

CANNON BEACH

Appeal reveals clash over oceanfront development

By KATIE FRANKOWICZ
The Astorian

CANNON BEACH — City Councilor Mike Benefield had just hit a metaphorical wall.

Why, he wondered aloud at a meeting in early November, was the City Council even looking at an easement request from Stanley and Rebecca Roberts?

The couple wanted to use an undeveloped public right of way to access their property. The private drive they proposed was a far cry from the access they had previously suggested — a raised, curving road that looked more like a highway overpass than a driveway. But the request arrived as the couple continued to fight the city in front of the Oregon Court of Appeals over a beach house they want to build.

The access, city councilors noted, is for a house that has not met city standards and that doesn't yet exist.

The City Council will have to consider access, but many unanswered and thorny questions about the future of the project remain. Chief among them is what the implications will be for the city's oceanfront development rules if the couple prevails.

The Roberts' property sits where Hemlock Street, Cannon Beach's main north-south corridor, climbs steeply and takes a few quick, snaking curves. The couple has owned the 5,394-square-foot lot for two decades.

Their property is right above the beach and the view is fantastic. Iconic Haystack Rock rises to the north. But the slope off the property and those curves leading up to it have some concerned about the feasibility and safety of new development.

The Roberts' immediate neighbor to the south is an undeveloped city-owned lot called Inspiration Point, purchased in the early 2000s with the help of the public to preserve green space along the coastal cliff. To the north is land and a replica of a historic cabin once owned by famed former Gov. Oswald West.

The owners and caretakers of the property, Haystack Rock LLC, claim, among other things, that the Roberts' proposal would impact the historical nature of the site and also diminish the intent of Inspiration Point.

The undeveloped lots off the Hemlock Street curves are some of the few such oceanfront parcels left near the heart of the city. They allow people a glimpse, a sort of memory, of what the area looked like before it became so developed and a hub for tourism.

Then there is the thorniest issue of all.



Lydia Ely/The Astorian

Stanley and Rebecca Roberts are in a dispute with the city over a beach house off Hemlock Street.

Oceanfront setback

The property is zoned residential, so a beach house is allowed. However, the location puts it under an oceanfront management overlay with attendant limitations on development. Here, the Oswald West cabin, the only nearby building, plays a key role.

Last year, the Roberts submitted a proposal to build a 2,712-square-foot beach house on the northeastern corner of the property. City staff approved the request with several conditions. The Roberts needed to show the proposed house complied with the city's oceanfront setback standard.

At first, it seemed possible the project could meet the city's requirements, Planning Director Jeff Adams later noted in a report.

But the Roberts challenged the conditions set on them by city staff. Later, they submitted information that staff and officials say showed the house they hoped to build did not meet the oceanfront setback standard.

Cannon Beach's oceanfront setback rule has been in place since at least the 1990s, before the Roberts bought the property. It dictates that new development must be set away from the ocean shore and outlines how to calculate that distance. Most local surveyors, engineers and architects know about the rule and how to work with it, Adams said.

"It's pretty standard," he said. "I don't think there really had been a question until now."

Planners calculate the ocean setback for any given property by taking the average of the setbacks for existing buildings nearby that could be affected by a new building. In

the Roberts' case, the only nearby building was the Oswald West cabin. So the city determined the setback for the Roberts' property would be the same as the cabin's: 119 feet.

The line planners drew after applying the setback standard ran right through the middle of the Roberts' proposed house and significantly reduced the possible footprint for any building on the property.

The Roberts have gone through several appeals with the city over the setback standard. The matter eventually went to the state Land Use Board of Appeals, where the state sided with the city.

The Roberts were not ready to give up and appealed to the Court of Appeals. The city expects to hear a decision from the state early next year.

The arguments primarily come down to how the city applied its ocean setback standard and whether or not certain words in the law are clear. The Roberts believe different people could reach different conclusions about how to apply the ocean setback standard.

They also argue that state law prohibits Cannon Beach from applying the standard. To follow the city's rule reduces the size of the house that can be built, going against a state rule dealing with housing density, the Roberts argue.

The city contends that the state law does not apply in this case and that the Roberts' project was denied not because of the size of the house, but because the project didn't meet the city's setback standard.

Statewide concerns

Larger groups have joined the fight.

Signed on with the city is Haystack Rock LLC, which represents the Oswald West cabin property, and the nonprofit Oregon Coast Alliance. They have been joined by the League of Oregon Cities, which submitted an amicus brief to the appeals court to show the organization's strong support for the city's arguments.

The court's decision will "significantly affect the ability of cities in Oregon to plan for and guide development of housing within their jurisdictions," the League of Oregon Cities wrote.

The organization also contends that the Roberts are proposing interpretations of state rules about housing density that "would undermine the ability of cities to increase housing and avoid other critical zoning problems."

Meanwhile, the Home Builders Association of Metropolitan Portland and the Stafford Land Co., a residential developer, have submitted amicus briefs of their own in support of the Roberts, echoing the couple's arguments.

Stanley Roberts said he never expected so much pushback.

Roberts, a retired Washington state attorney, bought the property with his wife, his brother and his sister-in-law in 2001. It had been his brother's dream to build a house there. When his brother died, Roberts wasn't sure what to do.

Eventually, he decided to build the beach house — in honor of his brother, he said.

"It was very sentimental to me, to build where he wanted to build," Roberts said.

Now he has spent thousands of dollars trying to realize that dream with no guarantee that it will happen. He's angry.

"Cannon Beach, I will tell you, should be renamed Cannot Beach," he said.

Roberts doesn't think he will win at the appeals court. Perhaps he'll take the matter to the Oregon Supreme Court next. He isn't sure.

What he is sure about, though, is a feeling that his neighbors have more ownership and say over what happens on his property than he does.

Roberts is not interested in building a smaller house to satisfy the city's requirements. There is a good chance, he thinks, that he'll never be able to build the house he envisioned. If "no" is the final answer, he'll put something else on the property: some kind of homeless shelter, maybe, or, he said, "the most obnoxious art."

"I'll be famous in Cannon Beach," he said. "Infamous, probably."



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