



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1125
FAX: (541) 298-5490
Planning Department

AGENDA

CITY OF THE DALLES PLANNING COMMISSION

CITY HALL COUNCIL CHAMBERS
313 COURT SREET
THE DALLES, OREGON 97058
CONDUCTED IN A HANDICAP ACCESSIBLE MEETING ROOM
THURSDAY, NOVEMBER 15, 2012
6:00 PM

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. APPROVAL OF MINUTES
 - A. November 1, 2012
- V. PUBLIC COMMENT (Items not on the Agenda)
- VI. **QUASI-JUDICIAL HEARING**
Public Hearing Continuance
Application Number: VAR 116-11; Kimberly Wadsworth; Request: To obtain approval for the construction of a fence in the exterior side yard setback in excess of the 4 feet allowed in the Land Use and Development Ordinance (LUDO). Property is located at 520 W. 10th Street, The Dalles, Oregon, and is further described as 1N 13E 4AC, tax lot 6500. Property is zoned "RH" – High Density Residential District.
- VII. STAFF COMMENTS
- VIII. COMMISSIONER COMMENTS/QUESTIONS
- IX. NEXT SCHEDULED MEETING DATE
December 6, 2012
- X. ADJOURNMENT

CITY OF THE DALLES PLANNING COMMISSION MINUTES

Thursday, November 1, 2012

City Hall Council Chambers

313 Court Street

The Dalles, OR 97058

Conducted in a handicap accessible room

CALL TO ORDER:

Chair Lavier called the meeting to order at 6:01 PM.

BOARD MEMBERS PRESENT:

Bruce Lavier, Mark Poppoff, Jeff Stiles, Chris Zukin

BOARD MEMBERS ABSENT:

Robert Raschio, Mike Zingg, Dennis Whitehouse

STAFF MEMBERS PRESENT:

City Attorney Gene Parker, Director Richard Gassman, Administrative Secretary Carole Trautman

APPROVAL OF AGENDA:

It was moved by Stiles and seconded by Zukin to approve the agenda as submitted. The motion carried unanimously; Raschio, Zingg and Whitehouse were absent.

APPROVAL OF MINUTES:

It was moved by Stiles and seconded by Poppoff to approve the October 18, 2012 minutes as submitted. The motion carried unanimously; Raschio, Zingg and Whitehouse were absent.

PUBLIC COMMENT:

None.

QUASI-JUDICIAL HEARING:

Public Hearing Continuance

Application Number: VAR 120-12; **Brian and Gloria Tuck;** **Request:** To obtain approval for a carport with less than the required side yard setback. Property is located at 623 Sherman Drive, The Dalles, Oregon, and is further described as Township 1 North, Range 13 East, Map 1DB, tax lot 1600.

Chair Lavier called the public hearing to order at 6:03 PM.

Director Gassman reported that, at the previous hearing, staff was asked to work towards finding a possible resolution to the applicants' request. Gassman stated that he and City Attorney Parker could not find a solution. Gassman commented there could possibly be some construction solutions, but staff did not have enough expertise in construction to offer any kind of a solution.

Commissioner Zukin said that one solution that was offered at the previous hearing was to allow the construction of a 14 foot-wide carport instead of a 15 foot-wide carport. Zukin asked if that would help the City staff in regulating future variance requests of this nature. Director Gassman pointed out that there were no factors in this case that were unusual enough to make some sort of a distinction from

other properties and other variance requests. Gassman thought the staff would have trouble with future cases no matter what variance decision was made in this case.

Testimony

Proponents:

Brian and Gloria Tuck, 623 Sherman Drive, The Dalles, Oregon, stated that they appreciated the Commission's consideration, and they understood that the allowance of their variance request could set a precedent. Mr. Tuck said he needed some sort of relief from the setback requirements, 15 feet would be ideal, but he would be willing to accept a middle ground resolution on the setbacks. The Tucks presented some photographs and a scaled drawing of the carport area showing various setback footages that could be considered (*Exhibit #5*).

Chair Lavier asked Mr. Tuck if the carport could be constructed using three support posts instead of four. Mr. Tuck said it was not possible.

Commissioner Poppoff asked if it would be possible to partially roof the carport to cover a portion of the motor home rather than to extend the roof out to the fence line. Mr. Tuck did not believe that would work, because he would still have to climb up on the motor home to knock the snow off. Commissioner Poppoff asked the applicants if they had searched for another storage space. Mr. Tuck said there were no storage spaces large enough in The Dalles.

Mr. Tuck said the adjacent neighbor had no problem with the variance request, and Mr. Tuck would be willing to work with a 1.5 foot setback.

Chair Lavier closed the public hearing at 6:20 PM.

Deliberation:

It was moved by Commissioner Zukin to approve the request for VAR 120-12 using an 18 inch setback.

Zukin stated that the Planning Commission had always searched for a compromise. It was not a matter of allowing an enclosed building. It was a matter of allowing some support beams with no walls inside the standard setback area. Zukin suggested the Commission could review the Land Use and Development Ordinances (LUDO) in regards to setbacks for open carports as opposed to enclosed structures.

Chair Lavier called for a second to the motion. There was none. The motion died.

Commissioner Stiles said he was concerned about setting a precedent. He concurred with Zukin regarding reviewing the LUDO.

Chair Lavier said he was not opposed to changing the LUDO for carport setbacks, but he would have trouble voting in favor of something that was not currently allowed in LUDO.

City Attorney Parker advised that, if the Commission allowed the variance request, it would not necessarily set a precedent, because variance requests are reviewed on a case-by-case basis by the Planning Commission. One variance approval would not commit the Commission to allow future requests every time, Parker stated.

Commissioner Poppoff commented that he believed, in the long run, to allow the variance request would cause more problems that it would solve. However, he was not opposed to reviewing LUDO setback requirements for carports.

City Attorney Parker clarified that LUDO changes would require due process, including going before City Council. He advised that even to expedite a LUDO change request as quickly as possible could take the request before City Council in January 2013.

It was moved by Chair Lavier and seconded by Poppoff to deny VAR #120-12 based upon findings of fact and the staff's recommendation. Lavier, Poppoff and Stiles voted in favor, Zukin opposed; Raschio, Zingg and Whitehouse were absent. Motion carried.

Chair Lavier instructed staff to expedite LUDO changes for setbacks for covered carports, limited to structures that are three-sided with supporting posts and open on the side closest to the adjacent property.

RESOLUTION:

P.C. Resolution #526-12, APL #23-12

It was moved by Zukin and seconded by Stiles to approve P.C. Resolution #526-12 as presented. Lavier, Zukin and Stiles voted in favor, Poppoff opposed; Raschio, Zingg and Whitehouse were absent. Motion carried.

P.C. Resolution #528-12, ADJ #120-12

It was moved by Stiles and seconded by Poppoff to approve P.C. Resolution #528-12 as presented. Lavier, Poppoff and Stiles voted in favor, Zukin opposed; Raschio, Zingg and Whitehouse were absent. Motion carried.

STAFF COMMENTS:

Director Gassman reminded the Commissioners that Director Durow's retirement party was scheduled for Friday, November 2, 2012 at the Discovery Center.

City Attorney Parker advised that the Walmart legal issues were progressing, the latest hearing was rescheduled to January 2013. Representatives for Walmart advised that if there were no appeals to that hearing, Walmart could possibly move forward, Parker reported.

COMMISSIONER COMMENTS/QUESTIONS:

None.

NEXT MEETING:

November 15, 2012

ADJOURNMENT:

The meeting was adjourned at 6:45 PM.

Respectfully submitted by Carole J. Trautman, Administrative Secretary.

Bruce Lavier, Chairman

2 squares of foot.

EXHIBIT 5 - Pg 1



Motor Home

9' 6" wide

Side
garage

Garage

Drive way Brian & Gloria Tuck

fence line



1 foot from
property line

2 feet from
property line





3 feet from
property line



5 feet from
property line







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(541) 296-5481 ext. 1125
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Planning Department

MEMORANDUM

To: Planning Commission

From: Richard Gassman, Director *RG*

Date: November 15, 2012

Re: Wadsworth Variance, VAR 116-11

On May 5, 2011 the Planning Commission held a public hearing to consider the variance request of Kimberly Wadsworth to allow a six foot fence in an exterior side yard, where the Land Use and Development Code (LUDO) allows only a four foot fence. At the end of the public hearing the Commission did not make a decision, and directed staff to work with the applicant to determine if a resolution could be found.

Staff determined that the most feasible option was to recommend a code change. The proposed amendment was put on the annual code update list and was recently approved by the City Council. The new code language for height of fences can be found in LUDO Section 6.010.050 E. 1. and states:

Hedges, fences, and walls, shall not exceed 4 feet in height within a required front yard or in an exterior side yard within a 10 foot triangle adjacent to an alley or driveway.

When the new code language became effective in October, we contacted the applicant and offered two options to bring the fence into compliance with the new language. Since the rear of the applicant's property is adjacent to an alley, a six foot fence could be placed at an angle so that it did not infringe on the 10 foot triangle adjacent to the alley, or the fence could be reduced to 4 feet within the triangle area.


The applicant indicated she preferred to keep the fence at 6 feet and angle it. However when the fence was examined it was discovered the fence posts, in concrete, were placed at an 8 foot distance from the corner with the alley. The applicant is seeking approval from the Commission to allow the fence to have an 8 foot triangle rather than the 10 foot required in the code.

I have attached a copy of the original staff report as background information.

**City of The Dalles
Staff Report**

Variance No. 116-11

Kimberly Wadsworth

Prepared by: Dick Gassman, Senior Planner 

Procedure Type: Quasi-Judicial

Hearing Date: May 5, 2011

Assessor's Map: 1N 13E 4AC, tax lot 6500

Address: 520 West 10th Street

Comprehensive Plan
Designation: "RH" High/Medium Density Residential District

Zoning District: "RH" High/Medium Density Residential District

City Limits: Inside

Request: To gain approval for the construction of a fence in the exterior side yard setback in excess of the 4 feet allowed in the Land Use and Development Code.

BACKGROUND INFORMATION

The subject property is developed with a single family dwelling. The property is on the corner of West 10th Street and Trevitt Street, facing West 10th Street. Recently the applicant constructed a fence in the back yard. The fence extends to the sidewalk on the Trevitt Street side. The portion of the property that is within 10 feet of Trevitt Street is defined in the Land Use and Development Code (LUDO) as an exterior side yard. Fences are allowed in exterior side yards to a height of 4 feet. The applicant's fence is 6 feet in height.

The applicant has submitted this variance request to allow her to keep the fence as it currently exists, without meeting the height requirements of the code for fences in an exterior side yard.

NOTIFICATION

Property owners within 300 feet, City Departments, franchise utilities, Mid-Columbia Fire & Rescue, Wasco County Health Department, and State Building Codes were mailed a notice on April 20, 2011 as required by LUDO Section 3.020.050 D.

COMMENTS

No comments have been received as of the date of the preparation of this staff report.

RECOMMENDATION

Denial of the variance application.

If the Commission approves the request, staff will recommend conditions of approval.

A. LAND USE AND DEVELOPMENT ORDINANCE 98-1222

Section 3.010.040 Applications

B. Completeness.

FINDING #1: The application was found to be complete on March 29, 2011. The 120-day State mandated decision deadline is July 27, 2011. The hearing is within the required time line. Criterion met.

Section 3.020.050 Quasi-Judicial Actions

A. Decision types. 4. Variances:

FINDING #2: This application is for a Variance per LUDO Section 3.070. Variances are processed as quasi-judicial hearings per LUDO Section 3.070.020.
B. Criterion met.

B. Staff Report. The Director shall prepare and sign a staff report for each quasi-judicial action, which identifies the criteria and standards applying to the application and summarizes the basic findings of fact. The staff report may also include a recommendation for approval with conditions, or denial.

FINDING #3: The staff report will detail criteria and standards relevant to a decision, all facts will be stated, and explanations given. This will be detailed through a series of findings directly related to relevant sections and subsections of the ordinance as they relate to this request. Criterion met.

C. Public Hearings. The quasi-judicial process requires a public hearing within 45 days from the date the application is deemed complete. The application was deemed complete on March 29. The 45 day period ends on May 13, 2011.

FINDING #4: The public hearing is scheduled for May 5, 2011. Criterion met.

D. Notice of Hearing. At least 10 days before a scheduled quasi-judicial public hearing notice of the hearing shall be mailed to the applicant, owners of property within 300 feet of the subject property, and a variety of other persons.

FINDING #5. Appropriate mailings to the applicant, property owners within 300 feet and notice to affected departments and agencies were made on April 20, 2011. A notice of the hearing was published in The Dalles Chronicle on April 24, 2011. Criterion met.

Section 3.070.020 Review Procedures

A. Applications. Variance applications shall be accompanied by at least 15 copies of the concept site plan, and a written statement which specifically addresses the review criteria.

FINDING #6: The required plans and written statement have been submitted. Criterion met.

Section 3.070.030 Review Criteria

A variance to the requirements of this Ordinance shall be granted only in the event that each of the following circumstances is found to exist:

A. The proposed variance will not be contrary to the purposes of this Ordinance, policies of the Comprehensive Plan, or any other applicable policies and standards adopted by the City.

FINDING #7: The LUDO provisions for fence height standards are located in Section 6.010.050 E.1. The maximum height for a fence in an exterior side yard is 4 feet. An exterior side yard is defined in Section 2.030 as "A yard extending from the front yard to the rear lot line on the street side of a corner lot." Section 5.020.050 provides that the exterior side yard setback in the RH zone is 10 feet. The purpose of placing a maximum height on fences in exterior side yards is to prevent a closed off appearance adjacent to sidewalks. To allow this variance would be contrary to the purposes of the LUDO. Criterion not met.

B. Exceptional or extraordinary circumstances apply to the subject property which do not apply generally to other property in the same zone or vicinity. Such circumstances are a result of lot size or shape, topography, or circumstances over which the applicant has no control.

FINDING #8: This lot does not have an exceptional or extraordinary circumstance. There is a slight uphill slope to the south, but otherwise the lot is a typical corner lot. The applicant has indicated that her desire for the six foot high fence is based on personal reasons. While it is understandable why the applicant is seeking this variance, to approve this variance under these circumstances would make it difficult to deny any similar fence request. If the Commission is interested in allowing fences of this height in the exterior side yard setbacks, staff

would suggest a review of the overall height limitation in exterior side yards as part of a LUDO amendment. Criterion not met.

- C. The variance is necessary for the preservation of a property right of the applicant which is substantially the same as owners of other property the same zone or vicinity.

FINDING #9: There is nothing about this property which causes the applicant to lose a property right that is enjoyed by other owners in the same zone or vicinity. As stated earlier, this is a typical corner lot. Criterion not met.

- D. The conditions or circumstances justifying the variance have not been willfully or purposely self-imposed, and do not result from a violation of this Ordinance since its effective date.

FINDING #10: The fence has already been constructed. Ignoring this fact, there is nothing on the rest of the property that would be considered a self-imposed justification. Criterion met.

- E. The proposed variance will not substantially reduce the amount of privacy enjoyed by users of neighboring land uses if the variance were not allowed.

FINDING #11: Privacy of neighboring land uses will not be reduced. In fact, privacy would be slightly increased due to the reduced visibility. Criterion met.

- F. The proposed variance is the minimum variance which would alleviate the difficulty.

FINDING # 12: The proposed variance is the minimum variance needed to allow the fence. Criterion met.

STAFF RECOMMENDATION:

Denial of this variance request as not meeting all of the conditions for approval.

IF APPROVED, RECOMMENDED CONDITIONS OF APPROVAL:

1. Except as provided for in this variance, all development must be completed in accordance with Land Use and Development Ordinance 98-1222.
2. The existing fence, up to six feet in height, is allowed in the exterior side yard.