

**WASCO COUNTY PLANNING COMMISSION**

**November 2, 2010**

**Meeting begins at 3:00p.m.**

**Columbia Gorge Discovery Center**

**Classroom, lower level**

**5000 Discovery Drive**

**The Dalles, OR 97058**

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**REGULAR HEARING CALL TO ORDER**

**I. ROLL CALL**

**PLANNING COMMISSIONERS PRESENT**

Don Hoffman  
Jill Amery  
Ron Archer  
Chip Wood  
Russ Hargrave

**PLANNING COMMISSIONERS ABSENT**

Vicki Ashley  
Mike Omeg

**STAFF PRESENT**

Todd Cornett, Planning Director  
Brenda Jenkins, Planning Coordinator  
Jeanette Montour, Associate Planner

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

None

**III. QUASIJUDICIAL HEARING: File # PLAQJR-10-08-0003 and PLACUP-10-08-0019. Request by owners James Harlow and Doug Robertson for a conditional use permit to construct a 16' x 12' x10' (192 sq. ft.), storage shed in the Wild and Scenic Rivers overlay zone of the A-1(160) Exclusive Farm Use zone. The subject property is located in the North Junction of the Deschutes River Access Road, approximately 19.6 miles south of the City of Maupin, Oregon. Review Authority: Chapter 2, Section 2.060.B.14 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), Section 3.210 (F) Setbacks, Section 3.910 (EPD 7 Natural Area- Wild and Scenic Rivers Boundary Area); Chapter 5 (Conditional Use Review); Chapter 6 (Variances).**

Chair Hoffman opened the session as follows:

1. Opening the Hearing: The public hearing is now open for the purpose of considering PLAQJR-0-08-0003-PLACUP-10-08-0019, a review by the Planning Commission to consider variance to retroactively permit the construction of a 192 sq.ft. (16' x 12' x 10') utility shed located approximately 30' from the closest property line. The setbacks required for this parcel are 100-feet to all sides. The property is described as 7S 14E 8D, tax lot 100.

This hearing was noticed for today, November 2, 2010 at 3:00 p.m. in this room.

2. 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

3. 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

- a. 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.
  - b. 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.
  - c. A Citizen Advisory Group pursuant to the Citizen Involvement Program approved pursuant to O.R.S. 197.160.
  - d. Any affected unit of local government or public district or state or federal agency.
  - e. 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:
    - a. No person shall present irrelevant, immaterial, or unduly repetitious testimony or evidence.
    - b. Evidence received shall be of a quality that reasonable persons rely upon in the conduct of their daily affairs.
    - c. Testimony and evidence must be directed toward the criteria applicable to the subject hearing.
    - d. 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.
    - e. 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.
  5. Disclosure of Interest of Ex Parte Contact:
    - a. Does any Planning Commission member wish to disqualify themselves for any personal or financial interest in this matter?
    - b. Does any Planning Commission member wish to report any significant ex parte or pre-hearing contacts?
    - c. Does any member of the audience wish to challenge the right of any Planning Commission to hear this matter?
    - d. 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.

Jeanette Montour, Associate Planner

Associate Planner Montour presented the staff report as follows:

1. Location: The property is located approximately 11 miles south of Maupin, Oregon, along the Deschutes River Access Road.
2. Staff Recommendation: The full Staff Recommendation was mailed in the Planning Commission's agenda packets. It was available for review by the public one week prior to this hearing, and it is considered a part of the record.
3. Why the Request is Before the Planning Commission:  
Today's review includes 1) a variance to setbacks and 2) a STS review for an alteration to defensible space fire safety standards. Alterations to fire safety standards are ordinarily reviewed by Staff, however, since the STS is a part of this application, the Planning Commission will review it along with the variance request.
  - **The applicant requests to retroactively approve a 192 sq. ft. accessory structure that is currently located 30' from the front yard property line, which is a 70% variance from the required 100' setback, and a reduction of 20' from the required 50' fire buffer.**
4. Stage in the Process: This application was submitted to the Planning Department on August 24, 2010. All required public notice has been given. The Staff Recommendation, with findings, conditions and conclusions, was issued on October 26, 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.
5. Criteria: The criteria used to evaluate this request include:

**Wasco County Land Use & Development Ordinance (WCLUDO)**

**A. Chapter 2 – Development Approval Procedures**

Section 2.060.B.8	Variance
Section 2.080.A	Notice
Section 2.090	Contents of Notice
Section 2.140	Hearing Procedure
Section 2.150	Official Notice
Section 2.190	General Conduct of Hearings

**B. 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
Section 3.910	EPD Division 7- Natural Areas Overlay

**C. Chapter 5 – Conditional Use Permit**

Section 5.020	(Authorization to Grant or Deny Conditional Uses, and Standards and Criteria Used)
Section 5.030	(Conditions)
Section 5.040	(Revocation of Conditional Use Permit)

**D. Chapter 6 – Variance**

Section 6.020	Criteria for Decision
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**E. 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**

**6. Findings:**

**Chapter 3:**

**Section 3.210.C.2 allows buildings and structures accessory to a legally established use 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 use to be lawfully established.**

**Section 3.210.F Property Development Standards**

**Setbacks: Property Lines: If adjacent land is being used for grazing, is zoned Exclusive Farm Use and has never been cultivated, the setback shall be a minimum of 100 feet from the property line.**

- **The adjacent properties are all zoned A-1 (160) however; none of the adjacent properties have been utilized for the production of crops within the past ten years. The soils composing all of TL 100 (subject property) and within a 0.75 mile radius of TL 100 are composed of exclusively Class 7 and 8 soil types, which are considered to poor soil types by Wasco County. Three of the associated properties contain both existing dwellings and accessory structures. TL 100 abuts a private railroad easement. Therefore, a 100' setback to all property lines is required.**

**Chapter 6 – Variances**

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

- **The location of the proposed development envelope does not comply with setback standards from the adjacent property lines. This is a property development standard, which can be reviewed through the variance process.**

**The specific Variance Criteria that must be met are as follows:**

**First: Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity**

- **The applicant has requested to retroactively permit the construction of a 192 sq.ft. (16' x 12' x 10') utility shed located approximately 30' from the closest property line. The setbacks required for this parcel are 100-feet to all sides.**
- **The requested structure is 192 sq. ft. in area. The structure is accessory to the primary dwelling, which is 1136 sq. ft. Staff has found that the proposed structure is approximately 17% of the primary structure, which meet the definition of accessory structure.**

- **Location of Existing Structures:** The subject property is a legal parcel and contains three legally established dwellings, and one legally established accessory structure. This parcel is 3.34 acres in area. The applicant, James Harlow, shares the property with Mr. Doug Robertson. Although the two parties, share ownership of TL 100, Mr. Harlow has ownership of two of the existing dwellings located on the southern portion of the parcel. Mr. Robertson has ownership of the third dwelling located on the northern portion of the parcel.
- The proposed 192 sq. ft. accessory structure is currently located approximately 8' west of an existing accessory structure that was approved in 1985 through a Wasco County ministerial review. The structure complies with all property line setbacks except for the southern property line.
- **Shape:** Figure 2 identifies the location of the buildable area on TL 100. The buildable area indicated in the center of the parcel is approximately 13.4% (0.45 acres) of the entire 3.35 acre parcel. The buildable area is the space available after the 100' setback from all property lines is overlaid, the 8,000 ft. area of undevelopable land due to septic drainage fields is also overlaid, and existing infrastructure is placed on the map. As seen in Figure 2 above, the nearest area of buildable space is located approximately 100' from the primary dwelling to which the proposed structure is accessory.
- **Existing Topography/ Flood History:** As seen in Figure 3 below, the north end of the existing structure is located approximately 300' from the edge of the FEMA floodplain. The Deschutes River flooded in 1996. Both TL 100 and associated properties owned by John Hartung were damaged by this flood. With the use of County GIS data, and information acquired from a site inspection on September 27, 2010, Staff has determined that the slope of the property is nearly level. The placement of structure a maximum distance from the floodplain is preferable, in areas of nearly level slope.
- Staff has evaluated the application and determined that the proposed location of the accessory structure meets the variance criteria exceptional or extraordinary circumstances, based on the relation of the proposed accessory structure's location to the following: existing legally established dwellings and previously approved accessory structure, the location of the existing septic fields, hazards caused by slope and prior flooding history, and relative distance ( a minimum of 100 ft.) of the buildable area from the primary dwelling to which the proposed structure is accessory.

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

- The requested placement of an accessory structure, on TL 100 is an allowable use in the Exclusive Farm Use Zone. Staff research of County Tax Assessor records found that none of the seven (7) adjacent tax lots are currently employing farm use on their property.
- Wasco County Assessor data indicates that three (3) of the adjacent properties contain accessory structures ranging in size from 200 to 800 square feet.
- With this in mind, staff finds that the requested variance is necessary for the preservation of a property right of the applicant which is the same as that enjoyed by other nearby property owners.

**Third Variance Criteria:** 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.

- Section 1.020 of the WCLUDO defines the purpose of the Ordinance, in part, as being the promotion of public health and safety, and to encourage the most appropriate use of land.
- Specifically, setback standards for developments are in place to assist in the protection of public health and safety.
- The applicant has requested to locate an accessory structure in an area that is contained within an existing cluster of development and next to existing structures that also do not meet today's property line setback requirements. Locating the accessory structure elsewhere on the property would require the placement of additional water and electrical systems and would be contradictory to the principals contained in the Comprehensive Plan regarding clustering development within resource zones and development near existing waterways and floodplain hazard areas.
- In addition, TL 100 is located in the Scenic River Overlay area. Although the authority over the Wild and Scenic Waterway, Oregon Parks and Recreation Department, made no comment regarding the proposed development, it is their interest to protect and conserve the scenic waterway area from any visual impact. Therefore, it their objective is to limit development along the river way.
- Locating the accessory structure elsewhere on the property is limited to a 0.45 acre area (13.47% of the parcel) due to the existing the floodplain overlay, waterway setback, and the location of existing legally established dwellings and the previously approved accessory structure, driveway, and septic drainage fields. The placement of the accessory structure within the described developable envelope would locate the structure a distance ( a minimum of 100 ft.) from the primary dwelling to which the proposed structure is accessory.
- With this in mind, Staff concludes that the requested variance does conform to the intent of this ordinance and will not be materially detrimental to property in the vicinity, or otherwise conflict or impose a foreseeable conflict with the Comprehensive Plan.

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

- The requested variance is for 70 percent (70 feet) of the total required setback. As previously mentioned, the applicant's necessity for a variance is based on environmental, sanitation, and the location of the existing structures and infrastructure constraints currently present on the Subject Parcel.
- As previously discussed, the accessory structure has been proposed in an area that will not require the placement of additional infrastructure development, avoid conflict with a separate homeowner, avoid development on or near the floodplain, and avoid damage to the septic system.
- The small size of the structure (192 square feet) further minimizes impacts on property owners.

- With this in mind, 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, TL 100 was created in its current dimension on February 10, 1971 through a deed filed with Wasco County as 71-0183. Additionally, it should be noted that Wasco County approved the construction of an accessory structure in nearly the same location in 1980 (Section 3.210 I.1. of the 2000 WCLUDO states that a 25' setback is needed from the front yard/ROW), and the renovation of the existing dwelling in 2000, approved with a 35' setback (Section 3.210 I.1. of the 2000 WCLUDO states that a 40' setback is needed from the front yard/ROW). The applicant constructed the accessory structure based on the prior knowledge that he had regarding setbacks to the front yard/ROW.
- Staff finds that, in combination with the location of existing infrastructure and other structural development, avoidance of development within or nearby the flood zone overlay and sanitary drain field areas, the requested variance is not the result of a self-created hardship.

#### Chapter 10 – Fire Safety Standards

Chapter 10 evaluates the fire safety of a proposed development:

- Constraints due to the existing environment, existing development and sanitation system make it difficult to achieve the 50-foot wide fire fuel break, specifically, part a., Defensible Space Standards.
- As previous stated, Staff has found that the location of the proposed storage structure meets Chapter 6. Variance criterion a, Exceptional or extraordinary circumstances, due to the following: the location of the existing legally established dwellings and the previously approved accessory structure, the location of the existing septic fields, hazards caused by slope and prior flooding history, and relative distance (100 ft.) of the buildable area from the primary dwelling to which the proposed structure is accessory.
- Because of this finding that the accessory structure is currently located in the best suited location on the parcel, the request cannot meet Section 10.120, Defensible Space criteria, therefore the need to modify fire safety standards exists.
- The applicant has applied for a Modification of Fire Safety Standards and has provided a Fire Safety Mitigation Plan. This plan was developed in cooperation with a consultant to the applicant and was reviewed and approved by Wasco County on October 20, 2010. A copy of this document can be found at the Wasco County Planning and Development Office under PLAQJR-10-08-0019\_PLACUP10-08-0019.
- The Mitigation Plan notes several fire safety mitigation methods that will be implemented to reduce the risk of fire damage. Those mitigation methods include:
  1. The structure has been constructed with fire resistant materials. It is sided with 1 x 6 cedar siding and has a metal roof. Additionally, the openings under the exterior of the structure will be screened with non-combustible, corrosion resistant mesh.

2. In addition to the water supplied at the edge of the Deschutes River, there are several on-site water sources. Water has been plumbed to the outside of the structure, and a standpipe is located approximately 15' from Northeast corner of the structure. The structure sits between two dwellings served by a plumbed water system; therefore, water is available on the East, North and West sides of the structure. In addition to having an ample water supply, the system is capable of running for extended periods of time.
  3. The perimeter of the structure is kept clear, and can be easily maneuvered.
  4. The property is planted in grass, with a few trees. The grass is watered, maintained and kept free of dead leaves. The trees are maintained in a healthy fire resistant condition and kept free of dead or dry wood.
  5. The property is considered vacation property and is used most frequently during the spring, summer and early fall. Careful attention is given to minimize vegetation, maintain moisture during the drier months, and to reduce fire risk.
- Staff finds the proposed fire safety mitigations to meet Wasco County Fire Safety requirements, contingent upon meeting the following conditions which state that the applicant must remove all woodpiles from within the 50' fire break area of the described development envelope, within 30 days of the finalization of this decision, and that the described mitigation measures must be maintain the proposed defensible space measures in perpetuity.

In closing, the options of the Planning Commission are to:

- a. Approve the request to retroactively permit the construction of a 192 sq. ft. (16' x 12' x 10') accessory structure located approximately 30' from the closest property line with the findings, conclusions and conditions recommended by the Planning Department;  
or
- b. Approve the request to retroactively permit the construction of a 192 sq. ft. (16' x 12' x 10') accessory structure located approximately 30' from the closest property line with amended findings, conclusions and conditions provided by the Planning Commission;  
or
- c. Deny the request to retroactively permit the construction of a 192 sq. ft. (16' x 12' x 10') accessory structure located approximately 30' from the closest property line with amended findings, conclusions and conditions provided by the Planning Commission;  
or
- d. If additional information is needed, continue the hearing to a date and time certain to allow the submittal of additional information.

**Staff Recommendation:**

**Staff recommends the Planning Commission follow Option A.**

**Chair Hoffman** called for questions from the Commission.

Commissioner Hargrave: No questions at this time.

Commissioner Amery: No questions at this time.

Commissioner Archer: Asked for clarification on the legal status of the development, whether they were required to obtain building permits. Planner Montour stated that the applicants had not received the required permits at the time. There had been some confusion as to what the applicants were required to do as Building Codes Department does not require building permits on structures less than 200 square feet and less than 10 feet in height, and they did not realize they still needed land use approval.

Chair Hoffman stated that he felt that since there were a number of conditions that need to be completed he would like to know where the applicant is on completing the conditions before retroactively approving the structure.

Chair Hoffman called for testimony from the applicant

Whitney Yazalino, Applicant's Representative

Ms. Yazalino wanted to clarify the map and indicated on the map the area of the railway line, she also indicated next to the railway was a road approximately 12' to 14' wide. She stated that this road is used by the adjacent property owners for access. She stated that they measured from the railway to the structure was 100'.

Chair Hoffman asked if Ms. Yazalino could fill the Commission in on the status of the conditions. Ms. Yazalino stated that she had contacted Bob Wood, Wasco County Watermaster, who has assisted her in the application process to permit the access of the water from the Deschutes River. She explained that the application will most likely be a "hardship" application to allow the water from the River. Due to the railway trellis it is not possible to get a well drill up to the properties, therefore they are requesting the right to draw from the river. She also explained that in regards to the vegetation and fire safety, the grounds all always watered up there and well maintained. The residents up there are very aware of the fire risk and the hazard of the location as fire trucks are not able to get to the properties either. The final issue that needs to be addressed is a wood pile, this is already in process to be moved.

Chair Hoffman called for additional questions from the Commission.  
None.

Chair Hoffman closed the hearing for deliberation.

Commissioner Hargrave stated he didn't see that approving the request would be setting a bad precedent and believes the commission should approve the request. Director Cornett clarified that the legitimizing of the illegal structure is allowed in the ordinance, and setting precedence is not a concern or an issue in this request.

Commissioner Archer moved to recommend approval of the request with the conditions as presented by staff.

Commissioner Wood seconded

Chair Hoffman called for discussion

None.

Chair Hoffman called for the vote

The motion was unanimously approved 5 to 0, 2 absent (Vice Chair Ashley, and Commissioner Omeg). A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hoffman – yes

Vice-Chair Ashley – absent

Commissioner Hargrave – yes

Commissioner Wood – yes  
Commissioner Omeg – absent  
Commissioner Archer – yes  
Commissioner Amery – yes

Hearing closed

IV. FUTURE AGENDA ITEMS:  
December Hearing Re: Keever variance

V. OTHER BUSINESS:  
None.

VI. ADJOURNMENT  
Adjourned at 4:30

Respectfully submitted,

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Donald Hoffman, Chair  
Wasco County Planning Commission

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Todd Cornett, Planning Director  
Wasco County Planning & Development