



CURRY COUNTY COMMUNITY DEVELOPMENT
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April 1, 2021

EXHIBIT 1
Curry County Community Development Department
PLANNING COMMISSION STAFF REPORT

Application A-2101/PC-21-000034 is an appeal of the Planning Director's decision of a Planning Clearance approval to construct an RV garage/storage building in the Rural Residential -5 (RR-5) zoning district. Building may be used for a pickleball court.

Background Information

Owners: John Little and Alberta Rose

Owner's Representative: Roger Gould
Gould Law Firm
P.O. Box 29
Coos Bay, OR 97420

Appellant: Deborah and Chip Shepherd

Land Use Review: Appeal of Planning Director's decision authorizing an RV garage/storage building, a permitted outright structure in the RR-5 zoning district. The intended use may be a pickleball court which was **NOT** disclosed on the Planning Clearance (PC) application (PC-21-000034).

Property Description:	Assessor's Map 31-15-08DB; Tax Lots 1700 & 1800.
Location	Subject property is located in the Floras Lake residential area, approximately 1.0 block east of Boice Cope Park on Leeward St. off of Boice Cope Road.
Existing Development:	Single family dwelling including a 8 ft. x 16 ft. storage building
Proposed Development:	A 32 ft. x 60 ft. RV garage/storage building, 25 ft. in height, as an accessory structure to the existing single family dwelling.
Access:	Access is from Leeward St. which is off of Boice Cope Road near Boice Cope Park.
Zone:	Rural Residential – 5 (RR-5) Zoning District
Acreage:	0.50 acres (TLs 1700 & 1800 combined)

Summary of Appeal

On July 17, 2020 John Little and Alberta Rose submitted an application (PC#-20-000242) for a 30ft. X 56ft. asphalt pad as an accessory to an existing residential use. The applicant explained that the purpose of the asphalt pad was for an outdoor pickleball court. The surrounding property owners contacted the applicant and the Planning Department with objections to the outdoor pickleball court. The Planning Director conducted research related to issues involving the placement of pickleball courts in and near residential neighborhoods. Based on the research and close proximity of the proposed court to existing residences, the Planning Director approved the outdoor pickleball court with the following conditions:

- The court shall be for personal use by the resident owners only.
- A drainage plan for the court shall be submitted for review and approval by the Planning Director.
- An Erosion and Sediment Control Plan (ESCP) shall be submitted for review and approval by the Planning Director.
- Only one (1) court shall be built on the site for personal use by the resident owners.
- No lights shall be constructed to allow night-time playing on the court.
- No tournaments shall be allowed.
- Hours of play on the court shall be restricted to 9:00 am until 5:00 pm.
- A sound abatement plan shall be developed by a licensed Acoustical Engineer for review and approval by the Planning Director. The development of the plan shall include input

and consideration of concerns identified by the neighborhood. At a minimum, the plan shall include adequate acoustical walls or panels or a complete covering or enclosure and vegetative buffers to abate noise from the court.

There was no appeal of the decision to approve PC#-20-000242 for the outdoor pickleball court with conditions.

Then on February 8, 2021 John Little and Alberta Rose submitted an application for a 32ft. X 60ft. RV garage/storage building to be 25 ft. in height. The application and follow-up correspondence explicitly precluded the mention of the use of a pickleball court. The application raised concerns by the Planning Director that the applicant was attempting to avoid compliance with the conditions set forth in PC#20-000242. Based on these concerns, the Planning Director approved PC#21-000034 (subject of this appeal) with the condition that:

“this structure is not to be used for pickleball courts without compliance with the conditions of Planning Clearance #20-000242”.

On February 22, 2021, the adjacent property owners to the proposed RV garage/storage building, Deborah and Chip Shepherd, appealed the Planning Director’s decision of approval of PC#21-000034. The appeal documentation includes several points indicating that the proposed RV garage/storage building will not be compatible in the neighborhood. Specifically:

“The primary basis for this appeal is that the size and location of the proposed building could not be worse. It will cause substantial and permanent damage to the Sheperd’s home and to the neighborhood, and is completely incompatible with the surrounding area and land uses for the following reasons. It will be the largest non-residential structure in the neighborhood, and have a larger footprint than our house, other homes in the neighborhood, and probably the Little’s too.”

The appellant is requesting that *“the County require the Little’s to file a deed restriction stating that the RV garage/storage will never be used for playing pickleball and used solely for the purpose of storage and no other activity whatsoever.”*

On March 9, 2021 the Planning Director received a phone call from Roger Guold, Gould Law Firm, P.C. stating that he was representing John Little and Alberta Rose regarding the proposed pickleball court that will be inside the RV garage/storage building. Further, Mr. Gould requested that the Planning Director remove some of the conditions from PC#21-000034. The Planning Director replied that the applicant had **NOT** disclosed that the RV garage/storage building would be used as a pickleball court and that any changes to the conditions of PC#21-000034 would need to be addressed by the Planning Commission since the application was being appealed.

Applicable Review Criteria

For this appeal, the Planning Commission must determine that it is in conformance with the following sections of the Curry County Zoning Ordinance (CCZO):

Curry County Zoning Ordinance

Section 2.060 (1) – Director Authority

Section 2.065 - Appeal of Administrative Permit

Section 2.120 - Establishment of Party Status

Section 2.170 – Appeal of a Land Use Decision

Section 3.080 – Rural Residential Zone

Section 3.081 – Uses Permitted Outright

Section 7.010 – Authorization to Grant or Deny Conditional Uses

Findings

Section 2.060(1) Director Authority. *The Director shall have the authority to review, and approve or deny the following applications which shall be Administrative Actions:*

4. Authorizations required by this Ordinance (such as but not limited to erosion control plans and other environmentally related actions required due to the physical location of the subject property) for uses and development listed as “Permitted Outright” in each of the zoning Classifications of Article III.

Finding: The Planning Director approved the RV garage/storage building on February 9, 2021 after review of a complete Planning Clearance application (PC#21-000034) submitted by John Little and Alberta Rose. The proposed structure was determined to be permitted outright in the Rural Residential -5 (RR-5) zoning district. Specifically, the proposed building meets the definition of an accessory structure to the existing residence located on site. The Curry County Zoning Ordinance (CCZO) defines accessory structure or use as: “*a use or structure incidental and subordinate to the main use of the property and located on the same parcel, tract, or lot as the main use.*” The existing residence is the main use which was permitted outright in the RR-5 zone therefore; the proposed accessory RV garage/storage building is considered a structure which is also permitted outright. The Planning Director’s decision to authorize the proposed RV garage/storage as a permitted outright structure is consistent with the CCZO which grants the Director the authority to make decisions on permitted outright structures, therefore this finding is met.

Section 2.065 Appeal of Administrative Permit. *An Administrative Permit authorized by the Director may be appealed to the Planning Commission, pursuant to the following:*

1. *Who may appeal. The following persons have standing to appeal;*
 - a) *The applicant or owner of the subject property*
 - b) *Any person who is entitled to written notice of the decision pursuant to this section.*
 - c) *Any other person who participated in the proceeding by submitting written comments on the application to the County by the deadline specified in Section 2.063(5).*
2. *Appeal Filing Procedure.*
 - a) *Notice of appeal. Any person with standing to appeal, as provided in subsection 2.065(1) may appeal a permit decision by filing a notice of appeal and paying the appeal fee according to the procedures of this subsection.*
 - b) *Time for Filing. A notice of appeal shall be filed with the Director within 12 business days of the date the notice of decision is mailed.*
 - c) *Content of Notice of Appeal. The notice of appeal shall be accompanied by the required filing fee and shall contain:*
 - (1) *An identification of the decision being appealed, including the date of the decision.*
 - (2) *A statement demonstrating the person filing the notice of appeal has standing to appeal.*
 - (3) *A statement explaining the specific issues being raised on appeal.*
 - (4) *A statement demonstrating that the appeal issues were raised during the comment period.*

Finding: The surrounding property owners, including the appellants, had been emailing and calling the Planning Department on a regular basis to ascertain the ongoing actions of the Little/Rose pickleball court. These actions gave the appellants and the surrounding property owners standing to appeal the administrative decision. They discovered that the RV garage/storage building was approved by the Planning Director on February 9th, 2021. They filed an appeal of that decision on February 22, 2021, which was within nine (9) business days of the date of the decision. The Director’s decision on the permitted outright structure did not require notification to adjacent property owners. The content of the appeal includes the identification of the decision being appealed, a statement that the appellant is an adjacent property owner whom had been following the actions of the Little/Rose pickleball court, multiple statements explaining the specific issues being raised on appeal, several referenced emails and statements that the issues were raised throughout the land use decision process. This finding is met.

Section 2.120. Establishment of Party Status.

1. *To be recognized as a party in an appeal of a land use decision under this ordinance the person shall comply with a, and b; except that the applicant is always a party in an appeal:*
 - a) *File a Notice of Appeal in accordance with Section 2.170, and*
 - b) *Appear before the local government body regarding this matter of record either orally or in writing*
2. *The appeals body shall first determine whether a person is a party before deciding the merits of the issue.*

Finding: The appeal was filed by Deborah and Chip Shepherd in accordance with Section 2.170 of the CCZO. The appellants appeared before the local government body regarding this matter orally (telephone), in writing (several emails), and by directly meeting with planning staff in the Planning Department. Staff recommends that the Planning Commission determine that the appellants, Deborah and Chip Shepherd be recognized as a party to this land use decision. This finding is met.

Section 2.170 Appeal of a Land Use Decision.

2. *Administrative actions taken by the Director shall be subject to appellate review by the Commission.*
4. *Any person who qualified under 2.120 may appeal a decision of the Director relative to an Administrative Action. In the conduct of a hearing, the Commission shall establish the appellant as a party who has timely appealed or the appeal shall not be heard and the contested decision shall become final.*

Finding: For this appellate review, IF the Planning Commission determines that the appellant has standing to appeal then the record shows that the appellant submitted a complete appeal application and paid the appeal fee of \$250. within the appeal time-frame of twelve (12) business days from the date of the decision. The Director's decision was made on February 9th, 2021. The appeal was received in the Planning Department on February 22, 2021 which was nine (9) business days after the decision was made. This finding has been met.

Section 3.080 Rural Residential Zone (RR). *Purpose of Classification. The Rural Residential Zone is designed to allow for low density residential development outside urban growth boundaries and rural communities defined by the Comprehensive Plan.*

Finding: The proposed RV garage/storage building is defined in the CCZO as an accessory to a residential use in the RR zoning district. The RR zone allows for low density residential development which exists on the two lots proposed for the structure. The proposed accessory structure meets the purpose of the classification of the zoning district, therefore this finding is

met. The Director was not knowledgeable of a pickleball court inside the proposed structure and did not have enough information about the intended indoor pickleball court to determine if that use is an accessory use to the existing residence, therefore this finding is not met for the indoor pickleball court.

Section 3.081 Uses Permitted Outright. *The following uses and their accessory uses are permitted outright:*

1. *A single family dwelling or mobile home on each contiguous ownership or platted subdivision lot approved prior to August 12, 1986 or lot subsequently approved at the minimum lot size specified by this zone subject to approval of on-site sewage disposal and domestic water source by the agency regulating these facilities.*

NOTE: Comprehensive Plan policy related to Floras Lake North (RLE-1) and Floras Lake South (RLE-2) exception areas states that development in the Pacific City Town Plats will not be allowed as one dwelling unit per lot but at one dwelling per contiguous ownership subject to approval of on-site sewage disposal system and water source by the agency regulating these facilities.

Finding: The property owners, John Little and Alberta Rose own two (2) lots in the Floras Lake exception area that are included in the Pacific City Town Plats. For the purpose of their application for the RV garage/storage building, the application was reviewed as an accessory structure to one dwelling per contiguous ownership which has both an on-site sewage disposal system and a well. The CCZO defines accessory structure or use as “*A use or structure incidental and subordinate to the main use of the property and located on the same parcel, tract or lot as the main use.*” The Director’s approval of the RV garage/storage building is consistent with Section 3.081 Uses Permitted Outright, therefore this finding is met for the RV garage/storage building which is a structure. The Director was not knowledgeable of the pickleball court use inside the proposed structure and did not have enough information about the intended indoor pickleball court to determine if that use is an accessory use to the existing residence, therefore this finding is not met for the indoor pickleball court.

Section 7.010 Authorization to Grant or Deny Conditional Uses. This section of the CCZO provides for the authorization of conditional and permitted uses. It specifically states: “*In permitting a conditional or permitted use the county may impose conditions in addition to the provisions set for uses within each zone in order to protect the best interests of the surrounding property, the neighborhood, or the County as a whole.*”

Finding: The Planning Director identified the initially proposed pickleball court as a use that may have the potential to create significant impacts to a residential neighborhood. Recent news articles across the nation have identified compatibility issues with the location of pickleball courts adjacent to residential neighborhoods. The literature indicates that unlike tennis, the sound of the pickleball being hit by a racket sounds very similar to a gun shot. Further, the players of the pickleball game tend to be extremely vocal, at times shouting profanities, clapping

and cheering loudly as the game is both in play and completed. Clashes have occurred in regards to playing time on the courts and traffic problems have entangled access to neighborhoods as people make their way to and from the few courts that exist. In several areas, seldom used tennis courts in residential areas have been re-stripped and converted to pickleball courts. This has enraged residential property owners and has caused many municipalities to reconsider actions to allow pickleball courts in or near residential areas. Spendiarian & Willis Acoustics & Noise Control (2018) specifically identified that courts located within 350 feet of residential structures often require noise abatement measures.

The proposed RV garage/storage building is located less than 50 feet from the appellant's home and less than 300 feet from seven (7) homes in the otherwise quiet neighborhood. When the Little/Roses' first planning clearance application (PC#-20-000242) was submitted specifically for a pickleball court, the Planning Director determined that in order to approve the proposal it would require input from the neighborhood. Conditions were included, as allowed per Section 7.010 with the Director's approval of PC#-20-000242 that included "*a sound abatement plan to be developed with input and consideration of concerns identified by the neighborhood*". This recommendation was based in part on the fact that the neighbors indicated that they were willing to work with the applicants to come up with a solution that both allowed the court and resolved neighborhood concerns about compatibility issues. Unfortunately, there were no subsequent gatherings or group discussions of the pickleball court by the applicant and the neighbors to try to resolve potential compatibility issues. At the time the Little/Roses' submitted the Planning Clearance application for the RV garage/storage building, the Planning Director was worried that the building would be developed with the intent of being used as a pickleball court without the input from the neighborhood so, in accordance with Section 7.010 of the CCZO, the Planning Director applied the conditions from the original Planning Clearance application that attempted to address the pickleball court. While this finding is met for PC#-20-000242 with conditions, it is **NOT** met for a pickleball court use in the RV garage/storage building since the Planning Director did not have the opportunity to adequately evaluate this use because the applicant did not disclose that the intended use of the RV garage/storage building was for a pickleball court.

Staff Recommendation

If the Planning Commission finds that the appellant has standing and the appeal application has satisfied Sections 2.065, 2.120 and 2.170 of the CCZO, then a decision on the specific merits of the appeal can be considered. Staff has determined that the appellant has standing and an application has been submitted that satisfies the provisions of Sections 2.065, 2.120 & 2.170 of the CCZO based on the findings above. Therefore staff recommends that the Planning Commission consider the following decision options or develop a decision that more closely represents the conclusion of the testimony presented at the May 20, 2021 public hearing:

Option #1.) The appellant’s challenge to the Planning Director’s decision be upheld and the “county requires the Littles to file a deed restriction stating that the RV garage will never be used for playing pickleball and used solely for the purpose of storage and no other activity” (Appellant’s request).

Option #2.) The appellant’s challenge to the Planning Director’s decision be upheld and PC-21-000034 (approval for the RV garage/storage building) is denied because the intended use of the RV garage/storage building as an indoor pickleball court was not disclosed within the application and therefore was not adequately evaluated in accordance with the findings as noted above.

Option #3.) The appellant’s challenge to the Planning Director’s decision be upheld and the Little/Roses’ be required to fully disclose their pickleball court plans and apply for a conditional use permit to be heard before the Planning Commission so that the neighborhood compatibility issues can be fully disclosed and addressed.