

City of Selah  
**Planning Commission Minutes**  
of  
November 17, 2009

Selah Council Chambers  
115 W. Naches Ave.  
Selah, Washington 98942

- A. Call to Order  
The meeting was called to order to by Chairman Munson at 6:00 p.m.

Roll Call:

Members Present: Commissioners Quinnell, Smith and Munson.

Members Absent: Commissioners Roberts and Eagles

Staff Present: Dennis Davison, Community Planner, Diana Turner, Secretary.

Guests: James Garner and Dan Garner

- C. Agenda Changes None.

- D. Communications  
1. Oral - None  
2. Written - None

- E. Approval of Minutes

Chairman Munson called for a motion on the minutes of the Planning Commission meeting of September 15, 2009.

Commissioner Quinnell moved to approve the minutes, Chairman Munson seconded. Minutes were approved with voice vote 3/0.

- F. Public Hearing

1. Old Business - None
2. New Business
  - a. **GARNER/BERNIER DAYCARE CLASS 3 USE PERMIT**

Chairman Munson opened the public hearing.

Mr. Davison presented the staff report on Class 3 Use Permit

The proposal is to authorize operation of a Child Daycare Center (more than 13 children) in the Multiple-Family Residential (R-3) zone under the terms of Selah Municipal Code, Chapter 10.28.010, Table 10.28A-2. The proponents are James Garner and Sue Bernier. The location is 941 North Wenas Road

The surrounding land use is:

- North: A Child Daycare Center operated by Ms. Bernier and Residences
- South: Residences
- East: Riverview Manor, an assisted living facility
- West: North Wenas Road and residences

The existing zoning is the site and properties to the north and south are zoned Multiple-Family Residential (R-3). Property to the east is zoned Professional Business (B-1) while properties to the west, across No. Wenas Road, are zoned Single Family Residential (R-1) by Yakima County.

The site and adjacent properties immediately north and south are designated High Density Residential. Property to the east is designated Commercial and property to the west, across Wenas Road, is designated Low Density Residential.

The proposed structure and use are exempt from environmental review.

Selah Municipal Code, Chapter 10.28, Table 10.28A-2 Child Day Care Centers, require a Class 3 Use permit in the Multiple-Family Residential zone (R-3).

All utilities, public and private, are available. The proposed facility will be connected to municipal water and sewer systems. Private utilities (electricity, telephone, cable TV) are existing and adequate.

#### OTHER FINDINGS:

- 1) Proposes hours of operation are from 6:00 a.m. to 2:30 a.m. Monday through Friday for children one (1) through four (4) years of age. The Department of Social & Health Services (DSHS) requires one (1) on-site childcare provider per each seven (7) children aged one (1) through two and a half (2½) years and one (1) on-site childcare provider per each ten (10) children aged two and a half (2½) year through four (4) years of age.
- 2) The proponent has requested the DSHS daycare license authorize a maximum of seventy-five (75) children.
- 3) Operation of the proposed new daycare would require a DSHS childcare license.
- 4) North Wenas Road, State Route 823, is regulated as an access controlled facility. The city of Selah, with concurrence by the Washington State Department of Transportation, established that portion of State Route 823 passing through the limits of the city of Selah, as a Class Five access control facility subject to the provisions listed under Chapter 468-52-040(3) WAC.

The recommendation is for approval of the Class 3 Use under Selah Municipal Code, Chapter 10.28.010 subject to the following conditions:

1. The child daycare facility must meet all current International Building Codes and be handicap accessible.

2. The child daycare facility is limited to a maximum of 75 children aged one through four years of age.
3. Days and hours of operation are limited to Monday through Friday commencing no earlier than 6:00 A.M. and terminating no later than 2:30 A.M.
4. All outdoor activity areas must be fenced with a minimum thirty-six (36) inch high fence and the fencing maintained.
5. The proponent must secure a City of Selah approved access control permit to the Class Five access control facility, North Wenas Road..
6. The proponent must extend, to the southern parcel line, the twelve (12) inch municipal water line and then connect the facility to this extended line.
7. The child daycare facility Class 3 Use is self-terminating if a State approved child daycare center license is not approved within ninety (90) days and thereafter remains a valid license.
8. The child daycare facility shall secure a City business license and renew said license by January 30<sup>th</sup> of each succeeding year.
9. The child daycare facility is authorized to operate, within the limitations set forth in Conditions #1 through #6, throughout the calendar year and is not limited to a school calendar year.
10. The City may terminate the child daycare facility Class 3 Use for violation of the conditions previously established.
11. This authorized Class 3 Use runs with the land and is unaffected by a change in operator or land ownership provided the child daycare facility remains in continuous operation without interruption for more than sixty (60) days.
12. The required building setback from the south property line is five (5) feet.

Mr. Davison asked if the Commissioners had any questions.

Commissioner Smith asked about the existing parking and if there would be provisions for more parking at the facility?

Mr. Davison asked Mr. Garner to explain the parking.

Jim Garner stated that they have to submit the plan and get it approved by the State and then they may need to use some of the lawn area on the plat plan for parking. The parking lot next door at the other facility will be rearranged to accommodate any employee parking/customer parking needed. The ingress on the south side will be used for customers dropping off the children at the four parking spaces shown on the plan. This is only a concept and can be adjusted. They will use the property next door to help with parking.

Chairman Munson asked if he was referring to the property to the south?

Mr. Garner stated it would be the property to the north at the original facility of 951 N Wenas Rd.

Chairman Munson asked was on the property at present?

Mr. Garner stated a house was at the back of the lot at present. He stated they will have to make application to the State for the driveway. At present the driveway is 24' and he does not foresee changing that if they directional the access (going in one way and leaving from 951 N Wenas access.

Mr. Davison stated that you submit the plan to the State for approval after the City has already approved the plan. The ingress and egress will be dictated by the State so the Commission can recommend approval to the Council conditions will apply that the configuration be determined by the State.

Commissioner Smith asked if the Fire Department has reviewed the project.

Mr. Davison stated yes they had reviewed and offered no comments. The Fire Department was one that was pushing for the extension of the water line to the south property line.

Commissioner Smith asked about the set backs for the proposal?

Mr. Davison stated that there will be a 5' set back on the south side and there will be adequate set backs with the lawn area.

Commissioner Smith asked if the proposal has to conform with the required number of parking spaces like other commercial facilities?

Mr. Davison stated that the number of parking spaces is based upon the number of employees and this facility may only have about 11.

Commissioner Smith asked if there was an 8" line going there.

Mr. Davison stated that there is a 12" line going to the north property line. The suggestion is to extend to the south property line and then down to the Goodlander Rd. The water line will have to be constructed before an occupancy permit can be issued and the building be occupied.

Mr. Garner asked if he could address the construction of the water line? The time line for the facility is a short one. The building needs to be completed within 60 days and he does not want to be putting in a water line during the winter months. He would like to come up with an agreement in regards to the water line. The water is two feet onto the property and does not want the occupancy permit contingent upon the water line being constructed.

Mr. Davison suggested adding a sentence to condition #6 to read: Construction time line to be determined by the Public Works Director, Fire Department and the applicant.

Chairman Munson called for further discussion from the Commissioners.

Chairman Munson moved to approve the Class 3 Use Permit with conditions and adding condition #13.

13. Fire Department must approve the existing hydrant adequate for the facility.

Commissioner Smith seconded the motion.

Chairman Munson read the findings and decision.

## CLASS 3 USE FINDINGS AND DECISION (File No.: 928.45.09-01)

This matter having come for public hearing before the City of Selah Planning Commission on October 20, 2009, for the purpose of considering a Class 3 Use permit application from James Garner/Sue Bernier to operate a Child Daycare Center at 941 North Wenas Road in the Multiple-Family Residential (R-3) Zone under Selah Municipal Code, Chapter 10.28, Table 10.28A-2.

The members of the Commission present were Todd Munson, Jim Smith and Willie Quinnell.

Legal notification pursuant to Selah Municipal Code was given on the 7th day of October 2009. All persons present were given the opportunity to speak for or against the proposed Class 3 Use permit.

### LAND USE FINDINGS

1. The Commission adopts the staff findings and report as to the existing use, zoning and optimal land use designation of the subject and adjacent property.
2. The proposal is compatible with the use of adjacent land.
3. The proposal is compatible with the zoning of adjacent land.
4. The proposal is compatible with the optimal land use designation contained in the City's comprehensive land use plan.

### PUBLIC OPINION

5. The owners of adjacent lands expressed neither approval / disapproval of the proposal.
6. The majority of persons offering comments on the proposal were in favor of the proposal.

### SPECIFIC FINDINGS APPLICABLE TO CLASS 3 USES

7. The proposal will or will not, as indicated below, further the following criteria contained in the City of Selah Zoning Ordinance, Chapter 10.28.
  - A. The proposal will comply with the requirements of the underlying zoning district.
  - B. The proposal will be served by existing public facilities such as streets, fire protection, water, storm and sanitary sewers, and other essential utilities.
  - C. The proposal will further, will, be in keeping with, and is / is not consistent with the objectives of the comprehensive plan.
  - D. The effect of the proposal on the immediate vicinity will not be materially detrimental.
  - E. There is merit and value in the proposal for the community as a whole.
  - F. Sufficient consideration has been exercised by the applicant in adapting the proposal to the existing environment.

## CONCLUSIONS

Based upon consideration of the above factors and the specific findings applicable to conditional uses the proposal is consistent with the criteria, purpose and intent of the zoning ordinance.

## ENVIRONMENTAL REVIEW

8. The proposal is categorically exempt from environmental review per Selah Municipal Code, Chapter 11.40.

## OTHER SIGNIFICANT FACTORS

9. The Commission finds no additional significant factor concerning the proposed Class 3 Use permit:

## CONCLUSIONS

Based upon consideration of the above factors and the specific findings applicable to Class 3 Uses the proposal is consistent with the criteria, purpose and intent of the zoning ordinance.

## CONTROLLING FACTORS

The Commission determines that findings numbered 1 - 9 to be the controlling factors in its deliberations on the proposal.

## DECISION

The Commission, based on these findings, conclusions and controlling factors finds that the proposal is in furtherance of the public health, safety or a contribution either to the general welfare of the people in the area or at large; therefore, the conditional use permit should be approved with the following conditions:

1. The child daycare facility must meet all current International Building Codes and be handicap accessible.
2. The child daycare facility is limited to a maximum of 75 children aged one through four years of age.
3. Days and hours of operation are limited to Monday through Friday commencing no earlier than 6:00 A.M. and terminating no later than 2:30 A.M.
4. All outdoor activity areas must be fenced with a minimum thirty-six (36) inch high fence and the fencing maintained.
5. The proponent must secure a City of Selah approved access control permit to the Class Five access control facility, North Wenas Road..
6. The proponent must extend, to the southern parcel line, the twelve (12) inch municipal water line and then connect the facility to this extended line.
7. The child daycare facility Class 3 Use is self-terminating if a State approved child daycare center license is not approved within ninety (90) days and thereafter remains a valid license.

8. The child daycare facility shall secure a City business license and renew said license by January 30<sup>th</sup> of each succeeding year.
9. The child daycare facility is authorized to operate, within the limitations set forth in Conditions #1 through #6, throughout the calendar year and is not limited to a school calendar year.
10. The City may terminate the child daycare facility Class 3 Use for violation of the conditions previously established.
11. This authorized Class 3 Use runs with the land and is unaffected by a change in operator or land ownership provided the child daycare facility remains in continuous operation without interruption for more than sixty (60) days.
12. The required building setback from the south property line is five (5) feet.
13. Fire Department must approve the existing hydrant adequate for the facility.

Motion to approve by: Munson, Seconded by: Smith. Vote: 3/0

**b. GARNER VARIANCE**

Chairman Munson opened the public hearing.

Mr. Davison presented the staff report on Subdivision Variance.

The proponent is Dan Garner. The location is 305 Southern Avenue. The site is located approximately one-hundred fifty (150) feet west of South 3<sup>rd</sup> Street and approximately eight hundred (800) feet west of South First Street.

The request is for approval of a subdivision variance authorizing the creation of a lot which does not front upon a public street. Selah Municipal Code 0.50.041

(e) Lot design in a subdivision shall conform to the following standards:

(3) Each lot must front upon a public street with a width not less than those set forth in the street standards.”

The variance, if approved, would permit the division of one parcel, sixty-four (64) feet wide by 321 feet deep, into two parcels.

Selah Municipal Code, Chapter 10.30.030 provides that the Planning Commission may authorize a variance from the terms of the Subdivision Ordinance as will not be contrary to the public interest and the comprehensive plan. A variance shall not be granted unless the Commission makes findings that the applicant has expressly demonstrated all of the following:

(a) That special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, do exist; and,

(b) That because of such special circumstances, strict application of this title would deprive the subject property of rights and privileges enjoyed by other properties in the vicinity under identical zoning district classification; and,

(c) That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zoning district classification in which the property is situated; and,

(d) That the special circumstances do not result from the actions of the applicant; and,

(e) That the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; and,

(f) That the granting of a variance will be in harmony with the general purpose and intent of this title, the specific zoning district and the comprehensive plan; and,

(g) That the administrative adjustment or administrative modification provisions of this chapter were either not applicable or were insufficient to provide the relief sought from the standards of this title.

- The Commission may recommend approve or denial of a variance applications and may impose conditions of approval.

- The Commission shall not grant a variance to allow a use not permissible under the terms of this title in the zoning district involved, or any use expressly or by implication prohibited in the zoning district by the terms of this title. (*use is a not an issue*)

- The Commission shall not grant a variance to allow a density exceeding the land use designation contained in the Selah Urban Growth Area Comprehensive Plan, Future Land Use Map. (*density is not an issue*)

The existing parcel contains two (2) structures. A triplex (3) units and a duplex (2) units. The structures have been converted to condominiums. Owners would own the inside air space of their unit and a common interest in the land, landscaping, driveways and utilities.

#### SURROUNDING LAND USE:

NORTH: Immediately north is a residence and a multiple family structure.

SOUTH: single family residences.

EAST: single family residences.

WEST: single family residences.

Properties to the North, East and West are zoned Two-Family Residential (R-2) similar to the subject property. Property to the South, across Southern Avenue, is zoned One-Family Residential (R-1).

The 'future land use map' contained within the 2005 City of Selah Urban Growth Area Comprehensive Plan designates the site, and properties to the North, East and West, as "Moderate Density Residential"

providing for a maximum density of twelve (12) dwelling units per acre. South of Southern Avenue is designated "Low Density Residential" providing for a maximum density of five (5) dwelling units per acre.

The City of Selah, as the lead agency for this proposal under the State Environmental Policy Act (SEPA) determined that this proposal is categorically exempt from SEPA per WAC 197-11-800(6)(a).

Basic public utilities are available, or will be constructed, to serve the site, i.e., (telephone, electricity, municipal water and sewer), and will be connected to individual lots.

**TRANSPORTATION:**

Southern Avenue Designated "collector" with two travel lanes (28 foot pavement width), 60 foot wide right-of-way with no curb/gutter or sidewalk.

**OTHER FINDINGS:**

The two structures (triples and duplex) are condominiums served by one driveway, which is 20 feet in width.

Division of the property will require additional utility installations.

The conclusion the site is designated for moderate density residential development; the property is appropriately zoned for multiple family dwellings and duplexes. Each proposed lot would be served by municipal services; and each proposed lot would meet or exceed the minimum lot size requirement established in the Two Family Residential (R-2) zone. One of the lots, if created, however, will not front upon a public street.

**STAFF ANALYSIS:** The requested variance should be approved based on the following:

First basis for approval. SMC 10.50.041(e)(3) does not apply.

SMC 10.509.041(3)(3), which requires that each lot in a subdivision front a public street is not applicable to the instant application. That provision applies to "subdivisions". A subdivision is defined in the SMC 10.50.010(M) as follows:

(m) "Subdivision" means the division of a lot, tract or parcel of land into five or more lots or other divisions of land for the purpose, whether immediate or future, of transfer of ownership, lease or building development, including all changes in street or lot lines and shall include all resubdivisions of land.

Here, the applicant proposes to divide a lot into two lots, not five or more lots. Because the plain language of SMC 10.55.041(e)(3) makes its application limited to "subdivisions", it does not apply to the instant application. As a result, the requirement that each lot front a public street is not applicable.

Second basis for approval. Even if SMC 10.50.041(e)(3) applies, the applicant meets to the criteria for a variance.

The criteria that must be met for a variance under SMC 10.30.030 is set forth below with reasons following each criteria establishing how each requirement is met.

- (a) That special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, do exist.

Comment: The subject property is unique in that it is a narrow and elongated lot created to accommodate a "victory garden: during the Second World War such narrow and long lots are of little utility in today's land use and development patterns. The special circumstances surrounding the creation of these long and narrow lots has rendered otherwise usable property useless in terms of meeting required growth management mandated densities in compliance with the City's Comprehensive Land Use Plan.

- (b) That because of such special circumstances, strict applications of this title would deprive the subject property of rights and privileges enjoyed by other properties in the vicinity under identical zoning district classification.

Comment: As indicated above, due to the unique characteristics of this lot, the property owner is unable to develop his property to densities and in compliance with the Comprehensive Land Use Plan, as other property owners would otherwise be able to develop. The strict application of the title would result in depriving the property owner the full beneficial use of his property.

- (c) That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zoning district classification in which the property is situated.

Comment: As noted above, permitting the division of property for the use existing on it at present is consistent with permitted uses in the zoning district, is consistent with development densities for the area, and the area is equipped with sufficient infrastructure to accommodate the division. In fact, the property is already developed and is already being served with utilities.

- (d) That the special circumstances do not result from the actions of the applicant.

Comment: The applicant did not create the special circumstances present here. These long and narrow lots were created in the past to accommodate victory gardens during the World War II era.

- (e) That the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

Comment: Providing for this variance is the minimum necessary to permit the applicant full reasonable use of his land. The use will be consistent with all zoning requirements and the Comprehensive Plan.

- (f) That the granting of a variance will be in harmony with the general purpose and intent of this title, the specific zoning district and the comprehensive plan.

Comment: As indicated above, the division of this lot will be in harmony with the intent of the title, the zoning district and the Comprehensive Plan, in terms of use, density and in terms of compliance with development regulations and standards.

- (g) That the administrative adjustment or administrative modification provisions of this chapter were either not applicable or were insufficient to provide the relief sought from the standards of this title.

Comment: As administrative adjustment was not available as the requested relief involves the creation of an additional lot.

The recommendation is for approval of the subdivision variance application.

Commissioner Smith asked if there were structures already there?

Mr. Davison stated yes. There are two structures one is a triplex and the other is a duplex.

Chairman Munson asked if the structures were occupied?

Mr. Davison stated that he thought so.

Commissioner Smith asked if each unit had it's own water meter?

Dan Garner stated that there are two water meters one for each building.

Commissioner Smith asked if the each building had it's own sewer line?

Mr. Garner stated that the sewer line comes off the duplex in the back and the triplex in the front connects into that line. He stated there would be an easement set through there for the sewer line, which will also have the water and electrical line in it.

Chairman Munson asked about the fencing on the lot.

Mr. Garner stated there is a 3 foot fence on the east side and a 5 foot on the west side and one at the back of the property.

Commissioner Smith asked if there was a drainage facility for those lots?

Mr. Garner stated that there is a large onsite system on the north side of the first lot near the 3 parking spaces. Most of the parking and driveway systems drain into the lawns.

Chairman Munson asked Mr. Davison if the lot in the back would not front a public street?

Mr. Davison stated that was correct. The structures were constructed per code about 3 years ago and are in compliance with code.

Mr. Garner stated the variance is being requested for financial reasons.

Chairman Munson asked Mr. Davison if the Public Works Department was requesting something?

Mr. Davison stated there was talk about separating the sewer line for units 1, 2 & 3 from the other building, but he did not receive any written request from the Public Works Director.

Commissioner Quinnell asked if that should be a condition for the variance?

Mr. Davison stated if the Commission wanted to add a condition they could.

Mr. Garner stated that each unit in the front have their own clean outs.

Chairman Munson called for a motion.

Commissioner Quinell moved to approve the variance, seconded by Chairman Munson.

Chairman Munson read the findings.

CITY OF SELAH PLANNING COMMISSION  
SELAH MUNICIPAL CODE SUBDIVISION VARIANCE

Members of the Commission present were Todd Munson, Jim Smith and Willie Quinnell

The proponent is Dan Garner, property owner.

Factors to be considered (indicate N/A if not applicable)(Pursuant to S.M.C. Title 10, Chapter 10.30.030)

SPECIFIC FINDINGS APPLICABLE TO VARIANCES

The proposed variance will or will not, as indicated below, meet the criteria contained in the City of Selah Municipal Code, Title 10, Chapter 10.30.030:

CRITERIA

- |  |     |
|--|-----|
| Special circumstances applicable to the subject property, including size, shape topography, location or surroundings, do exist.                          | YES |
| 1. Because of such special circumstances, strict application of this title would deprive the owner of rights and privileges enjoyed by other properties. | YES |
| 2. The granting of the variance will not be detrimental to the public welfare or injurious to adjacent property.   | YES |
| 3. The special circumstances do not result from the actions of the applicant.  | YES |
| 4. The variance is the minimum variance necessary that will make possible the reasonable use of the land, building or structure.                         | YES |
| 5. The granting of the variance will be in harmony with the general purpose and intent of the zoning ordinance and comp. plan.                           | YES |

CONCLUSIONS

Based upon consideration of the above criteria applicable to a variance the proposal is consistent/inconsistent with the criteria, purpose and intent of the zoning and subdivision ordinances.

DECISION

The Commission based on the criteria and conclusions finds that the variance is/is not furtherance of the public health, safety or a contribution wither to the general welfare of the people in the area or at large; the variance should be approved/denied.

Motion by Commissioner Quinnell, seconded by Chairman Munson. VOTE 3/0

**c. SELAH MUNICIPAL CODE AMENDMENT**

Chairman Munson continued the hearing for the code amendment until the next meeting.

G: General Business

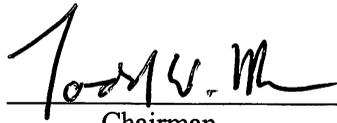
1. Old Business - None
2. New Business - None

H. Reports/Announcements

1. Chairman - None
2. Commissioners - None
3. Staff - None

I. Adjournment

Chairman Munson moved to adjourn the meeting, Commissioner Eagles seconded the motion. The meeting was adjourned the meeting at 7:41 pm.

  
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Chairman