

PLANNING COMMISSION STAFF REPORT TYPE III APPLICATION

DATE OF HEARING:	August 26, 2024
FILE NO.:	24-038 VAR
APPLICATION:	Type III Variances
PROJECT NAME:	Rayburn Detached Shop Variances
APPLICANT/OWNER:	Rick Rayburn and Tori Bishop
APPLICABLE CRITERIA:	Section 17.66.80.A (1-2), Section 17.74.10, and Section 17.08.10
MAP/TAX LOT:	24E 13AD, tax lot 01400
ADDRESS:	40155 Highway 26
ZONING:	Medium Density Residential (R-2)/FSH Overlay
COMPREHENSIVE PLAN:	Medium Density Residential
STAFF CONTACT:	Patrick Depa, Senior Planner

PURPOSE

To determine if the applicant meets the criteria and should be granted two Type III Special Variances to expand a non-conforming structure and exceed the maximum allowed square footage for a residential accessory structure.

BACKGROUND

The applicant attended a pre-application conference on May 17, 2022, to explore the expansion of an existing accessory structure. The conference revealed that the applicant's proposal to expand an existing accessory structure would require two (2) variances.

First Variance: No accessory structure shall be located in front of the principal building. The existing accessory structure is in front of the primary structure so any addition would be an expansion of a non-conforming structure which requires a variance.

Second Variance: The total accumulative square footage of all accessory structures on an individual lot shall not exceed 1,200 square feet. The original square footage of the two pre-existing structures is 1,219 square feet. The applicant is proposing to almost double the current amount of square footage ultimately bringing the finished building project of the accessory structure to approximately 2,304 square feet (see Additional information email – Exhibit C).

APPLICABLE CHAPTERS

Chapter 17.08 Non-conforming Development, Chapter 17.74 Accessory Development, and Chapter 17.66 Adjustments and Variances

Section 17.08.10. General provisions.

- B. *Alteration of a Nonconforming Structure.* Where the use of a structure is permitted by the applicable development district, but the structure is nonconforming, an alteration, expansion, enlargement, extension, reconstruction, or relocation may be administratively approved if the improvement, evaluated separately from the existing structure, would be in compliance, and is not within a vision clearance area.

Variance - *The applicant is proposing to expand and enlarge their non-conforming structure.*

The existing accessory structure is non-conforming due to its location of being in front of the principal building (single-family home).

Section 17.74.10 Residential accessory structures.

B. *General Standards.*

- 1. No accessory structure shall be located in front of the principal building. If located to the side of the principal building on an interior lot, the structure shall not be placed closer to the front lot line than the farthest back front wall of the principal building.

The existing accessory structure is located in front of the principal building (single-family home).

(See non-conforming structure restrictions)

- 5. The total accumulative square footage of all accessory structures on an individual lot shall not exceed 1,200 square feet.

Variance - *The applicant is proposing to exceed the maximum allowed square footage for an accessory structure by 1,104 square feet, bringing the structure to 2,304 square feet.*

The pre-application conference notes described the requirements for setbacks, design elements, parking/paving, the application form, fees, and other projected processing steps. The above-referenced proposal was reviewed as two Type III Special Variances (see findings 15 through 24). The following exhibits, findings of fact, and conditions of approval explain the proposal.

EXHIBITS

Applicant's Submittals

- A. Land Use Application
- B. Narrative
- C. Additional Information Email
- D. Site Plan with Utilities
- E. Architectural Elevations

Agency Comments

- F. Sandy Net & Fire Comments

FINDINGS OF FACT

General Findings

1. The applicant/property owner submitted an application to expand an existing non-conforming accessory structure on the subject site. The current accessory structure is a one-story 1,219 square foot building located in front of the primary structure which is a single-family home.
2. These findings are based on the applicant's submittal materials received on June 13, 2024, with additional items received on June 20, 2024. The application was deemed complete on June 21, 2024. The 120-day deadline is October 19, 2024.
3. Notification of the proposal was mailed to property owners within 500 feet of the subject property and affected agencies on August 1, 2024, notifying them of the hearing. **No public comments were received when final packet was uploaded to meeting platform.**
4. A legal notice about the public hearing was published in the Sandy Post on August 14, 2024.
5. The Planning Commission will hold a public hearing to review this application on August 26, 2024.
6. The existing and proposed setbacks of both structures meet all the requirements of the City's development code (See Exhibit D – Site Plan). The setback to the front property line would be 27 feet which exceeds the 20-foot transit street requirement setback.
7. The site currently gains vehicular access directly from Highway 26.
8. Sandy Net comments are attached as Exhibit F. Clackamas Fire, and the Sandy Building Division did not have any additional comments regarding this proposal.
9. The site is 3.6 acres in area. The home and garage were built in 1967. The total square footage of both structures is 3,791 square feet which is approximately 2.4% of the parcel. The additional 1,104 square feet will bring a new lot coverage to just 3.1% of total lot area.
10. The subject site has a comprehensive plan designation of Medium Density Residential and a zoning map designation of Medium Density Residential (R-2) with a Flood and Slope Hazard (FSH) Overlay.

Chapter 17.38 – Medium Density Residential (R-2)

11. The applicant proposes expanding a residential accessory structure, which is an accessory use permitted outright according to Section 17.38.10(B).

Chapter 17.60 – Flood and Slope Hazard (FSH) Overlay District

12. The north two-thirds of the property is within the FSH Overlay (see Figure 1).
13. No development is proposed within the FSH Overlay.

FSH Overlay - 40155 SE Highway 26



Figure 1

14. The site is severely compromised concerning development based on the steep slopes on the northern part of the site (see Figure 2).

TOPOGRAPHY MAP



Figure 2

Chapter 17.66 – Adjustments and Variances

15. The Planning Commission may grant a special variance waiving a specified provision under the Type III procedure if it finds that the provision is unreasonable and unwarranted due to the specific nature of the proposed development. In submitting an application for a Type III Special Variance, the proposed development explanation shall provide facts and evidence sufficient to enable the Planning Commission to make findings in compliance with the criteria set forth in Section 17.66.80 (A) while avoiding conflict with the Comprehensive Plan.

16. The applicant is requesting two Type III Special Variances. Section 17.66.80 Type III special variances has three subsections of criteria that applies to the specific character of the variance requested. Only one set of criteria needs to be met. Subsection A. below, applies to the two requested variances in this document:
 - A. The unique nature of the proposed development is such that:
 1. The intent and purpose of the regulations and of the provisions to be waived will not be violated; and
 2. Authorization of the special variance will not be materially detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted.

17. According to Section 17.74.10, an accessory structure must be built behind the furthest back front wall of the primary dwelling structure.

The existing primary and accessory structures were built in 1967 pre-dating the City's adoption of a development code. Due to the orientation and location of the existing primary dwelling structure, any addition of the accessory structure would be considered an expansion of a non-conformity and require a variance to Chapter 17.08 Nonconforming Development.

Staff has no reason to believe that the proposed expansion of the accessory structure violates the intent of the development code. Given the diagonal orientation of the primary dwelling structure on the site, staff agrees with the applicant that the requirement for building an accessory structure behind the primary dwelling structure would be difficult to accomplish.

18. Section 17.66.80(A) states that a Type III Special Variance may be granted if the unique nature of the proposed development is such that the intent and purpose of the regulations and of the provisions to be waived will not be violated, and authorization of the special variance will not be materially detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted.

The site has many unique characteristics not found in the majority of residential lots in Sandy. The subject property is 3.6 acres in area where a typical residential lot is 7,500 square feet or less. The site is comprised of steep slopes on the north part of the site reaching over one hundred (100) feet of elevation change in just 350 horizontal linear feet. The site's only access is from

Highway 26 with a 55-mph speed limit. Whereas most lots with a single-family home gain access from a local or collector street with far lower speed limits (See Figure 3).

The expansion of the accessory structure will not be materially detrimental to the public welfare due to the unique size of the residential lot, the location of the property, and the topographic challenges to the site.

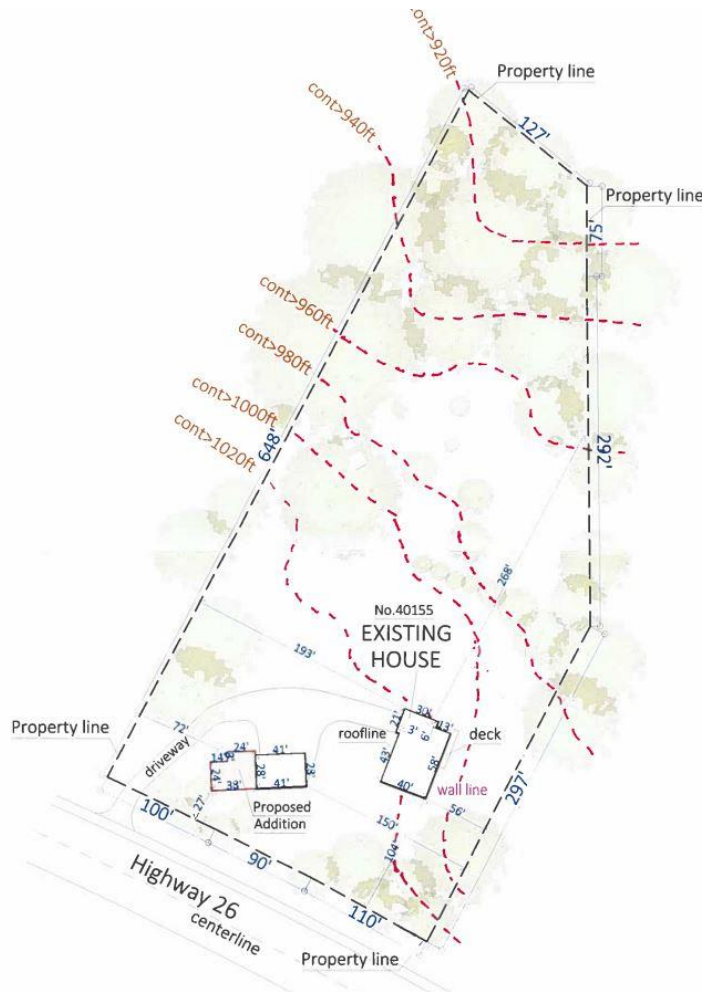


Figure 3

19. The property to the west of the subject property is split zoned General Commercial/Medium Density Residential (C-2/R-2). The first 120 feet in depth of the lot is General Commercial and spans the entire frontage. The property to the east has the same zoning as the subject property (R-2/FSH) but is even more constrained by steep slopes and the FSH Overlay.

Chapter 17.74 – Accessory Development

20. Section 17.74.10(B)(5) states that the total accumulative square footage of all accessory structures on an individual lot shall not exceed 1,200 square feet. The proposed structure expansion is associated with the only accessory structure on the property which reflects the total square footage the applicant is requesting. The applicant is proposing to exceed the maximum

allowed square footage for an accessory structure by 1,104 square feet bringing the new total square footage to 2,304.

21. Staff has no reason to believe that the proposed expansion of the accessory structure violates the intent of the development code. Given the size of the lot in relation to the existing structure, adding the additional square footage lends itself to be more in scale with the site and its location along Highway 26. A larger accessory structure will not be detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted.
22. A detached accessory structure shall be separated from the primary dwelling structure by at least six (6) feet. According to the site plan (Exhibit D), there will be approximately 60 feet between the accessory structure and primary structure.
23. Section 17.74.10(B)(3) requires that the roof of the accessory structure shall be constructed so that water runoff from the structure does not flow onto an abutting parcel. The submitted documents from the applicant do not provide an explanation of how water will be collected. **AN approved stormwater and soil erosion plan shall be submitted for compliance during building permit plan review.**
24. Section 17.74.10(B)(6) requires that accessory structures shall not exceed 16 feet in height. According to the definitions chapter (Chapter 17.10) of the development code, the height of a building with a pitched roof is determined by finding the mid-point height of the highest gable. It appears the proposed height of the structure is below the maximum allowed height, **but if the variances are approved the applicant shall submit plans identifying that the structure height does not exceed the maximum allowed height.**

Chapter 17.90 – Design Standards

25. Chapter 17.90 contains requirements for design standards. According to 17.90.150(E), four (4) Sandy Style design elements are required for the proposed structure. No Sandy Style elements are indicated on the elevation plans to review for compliance. **All future building plans submitted for construction for the subject structure shall adhere to a minimum of four (4) Sandy Style design elements.**

Chapter 17.102 – Urban Forestry

26. Chapter 17.102 has requirements for tree removal and retention. **No trees are proposed to be removed to accommodate the shop expansion.**

CONCLUSION

Given the size and topography of the lot in relation to the existing structure, adding the additional square footage lends itself to be more in scale with the site and its location along Highway 26. The travel speed along Hwy 26 will give the perception that the accessory structure is more suited for the site and creates an appearance that is not detrimental to the public welfare, and it will not be injurious to other property in the area. Section 17.66.80(A) was the only criteria that applied to the requested variances and staff finds that the criterion found in Section 17.66.80(A) has been met.

RECOMMENDATION

Staff recommends the Planning Commission **approve** both Type III Special Variance requests subject to the recommended conditions of approval below.

RECOMMENDED CONDITIONS OF APPROVAL

A. Prior to any onsite grading or earthwork, the applicant shall complete the following:

1. Submit and obtain a grading and erosion control permit and request and obtain an approved inspection of installed devices prior to any onsite grading. The grading and erosion control plan shall include a re-vegetation plan for all areas disturbed during construction. All erosion control and grading shall comply with Chapter 15.44 of the Municipal Code.
2. If the existing fiber connection to the house is in the way for any reason, it must be moved or replaced at cost to the property owner. We can disconnect and pull the fiber back if it conflicts with the new design, but the property owner would need to coordinate with us and pay for any repairs to their line if damaged.

B. Prior to issuance of building permits, the applicant shall:

1. Submit all pertinent permit applications (building, mechanical, plumbing (electrical goes through Clackamas County)) along with all required submittal documents for review and approval. Contact building@cityofsandy.com for submittal requirements or questions.
2. Section 17.74.10(B)(3) requires that the roof of the accessory structure shall be constructed so that water runoff from the structure does not flow onto an abutting parcel. Submit details on stormwater collection.
3. Submit building plans identifying the structure's height meets Section 17.74.10(B)(6) and does not exceed the sixteen (16) foot maximum allowed height.
4. Submit building plans detailing a minimum of four (4) Sandy Style design elements.

C. General Conditions of Approval:

1. Special Variance approval shall be void after two (2) years per Section 17.66.190 from the date of the Final Order unless the applicant has submitted plans for building permit review.
2. The applicant shall apply for a tree removal permit prior to any tree removal on the subject property.
3. Comply with all other conditions or regulations imposed by the Sandy Fire District, county, state, and federal agencies. Compliance is made a part of this approval and any violations of these conditions and/or regulations may result in the review of this approval and/or revocation of approval.