

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application by Charlene)
Washburn for a Temporary Permit to Use a)
Garage as a Dwelling to Care for an Incapacitated) Final Order No. 92 - 2006
Relative)

WHEREAS, on September 1, 2006, Charlene Washburn submitted an application for Temporary Permit (TP 07-03) to use an existing garage as a temporary dwelling for the care of a relative on property zoned for Primary Forest (PF-76), having Tax Account Number 6513-000-00103; and

WHEREAS, the Board of County Commissioners asserted original jurisdiction over the Temporary Permit on November 22, 2006, during the scheduled hearing; and

WHEREAS, on November 22, 2006, the Board of County Commissioners held a Special Public Hearing on the application; and

WHEREAS, during the hearing evidence was received into the record, a list of which is attached hereto as Attachment 1, and is incorporated herein by this reference; and

WHEREAS, after hearing testimony and receiving evidence, the Board closed the hearing and voted to tentatively approve the Temporary Permit;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- A. The Board of County Commissioners adopts the Findings of Fact and Conclusions of Law in the Staff Report to the Board of County Commissioners, dated October 25, 2006, which is attached hereto as Attachment 2, and is incorporated herein by this reference.
- B. The Application for a Temporary Permit TP 07-03, is APPROVED subject to the following conditions of approval.
 - 1. The Temporary Permit shall be in effect for a period of one year from the date of this Order, or until the hardship dwelling is no longer needed for care of a relative, whichever is sooner. Upon conclusion of the permit period, if the hardship continues to exist the Applicant may apply for a new Temporary Permit. Upon conclusion of the permit period the Applicant shall convert the garage/shop back to its non-residential status in accordance with the Uniform Building Code.
 - 2. The Temporary Permit shall not take effect until the Applicant has complied with the following:

- a. The Applicant shall file an application for a change in occupancy for the garage/shop and shall comply with any modifications required under the Uniform Building Code.
 - b. The Applicant shall apply for and shall receive approval to connect the temporary residence to the existing septic system and shall comply with any conditions of said approval.
 - c. The Applicant shall obtain approval from the Mist Birkenfeld Rural Fire District for the driveway and shall comply with any requirements issued by the Fire District.
3. The Applicant shall comply with Firebreak Standards for new buildings and road in the Primary Forest Zone.

Dated this 29th day of November, 2006.

Approved as to form

By: Sarah Hanson

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: Joe Corsiglia
Joe Corsiglia, Chair

By: Rita M. Bernhard
Rita Bernhard, Commissioner

By: Anthony Hyde
Anthony Hyde, Commissioner

ATTACHMENT 1

RECORD

EXHIBIT 1-

- (1) Notice of Public Hearing- property owner notice;
- (2) Notice of Public Hearing-Publication
- (3) Affidavit of Publication;
- (4) Affidavit of Mailing
- (5) 2nd notice of public hearing-property owner notice;
- (6) 2nd notice of public hearing-publication;
- (7) Affidavit of Publication;
- (8) Affidavit of Mailing;
- (9) Board Communication dated October 20, 2006, with the following attachments:
 - a. Staff Report dated October 17, 2006;
 - b. Application for a Temporary Permit;
 - c. Letter to Todd Dugdale from Charlene Washburn dated August 24, 2006;
 - d. Plot plan;
 - e. Vicinity Map;
 - f. As built Plot Plan;
 - g. Address Map;
 - h. Zoning Map;
 - i. Topographical Map;
- (10) Letter from Janet Kelly, MD;
- (11) Board Communication dated September 25, 2006, with the following attachments;
 - a. Notice of Public Hearing;
 - b. List of Persons to receive Notice;
 - c. Referral Contact List;
 - d. Lables;

COLUMBIA COUNTY BOARD OF COMMISSIONERS

STAFF REPORT

October 17, 2006

Temporary Use Not Allowed in District Permit - Care of Relative

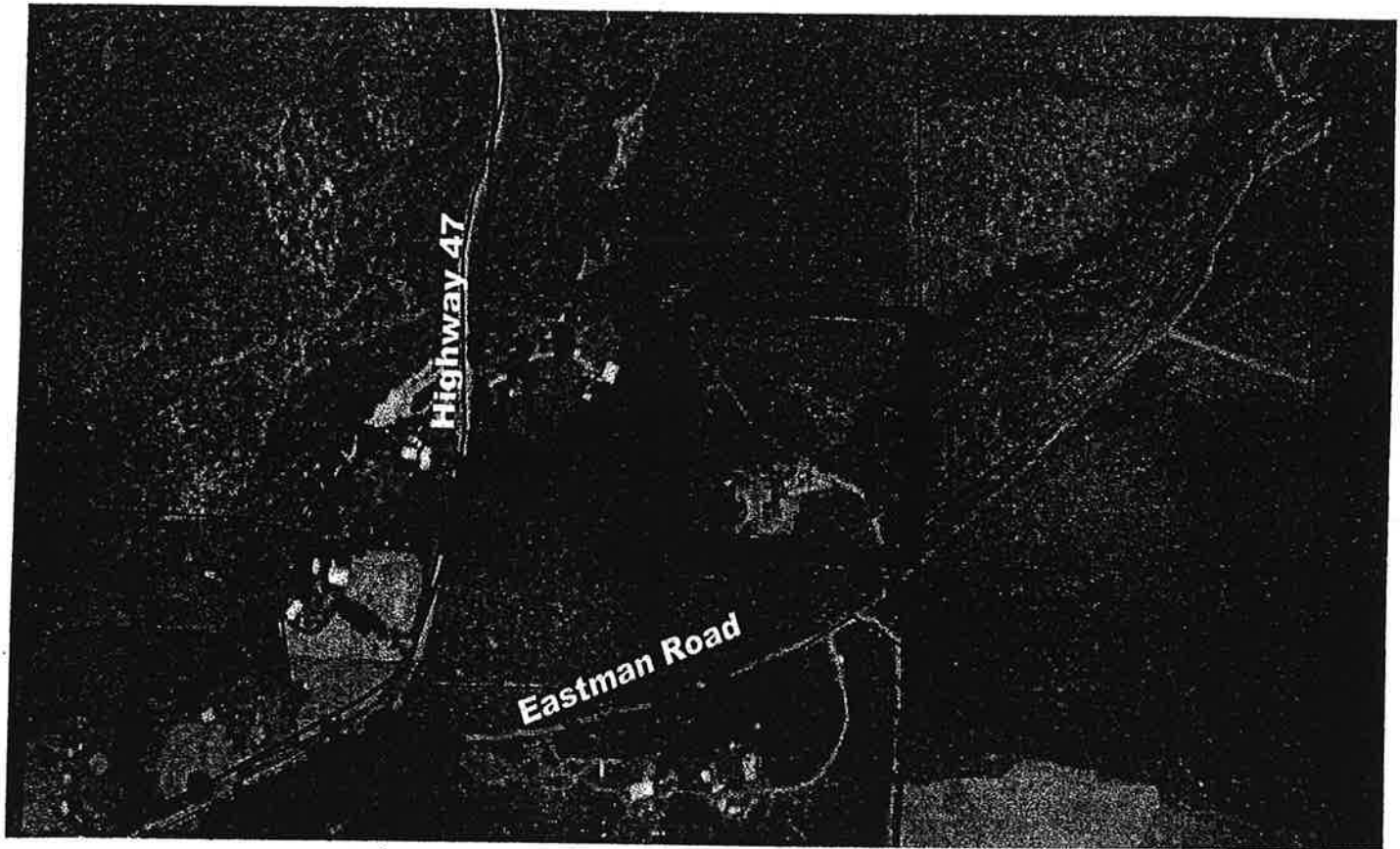
HEARING DATE: October 25, 2006
FILE NUMBER: TP 07-03
APPLICANT: Charlene Washburn
15997 Eastman Road
Mist, Oregon 97016
PROPERTY LOCATION: 15997 Eastman Road in Mist, Oregon
TAX ACCT. NUMBER: 6513-000-00103
ZONING: Primary Forest (PF-76)
SIZE: 10.25 acres

REQUEST: This request will allow the applicant to legalize the temporary residential use of her attached shop/garage at 15997 Eastman Road in Mist. The 10.25 acre property is zoned Primary Forest (PF). This request, if approved, will be temporary and necessary only until the mother no longer requires her daughter's care.

| REVIEW CRITERIA: | Page |
|---|-------------|
| <u>Oregon Administrative Rules (OAR):</u> | |
| OAR 660-006-0025(4)(t) | 2 |
| OAR 660-006-0035 | 2 |
| OAR 660-006-0040 | 3 |
| <u>Columbia County Zoning Ordinance (CCZO)</u> | |
| Section 1505 Temporary Permits | 4 |
| Section 1603 Quasijudicial Public Hearings | 5 |
| Section 1608 Contents of Notice | 6 |
| Section 1612 Special Hearings | 6 |

BACKGROUND:

The applicant, Charlene Washburn, is requesting the Columbia County Board of Commissioners consider her request for a Temporary Permit (TP 07-03) for a Use Not Allowed in District to use a portion of her attached



TP 07-03

Charlene Washburn

Eastman Road, Mist

Tax Parcel No. 6513-000-00103

Temporary Use Not Allowed in District-Hardship Dwelling

shop/garage as a temporary hardship home for her mother. The County Zoning Code allows temporary uses not allowed in the district for a limited period of time.

Although the applicant installed a full bath and extended electricity to her attached shop/garage, she did not simultaneously apply for the needed change of occupancy permit to convert this accessory structure into a residential living area. Before she can apply for this change of occupancy, however she has asked the Board to review and approve her Temporary Use Not Allowed in District Permit at a Quasijudicial Public Hearing pursuant to CCZO 1603. This temporary use, if approved, will need to be reviewed, approved and renewed annually by Land Development Services. Finally, and within three months of the end of the need for this hardship, this shop/garage shall be removed, demolished or converted to a nonresidential use.

FINDINGS:

Beginning with the Oregon Administrative Rules (OAR) Criteria and Findings:

OAR 660-006-0025(4) (t) states, *(emphasis added)*, "A manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative as defined in ORS 215.213 and 215.283. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured dwelling will use a public sanitary sewer system, such condition will not be required. *Within three months of the end of the hardship*, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, *the building shall be removed, demolished or returned to an allowed nonresidential use*. A temporary residence approved under this subsection is not eligible for replacement under subsection (3)(p) of this rule. Governing bodies every two years shall review the permit authorizing such mobile homes. When the hardships end, governing bodies or their designate shall require the removal of such mobile homes. Oregon Department of Environmental Quality review and removal requirements also apply to such mobile homes. As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons"

Finding 1: This Oregon Administrative Rule allows the temporary residential use of an existing building, in conjunction with an exiting dwelling, in Forest Zones provided the following:

1. A relative suffers from a medical hardship,
2. Both the permanent and temporary residence use the same sewage disposal system,
3. The temporary residential unit is removed, demolished or converted to a nonresidential status within three months after it is no longer needed, and
4. This permit is regularly reviewed and renewed.

Section 1505.1 of the Columbia County Zoning Ordinance further also allows for these temporary uses but requires annual, instead of 2 year, administrative reviews.

Consequently, and prior to final approval, the applicant shall apply for the temporary change of occupancy from nonresidential to residential status for her attached shop/garage and make any modifications required by the Uniform Building Code. In addition, the existing onsite sewage disposal system shall be authorized for this new use. Finally, this Temporary Use Permit shall be reviewed and renewed annually; when the hardship is no longer necessary, the shop/garage shall be removed, demolished, or converted to nonresidential status within 3 months.

OAR 660-006-0035**Fire Siting Standards for Dwellings and Structures**

The following fire siting standards or their equivalent shall apply to new dwellings or structures in a forest or agriculture/forest zone:

- (1) The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the governing body determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the governing body may provide an alternative means for protecting the dwelling from fire hazards. The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use. Road access shall be provided to within 15 feet of the water's edge for fire-fighting pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.
- (2) Road access to the dwelling shall meet road design standards described in OAR 660-06-040.
- (3) The owners of the dwelling and structures shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break area in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991 and published by the Oregon Department of Forestry.
- (4) The dwelling shall have a fire retardant roof.
- (5) The dwelling shall not be sited on a slope of greater than 40 percent.
- (6) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

Finding 2: This residence with the attached/shop garage at 15997 Eastman Road is located within the Mist Birkenfeld Rural Fire District. The standard fire break for the PF-76 zoning district is a 30-foot primary and a 100-foot secondary break for a total of 130 feet of fire buffer. The enclosed plot plan identifies both the 30' Primary Safety Zone and the 100' Secondary Firebreak surrounding the residence. The road access to Eastman Road shall also need to meet the requirements of OAR 660-060-040 prior to LDS issuing the temporary change of occupancy permit.

OAR 660-006-0040**Fire Safety Design Standards for Roads**

The governing body shall establish road design standards, except for private roads and bridges accessing only commercial forest uses, which ensure that public roads, bridges, private roads and driveways are constructed so as to provide adequate access for fire fighting equipment. Such standards shall address maximum grade, road width, turning radius, road surface, bridge design, culverts, and road access taking into consideration seasonal weather conditions. The governing body shall consult with the appropriate Rural Fire Protection District and Forest Protection District in establishing these standards.

Finding 3: All building permits in forested areas and forest zones require documentation by the local Fire Protection District approving any driveway greater than 150 feet in length. The enclosed plot plan indicates the existing driveway is indeed greater than 150' from Eastman Road a county road adjacent to this property. Prior to issuing this temporary residential use permit, an on-site inspection by the Mist Birkenfeld Rural Fire District must indicate that this driveway accessing this parcel is suitable for fire service equipment

Continuing with the following sections of the Columbia County Zoning Ordinance:

Section 1505 Temporary Permits

- .1 **Use Not Allowed in District:** The Planning Commission may allow a temporary permit for a period not to exceed 1 year for a use not otherwise allowed in the zoning district. The temporary permit may be allowed only after a hearing conducted pursuant to Section 1603 and provided that the applicant provides evidence substantiating the following, unless otherwise provided for in this Ordinance:
- A. There is no reasonable alternative to the temporary use;

Finding 4: The applicant states in her application that her mother has been living in her attached shop/garage for 4 years is also on limited income and cannot financially afford to move and live somewhere where she will have pay for assisted living services. Because the Zoning Ordinance allows for temporary uses not allowed in districts, Staff finds it is reasonable for the applicant to pursue this option to rectify her unique situation. Requiring Ms. Washburn to change the occupancy permit status of her attached shop/garage from a nonresidential to residential will allow the legal establishment of this unintentional illegally conversion of this accessory structure in this PF-76 zoned property. This conversion shall also require a building inspector to inspect the existing residential unit as it now exists and determine what changes it will need to comply with the Uniform Building Code's requirements for residential structures. The applicant shall be required to make all necessary changes before LDS will issue a temporary occupancy permit.

- B. The permit will be necessary for a limited time or will allow an occasional use, such as housing for seasonal farm labor;

Finding 5: The temporary occupancy permit for this shop/garage will need to be reviewed annually and will require the applicant to provide evidence substantiating the medical hardship need for her mother to continue to reside with her.

- C. The temporary use does not involve the erection of a substantial structure or require any other permanent commitment of the land;

Finding 6: Because an attached shop/garage is a permitted accessory structure in this PF 76 zone, allowing it to be lived in after converting it to a temporary residential unit will not require any substantial external changes. Neither will the temporary residential use of this shop be a permanent commitment of this property since it must use the same onsite sewage disposal system as the permanent residence. Finally, this temporary residential unit will need to be reviewed and approved annually and shall be removed, demolished, or converted to a nonresidential use within three months of the end of the need for a hardship. These criteria will all help ensure this permitted and legally converted temporary residential unit will not be a permanent commitment on this 10.25 acres of PF-76 zoned property.

D. The temporary use will not be detrimental to the area or to adjacent properties; and,

Finding 7: Section 503.9 of the Columbia County Zoning Ordinance permits as a conditional use a nonresource related single family residential structures in the PF-76 zone. The temporary conversion of this attached shop/garage from nonresidential to residential status further will not significantly impact the ongoing resource land uses occurring on this and adjacent properties. One more resident on this property will not result in the types of potentially intensified uses that will negatively impact land uses normally associated with this PF-76 zoned area of our county.

E. The temporary use will comply with the Comprehensive Plan.

Finding 8: The Housing section of the Columbia County Comprehensive Plan applies to the temporary residential use of this attached shop/garage. Specifically, the Goal of the Housing section is to "provide for the housing needs of the citizens of the County by allowing adequate flexibility in housing location, type and density." As the demographics of our country change, it is important that land use actions need to be flexible enough to reflect these continually changing needs of our residents. Allowing family to care for other family members in their homes complies with the purpose and intent of our Comprehensive Plan. Although the applicant unintentionally illegally converted her shop/garage so her mother could live with her, when this illegality was brought to her attention she immediately sought appropriate measures to rectify these unfortunate circumstances.

Continuing with the Columbia County Zoning Ordinance:

Section 1600 ADMINISTRATION:

1603 **Quasijudicial Public Hearings:** As provided elsewhere in this ordinance, the Hearings Officer, Planning Commission, or Board of Commissioners may approve certain actions which are in conformance with the provisions of this ordinance. Zone Changes, Conditional Use Permits, Major Variances, and Temporary Use Permits shall be reviewed by the appropriate body and may be approved using the following procedures:

- .1 The applicant shall submit an application and any necessary supplemental information as required by this ordinance to the Planning Department. The application shall be reviewed for completeness and the applicant notified in writing of any deficiencies. The application shall be deemed complete upon receipt of all pertinent information. If an application for a permit or zone change is incomplete, the Planning Department shall notify the applicant of exactly what information is missing within 5 days of receipt of the application and allow the

applicant to submit the missing information. The application shall be deemed complete for the purpose of this section upon receipt by the Planning Department of the missing information. [effective 7-15-97]

- .2 Once an application is deemed complete, it shall be scheduled for the earliest possible hearing before the Planning Commission or Hearings Officer. The Director will publish a notice of the request in a paper of general circulation not less than 10 calendar days prior to the scheduled public hearing. Notices will also be mailed to adjacent individual property owners in accordance with ORS 197.763. [effective 7-15-97]

[Note: ORS 197.763 requires 20 days notice (or 10 days before the first hearing if there will be 2 or more hearings), and that notice be provided to property owners within 100' (inside UGBs), 250' (outside UGBs), or 500' (in farm or forest zones).]

- .3 At the public hearing, the staff, applicant, and interested parties may present information relevant to the criteria and standards pertinent to the proposal, giving reasons why the application should or should not be approved, or what modifications are necessary for approval. [effective 7-15-97]
- .4 Approval of any action by the Planning Commission at the public hearing shall be by procedure outlined in Ordinance 91-2. [effective 7-15-97]

1608 Contents of Notice: Notice of a quasijudicial hearing shall contain the following information:

- .1 The date, time, and place of the hearing;
- .2 A description of the subject property, reasonably calculated to give notice as to the actual location, including but not limited to the tax account number assigned to the lot or parcel by the Columbia County Tax Assessor;
- .3 Nature of the proposed action;
- .4 Interested parties may appear and be heard;
- .5 Hearing to be held according to the procedures established in the Zoning Ordinance.

Finding 9: The applicant submitted a complete application for a Temporary Permit for a Temporary Use Not Allowed in District (TP 07-03) to Land Development Services September 1, 2006. The Board of County Commissioners scheduled the Public Hearing for October 25, 2006 and published, with the required Contents of Notice, the Notice of Public Hearing on October 14, 2006 satisfying these criteria for Quasijudicial Hearings.

1612 Special Hearings: The Board of County Commissioners, in its discretion, may order any quasi-judicial land use application or type of quasi-judicial land use application to be heard at a Special Hearing in lieu of a hearing before the Planning Commission or the Board of County Commissioners.

Finding 10: The Board of County Commissioners decided to take jurisdiction of this quasi-judicial land use application and hold this Special Hearing to expedite this process.

STAFF COMMENTS, CONCLUSIONS, AND RECOMMENDATIONS:

Based on testimony received and findings in this staff report, Planning Staff find that this proposal is consistent with the review criteria for a Temporary Permit for a Use Not Allowed in District and recommend that the Board of County Commissioners **APPROVE** this request to allow the temporary residential use of the attached shop/garage for the residence at 15997 Eastman Road situated on a 10.25 acre parcel in a Primary Forest (PF-76) Zone, with the following conditions:

1. The applicant shall apply for the temporary change of occupancy from nonresidential to residential status for her attached shop/garage and make any modifications required by the Uniform Building Code
2. No permanent new structures, or subsurface sewage disposal systems, are permitted as a result of this application alone. Future building permits may be required for additional structures on this property which shall comply with all applicable building code requirements and land use regulations.
3. The existing onsite sewage disposal system serving both the permanent and temporary residence at 15997 Eastman Road shall be authorized for this new use prior to the issuance of this temporary residential use permit.
4. This Temporary Permit for a Use Not Allowed in District shall be reviewed and renewed annually; when the hardship is no longer necessary, the shop/garage shall be removed, demolished, or converted to nonresidential status within 3 months.
5. Prior to issuing this temporary residential use permit, an on-site inspection by the Mist Birkenfeld Rural Fire District shall indicate that the driveway accessing this property is suitable for fire service equipment