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**Review of CI-16-01**

**STAFF REPORT**

**Date Submitted:** January 2nd, 2020

**Agenda Date Requested:** January 14th, 2020

**To:** John Day Planning Commission

**From:** Nick Green

John Day City Manager

**Subject:** Review of 2016 Variance granted to Riverside Home Park

**Location:** 677 W. Main Street, John Day, OR 97845

Map 13-31-22D Tax Lot 100

Map 13-31-22DD Tax Lot 100

Map 13-31-23CB Tax Lots 1408, 1407, and 703

**Type of Action Requested:**

|  |  |
| --- | --- |
| **[ ] Resolution** | **[ ] Ordinance** |
| **[ X ] Formal Action** | **[ ] Report Only** |

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1. **BACKGROUND**

On November 7th, 2016, the John Day Planning Commission granted a variance allowing Riverside Mobile Home Park to place single-section manufactured homes that do not meet the minimum size requirements of the John Day City Development Code. The park has not been in compliance with the conditions outlined in the variance (CI-16-01.) The variance is being reviewed after an inspection by the city concluded that roof pitch requirements, thermal envelope requirements, floodplain development requirements, and building/placement permit requirements had been violated in multiple instances. These violations may be grounds for revoking the class B Variance. In addition to these violations, planning staff has determined that the variance was not properly granted and did not follow the appropriate type III planning process. The property which includes 23-acres of mobile home spaces is zoned General Commercial and is owned and operated by Chris Fox and Hays Development, LLC. The Code Interpretation is attached as Exhibit A.

1. **APPLICABLE CRITERIA**

The approval criteria for this proposal, detailed below, are summarized as follows:

1. Non-Conforming Uses and Developments – Section 5-5.2
2. Variances—Section 5-5.1

2. Manufactured Homes – Section 5-2.2.100F

3. Manufactured/Mobile Home Parks – Section 5-2.2.100G

When interpreting code, the staff first considers the text. If the text is unclear or may have more than one meaning, the staff reviews the text in context with other relevant code provisions. If the code is still unclear, the staff reviews the legislative history from when the City adopted the code. If the meaning remains unclear, the staff refers to statutory construction.

The applicable code criteria are provided below in italics typeface; staff’s findings follow each code provision in regular typeface. The findings, which are based on information submitted by the applicant, are preliminary.

The final decision notice will contain findings addressing the Planning Commission’s deliberation, and any public testimony, including any additional agency comments received by the close of the hearing.

The application and staff report findings may be modified based on factual information entered into the public hearing record. Members of the public who have questions about the proposal or who would like to submit oral or written testimony testify in person at the public hearing or submit written testimony to the City of John Day before the close of the hearing. Testimony should respond directly to the applicable criteria.

1. **PUBLIC NOTIFICATION**

The City of John Day mailed public hearing notices to the applicant and property owners within 100-feet of the subject site 20 days before the hearing date. At least 14 days before the hearing, notice of the hearing was printed in The Blue Mountain Eagle.

1. **PLANNING COMMISSION AND CITY COUNCIL CONSIDERATIONS**

The Planning Commission’s review must focus on the relevant code criteria and follow the public hearing requirements for a Type III procedure under section 5-4.1.040.

1. **STAFF RECOMMENDATION**

Staff recommends that the Planning Commission **revoke the variance granted in CI-16-01** and that the planning commission recommend the city council take further action to prevent property owners from placing and moving nonconforming manufactured homes within city limits.

1. **CRITERIA AND FINDINGS**

John Day Development Code Section 5-5.1 Variances –

The Planning Commission’s evaluation of the project must focus on the relevant code criteria under Section 5-4.4.040 and follow the public hearing procedures for Type III (quasi-judicial) review under Section 5-4.1.040.

The applicable code criteria are provided below in *italics* typeface; staff’s findings follow each code provision in regular typeface. The findings, listed below, are preliminary.

The application and staff report findings may be modified based on factual information entered into the public hearing record before the close of the record. Members of the public who have questions about the proposal or who would like to submit oral or written testimony are encouraged to appear at the public hearing or provide written testimony before the close of the hearing. Testimony should respond directly to the following criteria.

***5-5.1—Variances***

*Chapter 5-5.1 provides standards and procedures for variances, which are modifications to development standards that are not otherwise permitted elsewhere in this Code as exceptions to code standards. This Code cannot provide standards to fit every potential development situation. The City’s varied geography and the complexities of land development require flexibility. Chapter 5-5.1 provides that flexibility while maintaining the purpose and intent of the Code. The variance procedures provide relief from specific code provisions when they have the unintended effect of preventing reasonable development in conformance with all other codes. The variance procedures provide flexibility while ensuring that the resulting development is consistent with Code’s intent.*

*A. Exceptions and Adjustments versus Variances. A code standard or approval criterion (“code section”) may be modified without approval of a variance if the applicable Code expressly allows exceptions or adjustments. If the Code does not expressly provide for an exception or modification, then a variance is required and the provisions of Chapter 5-5.1 apply.*

**Findings:** The variance granted in CI-16-01 allows the owners of Riverside Home Park to fall out of compliance with the floor plain requirements outlined in section 5-2.2—Residential (R) Land Use Districts- Special Use Standards: Manufactured Homes. The code does not expressly allow exceptions or adjustments to this standard, so a variance is required.

*B. Combining Variances with Other Approvals; Permit Approvals by Other Agencies. Variance requests may be combined with and reviewed concurrently by the City approval body with other land use and development applications (e.g., development review, site design review, subdivision, conditional use, etc.), however, some variances may be subject to approval by other permitting agencies, such as ODOT in the case of State Highway access. Variances to City of John Day Engineering Design Standards are reviewed by the City Engineer and are not subject to this Code. Approvals under this Code that are contingent upon variance approvals by the City Engineer or other agencies may be conditioned accordingly.*

**Findings:** The variance is not subject to approval by other permitting agencies, however, public notice was never given during the process of approving CI-16-01, so other permitting agencies did not have the opportunity to comment on the variance before it was granted (see section C.)

*C. Types of Variances. As provided in Section 5-5.1.030, there are two types of variances: Class A and Class B. Class A involve variances involve limited discretion and therefore are reviewed administratively by means of a Type II procedure (Section 5-4.1.030). Class B variances require a public hearing under a Type III procedure (Section 5-4.1.040) because they involve more discretion. Where the Code contains built-in flexibility, for example, through provisions that allow lot size averaging in new subdivisions, density bonuses, building height bonuses, or flexible setbacks, under Articles 2 and 3, a variance is not required. Permissible uses shall not be modified through a variance but may be adjusted as part of a Master Planned Development under Chapter 5-4.5.*

**Findings:** The exception provided in CI-16-01 was approved as a Class B Variance, but was not processed appropriately. An application was never submitted, public notice was never given, a public hearing was never held, and notice of decision was never posted. The variance is therefore invalid.

***5-5.1.030 Class A Variances***

*A. Applicability. The following variances are reviewed using a Type II procedure, pursuant to Section 5-4.1.030 and based on the approval criteria in subsection B below:*

*1. Front yard setbacks. Up to a 10 percent change to the front yard setback standard in the land use district.*

*2. Interior setbacks. Up to a 10 percent reduction of the dimensional standards for the side and rear yard setbacks required in land use district.*

*3. Lot coverage. Up to 10 percent increase of the maximum lot coverage required in the land use district.*

*4. Landscape area. Up to 10 percent reduction in landscape area (e.g., overall area, required buffer areas, interior parking lot landscape area, quantity of trees or other vegetation, and similar landscape code provisions).*

*5. Fence Height. Up to a 1-foot increase in fence height may be approved where the additional 1-foot is for decorative purposes and is comprised of partially see-through material, such as lattice, wrought-iron, or similar detailing.*

***5-5.1.040 Class B Variances***

*A. Applicability. Class B variances are allowed for requests that do not otherwise meet the criteria under subsection 5-5.1.030 (Class A Variance), pursuant to the limitations under subsections 1-3, below, and the approval criteria in Sections 5-5.1.040C through 5-5.1.040G. Class B variances shall be reviewed using a Type III procedure under Chapter 5-4.1.040.*

**Findings:** The variance granted does not meet the criteria under subsection 5-5.1.030. It should have been processed as a type III procedure under Chapter 5-4.1.040.

*1. The Class B variance standards apply to individual platted and recorded lots; properties determined to be Legal Lots of Record under Chapter 5-5.3 are also eligible for Class B variances.*

**Findings:** Riverside Home Park is made up of individual platted and recorded lots.

*2. The Class B variance procedure shall not be used to modify a standard for lots yet to be created through a partition or subdivision process. Such requests may be approved under the Master Planned Development procedure of Chapter 5-4.5.*

**Findings:** Not applicable.

*3. A variance shall not be approved that would vary the “permitted uses” or "prohibited uses" of a land use district (Article 2).*

**Findings:** Riverside Home Park is a nonconforming property in a general commercial zone which was lawfully established prior to November 24, 2005. Staff has concluded that moving new residential manufactured homes onto existing lots within the park is a permitted use, but expansion of the nonconforming property would be prohibited. The conditions approved in CI-16-01 do not conflict with the code’s permitted or prohibited uses of this property.

*B. Approval Criteria. A Class B Variance may be approved only upon finding it meets all of the following criteria:*

*1. The variance is necessary because the subject Code provision does not account for special or unique physical circumstances of the subject site, existing development patterns, or adjacent land uses.*

**Findings:** This criterion was not addressed in the original code interpretation. The unique physical circumstance of the subject site is the small lot size which would not accommodate traditional double-wide manufactured homes.

*2. The variance is the minimum necessary to address the special or unique physical circumstances referenced in subsection 5-5.1.040B(1).*

**Findings:** A variance is the minimum necessary avenue of addressing the unique lot sizes.

*3. The variance conforms to the provisions of subsections 5-5.1.040C through 5-5.1.040G, as applicable.*

**Findings:** Not applicable.

*4. The variance does not conflict with other applicable City policies or other applicable regulations.*

**Findings:** The variance does not conflict with other applicable city policies or other regulations.

*5. The variance will result in no foreseeable harm to adjacent property owners or the public.*

**Findings:** No harm would result to the public from the variance granted if stated conditions of the variance were followed by Riverside Home Park.

*5-5.1.050 A. Application. The variance application shall conform to the requirements for Type II or III applications (Sections 5-4.1.030 or 5-4.1.040), as applicable. In addition, the applicant shall provide a narrative or letter explaining the reason for the variance request, alternatives considered, how the stated variance criteria are satisfied, and why the subject standard cannot be met without the variance.*

**Findings:** This requirement was not satisfied. No pre-application conference was held, no application was submitted, the $250 fee was never paid, a notice of public hearing was not mailed, and a public hearing was never held. Per section 5-4.1.040, the type III process was not followed and the variance is therefore void.

1. **PLANNING COMMISSION MOTION**

After hearing the applicant’s presentation and any public testimony, the Planning Commission must allow the applicant an opportunity to rebut any opposing testimony. Then the Commission will close the hearing and deliberate. The following motion is suggested:

“I move to approve revoke the variance granted in CI-16-01 based on the findings contained in the staff report.”

*The staff report may be amended during the course of the hearing.*

Respectfully submitted this 9th day of January, 2020.

Nicholas Green, City Manager/City Planning Official

City of John Day