

**BEFORE THE STAYTON PLANNING COMMISSION**

In the matter of  
The application of  
Tracy & Denise Guenther

)  
) Variance  
) File # 5-03/19  
)

**ORDER OF APPROVAL**

**I. NATURE OF APPLICATION**

The applicant is requesting a variance to the height restrictions for accessory buildings.

**II. PUBLIC HEARING**

A public hearing was held on the application before the Stayton Planning Commission on April 29, 2019. At that hearing the Planning Commission reviewed Land Use File #5-03/19, application for variance, and it was made part of the record.

**III. FINDINGS OF FACT**

**A. GENERAL FACTS**

1. The owners of the property are Tracy & Denise Guenther. The applicants are the owners.
2. The property can be described as tax lot 4600, Township 9, Range 1 West of the Willamette Meridian, Section 10DA.
3. The property is zoned Low Density Residential (LD).
4. The property is located at 1720 E Jefferson St. The property is a flag lot, with 20 feet of frontage on E Jefferson St.
5. The surrounding properties are zoned LD. The properties to the north, east and south are developed as single family dwellings. The property to the west has a shop building on it and is used for outdoor storage.

**B. EXISTING CONDITIONS**

1. The property is 21,500 square feet in area with 20 feet of frontage on E Jefferson St. The “pole” portion of the lot is approximately 125 feet deep. The applicant’s home sits approximately 156 feet from E Jefferson St and is not visible from the street.
2. The existing house on the lot is a one-story structure with an eave height of 10 feet and a 15-foot tall roof peak.

**C. PROPOSED DEVELOPMENT**

The applicant proposes to construct a 30-foot by 48-foot shop building for storage of their recreational vehicle. The proposed building would have an eave height of 16 feet and a 21-foot tall roof peak.

D. CODE REQUIREMENTS

Section 17.20.040.2 of the Land Use and Development Code requires that an accessory building be no higher than the main building.

E. AGENCY COMMENTS

The following agencies were notified of the proposal: City of Stayton Public Works, Santiam Water Control District, Willamette Broadband, Stayton Cooperative, Pacific Power & Light, NW Natural Gas, Stayton Fire District, Stayton Police Department, Marion County Public Works and Marion County Planning Division.

No comments were received.

F. PUBLIC COMMENTS

The surrounding property owners were notified of a pending variance. No written comments were received prior to the public hearing.

G. ANALYSIS

Variance applications are required to satisfy approval criteria contained within Stayton Municipal Code (SMC) Chapter 17, Section 17.12.200.6.

H. APPROVAL CRITERIA

Pursuant to SMC 17.12.200.6 the following criteria must be demonstrated as being satisfied by an application for a variance:

*a. General Criteria Applicable to All Requests.*

- 1) *The granting of the variance would not be materially detrimental to the public health, safety, or welfare or the overall public interest of the citizens of the City as expressed within this title and the adopted Comprehensive Plan.*

Finding: The location of the proposed shop building, and the fact that this is a flag lot, mean that the proposed shop building will not be visible from a public street and will have no impact on neighboring properties.

- 2) *The granting of the application complies with the applicable specific approval criteria as follows:*

*b. Specific Variance Criteria*

- 1) *Variance to Land Use Regulations*

- a. The property is subject to exceptional or extraordinary circumstances such as lot size, shape, topography, or other similar circumstances over which the property owner has no control and which do not generally apply to other properties in the same zoning district and/or vicinity.*

Finding: The lot is a flag lot with the house site being approximately 160 feet from E Jefferson St. The proposed shop location over 275 feet from the street. There are no other lots in the neighborhood with a similar layout.

- b. *The variance is necessary for the reasonable preservation of a property right of the applicant which is the same as that enjoyed by other landowners in the zoning district.*

Finding: Section 17.16.070.1 allows accessory buildings on residential lots. Section 17.20.040 establishes the standards for accessory buildings. Due to the height of the existing building the Code does not allow an accessory building tall enough to accommodate a recreational vehicle.

- c. *The variance would conform to the purposes of the applicable zoning regulations and would not generate a significant adverse impact on the other property in the same zoning district or vicinity.*

Finding: The purpose of the height restriction is assure that an accessory building remains subordinate to the main building and to preserve the visual character of residential neighborhoods. The proposed shop building would not be visible from the street and would not impact the neighboring properties.

- d. *Approval of the variance would not create an identifiable conflict with the provisions of the Comprehensive Plan or achieve the same conditions and a comprehensive plan amendment or zone change for the property.*

Finding: There are no policies in the comprehensive plan that address accessory building standards.

- e. *The variance being requested is the minimum relief available to alleviate the difficulty giving rise to the application.*

Finding: The Code would allow a 6 foot fence if were 10 feet back from the front lot line. The proposal is for a four foot fence, five feet back from the front lot line.

- f. *The variance would not have the effect of granting a special privilege not generally shared by other property in the same zoning district.*

Finding: The proposed shop building is as short as feasible to house the owners' recreational vehicle.

- g. *The request for the variance is not the result of an action taken by the applicant or a prior owner.*

Finding: The existing house was built in 1951, prior to any land use restrictions.

#### IV. CONCLUSION

Based on the facts above, the Planning Commission concludes that the application meets the requirements established in SMC 17.12.200.6.

#### V. ORDER

Based on the conclusion above, the Planning Commission approves the application to allow a 30' foot by 48-foot shop building with a 16-foot eave height and a 21-foot roof peak, to be

located as shown on the sketch submitted with the application, subject to the attached standard conditions of approval for land use applications.

**VI. APPEAL DATES**

The Planning Commission’s action may be appealed to the Stayton City Council pursuant to Stayton Municipal Code Section 17.12.110 APPEALS.

\_\_\_\_\_  
Ralph Lewis,  
Planning Commission Chairperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dan Fleishman,  
Planning & Development Director

\_\_\_\_\_  
Date

DRAFT

## Standard Conditions of Approval for Land Use Applications

### General

1. **Approved Land Use Plans** - Minor variations to the approved land use plans shall be permitted provided the development substantially conforms to the submitted land use plans, conditions of approval, and all applicable standards contained in the Stayton Municipal Code (SMC) and City of Stayton Public Works Standards. The applicant shall be responsible for all costs relating to the development, including the design and construction of any required public improvements identified for the project in the approved land use plans, the conditions of approval, the SMC, and Public Works Standards.
2. **City Approvals** - The applicant shall obtain any and all required reviews, approvals, and permits from the City prior to construction of the project.
3. **Change in Use** - Any change in the use of the premises from that identified in the application shall require the City Planner to determine that the proposed use is an allowed use and that adequate parking is provided for the development.
4. **Landscaping** - The applicant shall remain in substantial conformance to the approved landscaping plan and follow the criteria established in SMC 17.20.090 for maintenance and irrigation. Dead plants shall be replaced within six months with a specimen of the same species and similar size class.

### Prior to Engineered Plan Approval

5. **Design Standards** - All public and privately financed public improvements within the project shall be prepared, signed, and stamped by a Professional Engineer registered in the State of Oregon and shall be designed to the most current edition of the Public Works Standards plus the requirements of the SMC in effect at the time the engineered plans are submitted. (SMC 12.08.310.1)
6. **Engineered Plans** - The applicant's design engineer shall submit engineered plans for review and approval of all required public improvements identified for the project in the approved land use plans, the conditions of approval, the SMC and Public Works Standards. Engineered plans shall be reviewed by the City and signed approved by the City Engineer or Public Works Director, prior to issuance of City permits. All conditions of approval for the project will need to be met to the satisfaction of the City Planner and Public Works Director prior to approval of the engineered plans.
7. **Surveys** – Surveys for public improvements shall be performed under the direction of a Professional Land Surveyor registered in the State of Oregon.
8. **Utility Coordination** - Utility companies and public agencies as applicable shall be notified early in the design process and in advance of construction to coordinate all parties impacted by the construction.
9. **Agency Approvals** - The applicant shall obtain any and all required reviews, approvals, and permits from all City, State and Federal agencies having jurisdiction over the work. This may include, but is not limited to, the City, Marion County, DEQ, OHA-DWS, DSL, Fire Code Official, Building Code Official, etc. Written documentation of all required agency approvals as applicable shall be submitted to the City prior to approval of the engineered plans.

## Prior to Construction

10. **Developer Agreement** – Where public improvements are required, the applicant shall submit to the City an approved (by City Attorney) Developer-Engineer-City Agreement signed and notarized by the applicant and the design engineer, or a signed Developer-Engineer of Record Agreement (for minor privately financed public improvements) signed by the applicant and the design engineer, prior to issuance of City permits.
11. **Permits, Insurance, and Indemnification** – All required permits, insurance, and indemnification shall be obtained by the applicant and provided to the City in accordance with the Public Works Standards prior to construction. A 1200C permit shall be secured by the applicant if required under the rules of the Oregon State DEQ.
12. **Design Engineer's Estimate** – Where public improvements are required, an estimate performed by the design engineer of the total estimated project cost shall be provided to the City for review and acceptance. This is needed to determine the amount of bonding required for the project.
13. **Performance Bond** - Where public improvements are required, a performance bond, or other form of performance guarantee acceptable to the City Manager and City Attorney, is required to be in place, prior to issuance of City permits. The applicant shall provide a performance bond in the amount of 125% of the total estimated project cost in accordance with the Public Works Standards. The performance bond shall be in a form acceptable to the Public Works Director.
14. **Pre-Construction Conference** - Where public improvements are required, a pre-construction conference shall be held prior to construction in accordance with the Public Works Standards.

## During Construction and Project Completion

15. **Construction Specifications** - Where public improvements are required, all public and privately financed public improvements within the project shall be constructed to the most current edition of the Public Works Standards plus the requirements of the SMC in effect at the time the engineered plans are submitted. (SMC 12.08.310.1)
16. **Construction Inspection**- Where public improvements are required, all public improvements shall be inspected by the design engineer, or a qualified individual under their supervision, in accordance with the Public Works Standards to assure the construction is following the approved engineered plans. At least three days prior to construction, the applicant shall notify the Public Works Director in writing of the date when the applicant proposes to commence construction. The written notification shall include the name and phone number of the contracting company and the responsible contact person. Any supplemental inspection by the City does not relieve the applicant or the design engineer of providing the required inspection.
17. **Project Completion** - Where public improvements are required, the public improvements and public utilities shall be fully constructed and a project completion report that certifies to the City that the project was constructed according to the approved plans and specifications and that the correct required testing and inspections were satisfactorily performed shall be provided by the design engineer in accordance with the Public Works Standards. Unless the required public improvements are deferred under a non-remonstrance or other agreement approved and signed by the City, a notice of final completion and provisional acceptance of

the public improvements is to be provided by the City to the applicant following the completion of construction, prior to the recording of the final plat and prior to any building permit applications being accepted or issued. Construction items must be completed within a specified period of time provided in the approval letter or the approval of any additional building permits will be withdrawn by the City.

18. **Warranty Bond** - Where public improvements are required, after completion and provisional acceptance of the public improvements by the City, the applicant shall provide a 1-year warranty bond in the amount of 30% of the performance bond amount in accordance with the Public Works Standards. The warranty bond shall be in a form acceptable to the Public Works Director.
19. **Record Drawings** - Where public improvements are required, the applicant shall submit to the City, reproducible record drawings and an electronic file of all public improvements constructed during and in conjunction with the project within three months of the completion of construction. Field changes made during construction shall be drafted on the plans in the same manner as the original plans with clear indication of all modifications (strike out old with new added beside). Record drawings shall be submitted prior to provisional acceptance of the construction, initiating the one-year maintenance period.
20. **Warranty Bond Release and Final Acceptance** – Where public improvements are required, the release of the warranty bond and final acceptance of the public improvements will be in accordance with SMC 12.04.310 and the Public Works Standards
21. **SDCs and Other Utility Fees** - Systems Development Charges and other utility fees (Mill Creek Sewer Interceptor, etc.) as applicable, will be applied to the project at the time of issuance of a building permit.