

Agenda

Shady Cove Planning Commission Public Hearing
Thursday, August 26, 2021
6:00 PM

This meeting will be held via Zoom with Commission being present at City Hall. Attendees will click on the link or call in to the listed number.

<https://us02web.zoom.us/j/85192313536?pwd=d3ordHdNYUxQZGVEbHorYWhzUktJZz09>

Meeting ID: 851 9231 3536

Passcode: 319070

One tap mobile

+16699006833,,85192313536#,,,,*319070# US (San Jose)

+12532158782,,85192313536#,,,,*319070# US (Tacoma)

I. Call to Order

A. Roll call.

B. Announcements by Presiding Officer.

1. This meeting is being digitally recorded.
2. The next regularly scheduled meeting of the Planning Commission will be September 9, 2021, at 6:00 PM with Commission members present in Council Chambers and the public to attend via Zoom.
3. The meeting date is subject to change by the circumstances related to COVID-19.

II. Consent Calendar

A. Planning Commission Meeting Minutes of July 29, 2021

III. Public Hearing

A) Public Hearing to Consider a Variance located at 80 Mason Lane.

Open Public Hearing.

A Public Hearing to accept public testimony and consider a Variance to the standards of Section 154.200 to permit a reduced rear-yard setback located at 80 Mason Lane, Shady Cove, Oregon. Assessor's Map and Tax Lot: 34-1W-16DB, 903. Zoning is R-1-20 (Low Density Residential).

Owner/Applicant: Craig Whitmore. File Number: VAR 21-01.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Department at (541) 878-2225. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title II).

1. Read Public Hearing Opening Statement.
2. If you would like to speak before the Commission, please email ahead of time djermain@shadycove.org or attend by Zoom
3. Jurisdiction Question.
4. Conflict of Interest.
5. Ex Parté Contact.
6. Site Visit.
7. Staff Comments. (Nolan)
8. Applicants' Testimony/Proponents Testimony/Commission Questions
9. Opponents' Testimony/Commission Questions.
10. Rebuttal.
11. Final Staff Comments.
12. Close/Continue Hearing.
13. Deliberations/Discussion/Decision.

IV. New Business

None

V. Department Reports

A. Planning Technician Report

VI. Public Comment

VII. Commissioner Comments

VIII. Adjournment

City of Shady Cove
Planning Commission Regular Meeting Minutes

Thursday, July 29th 2021

Meeting was held with the Planning Commission present at City Hall and public attending Via Zoom

I. CALL TO ORDER

Planning Technician Debby Jermain called the Regular Planning Commission Meeting to order at 6:18 PM

Commissioners Present: Chair Barnes, Commissioner Magill, Commissioner Hohenstein, Commissioner Ball

Staff Present: Debby Jermain, Planning Technician, Ryan Nolan Contract Staff Planner

I.B. ANNOUNCEMENTS

The Chair made the announcements on the agenda.

II. Consent calendar

None

III. New Business

A. Swearing in of Commissioner Magill and Commissioner Ball

IV. Review of recent land use approvals

Discussion of recent land use approvals and way to enforce conditions placed on Conditional Use items. There has to be some kind of time limit on the Conditions. Planning Commission would like to hear from Conditional Use Permit applicants. Staff to send letter inviting applicants to attend August 12 Planning Commission meeting in person or attend by Zoom. Staff provided an example of a staff report with A, B, C lists of conditions for the Planning Commission to review.

V. Department reports.

A. Planning Technician report

VI. Public comment

none

VII. OLD BUSINESS

None

VIII. WRITTEN COMMUNICATION

None

IX. PUBLIC COMMENT ON NON-AGENDA ITEMS

None

X. COMMISSIONER COMMENTS

- A. Commissioner Hohenstein welcomed Commissioner Magill on reappointment and welcomed Commissioner Ball on board. He hopes to see all at Movie in the Park event and Festival on the Rogue.
- B. Chair Barnes announced he is only on the Planning Commission for another 30 days due to wife's health and they will be moving to Medford.

XI. ADJOURNMENT

There being no further business before the Commission, the Chair adjourned the regular Meeting at 7:30PM.

Approved:

Attest:

Hank Hohenstein
Chair

Debby Jermain
Planning Technician

Commission Vote:
Chair Hohenstein _____
Commissioner Magill _____
Commissioner Ball _____



Type III Staff Report Variance

Date: August 17, 2021

Description of Property: 34-1W-16DB, Tax Lot 903

Address: 80 Mason Lane, Shady Cove Oregon

Planning Application: VAR 21-01

Owner/ Applicant: Craig Whitmore

Proposal: Variance to the standards of Section 154.200 to permit a reduced rear-yard setback, allowing an existing pergola structure to receive an after the fact building permit allowing it to remain while not meeting the required 15 feet from the rear property line.

Zoning: Low Density Residential R-1-20

Public Hearing Date: August 26, 2021

All class C variances shall be reviewed through a Type III review process as per §154.379, and subject to the criteria of Section 154.419.

The Planning Commission shall make a type III decision after addressing all of the relevant approval criteria and standards. Based upon the criteria and standards, the facts contained within the record, the evidence submitted and the testimony presented, the Planning Commission shall approve, approve with conditions, or deny the requested application for a variance, or they may grant a continuance of the public hearing to a date and time certain.

Variance

Class C variances may be granted if the applicant shows that, owing to the special and unusual circumstances related to the property, the literal application of the standards of the applicable land use district would create a hardship to development which is peculiar to the lot size and shape, topography, sensitive lands or other similar circumstances related to the property over which the applicant has no control and which are not applicable to other properties in the vicinity; except that, no variances to permitted uses shall be granted.

The city shall approve, approve with conditions or deny the application for a variance based on a finding that all of the following criteria are satisfied.

(a) The proposed variance will not be materially detrimental to the purposes of this chapter, to any other applicable policies and standards and to other properties in the same land use district or vicinity.

(b) A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands or similar circumstances related to the property over which the applicant has no control and which are not applicable to other properties in the vicinity.

(c) The use proposed will be same as permitted under the applicable zoning district and city standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land.

(d) Existing physical and natural systems, such as, but not limited to, traffic, drainage, natural resources and parks will not be adversely affected by any more than would occur if the development occurred as specified by city standards.

(e) The hardship is not self imposed.

(f) The variance requested is the minimum variance, which would alleviate the hardship. (SCCO§154.419)

Approval Criteria and Findings – Class C Variance (SCCO)§154.419

The City shall approve, approve with conditions or deny the application for a variance based on a finding that all of the following criteria are satisfied.

(A) The proposed variance will not be materially detrimental to the purposes of this chapter, to any other applicable policies and standards and to other properties in the same land use district or vicinity.

FINDING: Approval of the variance would allow a previously constructed pergola structure to remain on the property and receive an after the fact building permit even though it does not meet the required rear yard building setback. The structure has been built up to and potentially over an existing property line.

(B) A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands or similar circumstances related to the property over which the applicant has no control and which are not applicable to other properties in the vicinity.

FINDING: The applicant apparently built a structure without permits prior to determining property lines. The Planning Commission should evaluate whether a variance is appropriate for this structure. Could the structure be altered or moved to meet the required setback? While the applicant has created a hardship by building a structure too close to an existing property line, it doesn't appear that any pre-existing hardship exists associated to this lot.

(C) The use proposed will be same as permitted under the applicable zoning district and city standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land.

FINDING: Accessory structures are permitted in the R-1 zoning district. The parcel already contains a home and several accessory structures. Lot coverage is limited to 40 percent of the property, permitting approximately 10,106 square feet of structural coverage. The sum of all existing approved structures (house, garage, shed) is 2,892 square feet (11%). As long as the RV cover, deck, and pergola are not more than 7,214 square feet they could be permitted based on lot coverage. The applicant shall provide square footage information for the unapproved deck, pergola, and RV storage structures.

(D) Existing physical and natural systems, such as, but not limited to, traffic, drainage, natural resources and parks will not be adversely affected by (sic) any more than would occur if the development occurred as specified by city standards.

FINDING: The Planning Commission should decide if this Variance would have or could have any negative impacts on the property adjacent to 80 Mason Lane. No specific physical or natural systems (other than potential fuel breaks between properties) appear to be impacted by this structure.

(E) The hardship is not self imposed.

FINDING: This hardship is clearly self-imposed. The applicant chose to build a structure across a property line without identifying property lines.

(F) The variance requested is the minimum variance, which would alleviate the hardship

FINDING: As the structure appears to be built across property lines this is the only possible request that would allow it to remain in place.

Conclusion

Variances include a set of criteria that are difficult to satisfy entirely. In this proposal, the best alternative seems to be a property line adjustment that would allow the applicant to adjust the property line to provide clear definition of land that he is using as his own. Variances may be approved when all of the criteria are met, but it is difficult to argue that the hardship is not self-imposed.

Staff recommends denial of the request as the hardship is entirely self-imposed.

If the Planning Commission is satisfied that the proposal meets the criteria, or can meet the criteria with conditions, it should consider approving this application with the following conditions of approval.

Conditions of Approval

_____ 1. All necessary 'after the fact' City and County building permit approvals shall be obtained within 1 year or any structures built within the required building setbacks shall be removed.

CITY OF SHADY COVE
CLASS C
VARIANCE APPLICATION
SCMC §§154.415-154.420

APPLICATION NO. VAR 21-01 REC'D BY: D. Jermolov DATE: 7/16/21

FEE: **Class C \$ 500.00** AMOUNT PAID: \$500.00 RECEIPT NO: 27181

PUBLIC NOTICE MAILING FEE: \$ 75.00

PROPERTY OWNERS: Craig Whitmore

PROPERTY STREET ADDRESS: 80 Mason Lane

MAP AND TAX LOT: Township 34, Range 1W Section 16DB Tax Lot 903

CURRENT ZONING: ~~RR-5~~ R-1-20 ADJACENT ZONING: RR-5, R-1-20

Variance §154.418
<i>A Variance owing to the special and unusual circumstances related to the property</i>
<i>Literal application of the standards would create a hardship to development</i>
<i>Due to peculiar lot size and shape, topography, sensitive lands or other</i>
<i>Applicant has no control, and not applicable to other properties in the vicinity</i>
<i>Hardship cannot be self-imposed and no variance to a permitted use will be granted</i>

SCMC § 154.418 CLASS C VARIANCE.

Class C variances are reviewed using a **Type III** procedure as governed by SCMC §154.379

Application for variance **must** include the following:

1. If you are not the property owner an Owners Authorization must be submitted.
2. 2 copies of property plat map.
3. 2 copies of the plot plan indicating existing property lines and proposed use.
4. 1 copy of metes and bounds description of the property.
5. A narrative statement explaining how the application satisfies each and all of the relevant criteria and standards; the reason for the request, alternatives considered and why the subject standard cannot be met without a variance. The narrative statement must contain sufficient detail for review and decision-making; (see page 3)

6. 1 copy of recorded covenants, conditions or deed restrictions concerning the present use of this property, if any.

7. ~~1 set of pre-stamped and pre-addressed envelopes for all real property owners of record who will receive a notice of the application (within 200 feet of the subject site). The records of the County Department of Assessment and Taxation are the official records for determining ownership. The applicant shall demonstrate that the most current assessment records have been used to produce the notice list.~~

~~[Alternatively, the applicant may pay a fee for the city to prepare the public notice mailing.]~~

CERTIFICATION

I hereby certify that the information given above and attached hereto is true and correct, that I am the property owner (or have provided owners authorization) and that falsification of fact will result in invalidation of the application. Further, I understand any approval given is valid for the specific project only and is subject to all applicable laws, regulations and conditions.

APPLICANT'S SIGNATURE: *Cy Helton* DATE: 7-28-21

MAILING ADDRESS: 80 Mason Lane, Shady Cove, OR 97539

HOME PHONE 541-944-7738 CELL PHONE _____

PURSUANT TO ORS 227, THIS APPLICATION IS CONSIDERED A COMPLETE APPLICATION WHEN REVIEWED, DATED, AND SIGNED BY THE CITY PLANNER OR HIS/HER DESIGNATE

Complete *RN* Incomplete _____

Letter sent _____

Signature *Pyron Nel* Date 7/28/21

Criteria for approval- your narrative statement must address the following:

SCMC §154.419 - The city shall approve, approve with conditions or deny the application for a variance based on a finding that **all** of the following criteria are satisfied.

- (a) The proposed variance will not be materially detrimental to the purposes of this chapter, to any other applicable policies and standards and to other properties in the same land use district or vicinity.
- (b) A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands or similar circumstances related to the property over which the applicant has no control and which are not applicable to other properties in the vicinity.
- (c) The use proposed will be same as permitted under the applicable zoning district and city standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land.
- (d) Existing physical and natural systems, such as, but not limited to, traffic, drainage, natural resources and parks will not be adversely affected by any more than would occur if the development occurred as specified by city standards.
- (e) The hardship is not self-imposed.
- (f) The variance requested is the minimum variance, which would alleviate the hardship.

And an impact study per 154.379 (A) (d).

State below the need for the variance:

Attach additional sheets as necessary

The variance requested is required due to see attached letter of statement

July 19, 2021

Re: Class C Variance Application Request / Statement

To Whom It May Concern:

The purpose for this letter is make a statement to accompany the Class C Variance application per City of Shady Cove Ordinance, 154.379(B)(2)(a). Mr. Craig Whitmore the owner of Tax Lot 903 is requesting a Class C variance for improvements made to his property in 2019. Mr. Whitmore is requesting a variance as certain improvements to his property were unintentionally constructed without benefit of permitting (See Exhibit A). Once notified by the County that these structures would need to be permitted. Mr. Whitmore engaged the services of Civil West Engineering Services to demonstrate that structures 1 & 2 below meet all of the structural requirements for permitting per Oregon Structural Specialty Code. Structural Reports have been furnished to Jackson County and The City of Shady Cover for verification. The two minor structures are further identified as follows:

(1) RV Carport



(2) Pergola



(3) The leanto shown to the right was removed in 2020 and will be reconstructed in accordance with City and County permits once a new retaining wall is constructed along easterly property line. Also of note at the easterly property is a recently approved lot line adjustment prepared by a licsened Land Surveyor. This lot line adjust was initiated at great expense to Mr. Whitmore and will accommodate the new leanto and the necessary property line set back requirements.



The outdoor pergola has been proven to be structurally permissible, however based on its physical location it does not meet the 15-foot setback from the rear property line as required by the City of Shady Cove. Additionally, there is a creek adjacent to the fireplace and pergola that guarantees no structures can be built in this location by the adjacent landowner.



Mr. Whitmore is a retired citizen of Shady Cove who is a valued and an upstanding member of the community. He has been a resident of Shady Cove for over 30 years without incident or violations. Mr. Whitmore is eager to get this behind him and move on to enjoying his home in peace. It was never Mr. Whitmore's intention to encroach on the 15-foot minimum setback as he did and will also provide a written letter from the adjacent owner that will state they have no issue with the improvements being within the minimum setback requirements. If this variance is not approved, Mr. Whitmore would lose substantial value in his property and a great deal of his hard-earned money would have been wasted without any benefit to him or his wife. Mr. Whitmore humbly requests this variance be approved.

Respectfully,
Civil West Engineering Services, Inc.


David C. Kung, P.E.



Mayor
Shari Tarvin

Councilors
Dick McGregor
Kathy Nuckles
Tim Evert

CERTIFICATE OF MAILING

I hereby certify that on August 6, 2021 I provided a copy of the NOTIFICATION OF ADJACENT PROPERTY USE PROPOSAL, APPLICATION VAR 21-01 by first class mail to the following (list attached):


Debby Jermain, Planning Technician

"The City of Shady Cove is an equal opportunity provider."

22451 Highway 62 ♦ PO Box 1210 ♦ Shady Cove OR 97539 ♦ (541) 878-2225 ♦ FAX: (541) 878-2226
E-Mail: djermain@shadycove.org ♦ Web Site: www.shadycove.org

THOMPSON SANDRA L/JOHN F
40 MASON LN
SHADY COVE, OR 97539

PELLETIER MICHELLE
60 MASON LN
SHADY COVE, OR 97539

WHITMORE CRAIG TRUSTEE ET AL
PO BOX 1022
SHADY COVE, OR 97539

BIGELOW MARTIN C/GERALDINE R
PO BOX 348
SHADY COVE, OR 97539

BEINS ADAM A
77 CHANDRA LN
SHADY COVE, OR 97539

~~CITY OF SHADY COVE
22451 HIGHWAY 62
SHADY COVE, OR 97539~~

KREUTZER DONALD W ET AL
2304 LOTUS LN
CENTRAL POINT, OR 97502

~~MAXSON EARL S/PATRICIA M
CITY OF SHADY COVE
22451 HIGHWAY 62
SHADY COVE, OR 97539~~

~~BIRCH ALTA M
2304 LOTUS LN
CENTRAL POINT, OR 97502~~

~~BORGES JOHN A/DANA L
PO BOX 1176
SHADY COVE, OR 97539~~

SANDERS PAUL
84 MASON LN
SHADY COVE, OR 97539

HEIN RAQUEL/JOSIAH
45 CHANDRA LN
SHADY COVE, OR 97539

~~PADOVER MARGARET J/WAYNE
17546 LONG BRANCH CT
PENN VALLEY, CA 95946~~

Ted Zuk
Jackson County
10 S Oakdale, Room 100
Medford, OR 97501

PADOVER MARGARET J WADE
17546 LONG BRANCH CT
PENN VALLEY, CA 95946

BORGES JOHN A/DANA L
PO BOX 1176
SHADY COVE, OR 97539

WILKINSON FREDERICK J
PO BOX 967
SHADY COVE, OR 97539

CITY OF SHADY COVE
PLANNING COMMISSION

NOTIFICATION OF ADJACENT PROPERTY USE PROPOSAL

DESCRIPTION OF PROPERTY: 34-1W-16DB, Tax Lot 903, located at 80 Mason Lane, Shady Cove

PROPOSAL: Variance Application No. VAR 21-01. The request is for a Variance to Section 154.200 requiring that rear yard building setbacks meet or exceed 15 feet. Zoning is Low Density Residential (R-1-20).

DATE AND TIME OF MEETING: Thursday, August 26th, 2021 at 6:00 p.m.

LOCATION: City Hall Council Chamber, 22451 Highway 62.

RESPONSE DATE: August 20, 2021

APPLICANT: Craig Whitmore

OWNER: Craig Whitmore

The purpose of this notice is to give nearby property owners and other interested people the opportunity to submit written comments about the application. You may also give oral testimony at the public hearing.

The Planning Commission shall make a Type III decision after addressing all of the relevant approval criteria. Based upon the criteria and standards; the facts contained within the record; the evidence submitted and the testimony presented, the Planning Commission shall grant a continuance of the public hearing, or they shall approve, approve with conditions, or deny the requested application for a Variance.

Failure to raise an issue at a hearing, in person or in writing, accompanied by statements or evidence sufficient to afford the decision maker and the applicant an opportunity to respond to the issue, shall preclude appeal to the Oregon State Land Use Board of Appeals based on that issue. All testimony and evidence must be directed towards the specific criteria.

A copy of the application, all documents and evidence submitted by the applicant, and applicable criteria and standards can be reviewed at City Hall at no cost, and copies will be provided at a reasonable cost. The Staff report will be available 7 days prior to the hearing. For more information please contact the Planning Department at City Hall, (541) 878-8204. Please mail comments to City of Shady Cove, PO Box 1210, Shady Cove, OR 97539. Public attendance is welcome.

* * REVIEW AND COMMENT * *

- No adverse effect.
- No comment.
- It has adverse effects as stated below.

REMARKS: _____

SIGNATURE: _____

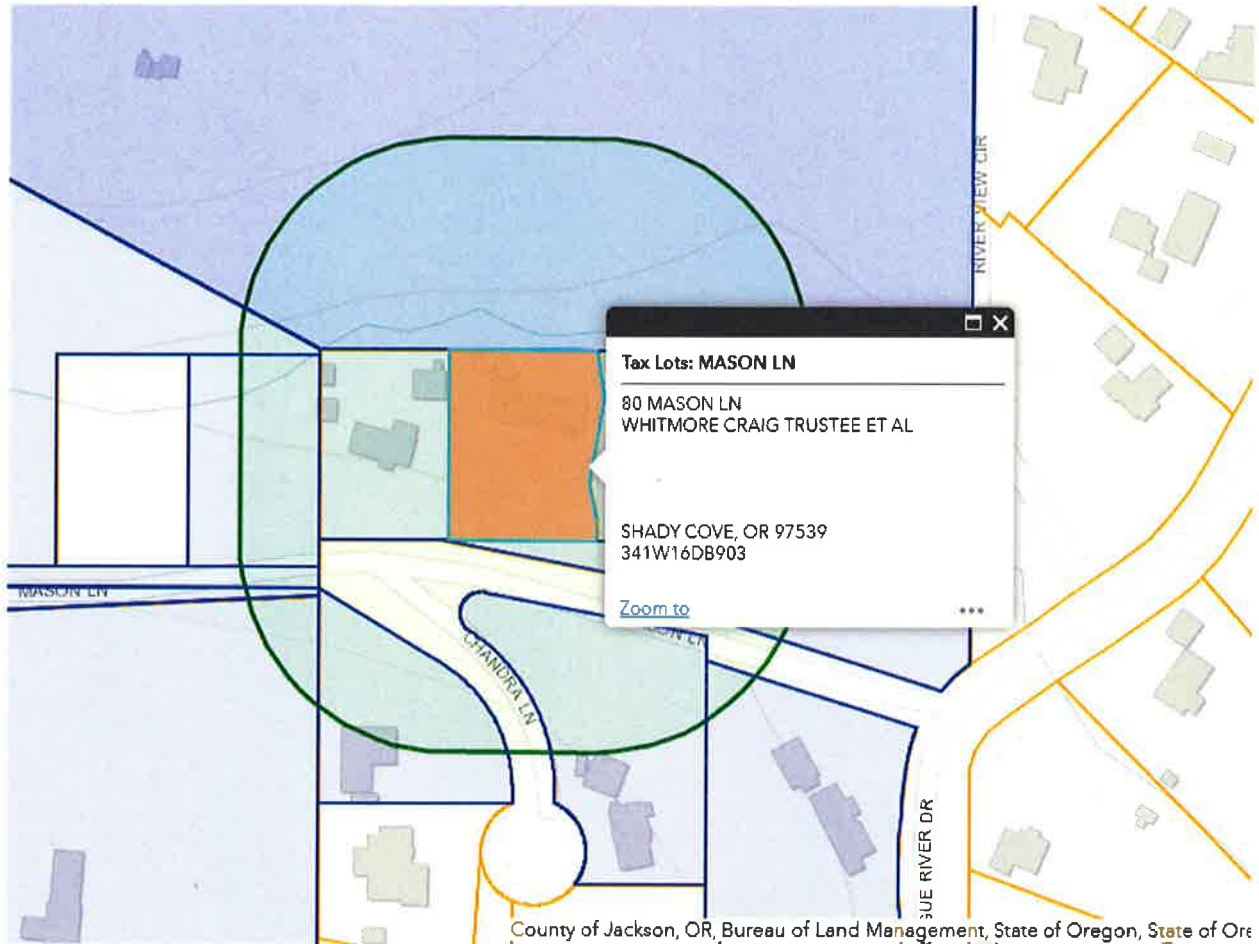
PRINTED NAME(S): _____

STREET AND MAILING ADDRESS: _____

"Notice to mortgagee, lien holder, vendor, or seller: The Shady Cove Zoning Ordinance requires that if you receive this notice it shall be promptly forwarded to the purchaser."

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Department at (541) 878-8204. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title II).

80 Mason Lane





Mayor
Shari Tarvin

Councilors
Dick McGregor
Kathy Nuckles
Tim Evertt

NOTICE OF PUBLIC HEARING

The City of Shady Cove Planning Commission will hold a Public Hearing at 6:00 p.m. on Thursday, August 26, 2021, at the Shady Cove City Hall Council Chamber, 22451 Highway 62, Shady Cove, Oregon for the following purpose:

To consider the request for a **Variance to Section 154.200 requiring rear yard setbacks be at least 15 feet in the Low Density (R-1-20) zone for property located at 80 Mason Lane, Shady Cove Oregon.** Said parcel is legally described as 34-1W-16DB, Tax Lot 903 and is currently zoned R-1-20 (Low Density Residential).

Applicant: Craig Whitmore Owner: Craig Whitmore File Number: VAR 21-01

Individuals may submit written comments relating to this planning action **at any time up to, and during, the public hearing**, although it is preferred that such comments be submitted to the City at least one week prior to the above scheduled hearing date so that they may be included in the agenda packet. The Planning Commission will consider written and oral comments at the hearing.

The applicable criteria and standards to be considered at the public hearing are found in the Shady Cove Code of Ordinances Chapter 154: Zoning

Failure to raise an issue at a hearing, in person or in writing, accompanied by statements or evidence sufficient to afford the decision maker and the applicant an opportunity to respond to the issue, shall preclude appeal to the Oregon State Land Use Board of Appeals based on that issue. All testimony and evidence must be directed towards the specific criteria listed above, copies of which are available at City Hall.

Please mail comments to: City of Shady Cove, PO Box 1210, Shady Cove, OR 97539. The staff report and related material will be available for public review seven days prior to the Public Hearing at 22451 Highway 62, Shady Cove during regular office hours (Monday-Friday 8:00 am – 5:00 pm). Copies will be available for purchase. For more information please contact Ryan Nolan, City Planner at 541.878.8204. The public is invited to attend and comment at this public hearing.

"The City of Shady Cove is an equal opportunity provider."

BUILDING PERMITS

YEAR Permit No.	DATE	NAME	TYPE	ADDRESS	MAP	TAX LOT
21-31	8/13/21	Todd/Betty Herbst	New Home	253 Old Ferry Rd	15	1300
21-32	8/16/21	Roche Family Trust	Addition	324 Rene Dr	21D	1304

PLANNING APPLICATIONS

Property Action Log	Name	Address	Notices Mailed	Comments due back	Staff report due back	Section/TL
8/9/2021 DR 21-05	Becca Williams	22057 Hwy 62 Unit B				10-Aug-21 15BA 3100

FLOODPLAIN CLEARANCE FOR PERMIT