



City of Lyons

David W. Kinney

Planning Consultant for the City of Lyons
791 E. Hollister St., Stayton, OR 97383

Phone: (503) 551-0899

Email: dwkinney@wvi.com

LYONS PLANNING COMMISSION STAFF REPORT

HEARING DATE: July 15, 2020

STAFF REPORT DATE: July 8, 2020

FILE NUMBER: 2020-02

APPLICANT/OWNER: John and Shannon Waddle
183 19th Street, Lyons, Oregon 97358
Email: swaddle23@yahoo.com

PROPERTY: 183 19th Street, Lyons, OR

<u>Assessor's Map</u>	<u>Tax Lot</u>	<u>Account</u>	<u>Acres</u>	<u>Zoning</u>	<u>Address</u>
09S 02E 20C	01001	5427	0.25	MFR	183 19 th Street

EXHIBITS: EXHIBIT A Application and letter
EXHIBIT B Letter dated June 23, 2020 from Don & Perta Wiltse, 181 19th St.

REQUEST: Variance – Allow a 2' 8-inch South setback instead of the required 5' setback

CRITERIA: Lyons Municipal Code

Zoning:

- Section 18.20.020 Multi-Family Residential (MFR) Zone
- Section 18.20.020.E Minimum Setback Requirements

Variance

- Section 18.45.020 Circumstances for Granting a Variance
- Section 18.45.030 Procedures to Taking Action on a Variance Application
- Section 18.45.040 Building Permits for an approved Variance
- Section 18.45.050 Time Limits

I. APPLICANT'S PROPOSAL

The City has received a land use application from John and Shannon Waddle, requesting approval of a side setback variance to allow them to construct a new garage within 3' of the south property line at 183 19th Street in Lyons. Section 18.20.020.E of the Lyons Zoning Code requires a minimum 5' side setback. The applicant proposes to demolish the existing garage area and build a new 24' x 36' garage with 16' high walls, to allow for indoor storage of their RV. The new garage will be located within 3' of the south property line next to home at 181 19th Street.



Figure 1- Street View, 183 19th Street, Lyons, OR



Figure 2- Aerial View, 183 19th Street, Lyons, OR

The applicant has submitted a site plan that shows a new garage located within 3' of the south property line, adjacent to the home at 181 19th Street. The applicant also submitted a letter of support from Don and Perta Wiltse, 181 19th Street, supporting the variance request.

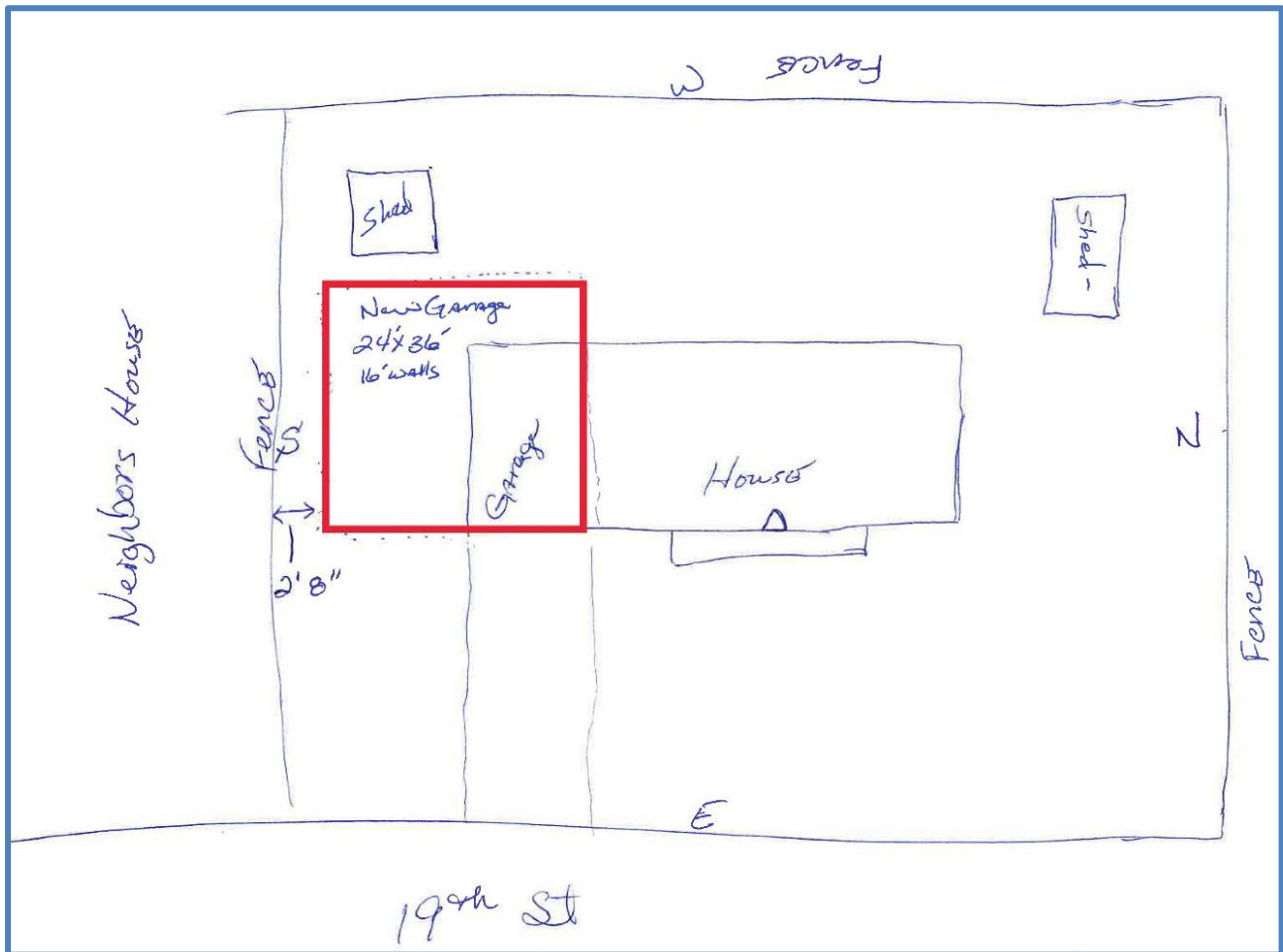


Figure 3 – Proposed 24' x 36' garage, 183 19th Street, Lyons, OR

II. BACKGROUND INFORMATION

A. Pre-Application Information and Application Submittals:

The City Recorder Micki Valentine communicated with the applicants prior to the submittal of an application. The applicant filed a variance application with the City on June 25, 2020. The application was deemed complete on June 25, 2020. Therefore, the final local decision must be made by Tuesday, October 21, 2020 to comply with the “120 Day Rule”.

B. Application, Land Use Procedure and Review Requirements:

Chapter 18 of the Lyons Municipal Code outlines the application, notice and review requirements for variance applications. The Lyons Planning Commission will hold a public hearing on July 15, 2020. At the conclusion of the public hearing the Planning Commission will deliberate and may either approve or deny

the proposal. If the variance is approved, the Planning Commission may impose condition to approval to ensure the proposal will comply with the City’s development requirements and to protect adjacent uses. The Planning Commission decision may be appealed to the City Council.

C. Public Hearing and Notices of Public Hearing:

A public hearing will be held before the Planning Commission on July 15, 2020 as part of the Commission’s meeting that begins at 6:30 p.m. at the City Hall, 449 19th St. in Lyons, Oregon. The Planning Commission will make its decision based on criteria found in the Lyons Municipal Code (LMC), Chapter 18.45 “Variances”. The City Code can be viewed under “Codes and Permits” at the City of Lyons website: [City of Lyons](#).

Notice of any public hearings must be provided to affected governmental agencies and adjacent property owners. Written notice shall be mailed to owners of property abutting the subject property at least 20 days prior to the initial evidentiary hearing. Notice of the initial evidentiary hearing was mailed 20 days prior to the public hearing.

D. Existing Conditions:

The property is a 10,800 square foot residential home site. The Waddles have a 1,296-sf home on the site. The proposal will allow the applicants to demolish the existing one-story garage and replace it with a 24’ x 36’ shop/garage building on the south side of the home. The new garage will have 16’ high walls and a 12’ entry door for an RV. The applicants provided drawings showing the proposed garage.

E. Adjacent Land Uses: See aerial photo (Figure 2)

- NORTH: Single family home at 1818 Main St.
- EAST: Single family homes at 182, 184, 186 and 188 19th Street.
- WEST: Vacant field as part of large lot at 171 18th St.
- SOUTH: Single family home at 181 19th St.

F. Utilities: The existing building is served by water service from the Lyons-Mehama Water District and a septic system in the north half of the back yard. Private utilities already serve the house.

G. Streets: 19th St. is a local city street. The street is paved with gravel shoulders. No improvements are needed.

H. Agency Comments and Public Testimony:

1. Agency Comments. Agency comments were solicited from the Lyons Fire District, the Lyons-Mehama Water District and private utilities. In addition, the City consulted with the Linn County Building Department to verify building code requirements if a variance is granted.
 - a. Linn County Building Department: *On June 25, 2020, City Recorder Micki Valentine spoke with Linn County Building Inspector, Matt Mason, regarding the setback. He said that if the setback could be changed to three feet, there would be no fire rating requirement. But if it is necessary to use 2.8’ then there would be a 1-hour fire-resistance requirement. Which could be easily met by using 5/8” thick sheetrock.*

2017 Oregon Residential Specialty Code

- *Chapter 3 - Section R302 Fire-Resistant Construction*
- *Page 41 - Table R302.1 Exterior Walls*

Exterior Wall Element		Minimum Fire-Resistance Rating	Minimum Fire Separation Distance
Walls	Fire-resistance rated	1 hour-tested in accordance with ASTM E119 or UL 263 with exposure from both sides	< 3 feet
	Not fire-resistance rated	0 hours	≥ 3 feet

If the construction plan were adjusted to meet a three-foot setback, they would not need to meet the fire-resistance requirement.

Any other agency comments received prior to or during the public hearing will be made part of the record.

2. *Public Testimony.* The City sent notices of the public hearing to surrounding property owners. Any written public testimony received prior to or during the public hearing will be made a part of the record. Oral testimony will be included in the meeting minutes.

III. FINDINGS

The application was reviewed to determine whether the proposal complies with the applicable standards and criteria in the Lyons Municipal Code.

A. Chapter 18.20.020 – Multi-Family Residential (MFR) District

18.20.020.A Permitted Uses: In an MFR zone, a single-family home is an allowed use.

18.20.020.E Yards (Setbacks): Setbacks for single-family dwellings must comply with the minimum setback requirements in the Single-family Residential (SFR) zone. A minimum 5’ side setback is required.

The applicant is requesting a variance to allow for a 2.8’ setback to the south property line.

Findings & Conclusions: The proposed garage is part of the permitted single-family home. However, a variance is required to allow a setback less than 5’. If the variance is approved, the proposal will comply with the basic zoning requirements of LMC 18.20.020.

B. Chapter 18.45 – Variances

The planning commission may authorize variances from the requirements of the Zoning Code where it can be shown that owing to special and unusual circumstances related to a specific lot and when the Planning Commission concludes the strict application of the code will cause an undue or unnecessary hardship. No variance shall be created to allow the use of property for a purpose not authorized within the zone.

The Planning Commission reviews variance applications. If approved, the Planning Commission may impose conditional of approval to ensure the proposed use complies with all of the city’s development standards and the proposed use fits into the neighborhood and the best interests of the city are safeguarded.

18.45.010 Application Requirements. The City requires an applicant to file an application on city forms, pay an application fee and comply with variance requirements.

Findings and Conclusions: The applicant has filed the application, paid required fees and is following City procedural requirements for a variance.

18.45.020 Circumstances for granting a Variance: At the conclusion of a public hearing, the planning commission is required to make a decision and determine if the proposal complies with the following ***all of the approval criteria.***

- A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape, topography or other circumstances over which the owners of property, since enactment of the ordinance codified in this title, have had no control.*
- B. The variance is necessary for the preservation of the same property right as possessed by owners of other property in the same zone and vicinity.*
- C. The variance would not be materially detrimental to the purposes of this title or to property in the same zone or vicinity in which the property is located and is consistent with the policies and guidelines of the adopted comprehensive plan and state planning goals.*
- D. The variance requested is the minimum variance which would alleviate the hardship.*

Each of the four criteria in LMC 18.45.020.B are reviewed below:

18.45.020.A Exceptional or extraordinary circumstances apply: Section 18.45.020.A requires exceptional or extraordinary circumstances that do not apply to other parcels in the Single-Family Residential zone or vicinity.

Findings and Conclusions:

1. The applicant's property is on a short residential street with 7 homesites on 0.25-acre lots.
2. The existing garage/home is approximately 12' +/- from the south property line.
3. The owners propose to demolish the existing garage and build a new 24' x 36' garage/shop from the living area south to the property line. The new shop will be large enough to allow for the storage of the applicant's RV.
4. The applicant's septic system is located on the west side of the house, near the north end of the site. No building can encroach into the septic drain field areas.
5. The applicants were asked to explain why this location is the only viable option for the construction of a 24' x 36' addition, versus placing it on the north end of the site.

On July 6, 2020, the applicants submitted a letter to the City providing a more detailed explanation of their request for the reduced setback. They state:

The south side of our home currently has the garage in place, with an entry door into our residence, into our laundry room. In addition, we have electricity already in place from our breaker box which is in the room right next to the garage. These two reasons alone make it most feasible to replace our current garage with a new one, on the south side. In addition, the north side of our home contains our natural gas lines and meter, so we could not pour a concrete pad over those nor would we

have an entrance into our home, other than running it in through a bedroom, which really isn't a feasible option.

The applicants have provided a clear explanation of the utility and building design issues that caused them to request the setback variance and create unusual conditions for their homesite. The Planning Consultant concludes the proposal complies with LMC 18.45.020.A.

18.45.020.B Granting of the variance will preserve a property right:

Findings and Conclusions:

1. The MFR zone allows single-family homes, garages and accessory buildings. The applicant proposes to comply with the basic uses allowed in the MFR zone.
2. Minimum setbacks are established in the zoning code to provide separation from neighboring uses and to provide fire separation between structures.
3. The applicant's letter states they will comply with the building code requirements for construction of a sheetrock firewall and no exterior openings along the south wall.

The proposal complies with LMC 18.45.020.B.

18.45.020.C The variance will not be detrimental to other properties or purpose of the Zoning Code:

Findings and Conclusions:

1. The variance requests the new garage be allowed within 2'-8" of the south property line. The south wall of the new garage will be 16' tall – to the eaves.
2. The south wall will create a tall 2-story structure on the south property line.
3. The neighbor's (Wiltse's) garage is 25' from the property line.
4. The Wiltse's submitted a letter stating they did not object to the City granting the variance and support the Waddle's proposal.

Due to the distance to the Wiltse's home, the proposal complies with LMC 18.45.020.C.

18.45.020.D The variance is the minimum variance to relieve the hardship:

Findings and Conclusions:

1. The Waddle's propose to build a 24' wide garage.
2. The Linn County Building Department has advised the City that allowing a 3' setback rather than the proposed 2'-8" setback will eliminate the need for a firewall installation.
3. The applicants were asked to explain why a 2'-8" setback is needed, versus a 3' setback. On July 6, 2020, they replied:

When we first started this venture and inquired to the city, we were aware of the 5' rule from property line to building, but we were under the impression if we built closer than the five feet of the line, we would just need to notify the city verbally when we turned in our plans and permit application. We really had NO idea that if we were under the 5' mark what so ever, that a variance would have to be filed. So, are we to understand then, that anything less than 5' requires a variance? Or is it anything 3' or less that requires the variance. We apparently aren't clear on that.

Right before we submitted our plans, we took our measurements again and found we were just under the 3' mark. We are trying to be honest, and completely transparent in our intentions. Frankly, we pay taxes on the property and we want to use the maximum amount that we able to maximize our storage capacity. Twenty-Four feet wide makes construction much easier when putting up walls and 8' sections of plywood, siding or drywall.

After having to file the variance, we again went out and re-measured again, from the outside of our garage to the fence line. We were at 2', 10", so we are talking about being potentially 2 to 4 inches from the 3' mark, once the new building is up. It really is hard to be precise when you are measuring a current building that is up and the new one yet to be constructed. It is our best estimate. Yes, we will be just under that 3' mark, but we can't say 100% where but are estimating up to 4" anyway.

We are fine with having to do a firewall construction, if that is what it takes for us to move forward with our current plans in place.

A variance is required for any structure that will be located within 5' of the side property line. Buildings permits cannot be applied for or issued unless the Lyons Planning Commission approves the reduced setback and grants the variance.

The applicants have provided a clear explanation of their building plans, dimensional requirements to simplify construction of the new garage and the likelihood that the structure will be located less than 3' from the side property line. In order to guarantee compliance with the Oregon Residential Specialty Code, the applicants propose to provide a firewall on the south wall of the new garage. A 2'8"-3'-0" setback is probable and is the minimum variance needed to allow for standard construction.

The Planning Consultant concludes the proposal complies with LMC 18.45.020.D.

IV. CITY PLANNER CONCLUSION AND RECOMMENDATION

Based on the findings contained in this report, the City Planner concludes that ***the application for a variance to allow a 2'-6" to 3'-0" side setback does comply with the applicable criteria***, if conditions of approval are imposed.

If the Planning Commission approves the variance, the City Planner recommends the Planning Commission impose several conditions of approval.

1. **Approved Variance – South Setback for New Garage.** The Variance is approved to allow the applicant to construct a new garage within 2'-6" to 3'-0" of the south property line at 183 19th Street in Lyons, Oregon, as shown on the site plan submitted by the applicant.
2. **Expiration.** The Variance will expire if the applicant does not apply for a building permit by July 31, 2021.
3. **Building Code Compliance.** The plans shall comply with the Oregon Residential Specialty Codes for fire resistant construction.

V. PLANNING COMMISSION OPTIONS

- A. Approval of the Variance for John and Shannon Waddle, 183 19th St., File No. 2020-02 and adoption of the proposed findings and the recommended conditions of approval.
- B. Approval of the Variance for John and Shannon Waddle, 183 19th St., File No. 2020-02 and adoption of amended findings and conditions of approval to reflect the Planning Commission deliberations.
- C. Denial of the Variance proposal, File No. 2020-02, and to direct the City Planner to modify the findings to reflect the Planning Commission’s deliberations that the proposal does not meet the applicable approval criteria.
- D. Continue the hearing, to a date and time certain, if additional information is needed to determine whether applicable standards and criteria are addressed.

VI. MOTIONS

- Approval: To approve the setback variance for John and Shannon Waddle at 183 19th St., adopt the findings of fact, conclusions and recommended conditions of approval for File No. 2020-02.
- Approval (modified): To approve the variance for John and Shannon Waddle at 183 19th St., to adopt the modified findings of fact and to reflect the Planning Commission’s deliberations and to adopt the conditions of approval for File No. 2020-02.
- Continue: To continue deliberations to the next meeting of the Planning Commission on ***(insert DATE and TIME)*** so the parties may submit additional information.
- Denial: To deny the application for a variance because the applicant has not demonstrated the proposal complies with all of the Lyons Municipal Code criteria and to direct the staff to modify the findings and prepare a final order to reflect the Planning Commission’s deliberations and conclusions.

VII. FINAL ORDER AND NOTICE OF DECISION

A FINAL ORDER and a written NOTICE OF DECISION will be issued to the applicant and all participants of record within five (5) business days of the Planning Commission’s decision.

VIII. APPEAL PERIOD

Any person aggrieved by the Planning Commission decision may appeal the decision to the City Council by filing a written appeal with the City of Lyons within fourteen (14) calendar days of the date the Notice of Decision is mailed by the City, in accordance with LMC 18.55.010.



CITY OF LYONS

Exhibit A

PHONE: (503)859-2167
FAX: (503)859-5167
www.cityoflyons.org

449 5TH STREET
LYONS, OREGON 97358
cityoflyons@wavecable.com

Received By (Initials): W
Date: 6-25-2020
Paid: \$300

VARIANCE APPLICATION

Name of applicant: John & Shannon Waddle

Applicant's Mailing Address: 183 19th St Lyons, OR 97358
shannon

Phone Number: 503 932-6163 email: swaddle23@yahoo.com

Address of subject property: 183 19th St Lyons, OR 97358

TWP: 09S RANGE: 02E SEC: 20C TAX LOT: 1001

Type of variance requested: Decrease Side Setback

Zoning on property: Residential - Multi-Family

Current use(s) of property: Primary Residence

Proposed change(s) in property use: None

Reason(s) for variance request: Building (garage) within 3' of boundary

To approve a variance application, the City must make findings related to each of the following factors. Please provide information pertaining to each factor.

A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape, topography or other circumstances over which the owners of property since

enactment of this ordinance have no control. _____

B. The variance is necessary for the preservation of the same property right as possessed by owners of other property in the same zone and vicinity. _____

C. The variance would not be materially detrimental to the purposes of this ordinance or to property in the same zone or vicinity in which the property is located and is consistent with the policies and guidelines of the comprehensive plan and the state planning goals. _____

D. The variance requested is the minimum variance which would alleviate the hardship. _____

Attach a scale drawing which shows the area included in the variance request. The drawing shall show:

1. The shape and dimensions of the lot.
2. The location and sizes of all existing and proposed structures.
3. The intended use of each structure.
4. The number of families to be accommodated, if any.
5. The location of vehicular ingress and egress, including the width and surfacing of abutting roads.
6. The location, size, access and number of spaces for proposed off-street parking areas.
7. The location and type of screening and landscaping.
8. The relation of the site to surrounding streets and land uses.

Provide a certified list of property owners within 300 feet of the subject property. Lists obtained from a title company incorporated under Oregon laws or the Linn County Tax Assessor's office shall be acceptable.

I have read and understand the instructions as explained above. This application will be governed by the Lyons Municipal Code Title 18, Chapter 18.45 as attached. I understand that it will be at least 30 days from the submission of the completed application before it will be reviewed before the Planning Commission.

SIGNATURE OF APPLICANT: Shannon Waddle DATE: 6/24/20

PLANNING COMMISSION APPROVAL: _____ DATE: _____

June 23, 2020

TO: City of Lyons Planning Commission

FROM: John and Shannon Waddle
183 19th St.
Lyons, OR 97358

RE: Variance

We have building plans that we wish to submit to the city and county for a new, larger garage on our property. Because the proposed, new garage will sit within two feet eight inches of our property line, we respectfully are submitting permission from the planning commission to proceed, with a variance.

We have spoken to Linn county and understand that we will need to have the south facing wall, closest to our neighbor's house, will be required to have a one hour wall assembly for fire barrier, have no doors, no windows, no venting and a truss overhang of 12" or less on that wall. We have spoken to our neighbor's Don and Perta Wiltse about our building project and they have no qualms with us proceeding. Please see the letter from them enclosed with this application.

There are no structures from the south wall of our garage, for approximately 15 feet on the other side of the fence between our two properties.

This building does not change the residential zoning that we are in.

We feel our building plans best meet our needs for maximizing the space on our property for appropriate storage of our automobiles, tools and recreational vehicles. We are respectful of necessary fire codes and will adhere to those requirements set forth by Linn County. We do not feel using the additional 26" of the 60" that are allowed, will be a significant impact to our neighbor's adjacent property.

Thank you for your consideration.

Regards,

John & Shannon Waddle

7/6/2020

Waddle Variance

Mr. Kinney and Lyons Planning Commission,

Here are the answers to the questions you had for us, regarding our variance application.

You asked why we are choosing to build our garage on the south side and could we build on the north side?

The south side of our home currently has the garage in place, with an entry door into our residence, into our laundry room. In addition, we have electricity already in place from our breaker box which is in the room right next to the garage. These two reasons alone make it most feasible to replace our current garage with a new one, on the south side. In addition, the north side of our home contains our natural gas lines and meter, so we could not pour a concrete pad over those nor would we have an entrance into our home, other than running it through a bedroom, which really isn't a feasible option.

You asked if the garage could be 20' or 22' feet wide? Well, yes it COULD, with modified plans.

When we first started this venture and inquired to the city, we were aware of the 5' rule from property line to building, but we were under the impression if we built closer than the five feet of the line, we would just need to notify the city verbally when we turned in our plans and permit application. We really had NO idea that if we were under the 5' mark what so ever, that a variance would have to be filed. So are we to understand then, that anything less than 5' requires a variance? Or is it anything 3' or less that requires the variance. We apparently aren't clear on that.

Right before we submitted our plans, we took our measurements again and found we were just under the 3' mark. We are trying to be honest, and completely transparent in our intentions. Frankly, we pay taxes on the property and we want to use the maximum amount that we able to maximize our storage capacity. Twenty-Four feet wide makes construction much easier when putting up walls and 8' sections of plywood, siding or drywall.

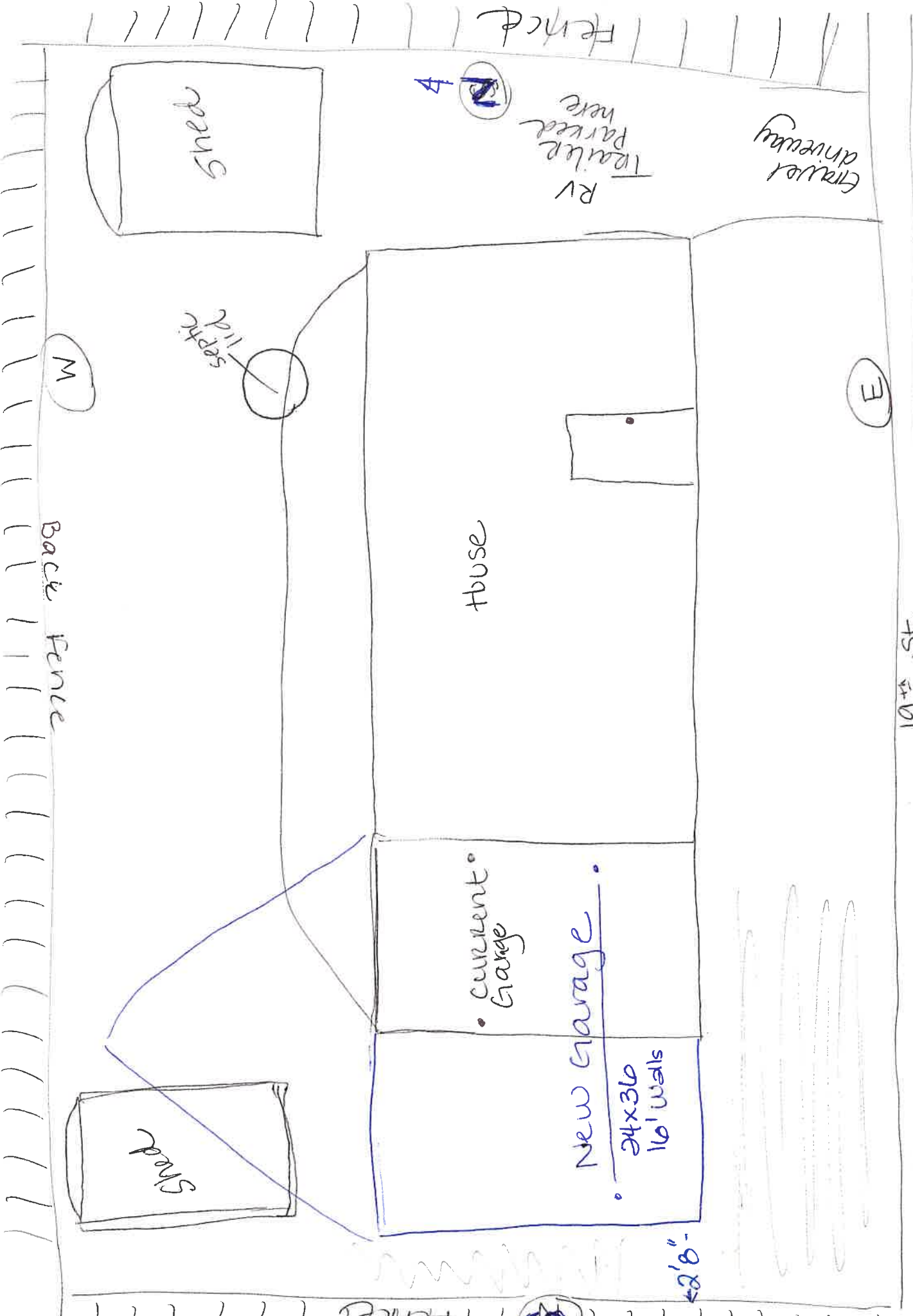
After having to file the variance, we again went out and re-measured again, from the outside of our garage to the fence line. We were at 2', 10", so we are talking about being potentially 2 to 4 inches from the 3' mark, once the new building is up. It really is hard to be precise when you are measuring a current building that is up and the new one yet to be constructed. It is our best estimate. Yes, we will be just under that 3' mark, but we can't say 100% where but are estimating up to 4" anyway.

We are fine with having to do a firewall construction, if that is what it takes for us to move forward with our current plans in place.

We welcome Mr. Kinney or anyone else to come out, meet with John and discuss in person, if that would be helpful, prior to the hearing.

Respectfully,

John and Shannon Waddle



Fence

Shed

A

RV
Trailer parked here

Gravel driveway

Septic Tank lid

M

Back Fence

House

E

19th St

current Garage

New Garage

24x36
16' walls

Shed

28''

Fence

S

Fence

2



E

Fence

19th St



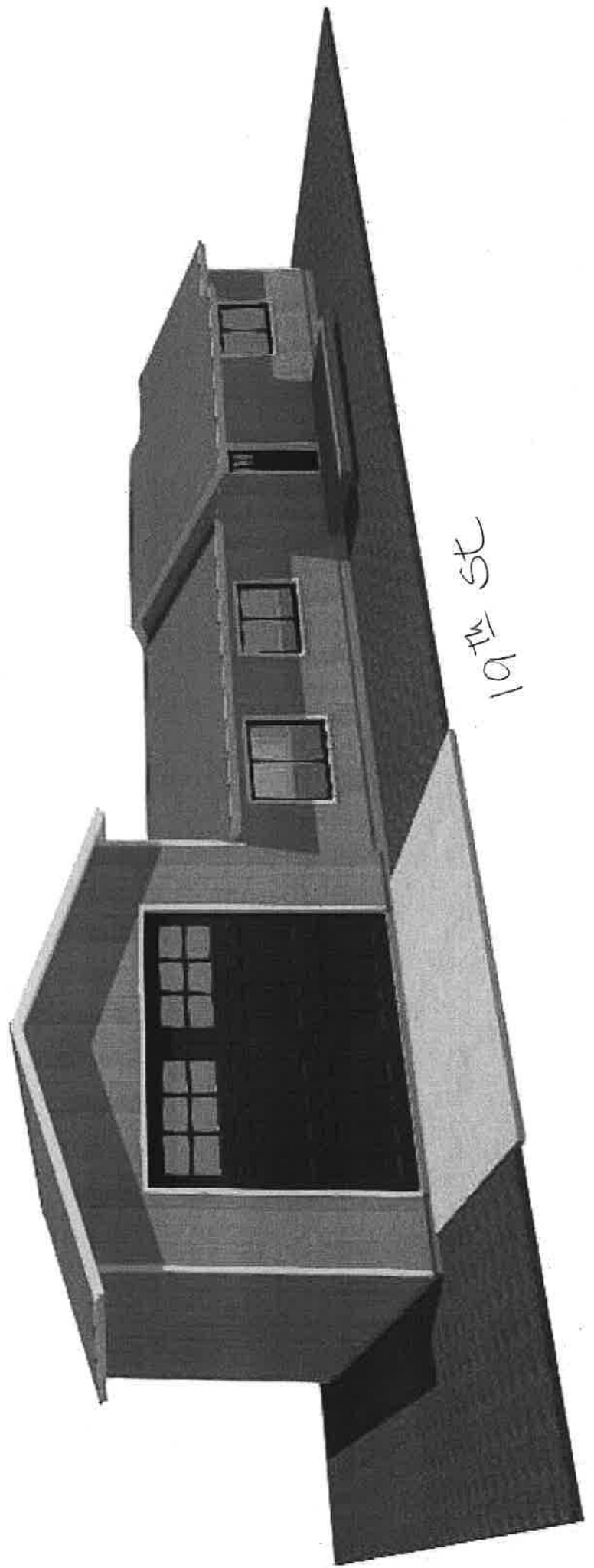
New Garage
24' x 36'
16' walls

8'0"

Fence

Neighbors House

Front view with
Proposed new garage



19th St

View of back of house
with Proposed new garage

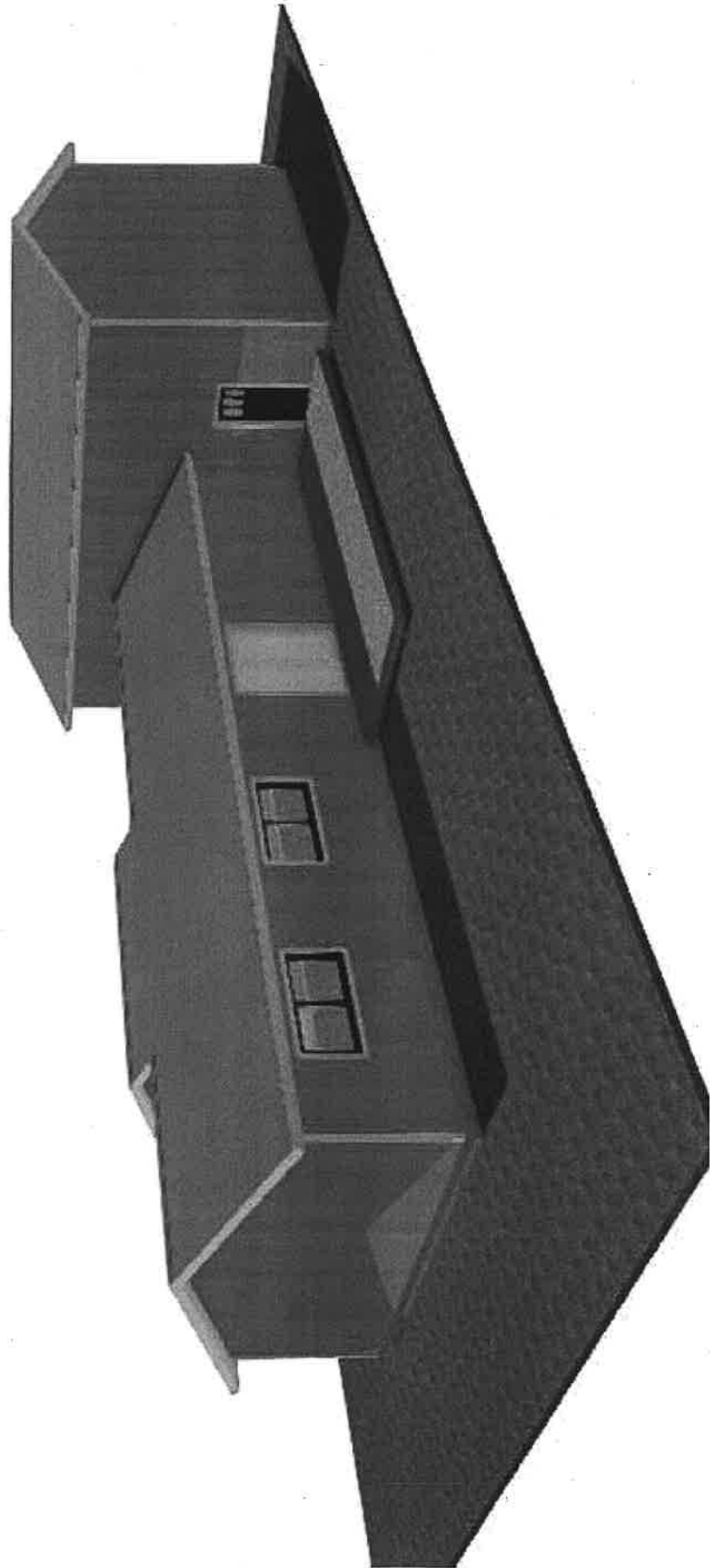


Exhibit B

June 23, 2020

To: City of Lyons Planning Commission
From: Don & Perta Wiltse
181 19th St.
Lyons, OR 97358

We understand that our neighbors to the north of us, John and Shannon Waddle at 183 19th St., are planning to build a new garage. We are aware that their new proposed garage will be within 2 to 3 feet of our fence line that separates our properties. We have no reservations with them proceeding with this building project and have discussed this with them. There are no close structures to the fence line on our property that we are concerned about in the event of fire. We understand the closest wall to our fence line, in the new garage, will have a one hour wall assembly for fire barrier.

Regards,

Don & Perta Wiltse

Don Wiltse
Perta Wiltse