

Case File: #1-VAR-PC-23
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Hearing Date: May 16, 2023
Previous Action: #6-PAR-PC-06

STAFF REPORT

Variance Application

APPLICANT: Richard Henkens, Jr.

A. REPORT OF FACTS

1. **Property Location:** The subject property is located at 550 Yachats Ocean Road and described on the Lincoln County Assessor's Map 14-12-34-AC as Tax Lot 4702.
2. **Applicant's Request:** The applicant is requesting a variance to reduce the required front yard setback from 20 feet to 10 feet in order to construct an accessory structure.
3. **Zoning:** Residential Zone R-4
4. **Plan Designation:** Multi-family Residential
5. **Lot Size and Dimensions:** The subject property is irregularly shaped and totals 0.24 acres or 10,454.4 square feet.
6. **Existing Structures:** Single-family residence built in 2019.
7. **Topography and Vegetation:** The subject site is relatively flat and landscaped with grass and shrubs.
8. **Surrounding Land Use:** Surrounding land uses consist primarily of single-family homes.
9. **Utilities:**
Water & Sewer: City of Yachats
Electricity: Central Lincoln PUD
10. **Development Constraints:** There is a small creek on the property that has been redirected to the north side of the existing residence.

B. EVALUATION OF REQUEST

1. **Applicant's Proposal:** The applicant submitted the required application form and fee, a narrative addressing the proposal, and a site plan.

2. Relevant Yachats Municipal Code (YMC) Criteria:

YMC Chapter 9.04 - General Provisions and Definitions

Section 9.04.030 Definitions

“Accessory structure or accessory use” means a structure or use incidental and subordinate to the main use of a property and located on the same lot as the main use.

YMC Chapter 9.24 R-4 Residential Zone

Section 9.24.040 Standards

Except as provided in Chapters [9.44](#), [9.48](#), [9.52](#) and [9.72](#), in an R-4 zone the following standards shall apply:

- A. Lot Size and Dimensions. The minimum lot size and dimensions in the R-4 zone shall be as follows:
1. The minimum lot area shall be six thousand (6,000) square feet for a one-family dwelling; seven thousand five hundred (7,500) square feet for a two-family dwelling; five thousand (5,000) square feet for the first dwelling unit and two thousand five hundred (2,500) square feet for each additional unit in a multifamily dwelling when a lot is served by both a public water supply and public sewage disposal system. However, the maximum density in the R-4 zone shall not exceed twelve (12) dwelling units per acre.
 2. Lot width sixty (60) foot minimum at front building line for interior lot and sixty-five (65) feet for a corner lot with public water and sewer systems.
 3. Lot width seventy (70) foot minimum at front building line for interior lot and seventy-five (75) feet for a corner lot with public water but no sewer.
 4. The minimum lot area per resort, hotel or motel guest unit shall be one thousand five hundred (1,500) square feet with a public water and sewer system.
 5. The minimum lot depth shall be eighty (80) feet.
 6. The minimum lot area per dwelling unit shall be at least twenty thousand (20,000) square feet when a lot is not served by a public water supply system, unless otherwise required by the county sanitarian.
 7. Landfill of dirt and rock only.
 8. Hazard areas:
 - a. Hill-side building sites, see Chapters [9.44](#), [9.48](#) and [9.52](#);
 - b. Flood-prone areas, see Chapter [9.54](#).
 9. Undersize lots, see Chapter [9.76](#).
- B. Yards. The minimum yard requirements in the R-4 zone shall be as follows:
1. Front yard shall be a minimum of twenty (20) feet.
 2. Each side yard shall be a minimum of either five (5) feet or one foot for each three (3) feet of building height, whichever requirement is greater. Corner side yards shall not be used for clotheslines, incinerators, permanent storage of trailers, boats and recreational vehicles nor shall said yard be used for the regular or constant parking of automobiles or other vehicles.
 3. The street side yard shall be a minimum of twenty (20) feet.

4. The rear yard shall be a minimum of ten (10) feet, except that on a corner lot it shall be a minimum of either five (5) feet or one foot for each three (3) feet of building height whichever requirement is the greater.
 5. All patio structures and swimming pools shall be a minimum of five (5) feet from any side or rear property line.
 6. No structure shall be located closer than sixty (60) feet from the center line of any state highway, nor forty-five (45) feet from the center line of any collector or arterial street.
- C. Building Height. No building in the R-4 zone shall exceed a height of thirty (30) feet from finished grade or from natural grade, see Chapter [9.52.180](#).
- D. Lot Coverage. Structures, including, but not limited to, buildings, porches and decks shall not occupy more than forty-five (45) percent of the total lot area.
- E. Off-Street Parking. Refer to Chapter [9.48](#) - Off-Street Parking and Loading for parking requirements.
- F. Separation Between Buildings. The minimum separation between multifamily buildings shall be thirty (30) feet unless the buildings are arranged end-to-end. In such a case, there shall be at least ten-foot separation and no doorway or entry may open into the space between the buildings.
- G. Vehicle Access. Ingress or egress to a multifamily dwelling or to a motel shall not be allowed from less than a thirty-five (35) foot right-of-way and a twenty-five (25) foot all weather travel surface, accessible to emergency vehicles. In the event that a thirty-five (35) foot right-of-way is not possible, a minimum of ten (10) foot easement (five (5) feet on each side of the travel surface) shall be dedicated to the City for utility purposes and pedestrian use. Commercial uses and multifamily dwellings shall not have vehicles access to or from a cul-de-sac.
- H. Utilities. The developer of multifamily dwellings shall have full financial responsibility for the utilities needed on the building site. The developer shall also have partial or full financial responsibility as determined by the City Council, for extra capacity utilities required to serve the building site. Extra capacity utilities includes water lines in excess of six inches, sanitary sewer lines in excess of eight inches and storm sewer lines in excess of twelve (12) inches.
- I. General Criteria. The vehicle and pedestrian access to the site can be safely and efficiently provided and the necessary utility systems and public facilities are available with sufficient supply and distribution capacity. If not provided by the City, it shall be the responsibility of the developer to insure these standards are met. (Ord. 314, Amended, 07/12/12; Ord. 286, Amended, 11/18/2009; Ord. 277, Amended, 10/10/2008; Ord. 267, Amended, 02/12/2007; Ord. 243, Amended, 12/18/2003; Ord. 215, Amended, 08/15/2003; Ord. 175, 1995; Ord. 731, 1994; Ord. 73E § 2.040(3), 1992)

YMC Chapter 9.80 Variances

Section 9.80.010 Authorization to grant or deny variances.

The Planning Commission may authorize variances from the requirements of this title where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship. No variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of this title. (Ord. 73E § 12.010, 1992)

Section 9.80.020 Circumstances for granting a variance.

A variance may be granted only in the event that all of the following circumstances exist:

- A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of the ordinance codified in this title, topography, or other circumstances over which the applicant has no control;
- B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess;
- C. The variance would not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city plan or policy;
- D. The variance requested is the minimum variance which would alleviate the hardship;
- E. The hardship asserted as a basis for the variance does not arise from a violation of the zoning ordinance. (Ord. 73E § 12.020, 1992; Ord. 73A, 1982)

Section 9.80.030 Variance procedure.

The following procedures shall be followed in applying for action on a variance:

- A. A property owner may initiate a request for a variance by filing an application with the City Recorder, using forms prescribed pursuant to Section [9.88.040](#). The application shall be accompanied by a site plan drawn to scale showing the condition to be varied and the dimensions and arrangement of the proposed development. The City Council or Planning Commission may request other drawings or material essential to understanding of the variance.
- B. If the request for a variance meets all the requirements of this title, the City Recorder shall set a time for a public hearing before the Planning Commission on the request within forty (40) days from the filing thereof and shall cause notice to be given in accordance with Section [9.88.060](#).
- C. At the conclusion of the public hearing the Planning Commission may approve or deny the request, based on findings which address applicable variance criteria, pursuant to Chapter [9.88](#). (Ord. 73E § 12.030, 1992)

Section 9.80.040 Time limit on a variance.

Authorization of a variance shall be void after one year unless substantial construction pursuant thereto has taken place. However, the Planning Commission may extend authorization for an additional period not to exceed one year, on request. (Ord. 73E § 12.040, 1992)

- 3. Public Testimony Received:** At the time this staff report was prepared, the City had received one letter of written testimony.

C. ANALYSIS OF THE APPLICATION

1. History of the Tax Lot

In December 2006, the Yachats Planning Commission heard Case File #6-PAR-PC-06, a 2-lot partition request for the property at 540 Yachats Ocean Road. The applicant in #6-PAR-PC-06 was requesting to partition the 0.42 acre lot identified on Lincoln County Assessor's Map 14-12-34-AC as Tax Lot 4701 into a 0.18 acre lot (Tax Lot 4701) and a 0.24 acre lot (Tax Lot 4702). The partition request was approved.

The 2006 Findings and Conclusions include the following statement regarding the new Tax Lot 4702:

Proposed Southerly Lot. The proposed southerly lot meets the standards for development of a one-family or two-family dwelling.

The minimum lot width requirement is satisfied. The table identifies that the average lot depth is substandard to the minimum lot depth requirement, i.e. 61' vs. 80'. Yachats Ocean Road is considered the front yard. The substandard depth is due to the nearly triangular shape of the proposed lot. The proposed lot has a depth of approximately 89.50' on the northerly property line and 32.80' on the southerly line. The southern portion of the proposed lot is practically unbuildable due to the nearly triangular shape and required setbacks. If the southern portion of the south lot is excluded from the lot depth calculation, the southerly lot can meet the minimum 80' lot depth standard. The Planning Commission finds that in order to meet the minimum lot depth requirement the southern portion of the lot is determined to be unbuildable. The average lot depth of the buildable area shall meet the minimum 80 foot depth standard. The unbuildable portion of the lot shall be noted on the partition plat.

The City Attorney had the following to say about the relevance of the 2006 findings:

"I also think that the City should apply current lot depth and setback requirements, including the ability to seek a variance. It seems to me that even with the partition decision, the Planning Commission can revisit the issue and determine whether, under current code, additional development might be allowed on this portion of the lot. In other words, while the City in 2006 determined that part of this lot was not subject to development, things may well have changed and the City can now evaluate a development proposal under existing regulations".

2. Analysis of the Variance Request

Section 9.80.010 Authorization to grant or deny variances.

The Planning Commission may authorize variances from the requirements of this title where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship. No variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of this title. (Ord. 73E § 12.010, 1992)

Staff Response: The applicant has presented a case for special and unusual circumstances due to the shape of the lot. The applicant is not proposing any use that is not authorized in the R4 zone.

Section 9.80.020 Circumstances for granting a variance.

A variance may be granted only in the event that all of the following circumstances exist:

- A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of the ordinance codified in this title, topography, or other circumstances over which the applicant has no control;

Applicant's Response: This request for a variance to existing property setbacks is based on an extraordinary condition resulting from the unique shape and proximity of my property to US Highway 101 and Yachats Ocean Road.

- B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess;

Applicant's Response: The lot coverage of the existing residence is 1445 square feet. Due to the limited availability of buildable land between the 20' setbacks from each roadway, the total buildability of the lot is severely compromised and well below the percentage of coverage otherwise allowed on adjacent and neighboring lots.

Staff Response: The subject property is 10,454.4 square feet. The R4 standards allow for 45% lot coverage, or 4,704.48 square feet.

- C. The variance would not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city plan or policy;

- D. The variance requested is the minimum variance which would alleviate the hardship;

Staff Response: According to the Lincoln County Assessor, the footprint of the existing residence is 1,487 square feet. The proposed structure is 780 square feet. If the variance is approved, the total lot coverage would be 21.7%.

- F. The hardship asserted as a basis for the variance does not arise from a violation of the zoning ordinance. (Ord. 73E § 12.020, 1992; Ord. 73A, 1982)

Staff Response: There is no violation of the zoning ordinance.

D. CONCLUSIONS

If the request is denied, the Planning Commission should state the general reasons and facts relied on, and direct staff to prepare findings for adoption at the next meeting. If the request is approved, staff offers the following recommended conditions of approval, which may be added to or amended at the Commission's discretion:

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1. Development shall be in accordance with all R-4 standards except for the approved variance for the front yard setback.

Submitted by,

Katherine Guenther
City Planner