

## **MILLERSBURG PLANNING COMMISSION**

September 7, 2016

Present: Planning Commissioners Steve Vogler, Anne Peltier, Dave Post, Connie Lepin, Dan Nixon, Ed Perlenfein, Skylar Bailer, Ryan Penning, City Administrator Barbara Castillo, City Attorney Forrest Reid, Special Counsel Wally Lien, City Planner Don Driscoll

The Millersburg Planning Commission was called to order at 6 p.m.

### **MINUTES OF AUGUST 9, 2016**

*Anne Peltier moved, seconded by Skylar Bailey to approve the minutes of August 9, 2016 as written.* The motion passed unanimously.

### **BAILEY VARIANCE HEARING**

Forrest Reid opened the Bailey Variance Hearing and announced that the applicant, Skylar Bailey, is requesting approval for an Accessory Structure Variance that is 2,880 square feet in size. The specified maximum size is 800 square feet unless a Variance is approved as defined in Code Section 2.600.

Forrest Reid called for members of the Commission to identify any potential conflict of interest, bias or any communication concerning this request. Both Skylar Bailey and Ed Perlenfein declared a conflict of interest, removed themselves from the Commissioners table and sat in the audience. Connie Lepin declared a potential conflict of interest because her son has a potential civil suit with Skylar Bailey, but she stated that she can be unbiased.

Wally Lien said this is a continuation of the hearing from August 9, 2016 because there was an objection to the timing of the hearing notice that was sent out. This hearing is starting over.

### **APPLICANTS PRESENTATION:**

Skylar Bailey, PO Box 454, Jefferson, OR 97357 told the Commission that he has requested a variance to the maximum size limit on an accessory structure. Bailey said after learning about the neighbors objections, and trying to work things out with them and after also doing the math to make sure everything he wants to put in the accessory structure will fit, he is willing to go down to 2,400 square feet. Bailey also said the building permit for his accessory building was already issued by the City Administrator and witnessed by a city employee, but at the request of the city, he is requesting the variance.

STAFF REPORT:

Don Driscoll said the Millersburg Land Use Development Code provides the applicable criteria for evaluation of the requested action and he referred to Code Sections 4.112, 1.200 (2), 6.110, 1.170 (2)(g), 1.170 (3), 2.600, 2.600 (2), 3.200 (3), and 3.300.

**APPLICABLE CRITERIA**

**The Millersburg Land Use Development Code** provides the applicable criteria for evaluation of the requested action. The following elements of the **Millersburg Land Use Development Code** specifically apply to the Applicant's Request:

1. **Code Section 4.112** specifies the development Standards for the **Residential-Urban Conversion-RR 2.5-UC Zone**.
2. **Code Section 1.200 (2)** specifies the definition of a Residential Accessory Use.
3. **Code Section 6.110** specifies standards for Residential Accessory Uses.
4. The City Administrator may approve or deny the request in conformance with **Code Section 1.170 (2) (g)** and may determine the conditions necessary for approval or may refer the request to the Planning Commission as a Variance Request.
5. The City Administrator has referred the request to the Planning Commission as specified in **Code Section 1.170 (3)** to be reviewed as a Variance Request as specified in **Code Section 2.600**.
6. A **Variance Request** may be granted if the following circumstances exist as specified in **Code Section 2.600 (2)**.
  - (a) That there are circumstances or conditions affecting the property or use that preclude strict adherence the Code standards.
  - (b) That the Variance is necessary for the proper design and/or use of the proposed development or land division.
  - (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.
  - (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.
7. The Millersburg Planning Commission is required to hold a **Quasi-judicial Public Hearing** on a **Variance** request in conformance with **Code Section 3.200 (3)**.

8. Property Owners have been notified for comment as specified in **Code Section 3.300 (3)**.

#### **STAFF REVIEW**

1. The property is an existing conforming urban lot within the Rural Residential-UC District. The Applicant can comply with the Development Standards specified in **Code Sections 4.112, 6.110** and **Article 5** subject to approval of the requested Variance.
2. The proposed Accessory Building size of 2,880 square feet which is 3.6 times larger than the maximum size of 800 square feet specified in **Code Sections 6.110 (d) (3)**.
3. Variance justification relies on compliance with the applicable criteria contained in **Code Section 2.600 (2)**. The Applicant did not address any of the four Decision Criteria for approval of a Variance Request in the Application.
4. Height of the Shop to the ridgeline is 23 feet within the 24-foot limit and one story as specified in **Code Section 6110 (3)**.
5. Adjacent property owners have been notified for comment.

**Staff finds that the request presents no apparent negative impacts subject to compliance with the Conditions of Approval for the requested Variance.**

#### **CONDITIONS OF APPROVAL**

The following Conditions for Approval are recommended for adoption. The applicable sections of the **Millersburg Land Use Development Code** are noted:

1. The proposed storage use in the Rural Residential-Urban Conversion Zone RR-2.5-UC RR is a permitted use. It is the area of the structure that requires justification. The Applicant shall address the Variance Decision Criteria to the satisfaction of the Planning Commission.
2. The Applicant shall comply with the applicable criteria for granting the Variance contained in **Code Section 2.600 (2)**.
3. Height of the Structure is limited to 24 feet and one story as specified in **Code Section 6110 (3)**.
4. The Applicant shall comply with the Development Standards specified in **Code Sections 4.112, 6.110** and **Article 5** subject to approval of the requested Variance.
5. The Applicant shall comply with all **Building Permit** requirements including **Code Section 2.200**. Permits are issued by the City and administered by the Linn County Building Department.

6. All utilities serving the Accessory Structure shall be located under ground.
7. Site grading shall not impact neighboring properties.
8. The Accessory Structure shall not be used for human occupation in conformance with **Code Section 6.110 (1)**.
9. Construction shall not cause adverse impacts such as erosion, slide hazards and stormwater runoff due to cut and fill of the property. Grading together with cuts and fill shall be regulated by the City Engineer.
10. It is the continuing obligation of the property owner to provide proper drainage and protect all runoff and drainage ways from disruption or contamination. Drainage shall not be directed across another property unless the drainage connects to an existing continuous drainage way.
11. The Applicant shall locate the roof downspouts toward the interior of the Applicants property and direct the drainage away from adjacent properties.

#### **FINDINGS FOR APPROVAL OF THE REQUEST**

1. The Applicant has provided adequate information to address the proposed Variance.
2. The Request and proposed use is similar to, and compatible with uses permitted in the Rural Residential-UC District of the Millersburg Comprehensive Plan.
3. The Request and proposed use is similar to, and compatible with existing uses permitted in the Rural Residential Zone RR-2.5-UC.
4. The Applicant complies with the applicable criteria for granting a Variance contained in **Code Section 2.600 (2)**.
5. The facts, as presented by the Applicant, appear to be in conformance with the required findings for a Variance as specified in the **Code Section 2.600**. Approval of the request is justified by the facts and criteria summarized in this Findings Document subject to compliance with the Conditions of Approval contained herein.
6. Application Notices have been sent to property owners within 100 feet of the Applicant's property in conformance with **Code Section 3.300 (3)**.

Wally Lien made an addition to the staff report with the statement that, "Any participant who fails to raise an issue in a hearing, in person or by letter, with sufficient specificity to afford the hearing body an opportunity to respond to that issue, is precluded from using the issue in any subsequent appeal of the decision.

TESTIMONY IN FAVOR:

Dave Harms, 3206 Yosemite Place, said he met with Skylar at the property and walked through it. Harms said although this variance request won't affect him, he personally could have a similar situation in that his property is adjacent to property zoned rural residential where the owner could put a large shop with metal siding that could block his view also. Would he rather look at three shops which would be allowed on Skylar's property or one shop? Harms said that it sounds like several other large shops have been approved which sets an implied precedent.

The Planning Commission had previously received an email from adjacent property owner, Andrew Dayton, stating that he has no objections to Mr. Bailey's proposed accessory building.

#### TESTIMONY IN OPPOSITION

Ed Shultz, PO Box 667, Albany, Oregon said there are several issues that need to be addressed. Shultz said the applicant raised the issue that his application was already approved. Shultz said they did file an appeal of the administrative decision to issue the permit for the accessory building.

Shultz submitted for the record, a Petition signed by 41 residents of Millersburg requesting the City Staff, City Planning Commission and City Council to uphold the standard for residential accessory buildings in an Urban Conversion Zone, stated in MDC 6.110(3) to be limited to 800 square feet, and therefore to deny the request of Skylar Bailey for a Variance for an accessory building on his property located at 3052 54<sup>th</sup> Avenue NE, Albany, Oregon 97321.

Shultz also submitted the testimony of Mike and Julie Brink, 3079 Yellowstone Place NE, Albany, Oregon 97321 in opposition to the Bailey Variance request into the record.

Shultz said that information has been submitted by the applicant and each of the criteria used to allow the variance request has failed, and there is no way or reason as to why you can approve this variance.

#### OTHER TESTIMONY IN OPPOSITION

Don Miller, 2690 Millersburg Drive NE, Albany, Oregon 97321, Roger Danielson, 3082 Yellowstone Place NE, Albany, Oregon 97321 and Larry Seminary, 3159 Yellowstone Place NE, Albany, Oregon 97321 all gave testimony in opposition of this request. Emails from Mike Brink dated July 16, and July 20, 2016 in opposition and an email from Roger Danielson dated July 20, 2016 in opposition to the request are also part of the record.

Skylar Bailey asked for a ten minute recess to prepare his rebuttal testimony.

#### REBUTTAL TESTIMONY

Skylar Bailey said he was out of order for not addressing the variance request items in his proposal criteria required for granting a variance. There are circumstances affecting the property. The variance is designed for the uses he needs. To safely store and secure his fifth wheel RV, with the length of the RV and truck, there is no way he could turn it around and store it any other way than from where he chose to locate the accessory building. Bailey said it is much safer that his personal property is secured and locked so people aren't climbing over fences trying to steal stuff out of his shop and RV. It is also better for property values if he parks his stuff inside rather than put a blue tarp over it if it has to be stored outside. The granting of the variance is not detrimental or injurious to the public. Bailey said he planned on planting trees on the backside of his shop the whole time. An issue was raised that they will see nothing but trees if he plants them, but they are looking at trees now. He is willing to have the Planning Commission choose the kind of trees. Bailey said that in no way, shape or form will the granting of the variance conflict with the objectives of the Comprehensive Plan.

Bailey said he is currently in the process of building a subdivision right next to the property where he will build his house and the "hideous" shop and that is a huge investment. There is no way he is going to put in a "hideous" shop that would drastically decrease the value of his lots.

Bailey said he previously lived just a block away in a beautiful home. He saw this property for sale and purchased it to build his home and shop. Bailey said he has stored his personal stuff at his parent's property in Jefferson and they are in the process of selling their property. He was familiar with Chad Angel's property where he was granted a variance to build a large shop. Bailey said he has enough property to divide it into at least 3 lots where he could put in three 800 sf shops for a total of 2,400 sf. Bailey said he will plant trees so that no one can see his "hideous" shop. He has almost an acre there and thinks it is very realistic for the amount of property he has.

Bailey said he has a huge financial impact himself to make sure it looks presentable and visually appealing. In every state of the country this will increase the property values by putting a structure on the land.

A comment was made that this massive size of shop will block out everything. Bailey said our code allows me to build a two story home in that same location 32 feet high with windows. That would be totally invasive looking into someone's back yard and this shop is much less invasive than a two story house.

Bailey said he also took offense at a comment that was made earlier regarding his pull with the city and said he has not received any favorable treatment in this request.

#### QUESTIONS FOR STAFF

Anne Peltier asked if the permit for the variance was already issued. Barbara Castillo told her that when Bailey submitted plans for the accessory building, the permit was actually issued. At that time, city staff had thought the property was in the RR-2.5-UC

zone and was still considered Rural Residential. In that zone, there are no size limits on the accessory buildings. When it was discovered that the property was actually in the Urban Conversion zone and water and sewer were going to be at the property, that changed things and the size of the accessory building was limited to 800 sf without getting a variance. Castillo put a stop to the building permit and Bailey applied for a Variance for the 2,880 sf accessory building. Castillo was handling it administratively. When she saw that the adjacent property owners were objecting to the size of the building, she turned it over to the Millersburg Planning Commission for their review.

Wally Lien said at this point, there is no permit issued, there is a clean slate and the Variance request is a lawful process.

Bailey told the Planning Commission he is willing to go down to 2,400 sf because that would not require him to get his building plans re-engineered.

Dan Nixon asked if this property could ever be divided. Bailey said they have no plans to further divide the property and this will be his lifetime home. He loves being here and plans to be here.

Connie Lepin asked if there would be a loft inside the building. Bailey said based on the height of the building, they do want to put a loft to store camping equipment, but there would be no living in the building. Lepin asked if we can require that there not be a plumbing permit or electrical permit issued for the accessory building until the home is built. She thought he intended to live there while his house was being built.

Connie Lepin asked if it was fair to ask these people (adjacent neighbors) what they would accept. She hasn't heard anything about a compromise.

Ed Schultz said if you allow the applicant to put in new testimony, you have to give my client seven day to provide new evidence and comments into the record.

A fifteen minute recess was given to talk about making a compromise. No compromise was reached.

Wally Lien explained that the statute provides an opportunity to provide a rebuttal. Lien said there appears to be several points that were not part of the previous record:

- Gazebo case
- Information about the retaining wall
- Kind of trees
- Loft or storage area
- 5,000+ sf house
- Lot is big enough to have a division
- 2,400 sf is okay with Skylar Bailey because of engineering
- Doing a development next door
- Chad Angel's shop

The first seven days is an open period to comment and provide new evidence or rebuttal. The additional seven days is for Mr. Shultz to provide rebuttal of new evidence from September 21<sup>st</sup>. The final seven days is for Skylar Bailey to provide his final summation or rebuttal.

***Anne Peltier moved, seconded by Dan Nixon to close the hearing and keep the record open for 21 days. A special meeting will be held Thursday, September 29, 2016 at 6 p.m. for deliberation.*** The motion passed unanimously.

Lien said that for any other Planning Commission members to participate that have not been at the hearing, they will have to listen to the tape and review the record. Lien also reminded the commission members to avoid ex-parte contact.

The meeting adjourned at 7:45 p.m.

Respectfully submitted,

Barbara Castillo  
City Administrator/Recorder