

Clatsop County Transportation & Development Services
Land Use Planning
800 Exchange Street, Suite 100, Astoria, OR 97103
www.co.clatsop.or.us

ph: 503-325-8611
fx: 503-338-3666
em: comdev@co.clatsop.or.us

STAFF REPORT

STAFF REPORT DATE: April 6, 2009

HEARING DATE: April 14, 2009

HEARING BODY: Planning Commission

REQUEST: The applicant requests an extension of time to obtain a building permit to rebuild a damaged non-conforming structure.

APPLICANT/AGENT: Paul Larson
92967 Pearson Road
Astoria, OR 97103

PROPERTY OWNER: PCL Investments, LLC
92967 Pearson Road
Astoria, OR 97103

PROPERTY DESCRIPTION: T8N, R8W, Sec. 22A, TL 3900
Land Use Designation: Rural Lands
Zoning District: Rural Community Commercial (RCC)

PROPERTY LOCATION: 40627 Old Highway 30
Approximately ¼ mile east of Svensen Market Road

PROPERTY SIZE: 0.65 acres

COUNTY STAFF REVIEWER: Will Caplinger, AICP, Development Services Manager

STAFF RECOMMENDATION: Approve the request.

SUGGESTED MOTION: Grant an extension of the one-year period to 5:00 p.m. on December 4, 2009.

EXHIBITS: 1 – Independent estimate of structural value

BACKGROUND

The subject structure, built in 1920, was severely damaged in the windstorm of December 1-3, 2007. The storm destroyed 2,150 square feet of the original 3,584 square foot structure. Because the destroyed portion of the building extended approximately 4 ½ feet into the 25-foot front yard setback, the structure was considered to be legal non-conforming.

APPLICABLE CRITERIA

Criteria for rebuilding a damaged non-conforming structure are contained in ORS 215.130 (5), (6) & (10) and in LWDUO 5.614(2) & (3):

Oregon Revised Statutes (ORS)

215.130 Application of ordinances and comprehensive plan; alteration of nonconforming use.

(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.

(6) Restoration or replacement of any use described in subsection (5) of this section may be permitted when the restoration is made necessary by fire, other casualty or natural disaster. Restoration or replacement shall be commenced within one year from the occurrence of the fire, casualty or natural disaster. If restoration or replacement is necessary under this subsection, restoration or replacement shall be done in compliance with ORS 195.260 (1)(c).

(10) A local government may adopt standards and procedures to implement the provisions of this section.

Clatsop County Land & Water Development & Use Ordinance (LWDUO)

Section 5.614 Replacement and Damage.

2) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted. If a Non-conforming structure or a structure devoted to a Non-conforming use is damaged or destroyed by any cause other than an action of the property owner or his agent, to an extent amounting to eighty percent (80%) or more of its fair market value as indicated by the records of the County Assessor, it shall be reconstructed in conformance with the current requirements of this Ordinance. Notwithstanding the above provision, if a building listed on the National Register of Historic Places is destroyed to an extent exceeding eighty percent (80%) of its fair market value, as indicated by the records of the County Assessor, it may be reconstructed in conformance with the dimensional standards of the building prior to its destruction.

(3) If a Non-conforming structure or a structure devoted to a Non-conforming use is damaged by any cause other than an action of the property owner or his agent, to an extent amounting to less than eighty percent (80%) of its fair market value as indicated by the records of the County Assessor, a building permit for its reconstruction shall be

obtained within one year of the date of the damage. If a building permit is not obtained within one year, the reconstruction shall be in conformance with the current requirements of this Ordinance. However, upon request, the planning commission may grant an extension of the one year period.

ANALYSIS

The intent of the ORS provisions clearly allows reconstruction; however, the county standards present a dilemma. Although many local governments adopt standards that reference a percentage of total value (usually between 50% and 90%), determination of that percentage is subjective. Some jurisdictions use replacement costs; i.e., they will allow reconstruction of the nonconforming damaged portion if the cost does not exceed the established percentage of total value. Clatsop County appears to have historically taken this approach.

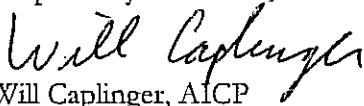
In the case of the subject structure, the Assessor determined a value of \$23.68 per square foot in 2007, which would value the damaged 2,150 square feet at \$50,912. New warehouse-type construction, however, can range from \$60 to more than \$80 per square foot. Reconstruction of the destroyed 2,150 square feet of the building could therefore cost from \$129,000 to \$172,000. The applicant has provided an independent estimate that confirms these figures (Exhibit 1).

It is hopefully apparent that percentage of value and replacement cost may not be synonymous, and that there is a need to revise Section 5.614 to clarify how staff makes determinations in these cases. In comparison, LWDUO §4.000 et seq. (Flood Hazard Overlay District) establishes a 50 percent-of-market-value threshold to trigger reconstruction in full compliance with adopted standards ("Substantial Improvement"); but §4.011 in part defines "Substantial Improvement" as "any combination of repair, reconstruction, or improvement... which equals or exceeds 50 percent of the market value of the structure..." which clearly folds the cost of reconstruction into the equation. Granted, §4.000 deals with reconstruction in the floodplain, and must be consistent with FEMA standards. Until the county has completed a planned sequence of code revisions, staff suggests taking a square-footage approach to determining value of structural damage. Case in point, the 2,150 square feet of damage to the 3,584 sq. ft. subject structure represents approximately 60 percent of total floor area. Damage to the structure is therefore 60% of its market value, and reconstruction is subject to LWDUO §5.614.3, which allows reconstruction as long as a building permit is obtained within one year.

ASSESSMENT OF APPLICATION VERSUS APPLICABLE CRITERIA

The applicant obtained Building Permit #15464 on October 21, 2008 for reconstruction of a 43" stemwall to initiate the reconstruction of the damaged portion. Since this permit did not cover full reconstruction of the remaining portion of the building, the criteria of §5.614.3 is not fully satisfied. The applicant is therefore requesting an extension of the one-year period in which to obtain a permit to rebuild the bulk of the structure. Based on the discussion above, staff recommends that the Planning Commission grant an extension of the one-year period in which to obtain a building permit for full reconstruction to 5:00 p.m. on December 4, 2009.

Respectfully submitted,



Will Caplinger, AICP
Development Services Manager

EXHIBIT 1

**Astoria Northwest Homes, Inc.
Stan Johnson, CCB# 164602
92732 Fern Hill Rd.
Astoria, OR 97103
503 325-0883**

March 19,2009

To: Paul Larson
92967 Pearson Rd.
Astoria, OR 97103

This letter is in regards to your property next to Old Highway 30 that you refer to as the Svenson Co-op property.

I value the 1434 sq. foot existing building and foundations at \$28 per square foot. Which would equal \$40, 152. In addition I value the electrical service at \$5,000 for a total value of \$45,152.

I value the new 2,150 sq. foot addition at \$60 per square foot. Giving a value of \$129,000.

This would give a total value of \$174,152. The value of the existing structure, foundations, and electrical service is 26% of the total value.

Sincerely,



Stan Johnson