

WASCO COUNTY PLANNING COMMISSION

June 1, 2010

Meeting begins at 3:00p.m.

Columbia Gorge Discovery Center

Classroom, lower level

5000 Discovery Drive

The Dalles, OR 97058

I. **REGULAR HEARING CALL TO ORDER**

ROLL CALL

PLANNING COMMISSIONERS PRESENT

Don Hoffman

Vicki Ashley

Jill Amery

Mike Omeg

PLANNING COMMISSIONERS ABSENT

Ron Archer

Joel Brown

Russell Hargrave

STAFF PRESENT

Todd Cornett, Planning Director

Gary Nychyk, Senior Planner

Brenda Jenkins, Planning Coordinator

Jeanette Montour, Associate Planner

PUBLIC COMMENT: Maximum 15 minutes, limited to items not being heard or discussed elsewhere on the agenda.

None

APPROVAL OF PAST MINUTES- February 2, 2010

Vice Chair Ashley moved to approve the minutes as submitted.

Commissioner Amery seconded

Chair Hoffman called for discussion

None.

Chair Hoffman called for the vote

The motion was unanimously approved 4 to 0, 3 absent (Commissioners Brown, Hargrave, and Archer). A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hoffman – yes

Vice-Chair Ashley – yes

Commissioner Hargrave – absent

Commissioner Brown – absent

Commissioner Omeg – yes

Commissioner Archer – absent

Commissioner Amery – yes

- II. QUASIJUDICIAL HEARING: File # PLAQJR-10-04-0002. A Request by Dufur School District (Marty Willie) for a Quasi-Judicial Variance permit to place four storage containers, each 320 square ft., 8'5" high, on the western edge of TL 800. The purpose for the placement of the proposed structures is to store technology training materials as part of a statewide, environmental stewardship program, the Students Recycling Used Technology, StRUT program. The subject property is located on the north

side of Fifteen Mile Road, in the old Petersburg Elementary School building, which is approximately 5 miles east of the City of The Dalles, and is further described as 2S 14E 33 800 (Owner of record: Dufur School District.) Review Authority: Chapter 2, Section 2.060.B. 8 of the Wasco County Land Use and Development Ordinance. Review Criteria: Chapter 2 (Procedures); Chapter 3 (Basic Provisions), Section 3.210 (Exclusive Farm Use zone), and Chapter 6 (Variances).

Chair Hoffman opened the session as follows:

The public hearing is now open for the purpose of considering PLAQJR-10-04-0002, a request for:

A quasi-judicial variance permit to place four storage containers, each 320 square ft., 8'5" high, on the western edge of TL 800. The purpose for the placement of the proposed structures is to store technology training materials as part of a statewide, environmental stewardship program, the Students Recycling Used Technology, StRUT program.

The procedure for today's hearing will be:

- a. Establishment of Party Status
- b. Reading of the Rules of Evidence
- c. Disclosure of Ex Parte Contact
- d. Planning Department Report
- e. Applicant's testimony
- f. Those who wish to speak in favor of the proposal
- g. Those who wish to speak in opposition of the proposal
- h. Applicant's rebuttal
- i. Close the hearing for questions, deliberation, and the decision

Party Recognition

Anyone can speak for or against the proposal. However, only those who have party status will be able to appeal a decision reached by this Commission.

A party is defined in Section 1.090 as

The applicant and all owners or contract purchasers of record, as shown in the files of the Wasco County Assessor's Office, of the property which is the subject of the application.

All property owners of record, as provided in (a) above, within the notification area, as described in section 2.080 A.2., of the property which is the subject of the application.

A Citizen Advisory Group pursuant to the Citizen Involvement Program approved pursuant to O.R.S. 197.160.

Any affected unit of local government or public district or state or federal agency.

Any other person, or his representative, who is specifically, personally or adversely affected in the subject matter, as determined by the Approving Authority. (Revised 1/92)

4. The Rules of Evidence are as follows:

No person shall present irrelevant, immaterial, or unduly repetitious testimony or evidence.

Evidence received shall be of a quality that reasonable persons rely upon in the conduct of their daily affairs.

Testimony and evidence must be directed toward the criteria applicable to the subject hearing.

Failure to raise an issue accompanied by statements or evidence sufficient to afford the Planning Commission and parties an opportunity to respond to the issue precludes further appeal based on that issue.

Any party of record may request that the record remain open for at least seven (7) days prior to the conclusion of the initial evidentiary hearing.

Disclosure of Interest of Ex Parte Contact:

Does any Planning Commission member wish to disqualify themselves for any personal or financial interest in this matter?

Does any Planning Commission member wish to report any significant ex parte or pre-hearing contacts?

Does any member of the audience wish to challenge the right of any Planning Commission to hear this matter?

Is there any member of the audience who wishes to question the jurisdiction of this body to act on behalf of Wasco County in this matter?

Chair Hoffman called for the staff presentation and staff report.

Gary Nychyk, Senior Planner

Senior Planner Nychyk presented the staff report as follows:

Location: The property is located at 825 Carroll Road, which is approximately 0.5 miles south of the intersection of Dry Creek Road, approximately 0.5 miles southeast of Mosier.

Staff Recommendation: The full Staff Recommendation was mailed in the Planning Commission's agenda packets. It was available for review at the counter one week prior to this hearing, and it is considered a part of the record.

Why the Request is Before the Planning Commission: Section 2.060.B.8 of the Wasco County Land Use & Development Ordinance requires the Planning Commission to hear variances to setback standards that exceed 50% of the requirement. The applicant has requested to construct an addition to an existing accessory structure within 83 feet of the western property line, and within 42 feet of Mosier Creek. The required property line setback in this location is 200 feet, and the required setback from Mosier Creek is 100 feet. Therefore, the variance must be evaluated through the Quasi-Judicial review process.

Stage in the Process: This application was submitted to the Planning Department on February 16, 2010, and the request was found to be complete on March 18, 2010 and was scheduled for this public hearing. The applicant submitted revised drawings of the proposed accessory structure on April 8, 2010, which increased the square footage of the proposed accessory structure. Staff determined that the amendment could reasonably be reviewed with no additional Notice, but we wanted to raise the issue today just in case there were concerns. All required public notice has been given. The Staff Recommendation, with findings, conditions and conclusions, was issued on April 27, 2010. The Staff Recommendation and Summary were provided to the Planning Commission. If the Planning Commission feels they have all the necessary information to make a decision, they will vote to do so today.

Criteria: The criteria used to evaluate this request include:

Wasco County Land Use & Development Ordinance (WCLUDO)

Chapter 2 – Development Approval Procedures

Section 2.060.B.8. (Variance)

Section 2.080 (Notice)

Section 2.090 (Contents of Notice)

Section 2.140 (Hearing Procedure)

Section 2.150 (Official Notice)

Section 2.190 (General Conduct of Hearings)

Chapter 3 – Basic Provisions

Section 3.210 – A-1 (160) Exclusive Farm Use Zone

Section 3.210.C.2 (Accessory Structures)

Section 3.210.F (Property Development Standards)

Chapter 13 – Non-Conforming Use

Section 13.050 (Verification of Non-Conforming Use)

Section 13.060 (Restoration or Alteration of Non-Conforming Use)

Chapter 6 – Variance

Section 6.020 (Criteria for Decision)

Chapter 10 – Fire Safety Standards

Section 10.110 (Siting Standards)

Section 10.120 (Defensible Space)

Section 10.130 (Construction Standards for Dwellings and Structures)

Section 10.140 (Access Standards)

Findings:

Chapter 3:

Section 3.210.C.2 allows buildings and structures accessory to a legally established dwelling on a legal parcel not provided in conjunction with farm use subject to meeting the definition in Section 1.090.

County Planning Staff found the parcel and the dwelling to be lawfully established.

Section 1.090 of the Wasco County LUDO defines an accessory structure as: A detached structure, its footprint being less than 3/4 of the primary structures footprint, the use of which is customarily incidental to that of the primary structure or the primary use of the land and which is located on the same lot-of-record with the primary structure or use.

The applicant has requested to construct an addition to an existing 240 square foot accessory structure, which is currently being used as storage. The existing dwelling is approximately 1,012 square feet in size. 3/4 of 1,012 square feet is 759 square feet. The final size of the proposed addition will be 680 square feet, and it will be used for workspace, a craft studio, and storage. This meets the definition of an accessory structure.

To ensure compliance with the proposed use of the structure, a condition requires that current and future property owners shall comply with the application as reviewed and approved by the staff report which is available at the Wasco County Planning Department. This report details the restrictions on aspects of the approved development including but not limited to location, dimensions and use. This decision does not constitute tacit approval for any other development or use.

The applicant has not requested to use the proposed accessory structure as a guest house. Additionally, the Exclusive Farm Use does not include any provisions to allow guest houses.

Therefore, a condition is included advising current and future property owners that the use of the accessory structure as a guest house will be considered a violation of conditions of the Notice of Decision.

Section 3.210.F Property Development Standards

Setbacks:

All accessory structures not in conjunction with farm use, shall be a minimum of 200 feet from the property line if adjacent land is being used for crops.

Farm Service Agency maps indicate that the property to the west of the proposed accessory structure addition is being used for crops. Therefore, a minimum setback of 200 feet is required

The applicant has proposed to locate the accessory structure addition approximately 83 feet from the western property line. This does not comply with the setback requirements.

Analysis indicates that all other setbacks exceed the minimum requirement of 200 feet.

Additions, modifications or relocation of existing structures shall comply with all EFU setback standards. Any proposal that cannot meet these standards is subject to Chapters 6 (Variances) and 13 (Non-Conforming Uses):

The requested addition to an existing accessory structure does not comply with setback standards and has been reviewed through Chapters 6 and 13.

Waterways:

There is a 100-foot required setback from all fish bearing streams:

Discussions with Oregon Department of Fish and Wildlife Staff indicate that Mosier Creek in this area is considered fish-bearing. Therefore a minimum of 100 feet is required.

The proposed addition to the accessory structure is located approximately 42 feet from Mosier Creek, which is less than the required 100 feet. Therefore, a variance is required.

Lighting: A standard condition was included advising the applicant of acceptable lighting standards.

Chapter 13 – Non-Conforming Use:

Chapter 13 requires that a nonconforming use meets lawfully established and discontinuance or abandonment criteria, is processed as specified, and will result in no greater adverse impact on the neighborhood:

Staff reviewed the existing accessory structure against all applicable criteria and found that the use of the structure was lawfully established in the 1920s.

The applicant indicated that the accessory structure is and has continuously been used as a storage structure. Staff found during a site inspection that the structure is currently suitable for storage. Additionally, staff found no evidence of the structure's abandonment.

Staff reviewed the request against applicable criteria in Sections 2.060.A.9 and 13.050 of the LUDO.

Staff found that expansion of the accessory structure to accommodate a workshop, craft studio and storage is consistent with alteration of a nonconforming use.

Additionally, Staff found that the existing accessory structure does not currently meet setback requirements, and that the expansion of the structure will result in further non-conformance with those requirements. Therefore, the request must be reviewed through Chapter 6 – Variances.

Except for the encroachment into the setbacks as described, Staff found that the requested addition will result in no greater adverse impact on the neighborhood.

Staff also found that the request complies with all applicable regulations of Chapter 13.

Chapter 6 – Variances

Section 6.020 allows a variance from regulations to dimensional standards subject to certain criteria:

The location of the existing accessory structure currently does not comply with setback standards from the adjacent property line or Mosier Creek. The applicant has requested to construct an addition to the existing accessory structure closer to the western property line and Mosier creek. This is a dimensional standard, which can be reviewed through the variance process.

Specific Variance Criteria that must be met:

First: Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity which result from the lot size or shape, topography, or other circumstances over which the property owner has had no control.

The subject property ranges in width from approximately 300 feet to approximately 550 feet. Land on all sides of the subject property is currently being utilized for agricultural purposes. Therefore, the required setback is 200 feet from all property boundaries. The required setback from Mosier Creek is 100 feet because it is considered fish bearing.

As you can see from the aerial photo, the property is approximately 2,100 feet long (running north – south) and between 300 and 550 feet wide (east to west). Additionally, Mosier Creek is located along the western boundary of the property, and steep slopes (over 30%) are also located on the eastern and western sides of the property.

The existing accessory structure is located adjacently west of the existing driveway. This driveway lies between the accessory structure to the west and the dwelling to the east. Any addition to the accessory structure away from the setbacks in question would require relocating the driveway to the eastern side of the dwelling. This would likely require relocating or altering a newly installed septic system.

Based on GIS information, there is approximately two acres of the property where a structure could be built in compliance with setback standards. As stated above, that space is further limited by the topography to the east and west, the existing driveway, and the existing primary and reserve septic field.

The existing accessory structure to be remodeled is located approximately 45 feet from Mosier Creek and approximately 90 feet from the property to the west.

In the vicinity of the accessory structure, the morphology of Mossier Creek curves around the structure so that any expansion to the south or west will encroach further into the setback.

Expansion to the north is partially limited to very steep terrain where the property falls approximately 40 feet to Mosier Creek.

These are the circumstances allowing Staff to conclude that the request involves circumstances over which the property owner has had little control since the enactment of this Ordinance.

Second: The variance is necessary for the preservation of a property right of the applicant which is the same as that enjoyed by other property owners in the same zoning district in the area.

The requested addition is an allowable use in the Exclusive Farm Use Zone. Typically, Lots and Parcels in the A-1 (160) zone are larger in size and much wider than the subject property. The constraints imposed by the required two hundred foot setback from all property lines leaves between zero and 150-foot width where a new accessory structure could be built in compliance with the setback requirements.

Existing topography, along with the location of driveways and the primary and reserve septic fields further limits the possible locations of an accessory structure.

Finally, the applicant is requesting to remodel an existing structure. The location of this structure cannot be changed to meet the required setbacks.

With this in mind, Staff finds that the variance is necessary for the preservation of a property right of the applicant, which is enjoyed by other property owners in the zoning district.

Third: The variance would conform with the purposes of this Ordinance and would not be materially detrimental to property in the same zone or vicinity in which the property is located, or otherwise conflict or reasonably be expected to conflict with the Comprehensive Plan.

Setback standards for development are in place to assist in the protection of public health and safety. The applicant has proposed to remodel and expand an existing accessory structure instead of creating a new one.

Accessory structures are an allowable use in this zone.

As of April 29, 2010, Staff had received no comments from neighbors expressing concerns regarding the proposed variance to setback standards.

Email conversations on April 5, 2010 with Jason Seals, Assistant District Fish Biologist for the Oregon Department of Fish and Wildlife indicate that ODFW doesn't have any concerns regarding the expansion of the existing accessory structure.

Staff concludes that the requested variance does conform to the purposes of this ordinance and will not be materially detrimental to property in the vicinity, or otherwise conflict or reasonably be expected to conflict with the Comprehensive Plan.

Fourth: The variance request is the minimum variance which would alleviate the difficulty.

Section 1.090 allows accessory structures to occupy up to 3/4 of the footprint of the primary structure. The applicant has requested a 680 square foot accessory structure, which complies with the definition of Accessory Structure.

The location of the existing structure is adjacent to the driveway serving the property. The applicant has proposed to construct the addition to the accessory structure as close to the driveway as possible, which reduces the encroachment into the property line and waterway setbacks.

The applicant has proposed to construct the addition to the accessory structure parallel to the western property line and Mosier Creek to the maximum extent practicable, which reduces further impacts into those setbacks.

When complete, the accessory structure will be approximately 42 feet from Mosier Creek and approximately 83 feet from the western property boundary.

Staff noted that there are other structures on the property. Namely, a 3,600 square foot horse barn located approximately 300 feet north of the existing dwelling and a riding arena near the northern property line. Although these structures could possibly be used as an accessory structure for the dwelling, staff finds that their location and agricultural use preclude them from being used as accessory to the dwelling.

Staff concludes that the request is for the minimum necessary in order to alleviate the difficulty.

Finally: The variance is not the result of a self-created hardship.

As previously discussed, the property is long and narrow (300' – 550' wide), leaving little space where a new accessory structure could be constructed in compliance with property line setbacks.

Existing topography, driveways, and the primary and reserve septic drainfield further limit the possibility of siting an accessory structure that complies with the setback requirements.

The applicant has requested to remodel an existing 240 square foot accessory structure into a 680 square foot accessory structure.

Wasco County Assessor records indicate that both the existing accessory structure and the dwelling were built during the 1920s.

With this in mind, staff find that the variance as requested is not the result of a self-created hardship.

Chapter 10 – Fire Safety Standards

Chapter 10 evaluates the fire safety of a proposed development:

Planning Staff evaluated the requested addition to an existing accessory structure against all applicable Fire Safety Standards and found that the request complies subject to a condition committing current and future property owners to comply with the signed fire safety standards self-certification checklist submitted by the applicant.

The options of the Planning Commission are to:

Approve the request to construct an addition on an existing accessory structure within 83 feet of the required 200-foot setback, and within 42 feet of the required 100-foot setback from Mosier Creek with final dimensions of the accessory structure being 38' x 16' x 20' tall (680 square feet) with the findings, conclusions and conditions recommended by the Planning Department; or

Approve the request to construct an addition on an existing accessory structure within 83 feet of the required 200-foot setback, and within 42 feet of the required 100-foot setback from Mosier Creek with amended findings, conclusions and conditions provided by the Planning Commission; or

Deny the request to construct an addition on an existing accessory structure within 83 feet of the required 200-foot setback, and within 42 feet of the required 100-foot setback from Mosier Creek with amended findings, conclusions and conditions provided by the Planning Commission; or

If additional information is needed, continue the hearing to a date and time certain to allow the submittal of additional information.

Staff believes that the Planning Commission has sufficient information to make a decision on this request, and we recommend Option A.

Conclusion

That concludes my presentation and I will entertain any questions you may have.

Chair Hoffman called for questions from the Commission.

Chair Hoffman called for testimony from the audience

Jan Huxel, Property Owner

Mr. Huxel stated that he had gotten a home improvement loan, the insurance company wanted a flood map, the map they received from Wasco County was from 1882. He inquired if customers could get an updated map from Wasco County.

Chair Hoffman explained that due to limited flooding and the population in the County we are not a high priority for mapping, he also explained that an individual could go and request a remapping of an area but that it would be a FEMA process not a Wasco County Process.

Chair Hoffman called for additional testimony from the audience.

None.

Chair Hoffman closed the hearing for deliberation.

Vice Chair Ashley moved to recommend approval of the proposed county ordinance
Motion died

Vice Chair Ashley moved to recommend approval of the proposed amendments to the Wasco County Land Use and Development Ordinance with changes as discussed and agreed upon by the Commission.

Commissioner Amery seconded
Chair Hoffman called for discussion
None.
Chair Hoffman called for the vote

The motion was unanimously approved 4 to 0, 3 absent (Commissioners Brown, Hargrave, and Archer). A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hoffman – yes
Vice-Chair Ashley – yes
Commissioner Hargrave – absent
Commissioner Brown – absent
Commissioner Omeg – yes
Commissioner Archer – absent
Commissioner Amery – yes

Vice Chair Ashley moved to recommend approval of the proposed amendments to the Wasco County Comprehensive Plan with changes as discussed and agreed upon by the Commission.

Commissioner Omeg seconded
Chair Hoffman called for discussion
None.
Chair Hoffman called for the vote

The motion was unanimously approved 4 to 0, 3 absent (Commissioners Brown, Hargrave, and Archer). A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hoffman – yes
Vice-Chair Ashley – yes
Commissioner Hargrave – absent
Commissioner Brown – absent
Commissioner Omeg – yes
Commissioner Archer – absent
Commissioner Amery – yes

Vice Chair Ashley moved to recommend approval of the proposed amendments to the Wasco County National Scenic Area Land Use and Development Ordinance with changes as discussed and agreed upon by the Commission.

Commissioner Amery seconded
Chair Hoffman called for discussion
None.
Chair Hoffman called for the vote

The motion was unanimously approved 4 to 0, 3 absent (Commissioners Brown, Hargrave, and Archer). A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hoffman – yes
Vice-Chair Ashley – yes
Commissioner Hargrave – absent
Commissioner Brown – absent
Commissioner Omeg – yes
Commissioner Archer – absent
Commissioner Amery – yes

Hearing closed

FUTURE AGENDA ITEMS:

None

III. OTHER BUSINESS:

None.

IV.

V. ADJOURNMENT

VI. Adjourned at 4:30

Respectfully submitted,

Donald Hoffman, Chair
Wasco County Planning Commission
Development

Todd Cornett, Planning Director
Wasco County Planning &