

**LINCOLN CITY PLANNING COMMISSION
MINUTES
March 7, 2023**

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

Attendee Name	Title	Status	Arrived
Brian Bunnett	Commissioner	Present	
Mellissa Sumner	Commissioner	Excused	
Marci Baker	Commissioner	Present	
Robert Vincent	Chair	Present	
Kim Blackerby	Commissioner	Present	
Charlsy Affuso	Commissioner	Present	

2. MINUTES

2.1. Planning Commission - Workshop - Feb 7, 2023 6:30 PM

MOTION:	Accept the minutes of the February 7, 2023, work session as written
MOVER:	Baker
SECONDER:	Vincent
AYES:	Bunnett, Baker, Vincent, Blackerby, Affuso
EXCUSED:	Sumner
RESULT:	Passed

2.2. Planning Commission - Regular Meeting - Feb 21, 2023 6:00 PM

MOTION:	Accept the minutes of the February 21, 2023, regular meeting as written
MOVER:	Baker
SECONDER:	Vincent
AYES:	Bunnett, Baker, Vincent, Blackerby, Affuso
EXCUSED:	Sumner
RESULT:	Passed

3. FINAL ORDERS & FINAL RECOMMENDATIONS

3.1. Final Order (FO 2023-01) for SUB 2022-01_P NW 40th subdivision

Commissioner Baker requested that the final order be amended to specify which side of the street the sidewalk would be placed, as shown on the drawings. The Planning Commission agreed to this amendment.

MOTION:	Approve Final Order (FO 2023-01) for SUB 2022-01_P NW 40th subdivision as written, but with the revision to add “as shown in the drawings” in reference to having sidewalk on one side of the street only
MOVER:	Blackerby
SECONDER:	Affuso
AYES:	Bunnett, Baker, Vincent, Blackerby, Affuso
EXCUSED:	Sumner
RESULT:	Passed as Amended

4. PUBLIC HEARINGS/DELIBERATIONS

4.1. APP 2023-01 Trout Fowler

Chair Vincent opened the public hearing for APP 2023-01 at 6:05 pm. He introduced the application, and asked if any member of the commission should declare ex parte communication, conflict or bias, to which Commissioner Blackerby responded that he knew the applicants well and would recuse himself from the discussion. Commissioner Blackerby subsequently left Council Chambers. Chair Vincent read all required statements, and Director Anne Marie Skinner provided the applicable substantive criteria.

Director Skinner presented the staff report, providing information regarding the site, the applicants, implications of the relevant components of the zoning code, and the proposal. She also provided an outline of the overall project timeline and process, from the building permit review phase, to the Director's Interpretation DI 2022-02, up to and including the current Appeal APP 2023-01 of the DI 2022-02.

Responding to a question from Chair Vincent, Director Skinner responded that there were limited options available, and that if the Planning Commission were to approve the appeal, the result would be comparable to rewriting the zoning code.

Commissioner Baker asked staff to confirm that if the project was to be done in separate phases, with the second story addition as the second phase under a separate building permit, that the project would meet the zoning code. Director Skinner asserted that it would. Ms. Baker also asked if a recommendation for an amendment to the code would need to be separate from their ruling on the current land use application, APP 2023-01. Director Skinner stated that was indeed the case.

Director Skinner added that this portion of the current zoning code has proven problematic in the past, and that a draft revision is underway. The revised language is scheduled for presentation to Planning Commission and a public hearing for the March 21, 2023 meeting. Zoning Ordinance Amendments also require a public hearing at City Council, which is scheduled for April 10, 2023. If adopted at that meeting it could be effective as early as May 10, 2023.

Responding to a question from Commissioner Baker, Director Skinner stated that she had no way of knowing what the intent of the current setback code language. It is not typical of other communities she has worked within.

Responding to a question from Commissioner Bunnett, Ms. Baker clarified her understanding that a phased project in two separate building permits would permit the project to be constructed.

City Attorney Richard Appicello clarified that any change to the code would require an ordinance, and could not be done through any interpretation process.

The application was represented by Randy Trout, the property owner's Architect. He emphasized his understanding of the terms "story", "with", and "structures" and how the use of these terms inform the basis for the appeal. Mr. Trout also expressed concern that the Director's Interpretation did not speak to the intent of the "graduated setback" component in the code. Mr. Trout also noted that although there was a notification to the neighborhood, no comments have been received in opposition to (or in favor of) their project.

Commissioner Baker asked Mr. Trout to clarify his use of the term "graduated setback". He stated that our code does not use this term, but that it is reasonable to imply that was the intent.

Commissioner Baker also asked for Mr. Trout to share his understanding of the term "structure". He said that it depended on the context on which you are discussing it, but that the use of the term "with" impacts that context. He reiterated his interest in discussion of the original intent of the setback code language.

Responding to a question from Commissioner Affuso, Mr. Trout stated that the final building would be a 2-story house. Commissioner Affuso also asked if the applicant had provided all of the required submittals for the current building permit, including the additional information requested by the Public Works Department. Mr. Trout stated that he did not believe this was not relevant to the current appeal discussion.

Jennifer Fowler, the property owner, spoke and shared her frustrations with the challenging nature of the project. She stated that due to the fact she could not successfully separate her emotions from the process, they had elected to have Mr. Trout present the appeal application. She expressed her desire to find common ground to allow their project to proceed.

There were no additional questions from the Planning Commissioners. Commissioner Baker moved to close the public hearing and the record, seconded by Commissioner Bunnett. The motion was passed.

Following the required statements provided by Chair Vincent, the applicants waived their right to continue the record.

Chair Vincent asked for follow-up questions or comments from staff. Director Skinner reiterated the current setback code language, and stated that per the applicant's representative, it will be more than one story. She added that there are times when the code does not always make sense, and it is the job of staff to apply the code whether or not it makes sense. In instances where the codes does not makes sense, staff are required to pursue an amendment, complete with a full notification to affected parties.

Mr. Appicello reiterated the state law that says that we can only amend code by ordinance, and not through interpretation. He added that he did not see that the use of the word "with" in the staff report made a difference in the discussion.

Commissioner Baker commented that our definition of the term "structure" was not clear in terms of whether various components of a building could be interpreted to be separate structures, i.e., a tower. Mr. Appicello stated that the setbacks applied to the entire structure, not to portions or stories of the structure. Ms. Baker asked for his understanding of the intent of the two different setbacks, to which Director Skinner replied that there was no intent given, the intent was not asked to be interpreted, that it is simply a rule. Mr. Appicello concurred.

Commissioner Bunnett agreed with the City Attorney that the term "with" was significant to the discussion, but he did sympathize with the nature of the situation with the homeowners.

Commissioner Baker stated that she understood how the applicants could have interpreted their proposal to meet the "intent" of the code, but that she concurs with staff that as a single project it does not meet our code as it is currently written. She recognizes that it is an asinine situation, and a perfect example of why we go through the process of amending our zoning code from time to time, though we are not in the position to make those changes tonight. She also expressed her sympathy for the applicants.

Chair Vincent stated that although he wished the Planning Commission could be more flexible, the code as written does not permit the project as currently proposed.

Commissioner Baker moved to uphold the Director's Interpretation. Commissioner Affuso seconded the motion, which was approved unanimously by the Planning Commission.

Commissioner Baker thanked the applicants. She stated that she had been prepared to recommend an amendment, so was glad to hear that one was being brought forward by staff. She asked whether this application would be held to the current code language. Mr. Appicello stated that they could request to take advantage of a favorable code amendment by simply communicating to the City.

In response to a question from Chair Vincent, Director Skinner provided additional information about the proposed code amendment process. She restated the public hearing with Planning Commission was scheduled for March 21st, and a subsequent public hearing was scheduled for April 10th with City Council. The earliest the code amendment would be effective would be May 10th if the City Council unanimously passed the first and second reading of the ordinance on April 10th.

Chair Vincent stated that the application had received a tentative verbal decision, and that a final written decision would be presented for adoption at the next available regular Planning Commission meeting.

MOTION:	Deny the appeal request and uphold the director's interpretation in DI 2022-02
MOVER:	Baker
SECONDER:	Affuso
AYES:	Bunnett, Baker, Vincent, Affuso
EXCUSED:	Mellissa Sumner
RECUSED:	Kim Blackerby
RESULT:	Passed

5. ADDITIONAL NOTE

Chair Blackerby rejoined the Planning Commission meeting.

6. DIRECTOR'S UPDATE

Director Skinner stated that there had been no known activities related to any previously approved land use cases.

7. NEXT MEETINGS/COMMENTS FROM PLANNING COMMISSIONERS & CIC

Director Skinner stated that good progress is being made on the Comprehensive Plan, and provided an overview of upcoming work sessions on March 9th and March 23rd. Current drafts of the chapters discussed to-date with the Planning Commission are on the project website.

Commissioner Baker asked if they should expect to receive public comments and feedback via email, or if they needed to rely on the website page. Director Skinner recommended using the website page. Ms. Baker also asked if staff could investigate the availability of any basic tutorial videos from DLCDC or other sources on the statewide planning goals, and if they could be added to the website. Director Skinner stated that she would add a link to the project website page for the statewide planning goals, and would look for any videos produced by DLCDC regarding the statewide planning goals.

8. ADJOURN

Chair Vincent adjourned the meeting at 7:07 PM.

Respectfully submitted,

Anne Marie Skinner
Planning Director

Robert Vincent
Chair