

**WASCO COUNTY PLANNING COMMISSION**

December 7, 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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**I. CALL TO ORDER**

**II. OTHER BUSINESS**

Schedule for 2011 Planning Commission Hearings was distributed

Future hearings, Gary Nychyk informed the Commission of the Dodge Hearing in February

**III. ROLL CALL**

COMMISSIONERS PRESENT

Don Hoffman  
Chip Wood  
Jill Amery  
Mike Omeg (arrived late, prior to Quasi-Judicial Hearing)

COMMISSIONERS ABSENT

Vicki Ashley  
Ron Archer  
Russ Hargrave

STAFF PRESENT

Gary Nychyk, Senior Planner  
Brenda Jenkins, Planning Coordinator

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

None.

**V. APPROVAL OF PAST MINUTES- November 2, 2010**

Commissioner Amery moved to approve the minutes as submitted.

Commissioner Wood seconded

Chair Hoffman called for discussion

None.

Chair Hoffman called for the vote

The motion was unanimously approved 4 – 0, 3 absent (Vice Chair Ashley, Commissioners Archer and Hargrave). 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 – absent

Commissioner Omeg – yes

Commissioner Wood – yes

Commissioner Archer – absent

Commissioner Amery – yes

**VI. QUASI-JUDICIAL HEARING: File #PLAQJR-10-10-0004. Request by Mark Keever and Kayla Cobb for a Quasi-Judicial Variance to construct a 30' x 36' (1,080 square feet) x 20' tall accessory structure in the A-1(160) Exclusive Farm Use zone. The subject property is located on the southeast corner of Boyd Loop Road**

and Bolton Road approximately 2.75 miles northeast of Dufur, Oregon, and is further described as 1S 14E 17 B 1200. Review Authority: Chapter 2, Section 2.060.B.4 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 10 (Fire Safety Standards).

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, December 7, 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?  
None.
    - b. Does any Planning Commission member wish to report any significant ex parte or pre-hearing contacts?  
None.

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

None.

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?

None.

Chair Hoffman called for the staff presentation and staff report.

Chair Hoffman called for the staff report.

Gary Nychyk, Senior Planner

Senior Planner Nychyk presented the staff report as follows:

Request: As the Chairman indicated, today we will be discussing a variance from setback standards as requested by Mark Keever and Kayla Cobb. Specifically, the request is a quasi-judicial variance to construct a 30' x 36' (1,080 square feet) x 20' tall accessory structure within 110 feet of the required 200-foot northern setback, within 50 feet of the required 100-foot southern setback, and within 25 feet of the required 100-foot eastern setback

1. Location: The property is located at the southeast corner of Boyd Loop Road and Bolton Road in the community of Boyd, which is approximately 2.75 miles northeast of Dufur, Oregon. (Show Vicinity Map).
2. 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.
3. 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. (indicated Setback Map) The applicant has requested to construct an accessory structure within 25 feet of the required 100-foot eastern property line setback and within 50 feet the required 100-foot southern property line setback. Since the requested setback is more than a 50% variance from the specified minimum setback, the request must be heard by the Planning Commission as specified by Section 20.60.B.8. Additionally, the applicant proposes to construct the accessory structure within 110 feet of the required 200-foot northern property line setback. Although the Planning Department could issue a decision on this setback, Staff chose to defer the decision regarding the variance to the northern property boundary setback as allowed by Section 2.060.B.14 (Matters which the Director elects not to review).

This might also be a good point to briefly discuss how the subject property was created. Typically, we think of properties getting smaller as time goes on, but that's not the case here (indicated Plat Map). The subject property is located within the community of Boyd created before 1920. As the Replat Map shows, the subject property was created in its current configuration when 25 separate legal parcels were replatted into three Parcels. Each of which actually grew in size. All of the dashed lines you see here are actually vacated subdivision lines. So this property, which was originally a portion of eight separate lots was replatted into one parcel.

4. Stage in the Process: This application was submitted to the Planning Department on October 10, 2010, and the request was found to be complete on November 1, 2010 and was scheduled for this public hearing. All required public notice has been given. The Staff Recommendation, with findings, conditions and conclusions, was issued on November 30, 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 2.060.B.14 (Matters which the Director Elects Not to Review)
  - 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)
- 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)
- C. Chapter 6 – Variance
  - Section 6.020 (Criteria for Decision)
- D. 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 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 a 30' x 36' x 20' tall accessory structure. The existing dwelling is approximately 1,640 square feet in size. 3/4 of 1,640 square feet is 1,230 square feet. The final size of the proposed addition will be 1,080 square feet (which less than the maximum allowed), and it will be used for a garage and possible workshop. 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.

Section 3.210.F Property Development Standards

a. 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, and 100 feet from the property line if adjacent land is being used for grazing, or is zoned EFU.

- Farm Service Agency maps and aerial photos indicate that the property to the north of the proposed accessory structure is being used for cherries. Therefore, a minimum setback of 200 feet is required. (indicated existing development on an Aerial Map)

- Farm Service Agency maps indicate that properties located to the west, south, and east are currently utilized for grazing. Additionally, the parcel to the south and east recently received approval from the Planning Department for a Non-Farm Dwelling. Therefore, the required setback from the west, south, and east property lines is 100 feet.
  - The applicant has proposed to locate the accessory structure approximately 110 feet from the northern property line, 50 feet from the southern property line, and 25 feet from the eastern property line. This does not comply with the setback requirements.
  - Analysis indicates that the western setback exceeds the minimum requirement of 100 feet.
- b. Lighting: A standard condition was included advising the applicant of acceptable lighting standards.

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#### Chapter 6 – Variances

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

- If you will take a look at this setback map that I prepared for the property (indicated Setback Map), you will quickly see that there is no place on the property where any setback-compliant structure could be placed. In fact, the setback from the northern property line overlaps that of the southern property line, and the setback of the eastern property line overlaps that of the western line.
- The applicant currently has a small (150 square foot) chicken coop on the property, which is the only accessory structure on site.
- The applicant has requested to construct a 1,080 square foot garage on the property. Again, this is less than the maximum allowed.

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.

- **(Indicated Setback Map)** The subject property is approximately 179 feet wide (east to west) and approximately 217 feet deep (north to south). As I have discussed before, there physically is no portion of this site where a setback-compliant structure could be placed. The nearest active agriculture land is the existing cherry orchard to the north. The other property is currently being used for grazing or non-agricultural purposes (dwellings).
- **(Indicated Plat Map)** I previously discussed how the subject property was created in its current configuration by aggregating portions of 8 subdivision lots. So you can see that the creation of the parcel itself reduced potential conflicts with nearby agricultural uses by significantly reducing the number of potential non-farm dwellings that could be requested.

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 accessory structure 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 one hundred foot setback from the west, south, and east property lines along with the two hundred foot setback from the north property line leaves no portion of the site where a setback-compliant structure could be built.
- The structure will be approximately 1,080 square feet in size, which is less than the 3/4 size requirement allowed by the ordinance. So, the applicant is requesting less than the maximum allowed by the criterion.

- As previously stated, a structure accessory to a dwelling is allowed for other properties in this zone. While we can evaluate the proposed size and location, denying the use would eliminate a property right other property owners in the zone have. (Chicken coop)
- 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.
- It is also necessary to evaluate whether or not the proposed structure will adversely affect adjacent agricultural uses.
- To that extent, staff notes that as of November 29, 2010, we have received no comments from neighbors expressing concerns regarding the proposed variance to setback standards.
- Property to the north of Bolton Road is currently utilized as a cherry orchard, however the proposed accessory structure will be located approximately fifty feet further south of this cherry orchard than the existing dwelling, and therefore will pose no additional impacts to that orchard.
- Properties immediately to the west of the subject parcel are currently utilized as grazing land. The proposed accessory structure will be separated from this grazing land by approximately 170 feet, which includes the right of way for Boyd Loop Road.
- The parcel to the south and east of the subject property is approximately 7.5 acres in size. A non-farm dwelling and accessory building were recently reviewed and approved through CUP-07-105 on this property. Additionally, Wasco County Assessor records indicate that the property to the south and east are not in farm deferral.
- With this in mind, staff finds that the proposed accessory structure will pose no adverse effects to any surrounding agricultural uses.
- Therefore, 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. This would potentially allow an accessory structure up to 1,230 square feet in size. The applicant has requested a 1,080 square foot accessory structure, which is less than the maximum they could apply for.
- The structure has been located in the only area that has not been developed as a dwelling or septic drain field.
- When complete, the accessory structure will be approximately 110 feet from the northern boundary, 50 feet from the southern boundary, and approximately 25 feet from the eastern property boundary.
- The applicant could potentially reduce the size of the structure thereby reducing the proximity to property lines. However, this would only reduce the setback by 5 or 10 feet which would

not make a substantial difference and therefore would not likely reduce any adverse affects of the structure.

- With that 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, the property was created through a replat of 25 existing lots into three new parcels. This replat resulted in an increase in the size of the parcels. However, the increase in property size still results in the setbacks on the subject property overlapping each other on all four sides. The combined result of the setbacks is that there is no portion of the property where a structure could be built in compliance with required setbacks.
  - With this in mind, staff finds that the variance as requested is not the result of a self-created hardship.
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#### Chapter 10 – Fire Safety Standards

Chapter 10 evaluates the fire safety of a proposed development:

- Planning Staff evaluated the requested accessory structure against all applicable Fire Safety Standards and found that the request complies subject to conditions.
- The first commits current and future property owners to comply with the signed fire safety standards self-certification checklist submitted by the applicant.
- The second requires current and future property owners to maintain the proposed accessory building with fire resistant roof and siding materials such as steel.
- And the third requires current and future property owners to maintain the area surrounding the accessory building with fire wise planting and maintenance methods.

The options of the Planning Commission are to:

- Approve the request to construct an accessory structure within 110 feet of the required 200-foot northern setback, within 50 feet of the required 100-foot southern setback, and within 25 feet of the required 100-foot eastern setback with the findings, conclusions and conditions recommended by the Planning Department; or
- Approve the request to construct an accessory structure within 110 feet of the required 200-foot northern setback, within 50 feet of the required 100-foot southern setback, and within 25 feet of the required 100-foot eastern setback with amended findings, conclusions and conditions provided by the Planning Commission; or
- Deny the request to construct an accessory structure within 110 feet of the required 200-foot northern setback, within 50 feet of the required 100-foot southern setback, and within 25 feet of the required 100-foot eastern setback 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.

Chair Hoffman called for questions from the Commission.  
None.

Chair Hoffman called for testimony from the applicant.  
None.

Chair Hoffman called for testimony in opposition.

None.

Chair Hoffman closed the hearing for deliberation.

Commissioner Wood moved to approve the variance as submitted by staff.

Commissioner Omeg seconded

Chair Hoffman called for discussion

None.

Chair Hoffman called for the vote

The motion was unanimously approved 4 – 0, 3 absent (Vice Chair Ashley, Commissioners Archer and Hargrave). 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 – absent

Commissioner Omeg – yes

Commissioner Wood – yes

Commissioner Archer – absent

Commissioner Amery – yes

VII. FUTURE AGENDA ITEMS (continued):

Senior Planner Nychyk suggested asking Commissioner Archer to take Leave of Absence to alleviate quorum issues while he is in Arizona. The Commission discussed the option and Agreed by Consensus to issue a Resolution to ask Commissioner Archer to take a Leave of Absence while he is in Arizona.

VIII. DIRECTOR'S REPORT

IX. ADJOURNMENT

Adjourned at 3:40

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