



*Where Life is Sweet*

Members of the Planning Commission  
**STAFF REPORT**  
For the Meeting of January 11, 2023

**Title/Subject**

Alteration of Non-Conforming Use- Schnell 4N2811CB Tax Lot 2200 - 291 E Gladys Ave

**Summary and Background**

Beau Bankston has submitted an application on behalf of John and Diane Schnell for property located at 291 E Gladys Ave. The property is located at the northwest corner of E Gladys Ave and NE 3<sup>rd</sup> Street and is described as 4N 28 11CB Tax Lot 2200. The property is zoned Downtown Commercial Overlay (DCO), which is a special overlay for the Central Commercial zone. The applicant seeks to alter an existing non-conforming structure located on the NE 3<sup>rd</sup> Street frontage of the property.

The property contains a single-family dwelling and a detached storage building. The detached storage building pre-dates zoning regulations and is built with zero setback on NE 3<sup>rd</sup> Street. The applicant seeks to expand the existing detached storage building, adding a garage bay on the south side. The existing detached storage falls within two differing interpretations of the zoning code. C-1 and DCO zoning both establish that there is no setback requirement from a street (§157.042E). However, where there is an existing residential dwelling, the code requires it to be subject to R-3 residential standards (§157.042G2). The R-3 standard requires a minimum setback of 10 feet for corner lots (§157.027D2). Thus, the garage is a non-conforming structure, but legal because its construction predates the current setback requirement (§157.190A).

The proposal to add a bay to the existing garage is considered a major alteration of a non-conforming structure under the Hermiston zoning ordinance. The zoning ordinance establishes a process for both major and minor alterations to non-conforming uses and structures. A major alteration expands a non-conforming use or structure by more than ten percent and a minor alteration expands a non-conforming use or structure by less than ten percent (§157.192). In the matter before the planning commission, the proposal expands the 450 square foot storage building, adding an additional 640 square feet. The proposal expands the non-conforming structure by 140% and is therefore a major alteration and subject to approval by the planning commission following a public hearing process as used for a conditional use permit. Minor alterations of less than 10% are approved administratively by planning staff.

The criteria that are applicable to the decision to approve or deny an alteration to a non-conforming structure are contained in §157.195 of the Hermiston Code of Ordinances. In rendering a decision to approve or deny the alterations, the applicant must demonstrate compliance with all three

requirements. The burden of proof for altering a non-conforming use or structure are considerably less than those required for a conditional use permit or variance in the Hermiston code.

- (A) The nature and character of the proposed use are substantially the same;
- (B) There is no material difference in the quality, character or degree of use; and
- (C) The proposed use will not prove materially adverse to surrounding properties.

Staff supports the granting of the expansion. Findings of fact are attached to this report as Exhibit A. It is the staff's opinion that all three requirements for approval are met. Specifically, the nature of the proposed expansion is substantially the same as the current use. The existing structure is used for storage and the expansion will also be used for storage and similar activities. The building is also to be built of like materials per the site plan attached to the application. There is also no material difference in the quality, character, or degree of use. The primary use of the property remains a single-family dwelling with accessory buildings. The expansion provides additional storage space for vehicles and personal belongings. It does not increase the living space or increase the residential density of the property. The proposal is not materially adverse to surrounding properties. The proposal will provide additional on-site storage for vehicles and personal belongings, reducing the on-street parking demand on NE 3<sup>rd</sup> Street. Building code requirements will be met for zero lot line construction where the building abuts the NE 3<sup>rd</sup> Street property line, reducing the overall fire danger.

Public notice was provided for the proposal.

- Notice of public hearing published in Hermiston Herald on December 28, 2022
- Notice of proposed land use action posted on property on December 28, 2022
- Notice of public hearing provided by direct mail to all property owners within 300 feet on December 28, 2022

The findings of fact are attached to this report as Exhibit A. The conditions of approval are attached as Exhibit B.

### **Tie-In to Council Goals**

N/A

### **Fiscal Information**

The existing dwelling and outbuildings have an assessed value of \$87,800. Adding additional garage space will marginally increase the assessed value of the improvements on site.

### **Alternatives and Recommendation**

#### **Alternatives**

The planning commission may choose to:

- Approve the proposed alteration of a non-conforming structure
- Approve the proposed alteration of a non-conforming structure with modified conditions
- Reject the proposed alteration of a non-conforming structure

Recommended Action/Motion

Staff recommends the planning commission make the following motions:

- Motion to make the project file a part of the record
- Motion to adopt findings of fact
- Motion to impose conditions of approval
- Motion to approve proposed alteration of a non-conforming structure

**Submitted By:**

Clint Spencer