

FINAL ORDER 2022-05

**BEFORE THE PLANNING COMMISSION
CITY OF LINCOLN CITY, LINCOLN COUNTY, OREGON
May 17, 2022**

In the Matter of Approval of a Conditional Use)
Permit Application [CUP 2022-01] for a dock) **FINDINGS OF FACT**
in the General Commercial (GC) Zone,) **CONCLUSIONS OF LAW**
located at 496 S Schooner Creek Rd, Lincoln City, Oregon) **AND ORDER**

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 a dock at 496 S Schooner Creek Rd.

The application materials were received on March 29, 2022, and deemed complete on March 29, 2022.

Notification of the May 3, 2022, 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 April 1, 2022. *The News Guard* published the public hearing notice on Tuesday, April 19, 2022.

On May 3, 2022, 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 May 3, 2022, including the staff report and all properly submitted evidence and argument, the Planning Commission voted to DENY the request.

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 2022-05 for CUP 2022-01

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 07-11-27-DA-00101-00 (Property). The street address of the Property is 496 S Schooner Creek Rd, Lincoln City, Oregon. The site is approximately 0.8 acre.

3) The Comprehensive Plan designation for the property is Commercial General District. The zoning classification of the site is General Commercial (GC) Zone.

4) The surrounding Land Uses and Zoning are as follows:

North: S Schooner Creek Rd, undeveloped; R-1-5

South: Houses; GC

East: Houses; County zoning

West: SE 51st St, houses; R-1-7.5

5) The applicants are:

Nancy Hatley and Phil Resnikoff
496 S Schooner Creek Rd
Lincoln City, OR 97367

6) The Property is owned by:

Nancy Hatley and Phil Resnikoff
496 S Schooner Creek Rd
Lincoln City, OR 97367

7) The relevant substantive criteria include the following:

LCMC Chapter 17.32 General Commercial (GC) 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 17.32 (General Commercial (GC) Zone), Chapter 17.44 (Marine Waterway (M-W) Zone), and Section 17.77.060 (Conditional Uses).

2) Chapter 17.32 (General Commercial (GC) Zone) Section 17.32.040.T 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;

COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
FO 2022-05 for CUP 2022-01

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

The written staff report provides:

DSL provided comments on April 19, 2022, indicating that the property owners need to contact both Carrie Landrum and Jennifer Miller at DSL for requirements and/or permits. DSL also

COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
FO 2022-05 for CUP 2022-01

noted that Schooner Creek is designated essential salmonid habitat and is a tidal water; therefore, it is under DSL ownership.

ODFW provided comments on March 30, 2022, with their residential dock guidelines. They use these guidelines to comment on all residential over water structures that require some type of permit from a local, state, or federal agency. At a minimum, the dock requires a conditional use permit from the city. It's possible that DSL will require permits as well.

The property owners provided no evidence in the submitted materials that they have contacted any agency for requirements. Accordingly, this requirement is not met.

The Planning Commission finds and determines that the findings of both the staff and the applicant concluding that this criterion is not 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 property owners, 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 use the dock to place kayaks in the water. These activities do not create any water pollution. This requirement is currently met and will continue to be met with a condition of approval that any new construction must adhere to the requirements of LCMC Chapter 17.44.

Based upon the staff report and the evidence provided by the applicant, the Planning Commission finds and determines that this 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:

The submitted site plan does not identify the ordinary low water line or the ordinary high water line. The submitted site plan also does not show the length of the dock or its placement in relation to either the ordinary low or ordinary high water line.

The submitted site plan does not provide enough details for staff to ascertain if the dock's location presents a loss of navigable waterway area.

The submitted site plan does not show the dimensions of the dock, the mean low water line, or the dimensions of the site.

The applicant did not provide any evidence in the initial submittal or in the public testimony showing the ordinary low or high water lines in relation to the length and placement of the dock. Opposing testimony stated that the placement of the dock was such that there is loss of navigable waterway area and the neighbor is unable to navigate kayaks around the dock in low tide. The applicant stated in testimony during the public hearing that it was not possible to place the dock such that it would not extend more than 5% of the width of the watercourse from mean low water line to mean low water line, thus admitting that this criterion is not met. The Planning Commission finds and determines (concurring with staff) that these criteria are not 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 submitted materials don't show any plumbing facilities on the existing dock.

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

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.

COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
FO 2022-05 for CUP 2022-01

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 applicant submitted: that the "dock is on our property;" that "the purpose of the dock is to get into and out of kayaks and canoes;" that the site is identified as 07-11-27-DA-00101-00; a map showing the existing dock, not drawn to scale or showing other development within 250 feet of the site, but a statement that there are no similar facilities within 250 feet of the dock; and a statement that the project was completed on April 4, 2017. The Planning Commission finds that these criteria were 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 written staff report notes that the zoning code enacts the comprehensive plan and without compliance with the zoning code there is, therefore, no compliance with the comprehensive plan. As shown in the findings above, the request is not in compliance with several required criteria from Chapter 17.44. Opposing testimony provided during the public hearing stated that there is loss of navigable waterway due to the placement of the dock, which is a violation of one of the criterion. Planning Commission finds that this criterion is not met based upon the written and verbal staff reports and evidence submitted by the opposition.

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 property owners request conditional use permit approval for a dock. It is unclear if all the requirements of LCMC Chapter 17.44, as detailed earlier in this report, are met. No setbacks, common spaces, retaining walls, parking and loading areas, or landscaping are required for a dock. Staff concludes that this criterion is not satisfied, but it can be with conditions of approval.

Testimony provided by the applicant and the opposition both state that the watercourse on the site is not wide enough to meet the requirement for the dock not extending more than 5% into the watercourse as measured from low water line to low water line. Accordingly, by testimony, the site for the proposed use is not adequate in size to accommodate the use. The Planning

Commission finds that this criterion is not met based upon the staff report and testimony given during the public hearing.

- 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 may or may not meet 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.

Based upon the staff report and testimony received during the public hearing regarding the width of the waterway in relation to the dock placement, the Planning Commission finds and determines that this criterion is not 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.**

COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
FO 2022-05 for CUP 2022-01

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

IV. ORDER

In sum, the Planning Commission for the City of Lincoln City finds and determines that the requested Conditional Use Permit Application does not meet the approval criteria in LCMC 17.77.060.D and in LCMC 17.44.040. 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 DENIES the requested Conditional Use Permit contained in CUP 2022-01.

Lincoln City Planning Commission

DocuSigned by:
Kim Blackerby

A051BF00F101462...

Kim Blackerby, Chair

Signature authorized and approved by the full Commission this 17th day of May, 2022.