the applicant.

COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
FO 2021-05 for CUP 2021-01

3. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;

The staff report provides:

The project proposes installation of a private dock at a private residence. The project will not generate any traffic over and above the traffic from the existing detached dwelling. This criterion is satisfied.

The Planning Commission finds that this criterion is met based upon the staff report and evidence submitted by the applicant.

4. The proposed use will have minimal adverse impact upon adjoining properties and the improvements thereon. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing;

The staff report provides:

The placement of the dock on the site meets all the dock siting requirements of LCMC Chapter 17.44 as detailed earlier in this report. No buildings, retaining walls, fences, landscaping, screening, exterior lighting, or signage are proposed or required for the dock. No pedestrian access is required to the private dock on a private residence site. Vehicular egress/ingress and internal circulation is not needed for a private dock on a private residence site. The site itself is already existing and improved with a driveway and detached dwelling with associated required residential landscaping. Staff concludes that this criterion is satisfied.

The Planning Commission finds and determines (concurring with staff) that this criterion is met.

5. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area.

The subject site is not in one of these designated areas. This criterion is not applicable.

COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
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V. CONDITIONS OF APPROVAL

1. Prior to construction of the dock, the applicant shall submit an application for the required Natural Resources Development Review as identified in LCMC 17.46.050. Approval shall be obtained prior to dock construction.
2. The applicant shall obtain all necessary permits and comply with associated conditions of permit approvals, including but not limited to: Oregon Department of State Lands (DSL), and any required environmental assessment reports as identified during the permitting process by any applicable agency.
3. Approval is for the design, size, shape, and location identified in the submitted application materials. If the design, size, shape, or location must change as a result of DSL (or other applicable agency) review, or for any other reason, the applicant must submit those changes to the Lincoln City Planning and Community Development Department for review through the appropriate review process as determined by the significance of the changes.
4. The applicant shall provide evidence prior to initiating construction that the project has been reviewed and approved by DSL or evidence that such review and approval is not necessary.
5. All required permits shall be obtained prior to staging or work activity and an electronic copy of each shall be emailed to the Lincoln City Planning and Community Development Department for inclusion in the project folder.

VI. ORDER

In sum, the Planning Commission for the City of Lincoln City finds and determines that the requested Conditional Use Permit Application meets the approval criteria in LCMC 17.77.060.D and in LCMC 17.44.040, but only with the imposition of conditions referenced or incorporated herein. Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the Planning Commission hereby APPROVES the requested Conditional Use Permit contained in CUP 2021-01, with the conditions set forth or referenced herein.

Lincoln City Planning Commission

Marci Baker, Chair

Signature authorized and approved by the full Commission this 2nd day of November, 2021.

COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
FO 2021-05 for CUP 2021-01

Planning Commission Communication

FO 2021-06 for VAR 2021-02

Meeting Date: November 2, 2021 Primary Staff Contact: AnneMarie Skinner
Department: Planning Commission E-Mail: ASkinner@lincolncity.org
Secondary Dept: Secondary Contacts:
Approval: Estimated Time:

Question:

Should the Planning Commission approve FO 2021-06 for VAR 2021-02 and authorize the Chair to sign?

Staff Recommendation:

Staff recommends the Planning Commission approve FO 2021-06 for VAR 2021-02 and authorize the Chair to sign.

Potential Motions:

Move to approve FO 2021-06 for VAR 2021-02 and authorize the Chair to sign.

Attachments:

FO 2021-06 for VAR 2021-02 (PDF)

FINAL ORDER 2021-06
BEFORE THE PLANNING COMMISSION
CITY OF LINCOLN CITY, LINCOLN COUNTY, OREGON
November 2, 2021

In the Matter of Approval of a)
Variance Request VAR 2021-02) **FINDINGS OF FACT**
for parking space encroachment) **CONCLUSIONS OF LAW**
in rear setback in General Commercial (GC)) **AND ORDER**
Zone at 2219 NW Hwy 101, Lincoln City, OR)

Applicant: Gregory Wescott, Excellence, Inc.
Owner: Gregory Wescott Trustee

I. NATURE OF PROCEEDINGS

This matter comes before the Planning Commission for the City of Lincoln City for *de novo* consideration of a request for a variance to the requirement in the Lincoln City Municipal Code (LCMC) Section 17.56.080.A.4 that parking and loading spaces must be outside required building setback areas for a structure located at 2219 NW Hwy 101, Lincoln City, Oregon. The subject property is in the General Commercial (G-C) Zone, and totals approximately 10,454 square feet.

The application materials were received on September 3, 2021, and deemed complete on September 27, 2021.

Notification of the October 19, 2021 public hearing before the Planning Commission was mailed, pursuant to Chapter 17, Lincoln City Municipal Code to area property owners within 250 feet of the site on September 28, 2021. *The News Guard* published the public hearing notice on Tuesday, October 5, 2021.

On October 19, 2021 the Planning Commission conducted a public hearing and considered the oral and written testimony presented, the staff report, and the record as a whole. The hearing was closed, and the record was closed. Based on the evidence presented at the public hearing on October 19, 2021, including the staff report, all properly submitted evidence and argument, the Planning Commission voted to approve the application with conditions. Based upon the evidence in the record, the Commission makes the following findings of fact and conclusions of law:

COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
FO 2021-06 for VAR 2021-02

II. FINDINGS OF FACT

- 1) The Nature of Proceedings (Section I) set forth above is true and correct and is specifically incorporated herein by this reference.
- 2) The subject of the above-referenced variance application is real property located within the City of Lincoln City ("City"), and described in the County Tax Assessor's maps as Tax Map 07-11-11-AD-02800 (the "Property"). The street address of the Property is 2219 NW Hwy 101, Lincoln City, Oregon. The site consists of approximately 10,454 square feet.
- 3) The Comprehensive Plan designation for the property is General Commercial District (G-C) and a zoning classification of General Commercial (GC).
- 4) The surrounding Land Uses and Zoning are as follows:
 - North: businesses; GC
 - South: NW 22nd St and businesses; GC
 - East: Hwy 101; GC
 - West: residences; RM
- 5) The applicant is:
 - Gregory Wescott, Excellence, Inc.
 - PO Box 1255
 - Lincoln City, OR 97367
- 6) The Property is owned by:
 - Gregory Wescott Trustee
 - PO Box 1255
 - Lincoln City, OR 97367
- 7) The relevant substantive criteria include the following:
 - LCMC Chapter 17.32 General Commercial (GC) Zone
 - LCMC Chapter 17.56 Off-Street Parking and Loading
 - LCMC Section 17.77.140 Variance

COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
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LCMC Chapter 17.76, Table 17.76.020-1 identifies a variance as a Type III application with the Planning Commission as the decision authority.

- 8) The background in the staff report is incorporated herein and is accepted as true and correct.

III. FINDINGS APPLYING APPLICABLE CODE CRITERIA

- 1) The Planning Commission finds and determines that the relevant approval criteria are found or referenced in the Lincoln City Municipal Code, principally Title 17, Chapter 17.32 (General Commercial Zone), LCMC 17.56 (Off-Street Parking), and LCMC 17.77.140 (Variance).
- 2) Chapter 17.32 (General Commercial Zone) Section 17.32.050.B requires a minimum side, street side or rear yard setback of 10 feet plus one-half foot for each foot by which the building height exceeds 15 feet when the side, street side or rear yard is abutting or across the street from a parcel in a residential zone. The rear setback of the subject property is across NW Mast PI from a lot in the Multiple-Unit Residential (R-M) Zone, and the proposed final building height is 19 feet, resulting in a required minimum rear setback of 12 feet.
- 3) Chapter 17.56 (Off-Street Parking), Section 17.56.080 requires that parking and loading spaces be located outside of required building setback areas and that they be 10 feet from any public right of way.
- 4) Chapter 17.77 (Conditional Uses), Section 17.77.140.C provides:

C. Approval Criteria. To approve a variance, the planning commission shall make findings of fact, based on evidence provided, that all of the following circumstances exist:

1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape legally existing prior to the date of the ordinance codified in this chapter, topography, or other circumstances over which the property owner has no control;
 2. The variance is necessary for the preservation of a property right of the property owner which is substantially the same as owners of other property in the same zone or vicinity possess;
 3. The variance should not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city planning policy;
 4. The variance requested is the minimum variance which would alleviate the hardship.
- 5) The Commission finds that it has received all information necessary to make a decision

COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
FO 2021-06 for VAR 2021-02

based on the entire record, including the Staff Reports, exhibits, application materials, public hearing testimony, and other materials received. Except where conflicting findings are made herein, the Commission adopts and specifically incorporates the findings as articulated by the Planning Department staff report, as the basis for the decision on the requested conditional use permit.

5) The Commission finds and determines, and adopts as its own the following findings concerning the applicable criteria:

- 1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape legally existing prior to the date of the ordinance codified in this title, topography, or other circumstances over which the applicant has no control;**

The written Staff report provides:

The site contains an existing building that was constructed in 1940, which is prior to the date of the ordinance codified in this chapter. The placement of the building, roughly in the center of the site and not adjacent to the front property line, would not be allowed under the current code. The unusual placement of the building, in conjunction with the criteria in Chapter 17.56 regarding the size and location of parking spaces, drive aisles, and parking screening and landscaping, prevent compliance with the criterion regarding parking spaces not being in the building setback area.

The property owner does not have any control over the past placement of the building because the building is existing. The property owner does not have any control over the requirements in Chapter 17.56. It is recognized that the requirements in Chapter 17.56 apply generally to other properties in the same zone, but other properties in the same zone are not preserving and repurposing an existing building, built in 1940 prior to the codification of the existing code and that is placed on the site contrary to existing code because that code didn't exist when the building was placed. The property owner has chosen to preserve and repurpose the existing building, rather than demolishing it and building a new building in the proper location, since this is the more economical, environmentally-friendly, sustainable, and history-preserving option..

The location of the building, the requirements for the number of off-street parking spaces, and the requirements for the drive aisle width and lot shape and site layout create a circumstance that applies to the property and the need for a variance to allow a portion of the parking spaces to encroach into the rear building setback.

COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
FO 2021-06 for VAR 2021-02

The Planning Commission concurs with staff analysis, and finds and determines that this criterion has been met. Commissioner Nelson does not concur with the staff analysis and does not feel that this criterion has been met, and accordingly, is against approving the request.

2. The variance is necessary for the preservation of a property right of the property owner which is substantially the same as owners of other property in the same zone or vicinity possess;

The Staff report provides:

The site's GC zone allows retail and office uses, which are allowed uses on anyone's property in the GC zone. These uses require one parking space per 400 square feet of floor area. Accordingly, for these uses to be allowed the required parking must be provided. Without the required parking, the site could not be utilized for retail and office uses. The only way to provide the required parking and still meet all the other criteria is to have the approximate 4-foot encroachment into the rear building setback area.

The Planning Commission concurs with staff analysis, and finds and determines that this criterion has been met.

3. The variance should not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city planning policy;

The Staff report provides:

The site contains an existing retaining wall along the west boundary. The project proposes construction of another retaining at the front end of the parking spaces with a 4-foot-deep landscape buffer on the other side of the retaining wall. The west boundary line is adjacent to the Oar Street public right-of-way. On the other side of the public right-of-way is the residential zone. The retaining walls and landscaping will provide an effective screen and buffer along the public right-of-way. With the retaining walls, landscaping, sidewalk, and street between the parking spaces and the residential zone, the 4-foot encroachment into the west building setback should not be detrimental to the properties in the residential zone across Oar Street. The objective of the criterion requiring no parking spaces in a building setback area is to provide distance and buffering between properties and parking areas. In this case, there is already a public right-of-way (street and sidewalk) between the site and the residential zone on the west side of Oar Street. The addition of the retaining walls and landscaping provides even greater buffering, so the objective is still being met with the minor encroachment.

The Planning Commission concurs with staff analysis, and finds and determines that this criterion has been met.

4. The variance requested is the minimum variance which would alleviate the hardship.

The Staff report provides:

The hardship is providing the required number of parking spaces outside of the building setback along the west boundary while still meeting all the parking, drive aisle, and parking landscaping and screening requirements. All the parking, drive aisle, and parking landscaping and screening requirements are being met, except the requirement for having the parking spaces outside of the rear building setback area. The building setback along the west boundary, since it is adjacent to a residential zone, is 12 feet. The parking spaces encroach into the 12-foot setback by approximately 4 feet. The variance being requested is to allow the front 4 feet of the parking spaces to be in the 12-foot setback. This is the minimum variance that will allow for placement of the required parking spaces. No more than the 4-foot-encroachment is necessary, and no more than 4 feet is being requested.

The Planning Commission concurs with staff analysis, and finds and determines that this criterion has been met.

V. ORDER

In sum, the Planning Commission for the City of Lincoln City finds and determines that the requested variance meets the approval criteria in LCMC 17.77.140.C. Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the Planning Commission hereby APPROVES the requested variance contained in VAR 2021-02.

Lincoln City Planning Commission

Date: _____

Marci Baker, Chair

Signature authorized and approved by the full Commission this 2nd day of November, 2021.

Planning Commission Communication

ZOA 2021-05 Lighting Ordinance

Meeting Date: November 2, 2021 Primary Staff Contact: AnneMarie Skinner
Department: Planning Commission E-Mail: ASkinner@lincolncity.org
Secondary Dept: Secondary Contacts:
Approval: Estimated Time:

This public hearing is being continued to November 16, 2021.