WITH INDUSTRY



4222 N.E. OLD SALEM RD.

ALBANY, OREGON 97321



MILLERSBURG PLANNING COMMISSION

October 17, 2017 6 P.M.

- 1 CALL MEETING TO ORDER
- 2 APPROVAL OF MINUTES OF July 18, 2017
- 3 JOINT PLANNING COMMISSION CITY COUNCIL MEETING
- 4 ELECT A NEW PRESIDENT AND VICE PRESIDENT
- 5 CURRENT GROWTH TRENDS
- 6 VARIANCE REQUEST (City council excused)
- 7 CLOSING COMMENTS AND ADJOURNMENT

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Millersburg Planning Commission Meeting

July 18, 2017

MEMBER PRESENT Ryan Penning, Dan Nixon, Dennis Gunner, Anne Peltier,

Connie Lepin, Steven Vogler, Ed Perlenfein

MEMBER ABSENT: Scott Stimpson, John Sullivan

STAFF PRESENT: Steven Hasson, Samuel Gollah

Chairman, Ed Perlenfein called the meeting to order at 6 p.m. asking for approval of the June 20, 2017 minutes. Commissioner Dan Nixon move to approve the minutes as presented, seconded by Anne Peltier. Ayes - 7, Opposed -0; absent – 2 (Sullivan and Simpson). **APPROVED**

Parker Lane Cable Removal:

Ed Perlenfein introduced the Parker Lane cable blockage issue and noting this matter is not a public hearing and thus, no public testimony would be taken. He did confirm written testimony had been received. He called on the City Manager, Steven Hasson to present this issue. Mr. Hasson introduced Sam Gollah as the new Development Coordinator and said he will work with Sam in managing development issues affecting the City. He said the City will maintain a contractual arrangement with Don Driscoll to provide planning services.

Mr. Hasson noted the area where the cable was removed is located at the intersection of Shayla Drive and Parker Lane. He explained that the cable was removed because it impeded traffic circulation and could pose a safety hazard. He remarked this case was introduced at the last Planning Commission meeting on June 20, 2017 at which time the Commission requested the cable be removed promptly. He said that not long after the cable was removed local residents complained about traffic hazard and unsafe sidewalks resulting from that action.

Mr. Hasson relied on his fire management experiences to emphasize the need to remove this barrier. He referenced a night club fire where the businesses back door was bolted to emphasize his point. He said people died because of this blocked off exit and the same could happen with the cable barrier.

It was apparent a majority of the audience were opposed to the cable's removal, citing increased traffic, lack of sidewalks, speeding vehicles and other concerns. Reference was made to the 2008 Hoffman Subdivision's conditions of approval that required a 10-foot setback for Parker Lane. The audience wondered why the conditions of approval were not honored.

Christian Watson and Dwayne Lever said the cable removal have created a higher traffic volume in the neighborhood and they would like to see the cable remain. A majority of the audience concurred with Christian and Dwayne's viewpoints. Mr. Lever

(from Parker Lane) wanted the case referred to the Council for resolution. Ed Perlenfein told Mr. Lever the case would be moved to Council. Melinda Allen stated her family moved into the neighborhood for its tranquility. Ed Perlenfein found need to admonish the audience not to repeat things.

Mr. Hasson provided further reasoning for the cable's removal relating to verbiage found in the Transportation element of the Comprehensive Plan. He reminded the Planning Commission about their recent approval of the comprehensive plan and its supporting language. He advised the Planning Commission if they reinstated the cable they would not be following their rules. He said removing the barrier improved street connectivity.

Ed Perlenfein agreed with Mr. Hasson that Parker Lane is now a public road and noted the City installed sewer there to address growth related issues. Planning Commission members Dennis Gunner and Dan Nixon were curious about how the dead end came to be? According to their memories a cable installation was not part of the approval process, rather it related to enforcement of the 10-foot setback. Anne Peltier was curious what other options were available. She asked, did the Jefferson Fire Department sign off on the original documents? Mr. Perlenfein said the 10-foot setback use had been a private issue but had become public since the subdivision's approval. Dan Nixon wanted Council person Scott Cowan to comment on the cable's removal. Steven Hasson interceded in that dialog by explaining Mr. Cowan could not comment because he was a councilperson and in the event of an appeal his comments at this time could be viewed as prejudicial. Mr. Hasson re-emphasized that safety and circulation were the driving factors for the cable's removal.

Mr. Hasson asked Mayor Jim Lepin, who was present, to comment on the City's street safety strategy that relies on solar speed signage. Mayor Lepin then explained the rationale for the solar safety project. Mr. Hasson thanked him and reminded the audience that the City was growing very fast (almost doubling in size in a short time span) and thus, street circulation was an important part of that safety strategy. He defended the rational for opening Parker Lane for safety purposes and noted the Comprehensive Plan clearly supports this action.

At this juncture, the audience shifted its focus to the 10-foot setback issue they believe contributes to the hazardous nature of Parker Lane.

Robin Whitney wanted to know more about what will happen to the 10-foot setback off of Hoffman Estates. Ed Perlenfein called it "an island of non-development". In response to this assessment, the audience requested the City take over the "Island" and do something about the adjoining street. The Planning Commission recommended addressing the issue through the City's Capital Facilities Improvement program.

Ed Perlenfein requested a motion to move these Hoffman Estate related issues to Council. Accordingly, Anne Peltier moved to recommend this matter be forwarded to Council for their action and seconded by Dan Nixon. Ayes - 7, Opposed -0; absent -2 (Sullivan and Simpson). **APPROVED**

150-Acre City Owned Property

Mr. Perlenfein asked Mr. Hasson to present this item. Mr. Perlenfein noted the property is located at the south side of Conser Road. Mr. Hasson presented a diagram that envisions the 150 acres currently zoned for industrial purposes be converted to other type land uses.

Mr. Hasson indicated Millersburg was among the fastest growing cities in the state. He explained the nature of the diagram that illustrates a variety of land use development patterns laid upon the 150 acres. He relied on the diagram to explain the different land use zones and corresponding uses he envisions for the area. He added, that due to the nature of his vision, the property will require rezoning [a map amendment process] and that development proposal was motivated by the need to create a central business district [CBD]. He indicated the various segments of his acreage that would be converted to a mixture of industrial, multifamily-family residential and mixed type uses. The crowd was fairly unanimous in its opposition to this proposed zone change. Ed Perlenfein reminded the audience that the meeting was not a public hearing and called for them to be respectful. He said he too was opposed to this proposal. He conveyed how he had participated in both the 1978 and 1998 comprehensive plan updates and both these plans maintained the rural zoning/industrial designation for the 150 acre site. He said he did not see any need for a revised Comprehensive Plan. Mr. Hasson said this proposal would have a positive effect on property valuations. He said this proposal provides a transition between the residential uses on the north side of Conser and potential uses on the south side of this roadway.

Anne Peltier stated she was not here in 1998 when the Comprehensive Plan was developed and suggested the City should conduct a plan update. Mr. Hasson noted most jurisdictions conduct Comprehensive Plan studies periodically; typically every ten to twenty years. He said a comprehensive plan update is warranted. Dennis Gunner echoed the audience's sentiment to keep the 150 acres in a rural/industrial designation. He said there is no need to change the land uses there.

Mr. Perlenfein stated since his arrival in Millersburg, the property that Mr. Hasson intends to develop has been rural and should remain in this land use status. He said that Conser Road is an excellent buffer between existing residential and industrial zones and did not wish to see the City involvement in residential development there. He commended Mr. Hasson for his proposal but remained steadfast this area remain as it is currently zoned. Steven Vogel concurred with Mr. Perlenfein. He said it is apparent the commission is not interested in a downtown concept but agreed to move it to the Council for consideration. Mr. Perlenfein requested a vote to move the 150 acre property to the council. Dennis Gunner moved to send this proposal to council and seconded by Steven Vogel. Ayes - 0, Opposed – 7, absent – 2) Sullivan Simpson.

DISAPPROVED

Fencing Ordinance:

Ed Perlenfein opened discussion on the proposed fencing ordinance. Mr. Hasson explained the rationale behind the proposed fencing standards. He said this item was first presented to the Commission at the June 20, 2017 meeting. He said this action was prompted in part by a series of fencing issues that were are not being addressed such as neglect for vision triangle protection as part of the fencing process, hence a need to revise the fencing code.

Mr. Hasson said, he believes the existing fencing code is inadequate. He said many fences are going up with little guidance. He cited an example of a homeowner whose rear yard fence encroached into the vision triangle setback area as an example of the need for a fence permitting process to assure consistent fencing outcomes.

Ed Perlenfein said the City issued too many permits, but he did agree with Mr. Hasson that fencing is an emerging issue. He indicated that not all fences should be permitted. Mr. Hasson countered the City needs one fencing code that addresses all fencing issues.

Connie Lepin agreed that the permit code may need revision. She suggested instead of creating a new code the City "copy" Albany's standards. Aside from suggesting the usage of Albany's code as an example, Connie also had a problem with some of the fencing code language definitions. She wondered why people have to obtain a permit before constructing a fence. Mr. Hasson said the proposed fencing code will contain graphics that depict the City's fencing specifications making it easier for homeowners and contractors to understand how to construct fences. Mr. Hasson said Millersburg is different than Albany and he does not have the staff to implement Albany's fencing standards. He said the permits will help the City track projects and insure application equity.

Mr. Hasson said fencing permits will help homeowners' define property boundaries and that action will reduce civil suits. Mr. Perlenfein added that it is part of a planners' job is to identify issues that minimize development conflict. He said this fencing code provides such an example and he agreed that the fence code needs revision.

Dennis Gunner was confused about the proposed text. He wondered why the existing code was crossed-out but retained, with Connie Lepin expressing a similar sentiment. Mr. Hasson said this legislative format style of modifying code is a form typically used by government agencies.

Anne Peltier suggested that Steve Hasson re-arrange the fence permit text by merging the old and new languages into one document (text) and have them on the same page. Fence permit in its developmental stage (draft form) should contain both the proposed and existing (crossed-out) text and placed on the same page and not separately. Mr. Hasson accepted Ms. Peltier's suggestion. Mr. Perlenfein asked the members if they were in favor of upgrading the fencing code and the response was positive. He requested a vote but Mrs. Lepin requested some of the language be modified before the

vote. Mr. Hasson said he would look into addressing her concerns for the next council meeting. Mr. Perlenfein requested a motion to move the fencing code upgrade to the council for further discussions. Mrs. Lepin made a motion to move the fence upgrade to council and seconded by Ms. Peltier: Ayes – 6, Opposed – 1, Absent 2 (Sullivan and Simpson).). **APPROVED**

American Planning Association

Mr. Perlenfein introduced the American Planning Association (APA) topic and asked about the benefits of APA membership? Mr. Hasson said he was recommending the Planning Commissioners join the APA. He said the APA provides jurisdictions with planning information and helps the members gain a good base of planning knowledge. Mr. Perlenfein said he did not particularly care to participate in APA, but other members of the Planning Commission expressed interest in joining this organization. In particular, Mrs. Lepin and Ms. Peltier expressed interest

Mr. Hasson said he would enroll those who expressed an interest. There were no other comments. The commission did not have any problem with APA membership and approved this action: Ayes -7, Opposed -0, Absent -2 (Sullivan and Simpson). **APPROVED**

CLOSING COMMENTS AND ADJOURNEMENT

There were no other new businesses. Meeting adjourned.

Respectfully,

Sam Gollah; Development Coordinator

CITY OF MILLERSBURG, OREGON

PLANNING'S FINDINGS AND DECISIONS

VARIANCE REQUEST

Date: 10/4/17

Applicant:

B.H. Homes;

4445 E. Elliot Prairie Road,

Woodburn, Oregon

Property Owner:

Billy Barsckoff,

4445 E. Elliot Prairie, Woodburn, Oregon 97971

Subject Property:

5455 Nestucca Avenue, NE

Millersburg, Oregon 97321

Staff Contact:

Sam Gollah, Development Coordinator

City of Millersburg, Oregon

Nature of the Application: The applicant is requesting for a Variance to construct a 1440 square-foot accessory structure. The proposed 30 feet by 48 feet residential accessory structure will be on situated lot 122 within the Sweetwater subdivision located at 5455 Nestucca NE, Millersburg, Oregon, 97321. There are no existing structures on the proposed site. The accessory structure, when approved and built will serve as parking space for the owners' motor home. The owners currently live in their motor home off the proposed site until their main house is completed. Please refer to **Exhibit 1** located on page 7 for a map of Sweetwater subdivision that shows the location of the proposed site.

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Application Submitted; September 18, 2017

Application Deemed Complete: September 20, 2017

<u>Types of Decision Section; 3300(3)</u>: Limited Land Use reviews: or Quasi-Judicial public hearings authorized by the Code require notification to the applicant and to owners of properties within 100 feet of the property which is the subject of notice as identified in the most recent property tax assessment roll where such property is located.

Public Notification: A notice of public review was mailed out on September 20, 2017.

Condition of the Property

The City of Millersburg's record shows that the property containing the proposed project is located at Assessor's Map number 10S—3W- 21BA; lot number 122. The lot size for the proposed residential accessory structure is 14,429 square feet. The address for the proposed site is 5455 Nestucca NE, Millersburg, Oregon. The property is zoned Rural Residential – Urban Conversion (RR-UC2.5) and fully developed to urban standard. The zoning classification is in conformance with Millersburg Comprehensive Plan. The abutting properties on the east, north and south of the proposed project site are zoned Single Family Residential (RR-UC2.5.) and designated as such in the Comprehensive Plan. There are no residential structures currently existing on the properties adjacent to the north, south and southwestern part of the proposed site. The properties adjacent to the eastern part of the proposed site are developed with residences. There are no wetland, floodplain, and any geo-hazard issues associated with the proposed site; no records of building permits or conditions of approval associated with the site.

Project Description:

The proposed residential accessory structure will be placed 12 feet away from the adjacent property to the north; approximately 10 feet away from a proposed main house to be located on the same property; 20 feet away from the rear yard and over 40 feet away from the front yard. These setbacks meet the City's standards. The property abuts Nestucca Avenue NE. The total height for the proposal is approximately 21 feet. The total impervious coverage for the proposed site is 46 percent: to include, the proposed residential accessory structure (shop), future main house and proposed Driveway and Approach. Please refer to the **Exhibit 2** located on page 8 for a site plan that depicts the location of the proposed building projects for the entire site as well as calculations for the proposed impervious coverage.

Applicant's Request

The applicant is requesting for a Variance to construct a 1440 square-foot accessory structure rather than the maximum limit of 1200 square feet. The applicant indicated that the Variance will enable the owners to use the accessory structure to store their 43-foot motor home after constructing their future main house on the same site. The driving force behind the Variance Request is the fact of the site (as illustrated in the site plan) is contingent upon the approval of the accessory structure. According to the applicant, denial of the Variance Request to construct the 1440 foot accessory structure may cause the owners to abandon the entire project. Please refer to **Exhibit 2** for a site plan that illustrates the location of the proposed residential accessory structure and the future main house. The subsequent City of Millersburg code sections will be applied in reviewing the Variance request.

Administration: Code section 1170(2) (g): The Planning Commission shall have the authority to approve Residential Accessory structure exceeding 1200 square in area in conformance with Code Section 6110(3) and the Variance of Code Section 2600. Amd. 4/10/2012.

Finding: The proposed 1440 square=foot accessory structure exceeds the maximum limit of 1200 square feet for residential accessory structure: Hence, the Variance Request. The City of Millersburg planning staff will review the Variance Request via the code sections above and provide notification of Action Taken to Planning Commission at the regular meeting to be held on October 17, 2017.

General Provision- Rural Residential – Urban Conversion: Code Section 6110: The Rural Residential – Urban Residential Zone is applied in rural residential areas with standard for continued rural development until a transition use occurs. Urban Residential standards shall apply to approved Urban Conversion areas where municipal water and sewer facilities are provided.

Finding: The lot containing the proposed residential accessory structure is fully developed to urban standard. Therefore, the Urban Conversion standards shall be applied in evaluating the proposed accessory structure.

Residential Accessory Uses: Code Section 6110: An Accessory use shall comply with all requirements for a principal use, except when specifically modified by this section. Accessory uses shall be used not for human habitation except; as specified in this section. Accessory uses shall comply with the following standard (6110(3): Amd 4/10/2012

Finding: The submitted site plan shows that the proposed residential accessory structure will be located in a residential zone where such structures are permitted. The Variance Request shall comply with the code section below.

Residential Accessory Uses; Code Section 6110(3)

An accessory building in the Urban Conversion zone shall be limited to <u>one building</u> and one story not exceeding a height of 24 feet and 1200 square feet in area unless modified through Variance provision of Section 2600.

Finding:

The submitted construction drawings show 30 feet by 48 feet floor plan and an elevation and sectional graphics for a one story residential accessory structure. The proposed height for the 1440 square-foot accessory structure is approximately 21 feet; including a 5/12 pitch roof. The height and setbacks associated with the proposal fulfill the land use provisions for residential zone. The applicant is requesting for Variance to address the issue regarding the size of the proposed residential accessory structure. The Millersburg code section 2600 below addresses Variance Request.

<u>Code Section 2600- Variance Request:</u> Because of the impossibility of foreseeing and providing for circumstance and conditions which may affect individual properties or uses, the variance provision is created to allow modification of the provision of this Code for certain circumstances without defeating the purposes and intent of the Code.

Finding

The City's records and the Linn County's assessors map and GIS database indicate that there are no wetlands or any form of geo-hazard restraint associated with the property that may affect how this development is built. The applicant's submittal contained a narrative that describes the circumstantial evidence for requesting a Variance for the 1440 square foot proposed residential accessory structure:

The circumstantial evidence provided in the applicant's narrative failed to address any unforeseen circumstances or conditions that compelled the Variance Request. **Exhibit 3** located on page 9 contains the applicant's narrative. The proposal, if allowed, will not affect the uses or properties adjacent to the proposed site. The project will be located 40 feet away from Nestucca Avenue, over 20 feet from the rear property line and 12 feet away from the adjacent property to the North

Code Section 2600(1)-Variance Application: An application for Variance shall be filed with the City together with a site plan and other supplemental data forms describing in the application. Section 2.130 and the Application Site Plan, Section 2.140. The applicant shall submit evidence that the circumstances for granting a Variance as outlined in item (2) herein apply to the Variance request. In granting the variance, the Planning Commission may attach conditions that it finds necessary to protect the surrounding property, vicinity, or the City and otherwise achieve the objective of this code

Finding: The Variance Request included a site plan illustrating the location of the proposed accessory structure, the proposed main house, Driveway and Approach. The application packet contains a narrative that describes the circumstantial evidence for the Variance Request. The application packet was submitted to the City Hall, 4222 Old Salem Road on September 13, 2017.

The Planning Commission meeting will be held on October 17, 2017. The applicant has fulfilled the 30 day required for submitting application prior to the Planning meeting. The submitted application packet for the proposed residential accessory structure fulfills the criterion above.

Code Section 2600(2) - Decisions Criteria:

A Variance may be granted if the following circumstances exits:

a. That there are circumstances or conditions affecting the property or use that preclude strict adherence to the code standard.

Finding

There are no environmental or natural constraints associated with the project that prevents the applicant from strict adherence to the standard of the code. The applicant's explanation for making the structure large enough to accommodate his 43-foot motor home would not appear justifiable "circumstance" affecting his property. **Exhibit 3** shows the applicant's narrative for the Variance Request. .

b. That the Variance is necessary for the proper design and/or use of the proposed development or land division.

Finding:

The applicant indicated in his narrative that the request for permission to depart from the norm is that his property is large enough to accommodate the proposed development and the proposed height and setback distances are more than adequate to prevent intrusiveness or other nuisances to the adjacent property owners might experience.

c. That the granting of the Variance will not be detrimental to the public welfare or injurious to other property in the area in which the property is situated

Finding

The location (setbacks from adjacent properties) and the height of the proposed residential accessory structure will not be detrimental to public's welfare.

d. That the granting of the Variance will not conflict with the purposes and objectives of the Comprehensive Plan and other related ordinances of the City.

Finding

The submittal fulfills the fundamental purpose and objective of Urban Conversion residential zoning requirement. The applicant impervious coverage, setbacks, and driveway and approach all meet the Urban Conversion standard of this City's land use code. Additionally, the proposal addresses the Comprehensive Plan objective of compact development in residential districts; all of the future building developments proposed for the site will fit into the property with enough space left to fulfill setback requirements. Based on the analysis above, it is apparent that the Granting of the Variance will not conflict with the general purpose and objectives of the code section.

<u>Decision Procedure 3110 (2):</u> Basis for Decisions: Approval or denial of a land use application shall be based upon and accompanied by:

a Brief statement that explains the criteria and standards considered relevant to the decision.

The planning staff recommended the denial of the Variance request based on the fact that: 1) The proposed residential accessory structure is out of scale; 2) It is not a hardship; and 3) It will lead to other out of scale provision; the residential accessory structure size was increased from 800 square feet to 1200 square not long ago (see Code section 6110 (3) –bold lettered sentence). The narrative addressing code section 2600(2) was not convincing enough.

- b A statement of the facts relied upon in rendering the decision

 The planning staff relied on the City of Millersburg code sections (6110 and 2600) and the applicant's submittal in evaluating and recommending Actions Taken to the Planning Commission for final decision. Code section 5110 spells out the maximum limit which this proposal exceeded. The narrative provided for the Variance Request is not convincing.
- An explanation of the justification for the decision based on the different criteria standards and facts set forth.

Another justification for denial is that the accessory structure cannot be built before the main residence. The City of Millersburg code section 6110 discourages usage of accessory for human habitation.

d That the granting of Variance will not conflict with the purposes and objectives of the Comprehensive Plan and other related ordinances of the City.

The comprehensive plan section 9.590 (residential use) encourages compact residential development within the existing residential district. The proposed site plan shows that the proposal utilizes the property efficiently. The site layout is compact and there is enough non-impervious space (54 percent) to absorb runoff; thus making the property more efficient and reducing the cost to public facilities. But the size cannot be approved based on facts listed under Decision Criteria on pages 4 and 5 of this report.

Recommendation:

The City of Millersburg planning staff recommends denial. The size is out of scale and intrusive by its massive presence and set a stage similar project. Finally, accessory use decisions should not be considered until the primary structure is in place so the relationship between primary and accessory can be established. The City's planning staff will notify the PC of the Action Taken for their deliberations.

Respectfully submitted:

Sam Gollah

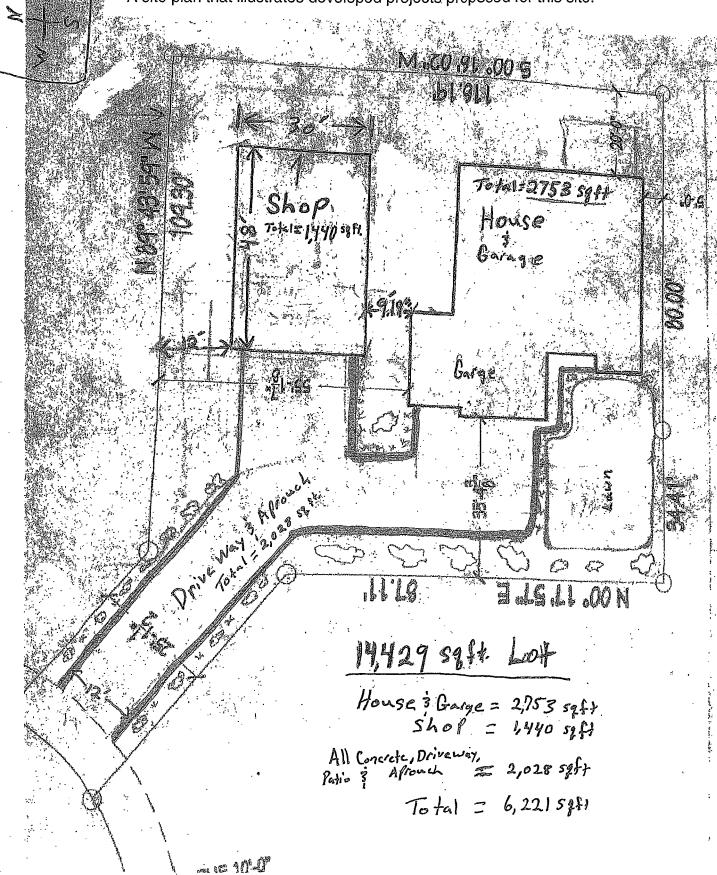
EXHIBIT 1: SWEETWATER SUBDIVISION MAP

Sweetwater subdivision map that depicts the locations of proposed development



EXHIBIT 2: SITE PLAN

A site plan that illustrates developed projects proposed for this site.



EXIHIBIT 3: NARRATIVE

Narrative that describes the applicant's explanation for the Variance Request

Owner: BH Homes

Property Address: 5455 Nestucca Ave NE, Albany, OR 97321

Billy Barsukoff, the owner of BH HOMES is requesting a conditional use approval for a 30'x48' shop (see attached shop plan for specifications) located at 5455 Nestucca Ave NE, Millersburg, OR 97321. Owner is under contract with Neil and Ellen Schneider who sold their home and will be living in their motor coach until home is completed. This is Neil and Ellen's last home and the reason they came to Millersburg was specifically for the large lots with the ability to have a 3 car garage and shop on a lot of their choice. The additional space is needed due to the fact the buyers have a 43' motor home. If the conditional use is not approved the Neil and Ellen will terminate the build and unfortunately start the process all over again. Lot 122 is 14,429 square feet, total lot coverage with Shop, House and concrete equals 6,621 square feet as shown in the attached site plan. Owner is asking city council to approve the conditional use as they approved a shop located at 2945 Conser Rd NE, Albany, OR 97321 which size is 48x58.

Thank you for your consideration.

BHHOMES

EXIHIBIT 4: CONSTRUCTION DRAWINGS

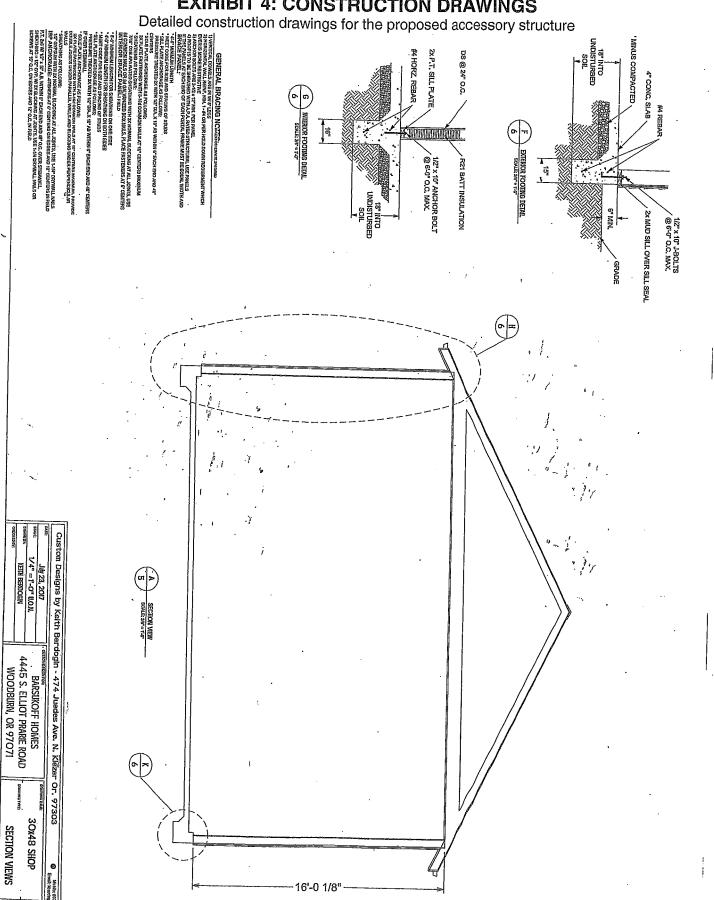


EXHIBIT 5:Floor plan with dimensions for the proposed residential accessory structure

