



Harrisburg Planning Commission Minutes  
December 15, 2015

The Harrisburg Planning Commission met on this date at City Hall, located at 120 Smith St. at the hour of 7:00p.m. Presiding was Chairperson Todd Culver. Also present were as follows:

- Charlotte Thomas
- David Smid Jr. (7:01p.m.)
- Kurt Kayner
- Francisco Garcia-Mendez
- Youth Advisor Karina Ruiz-Lopez
- City Administrator/Planner Brian Latta
- City Recorder/Asst. City Administrator Michele Eldridge
- Public Works Director Chuck Scholz

Absent this evening were Commissioners Roger Bristol and Kent Wullenwaber.

Approving the Minutes of October 20, 2015

- Garcia-Mendez **motioned to approve the minutes, and was seconded by Thomas. The Planning Commission then voted unanimously to approve the Minutes for October 20, 2015.**

Kidco Commercial Day Care Facility – LU348

**A Public Hearing was opened at the hour of 7:03p.m.**

*The chair described the order of testimony, and process to request a continuance, and asked for any declarations of conflict of interest, or ex parte contacts. There were none. He then reviewed the applicable criteria and process of testimony and appeal.*

**Applicants Presentation:** Pam Peck (Transportation/Facilities Coordinator) and Stephanie Koehn (Executive Director) were present and representing Kidco Head Start. Koehn said that they've been operating since 2001; however, the State of Oregon at the Governors initiative, have asked all Head Starts in Oregon to be licensed as facilities, and to implement quality child care and programming in Oregon. In order to obtain a license, they must have a valid Conditional Use Permit.

- Thomas said that she was unsure why they have to go through this process, since they've been operating for some time.

- Koehn told her that she's been there for three years. The initiative was created within that time frame.

**Staff Report:** Latta said that there are no conditions required as part of this land use application; they've satisfied all the municipal code criteria that we have. As noted in the agenda, the main reason for going through this application process is that they were required to be included with the state program for reading quality, and do so, meant being licensed, which requires that a land use application is up to date. They are allowed to operate a day care facility or pre-school within the R-2 zone they are located in. They are not expanding, they are simply maintaining their operation. He reviewed the criteria and his findings, all of which is in the agenda packet. They met both the conditional use permit criteria, as well as that of the site plan criteria.

- Chairperson Culver asked if there were any ADA parking spots there.
- Keohne said that there was one.

**There was no testimony offered for those in favor, in opposition, or neutral. Therefore, the public hearing closed at 7:12p.m.**

- **Thomas moved to approve the Kidco Conditional Use Permit (LU #348). This motion is based on findings contained in the December 7, 2015 staff report, and on findings made during deliberations on the request. She was seconded by Kayner, and the Planning Commission voted unanimously to approve the Conditional Use Permit for the Kidco Head Start Program.**

#### Minor Partition/Replat Permit for Kevin Sims – LU349

- Latta noted that there is nobody here for this land use application. He received an email from Kevin Sims, asking for an extension of time. (Please see Addendum No. 1) Oregon Land Use Laws state that the final decision must be received within 120 days from when a land use application is deemed complete. He's asked Sims to waive that period, so that we have time to review this once he gets the information that he needed.

#### Variance for Robert Fischer - LU350

**A Public Hearing was opened at the hour of 7:15p.m.**

*The chair described the order of testimony, and process to request a continuance, and asked for any declarations of conflict of interest, or ex parte contacts. There were none. He then reviewed the applicable criteria and process of testimony and appeal.*

**Applicants Presentation:** Robert Fischer said that there wasn't really anything to add; he has built the garage, and has paved the driveway, but he needs permission for the variance because of the side setback.

Discussion between the applicant and Planning Commission members ensued, based on the fact that the applicant had already built the project, before obtaining the variance request.

Fischer noted that he was told in the middle of construction that he would need a site plan and a building permit. Kayner confirmed with staff that a complaint had been received, necessitating the applicants requirement to obtain a variance. Thomas asked if the aerial picture is current, but Fischer told her that it wasn't. It shows the old carport, which was a safety hazard. He had to remove it. He was told the city code requires a carport or garage, which is why he's applying for this variance. The size of the lot doesn't allow for a carport to fit properly. Thomas asked if the carport was 12' from the road then. Fischer told her that it's from the sidewalk. There is 29' between the house and the roadway, 5' to the carport from the house, and 12' to the sidewalk from the proposed garage.

**Staff Report:** Latta said that the application came to the City in response to a violation of the city code. The applicant came to the city, and asked about the carport. He (Fischer) knew the current one was deteriorating, and was a safety risk, because the posts were bad. He (Latta) told him at that time that the R-2 zone requires a carport. The applicant decided to tear it down, and to construct a new one. He and the applicant had discussed the potential risks if something is built, and doesn't meet code requirements. Fischer decided to continue to construct the garage, and told him that he had met the setback requirements, and had done the best he could. The City received the complaint and investigated. The construction was under-way, and the building was too close to the road. The setback is 15' for the side yard, so we talked about his necessity to obtain the variance application.

Its unusual circumstances, but the owner was told that he would need to apply for a variance. Because of the setbacks on the property, he had no choice but to apply for one. Latta went over the specific criteria, as noted in the agenda. Based on the analysis in the report, he is recommending that the Planning Commission approve the project as proposed.

- Kayner asked if there were any inspections required by the city.
- Latta told him that he was in violation of the code, and that he needed to apply for both a variance, and a building permit to be in compliance. The building permit will require inspections.

The Planning Commission discussed the issue, and realized that the applicant was between a rock and a hard place. He needed to have a garage, but didn't have a place to put it. Thomas noted that the road wasn't put in until after the original carport was there, so the road being put in would have grandfathered the original carport. Latta said that it actually was non-conforming.

**There was no testimony offered for those in favor, in opposition, or neutral. Therefore, the public hearing closed at 7:29p.m.**

Thomas asked if the setback there was a visibility issue because of it being a corner lot. Latta told her that was correct. The setback had been only 5', but once the road was installed, that side was changed to a setback of 15'. There is vision clearance with the carport in the current location, but nonetheless, we will have to have the applicant meet the 15' setback for the new garage, or he has to apply for the variance because he only has 12' here to work with. Fischer said that he needs the variance to be approved, because the sidewalk and driveways

are being poured. He added that he did meet with the Public Works Director, Chuck Scholz, and he verified where the right-of-way was.

- Thomas **motioned to approve the variance request for the Fischer Variance (LU350), based on the criteria, and findings of fact as established by the staff report, and deliberations made on the request. She was seconded** by Kayner. The **Planning Commission then voted unanimously to approve the variance request for Robert Fischer, for the setbacks on the east side of his garage for his property located at 775 Sommerville Loop.**

#### Variance for Don and Chery Wobbe (LU351)

#### **A Public Hearing was opened at the hour of 7:34p.m.**

*The chair described the order of testimony, and process to request a continuance, and asked for any declarations of conflict of interest, or ex parte contacts. There were none. He then reviewed the applicable criteria and process of testimony and appeal.*

**Applicants Presentation:** Don Wobbe said that they are asking for a variance for a RV cover that is on their property. They purchased the lot two years ago, and the cover was there then. The property owner they purchased it from knew that it didn't meet criteria, and we purchased the property, in part, because of the RV cover that is there. They wanted to continue to use the RV cover, therefore, they need to go through the process to obtain a variance.

**Staff Report:** Latta went over the staff report for the variance request, noting that the neighbor next door supports the RV cover; she has a large wisteria there, and doesn't want to see it go away. (Please see Addendum No. 2 for a copy of the letter received.) He felt that since the variance has no impact to the existing neighbors, that under the circumstances, it might be allowed. He reviewed each of the criteria and findings found in the staff report. He felt all the findings and criteria were met, and therefore recommends approval of the request.

Garcia-Mendez asked what happens if that person moves away, and the next person to buy that property doesn't like the allowance; what happens then. Latta told him that once granted, the variance applies and can't be changed. It's a good point though, to look at what circumstances can change. Another way to look at this, is that the RV is going to be there regardless of whether there is a cover or not. Kayner asked if it's considered a temporary structure. Latta said that it could be moved, and confirmed that it was affixed to the ground. However, he verified that no, it's not technically permanent, because it's not a structure. Kayner asked what happens if someone wants to put something like this next to your property? Latta told him that they would need to ask for a variance, or it isn't allowed. The Planning Commission discussed the issue for a while, and were concerned about people not being happy in the future, with the current arrangement. Thomas asked if they can put a condition on it, that it's only for vehicle parking? She'd hate to see it become a shed, or have sides put on it. Latta told her that the variance is for the RV cover only. If they wanted to expand the garage, they

wouldn't be able to do that without seeking another variance. Thomas said then it's specific to that particular structure, and if it went away, the approval for it would go away.

Chairperson Culver asked if you could put a time limit on it, like saying that it's only allowed until the property is sold? Then if it sells the variance ends. Kayner liked doing that too. However, Latta said that the challenge is keeping track of something like that. It's a practical challenge. Anything that requires long term monitoring becomes difficult, although he noted that if it's on a deed, like a historical district home, that's different. The Planning Commission is not setting a precedent on this issue, because each variance is unique, and is established on its own merit and criteria.

**There was no testimony offered for those in favor, in opposition, or neutral. Therefore, the public hearing closed at 7:53p.m.**

Smid commented that if someone came into city hall asking to build there, he'd be comfortable telling them that they have to tear it down. Chairperson Culver added that there is still 10' between the two garages, even though this RV cover and the wisteria frame/vine are closer. Kayner didn't mind allowing it, because it's tied to that structure. If it goes away, they can't put it up again, without going through this process.

- Thomas **motioned to approve the Wobbe Variance, LU 351, based on the findings on the staff report, and the findings made on deliberations. She was seconded** by Kayner, and the **Planning Commission voted unanimously to approve the Wobbe Variance, and thereby allowing the Wobbe's to keep the RV cover in the current location.**

#### **Others:**

##### Marijuana Legislation

- Latta said that staff was currently working on code updates, and were working on non-conforming use provisions, and wireless facilities. We will be adding some appropriate standards for wireless facilities. He is also working on regulations in regards to medical and recreational marijuana facilities. He is working on giving Council the ability to adopt reasonable time, place, and manner of restrictions.

Kayner asked if we can't just say no. Thomas added that she thought the court decision was still outstanding. Latta said that we are still waiting for a decision on the appeal, but in the meantime, we'll be working on our own restrictions. Thomas thought that Junction City had something saying no, and Latta confirmed that they have put it on the ballot for the next general election to prohibit facilities. Harrisburg can do the same, but it's a manner of timing. At the last Council meeting, we decided to hold off on full-blown prohibition, because we can prohibit facilities based on our current ordinances anyway. We opted to impose reasonable time, place and manner of restrictions, because if the court doesn't weigh in our favor, we'll have those in place; then we can look at prohibition. Kayner thought that the state had appealed that decision, saying that state law precedes federal law in regards to marijuana. Latta told him yes, initially, they won their court case, and then the state appealed it. It will not be easy to open a

facility in Harrisburg, because the locations' for where they will be allowed will be very narrow. The reason we haven't voted on outright prohibition, is because as long as you approve a motion or ordinance doing so, you lose your ability to tax those facilities. It doesn't matter what you prohibit either. Prohibiting any of the uses, will remove the ability to tax it. So if we prohibited it, and then federal law changed, we wouldn't be able to tax it. Taxing it helps to compensate for additional law enforcement. Halsey, Brownsville, Junction City, and Linn County, amongst others, have all made that decision, and he is keeping track of it. That was another concern we had.

Kayner said then to clarify, we don't want it, but if we say no, then if it does get allowed in the future, we wouldn't be able to tax it. Latta said that's correct. Chairperson Culver said that money can be used as a method to limit facilities too. The Planning Commission generally agreed that it's better to tax it to death...Latta added that there are limits on tax in state law. 3% of gross revenue is the limit right now. In addition, you can require a registration fee, or a land use fee for development. A lot of the bigger dispensaries' are suggesting that cities should have large fees, such as between \$25,000 and \$100,000. They feel that it keeps the 'riff-raff' out. You get more business orientated facilities. Garcia-Mendez asked if there had been any kind of feasibility studies. Were there any cities that are close to our size that are allowing them that have taxes and/or fees? Latta told him no....it's still too new for any studies, and there are no experiences out here to draw on. Several cities along the coast have them; Corvallis has five of them, and Albany has two; they are around us. Every city will face this issue. Nobody has approached him about dispensaries or a recreational facility yet, although he has had someone inquire about growing personal marijuana in the city. He's set up visits from the Linn County Deputies to make sure that people are in compliance.

Kayner asked how Council felt about this. Latta told him that Council is not interested in the money, they felt that we already have the ability to prohibit facilities based on our current ordinances, so there was no reason to prohibit it further. They wanted to keep their options on the table, based on that, and being able to maintain the prohibition. He doesn't think anyone on Council is in favor of dispensaries. Garcia-Mendez asked if we would be having a discussion on this, but Latta told him that the Council would be considering a reasonable time, place, and manner of restrictions in January. The Zoning Ordinance will follow that. We need definitions to match up to state law. Right now, both the OLCC (Oregon Liquor Control Commission) and the OHA (Oregon Health Agency) were regulating facilities. There are different agencies, and different statutes. Kayner hoped that we were talking with the City attorney, and Latta confirmed for him that we were. Our city attorney is also employed by the City of Philomath, who had already put an ordinance in place. We've expanded ours to include recreational marijuana. We are moving in the right direction, based on Council feedback.

#### New Development in Town

- Latta said that we had finally received a land use application for property located at 3<sup>rd</sup> and Territorial, for a 9,100 sq. ft. retail store.

The Planning Commission discussed this, and wondered what kind of retail facility it was. Latta told them it was a Dollar General, which is sort of a small grocery type of store. They just submitted, so it will likely be February or March before it comes to the Planning Commission.

They are hitting the ground running; he anticipates that they will likely have it built by the end of summer. Thomas asked if they bought the property, but Latta didn't think so; they had Steve Bowers, the current owner, sign off on it. They could be leasing it. It's common to sell the property after it's approved for the intended use. Kayner said we really need a true grocery store. Latta said that they have 11,000 stores across the US, and are branching out to new markets. He thought that they were similar to a Walgreen's, but with a focus on groceries for our market. Smid wished that someone would do something with Iris Strutz's property. (Located next to JB Woodworks on 3<sup>rd</sup> St.) Kayner asked if they had ever removed the gas storage cells there, and was told that they had. The Strutz's were asking for \$125,000 for that property.

Boat Ramp Information

- Latta told the Planning Commission that we have submitted the application to re-open the boat ramp. The State Marine Board promised us \$125,000 in funds, and we budgeted \$15,000 for our match. We have looked at the gravel bar there, and tried to estimate how much gravel would need to be removed in order to put in the dock improvements that had previously been allowed and granted by the Marine Board. We won't hear back about the large grant from the state until at least August.

Thomas asked if we aren't moving the gravel then. Latta told her some of it will be moved to install the ramp and docks, but not all of it. Kayner asked what happens if we open it up, and then it fills in again? Latta told him that the Willamette River is dynamic. It could flood, and we might need to move a boat dock to the south of the city. Thomas remembered that it only took one year for the gravel bar to form. They really liked the beach too! Latta told them it was likely at least a million cubic yards there now. We can only go so deep, and remove only so much of it. It's about a \$450,000 project in total, but we only need to provide \$15,000, and the Marine Board will give us \$125,000 of it as well. Thomas asked if we could pay a gravel company to remove it. Latta said that we will look at that. Before we propose to move any gravel, the state, DSL (Department of State Lands) the Army Corp of Engineers, and the ODFW (Oregon Department of Fish and Wildlife) will get involved. We can get a permit to do that, but it's only allowed during certain times of the year. If approved, the project would be constructed in 2018.

**With no further business to discuss, the Planning Commission adjourned at the hour of 8:19p.m.**

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**Chairperson**

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**City Recorder**

**From:** kevin sims <kevin.sims90@gmail.com>  
**Sent:** Tuesday, December 08, 2015 12:26 PM  
**To:** Brian Latta  
**Subject:** 396 S 2nd st partition

Mr Brian Latta;

I respectfully request that my proposal for the property plat partition be postponed until a later date and taken off the agenda for this upcoming meeting scheduled for December 15th 2015. In consideration of this, I waive my right for the decision to be made within the 120 day time frame.

Sorry for the inconvenience,

Sincerely:

Kevin Sims

DEC. 14, 2015

CASE LANDUSE # 351  
WOBBE VARIANCE REQUEST  
465 EMILY LANE

I AM EVELYN JOHNSON, 495 EMILY LANE,  
NORTH NEIGHBOR OF THE WOBBE'S, AND  
COMMON FENCE.

I HAVE NO PROBLEM WITH THE STRUCTURE  
OVERHEAD. I HAVE AN ARBOR ON MY  
SIDE OF THE FENCE WITH A WISTERIA  
VINE, LIMBS, LEAVES, BLOOMS, COMPLETELY COVERS  
THE SITE FROM MY WINDOW VIEW OF THE  
STRUCTURE IN QUESTION.

THE STRUCTURE, IN ITS PRESENTS, IS NOT  
DISTRIBUTEFUL.

*Evelyn Johnson*

**City of Harrisburg**  
**PLANNING COMMISSION**

**NOTICE OF DECISION**

**REQUEST:** The applicant requests approval of a Conditional Use Permit application to operate a State licensed commercial day care facility. The property is zoned R-2 Medium Density Residential.

**LOCATION:** 885 Sommerville Loop

**HEARING DATE:** December 15, 2015

**ZONING:** R-2 (Medium Density Residential)

**APPLICANT:** Pam Peck, on behalf of Kidco Head Start

**OWNER:** St. Vincent De Paul Society of Lane County Inc.

**APPEAL DEADLINE:** December 28, 2015, at 5:00 p.m.

**DECISION:** The Harrisburg Planning Commission conducted a public hearing on December 15, 2015, and voted to approve the request. The Planning Commission adopted the findings contained in the Staff Report of the December 15, 2015, Planning Commission meeting, and portions of the minutes from the meeting that demonstrate support for the Planning Commission's actions.

**APPEALS:** This decision may be appealed by filing a Notice of Appeal with the City Recorder at 120 Smith Street. The Notice of Appeal should be filed by the Appeal Deadline date listed above. Specific information on the requirements for an appeal or a copy of the complete file of this land use action may be obtained at Harrisburg City Hall. There is a fee of \$350 plus actual expenses for appealing a Planning Commission to the City Council.

**EFFECTIVE DATE:** December 28, 2015, unless an appeal has been filed with the City Recorder.

**EFFECTIVE PERIOD:**

Land use approvals shall be effective for one year from the date of approval. If the applicant has not begun the work or initiated the use associated with the approval within one year, all approvals shall expire. Where the Planning Commission finds that conditions have not changed, at its discretion and without a public hearing, the Commission may extend the period one time for a period not to exceed one additional year.

Unless appealed, the Conditional Use Permit approval will expire on December 28, 2016.

A handwritten signature in black ink, appearing to read "Todd Culver", written over a horizontal line.

Todd Culver  
Planning Commission Chair

**City of Harrisburg**  
**PLANNING COMMISSION**

**NOTICE OF DECISION**

**REQUEST:** The applicant requests approval of a Variance application to reduce the street side yard setback from 15 ft. to 5.5 ft to construct a detached garage. The property is zoned R-2 Medium Density Residential.

**LOCATION:** 775 Sommerville Loop

**HEARING DATE:** December 15, 2015

**ZONING:** R-2 (Medium Density Residential)

**APPLICANT/  
OWNER:** Robert Fischer

**APPEAL DEADLINE:** December 28, 2015, at 5:00 p.m.

**DECISION:** The Harrisburg Planning Commission conducted a public hearing on December 15, 2015, and voted to approve the request. The Planning Commission adopted the findings contained in the Staff Report of the December 15, 2015, Planning Commission meeting, and portions of the minutes from the meeting that demonstrate support for the Planning Commission's actions.

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Unless appealed, the Variance approval will expire on December 28, 2016.

A handwritten signature in black ink, reading "Todd Culver". The signature is written in a cursive style with a horizontal line underneath the name.

Todd Culver  
Planning Commission Chair

**City of Harrisburg**  
**PLANNING COMMISSION**

**NOTICE OF DECISION**

**REQUEST:** The applicant requests approval of a Variance application to reduce the side yard setback from 5 ft. to less than 1 ft. to continue the use of an RV cover. The property is zoned R-1 Low Density Residential.

**LOCATION:** 465 Emily Lane

**HEARING DATE:** December 15, 2015

**ZONING:** R-1 (Low Density Residential)

**APPLICANT/  
OWNER:** Don and Cheryl Wobbe

**APPEAL DEADLINE:** December 28, 2015, at 5:00 p.m.

**DECISION:** The Harrisburg Planning Commission conducted a public hearing on December 15, 2015, and voted to approve the request. The Planning Commission adopted the findings contained in the Staff Report of the December 15, 2015, Planning Commission meeting, and portions of the minutes from the meeting that demonstrate support for the Planning Commission's actions.

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Planning Commission Chair