



Home of the Tualatin River National Wildlife Refuge

STAFF REPORT

Date: April 21, 2009

File No: ADM 09-01

TO: Planning Commission
Date of Director's Decision: Feb. 25, 2009
Date of Appeal: March 9, 2009
App. Complete: N/A
Report Date: April 21, 2009
120-Day Deadline: June 25, 2009

FROM: PLANNING DEPARTMENT



*Continued to
5/24/09*

Summary: On March 3, 2009 Eric Postma on behalf of Robert James and Susan Claus submitted a letter declaring their intent to appeal a February 25, 2009 director's interpretation and on March 9, 2009 submitted the required appeal fee. This is an appeal of a Type I director's decision that the applicants proposed covered parking was not exempt from Site Plan review.

I. APPLICATION INFORMATION

- A. Appellant and property owner:
Robert James and Susan Lynn Claus
22211 SW Pacific Highway
Sherwood, OR 97140
- B. Location: 22211 SW Pacific Highway, 2S131BA02000
- C. Site Size: According to the tax assessor information, the property is 5.86 acres
- D. Existing Development and Site Characteristics: The site is developed with a single family residential building and several accessory structures. There is a large pole barn located on the western edge of the property. The western, northern and eastern property lines are treed.
- E. Request: The applicant has appealed a director's interpretation that their proposed covered parking bays are not exempt from site plan review. The entire record utilized to make the director's decision is attached as Exhibit 1-15. Exhibit 15 is the revised submittal to the building department documenting the requested location and size of the covered parking with which the Community Development Director based his decision that the proposal was not exempt from site plan approval.

- F. Zoning Classification and Comprehensive Plan Designation: The property is zoned general commercial
- G. Adjacent Zoning and Land Use: To the north of the property is the Wyndham Ridge Subdivision comprised of single family residential zoned and developed lots. To the east is property zoned general commercial and developed with a single family residential structure. To the west is property zoned general commercial and developed with an antique retail mall and also has non-conforming storage of RV's and equipment. The property owner to the west is aware of the non-conforming status of their property and has been informed that expansions of the non-conformity will likely not be permitted. The subject property is bordered on the south by Pacific Highway.
- H. Review Type: An appeal of a Type I decision is heard by the Planning Commission pursuant to 16.72.010.2 in accordance with 16.76 of the Sherwood Zoning and Community Development Code.
- I. Public Notice and Hearing: Notice of the April 29, 2009 hearing was mailed to property owners within 100 feet of the subject property and posted in 5 locations around town on April 7, 2009. Notice was posted on the property on April 8, 2009. Notice was published in the newspaper on April 21, 2009.
- J. Review Criteria: The criteria used to make the determination were 16.48.010 through 16.48.060 regarding non-conformity. Also considered in the determination was 16.90.020 regarding site plan and site plan exemptions and 16.30 regarding the General Commercial zone. The process of land use appeals is outlined in 16.76 and ORS 227.175(10)

II. PUBLIC COMMENTS

As of the date of this report, the City has received two written comments which are included in the packet as Attachment 23 and 25. The comments, from Cory and Celeste Anderson, are supportive of the Director's determination. The comments from Clyde Raymer, representing the Vineyards at Wyndham Creek HOA, appear to be generally supportive of the interpretation although the comments indicate some confusion regarding the issue of the appeal.

III. AGENCY COMMENTS

As this is an appeal of a director's interpretation, which does not generally require comments from other departments or outside agencies, agency comments were not requested.

IV. ISSUE OF APPEAL

The applicant contends that the City of Sherwood told them that they could have 18 covered parking bays and then, after submitting for building plans changed from this. As Exhibit 4 clearly demonstrates, the City did in fact complete a detailed analysis of existing City files and building permits and determined that a maximum of 18 parking spaces would be permitted for the acknowledged commercial uses on the property. The letter also clearly states that the City would accept that the covered parking, associated with the existing uses, would decrease an existing non-conformity by better

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defining the location of parking on the site. Because the request would alter a non-conforming use, the covered parking sought for a building permit could only provide covered parking spaces in the location of the existing parking and be provided to serve standard passenger vehicles.

Initially, the building plans submitted provided RV shelters that ranged from 20' X 30' to 20' X 60'. A February 13, 2009 letter was sent indicating that plans did not comply with 16.94.020 and the covered parking spaces were located in a way that indicated site plan approval would be required. In response, revised plans were submitted February 17, 2009 (Exhibit 15); however as these plans continued to show 24' X 30' to 24' X 40' parking bays, the Director issues a letter February 25, 2009 stating that the covered parking is not a location of existing parking and therefore does not qualify as a modification to an existing non-conforming use. The letter also stated that site plan approval was required in order to proceed with the proposed parking facility.

At the heart of the appeal is the assertion by the applicant that this property has always been used for some form of commercial purposes and therefore any change to the site is a non-issue.

V. DISCUSSION

The issues on this site are complex because there are several types of non-conformities. While the zone (general Commercial) allows for a variety of commercial uses, the site developed with a residential structure and several accessory structures. The only prior land use application on file at the City regarding this property indicated at the time (1991) that the accessory structures were residential. As we have documented, several of these structures received building permit approval to be converted to commercial uses; however, there is no site plan review demonstrating compliance with current standards or standards in effect at the time of conversion.

Staff has determined that there are several **types** of non-conformity on this property: non-conforming structure and non-conforming use of structure. Below are excerpts from the development code with emphasis added to highlight the elements that appear to apply to the Claus property and this appeal:

Chapter 16.48 NON-CONFORMING USES*

16.48.010 Purpose

Within the zones established by this Code or any amendments that may have been adopted there may exist lots, structures, uses of land and structures, and characteristics of use which were lawful before the effective date of this Code, but which would be prohibited, regulated or restricted under the terms of this Code or any future amendments, or which do not meet in full all standards and provisions of this Code. This Chapter permits these nonconformities to continue until they are removed or discontinued, but does not encourage their perpetuation. **Nonconformities shall not be enlarged, expanded or extended, nor be used as justification for adding other structures or uses not permitted elsewhere in the same zone**, except as specifically provided elsewhere in this Section. (Ord. 86-851 § 3)

16.48.020 Exceptions

A. Generally

Nothing in this Chapter shall require any change in the location, plans, construction, size or designated use of any building, structure, or part thereof, for which a required City building permit has been granted prior to enactment of this Code. **If a building permit is revoked or for any reason becomes void, all rights granted by this Section are extinguished and the project shall thereafter be required to conform to all the provisions of this Code.**

B. Old Town (OT) Zone

Certain exceptions to this Chapter are permitted in the OT overlay zone, as per Section 16.162.060F. (Ord. 91-922 § 3; 86-851)

C. Any **otherwise lawful residential structure or use located on property zoned commercial** or industrial shall be **deemed conforming for the purposes of sections 16.48.050B and 16.48.060E.** (Ord. 94-983 § 3)

16.48.040 Non-Conforming Uses of Land

Where at the time of adoption of this Code lawful use of land exists which would not be permitted by the regulations imposed by this Code, **and where such use involves no structure or building**, other than a single minor accessory structure or sign, the use may be continued as long as it remains otherwise lawful provided:

A. No such use shall be enlarged, increased or extended to occupy a greater area of land or space than was occupied at the effective date of adoption or amendment of this Code, provided however, that such use may be enlarged or altered in a way that will not have a greater adverse impact on surrounding properties or will decrease its non-conformity, as per Section 16.48.070.

B. No such use shall be moved in whole or in part to any portion of the lot other than that occupied by such use at the effective date of adoption or amendment of this Code.

C. If any such use of land ceases for any reason for a period of more than one hundred and twenty (120) days, any subsequent use of land shall conform to the regulations specified by this Code for the zone in which such land is located.

D. No additional structure, building or sign shall be constructed on the lot in connection with such use of land unless said structure, building, or sign reduces or further limits, in the City's determination, the existing non-conformity.

(Ord. 91-922 § 3; 86-851)

16.48.050 Non-Conforming Structures

Where a lawful structure exists at the effective date of adoption of or amendment to this Code that could not be built under the terms of this Code by reason of restrictions on lot area, lot coverage, height, **yards, its location on the lot, or other requirements concerning the structure**, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

A. No such structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be enlarged or altered in a way that will not have a greater adverse impact on surrounding properties or will decrease its non-conformity, as per Section 16.48.070.

B. Except as otherwise provided for in Section 16.48.020, should such structure or the non-conforming portion of a structure be destroyed by any means to an extent of more than sixty percent (60%) of its current value as established by the Washington County Assessor, it shall not be reconstructed except in conformity with the provisions of this Code; and

C. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zone in which it is located.

(Ord. 86-851 § 3)

16.48.060 Non-Conforming Uses of Structures

If a lawful use involving individual structures, or structure and premises in combination (except for a single, minor accessory structure) exists at the effective date of adoption or amendment of this Code that would not be allowed in the zone in which it is located; or **which is non-conforming because of inadequate off-street parking, landscaping, or other deficiencies**, the use may be continued so long as it remains otherwise lawful, subject to the following provisions:

A. **No existing structure** devoted to a use not permitted by this Code in the zone in which it is located **shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered** except to accommodate a changing of the use of the structure to a use permitted in the zone in which it is located.

B. Any non-conforming use may be extended throughout any existing parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, **but not such use shall be extended to occupy any land outside such building.**

C. If such use of a structure and premises is changed to another use, such new use shall conform to all provisions of this ordinance.

D. When such use of a structure and premises is discontinued or abandoned for one hundred and twenty (120) days, the structure and premises shall not thereafter be used except in full conformity with all regulations of the zone in which it is located. A use shall be deemed to be discontinued or abandoned upon the occurrence of the earliest of any of the following events:

1. On the date when the structure and/or premises are vacated.

2. On the date the use ceases active sales, merchandising, the provision of services, other non-conforming activity.

3. On the date of termination of any lease or contract under which the non-conforming use has occupied the premises.

4. On the date a request for final reading of water and power meters is made to the City.

E. Where non-conforming uses status applies to a structure and premises, removal or destruction of the structure shall eliminate the non-conforming use status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than sixty percent (60%) of its current value, as appraised by the Washington County Assessor. Except as otherwise provided for in Section 16.46.020, any subsequent use shall conform fully to all provisions of the zone in which it is located.

(Ord. 91-922 § 3; 86-851)

As demonstrated in Exhibit 1 the city conducted detailed review of the building permits on file at the City and past land use applications. There are a number of buildings on the property that we have acknowledged based on information on the building permit were intended for commercial uses even though no land use action was found for any change of use except one. The building sizes were obtained from the building permit records and/or a plot plan provided for building permit #8581. Because of the commercial design standards adopted in 2005 (Ord. 2005-009) it appears that none of the structures conform to current standards because they would not be able to be constructed in the location and in accordance with their design under the current standards.

It also appeared that the site itself did not conform in accordance with “non-conforming uses of structures” because there was no paved and marking parking, landscaping, etc. For this reason, staff determined that the site would decrease in non-conformity if covered parking was provided as originally discussed by Mr. and Mrs. Claus because it would define the location of parking spaces associated with the businesses on the property. What was submitted by Mr. and Mrs. Claus did not provide parking stalls for the existing uses and was not in a location where parking associated with those uses had historically been. Exhibit 24 demonstrates that the location of the proposed structures would be where trees, field and shrubs are currently located.

16.90.020 (Site Plan) states that except for single and two family uses, and manufactured homes located on individual residential lots as per Section 16.46.010, no building permit shall be issued for a new building or structure, or for the substantial alteration of an existing structure or use, until the proposed development has been reviewed in accordance with Chapter 16.72 (Procedures for Processing Development Permits). Section 16.90.020 further indicates that:

The term “substantial alteration” shall mean any development activity as defined by this Code that generally requires a building permit and may exhibit one or more of the following characteristics:

A. The activity alters the exterior appearance of a structure, building or property.

B. The activity involves changes in the use of a structure, building, or property from residential to commercial or industrial.

C. **The activity involves non-conforming uses** as defined in Chapter 16.48.

D. The activity constitutes a change in a City approved plan, as per Section 16.90.020.

E. The activity involves the cutting of more than five (5) existing mature trees per acre, per calendar year.

F. The activity is subject to site plan review by other requirements of this Code.

G. Review of any proposed activity indicates that the project does not meet the standards of Section 16.90.020.

(Ord. 2006-021)

16.90.020.2 states that “the City shall make an initial determination whether a proposed project requires a site plan review or whether the project is exempt. **The City Manager or his or her**

designee is authorized to waive site plan review when a proposed development activity clearly does not represent a substantial alteration to the building or site involved. The findings of the City Manager or his or her designee shall be made in writing to the applicant. The action of the City Manager or his or her designee may be appealed as per Chapter 16.76.”)

The City Manager’s designee, in this case, the Community Development Director, reviewed the building plans submitted, considered the non-conforming section of the development code and the site plan standards regarding when site plan review is required and determined that the proposed covered parking stalls were not exempt from site plan review because: it involved a non-conforming use and did not decrease any existing non-conformity, was a substantial alteration to the site and would have been a change of use to the site or at the very least a significant expansion to the equipment storage use already located at the western property line.

VI. RECOMMENDATION

It is recommended that the Planning Commission review the record, take public testimony and concur with the Director’s determination that the proposal submitted 2/13/09 and 2/17/09 is not exempt from site plan review.

VII. EXHIBITS

1. Building permit and planning file data reviewed for 2-3-09 letter
2. Materials submitted to City Recorded Sylvia Murphy by Mr. and Mrs. Claus
3. Transcripts of phone messages left on Tom Pessemier’s voice mail related to the covered parking structures between the dates of 1/31/09 and 2/18/09
4. February 3, 2009 memorandum from Sherwood Planning Department to Jim and Susan Claus
5. February 9, 2009 memo from Julia Hajduk to Building Department
6. February 9, 2009 letter from Tom Pessemier to Jim and Susan Claus
7. February 9, 2009 letter from Becky Miller regarding the uses on the Claus property
8. February 11, 2009 list of Equipment owned by Mr. and Mrs. Claus, submitted by Jim and Susan Claus
9. February 11, 2009 list of square footages of existing structures submitted by Jim and Susan Claus (measurements by Jim and Susan Claus and Robert Johnson)
10. February 11, 2009 memorandum with list of questions prepared by Jim and Susan Claus for discussion at meeting on same date
11. February 13, 2009 letter from Ken Shannon regarding uses at the Claus property with prior owners, George and Betty Stanfield
12. February 13, 2009 plot plan submitted to the Building Department by Jim and Susan Claus (no permit submitted)
13. February 13, 2009 memorandum from Julia Hajduk to Building Department
14. February 13, 2009 letter from Tom Pessemier to Jim and Susan Claus
15. February 17, 2009 re-submittal to Building Department from Jim and Susan Claus (building permit application submitted but returned to application)
16. February 25, 2009 letter from Tom Pessemier to Jim and Susan Claus

17. March 3, 2009 letter from Eric Postma (attorney for Jim and Susan Claus) regarding potential appeal
18. March 3, 2009 letter from Tom Pessemier to Jim and Susan Claus RE: appeal process for 2-25-09 letter
19. March 6, 2009 letter from Tom Pessemier
20. March 9, 2009 letter from Eric Postman regarding submittal of appeal fee
21. March 12, 2009 letter from Eric Postma
22. March 27, 2009 letter from Tom Pessemier
23. April 20, 2009 letter from Cory and Celeste Anderson
24. Aerial photo of site with overlay of proposed parking structure locations (prepared by City of Sherwood)
25. April 21, 2009 letter from Clyde Raymer, Jr
26. April 20, 2009 letter from David and Linda Karpeles

END REPORT

