

**Minutes  
Zoning Administrator Meeting  
March 30, 2010**

**Staff Present**

Charley Stump, Zoning Administrator  
Kim Jordan, Senior Planner  
Cathy Elawadly, Recording Secretary

**Others Present**

Yvette Moore  
Patty Bruder  
Kelly Burwell  
Pat Stefani  
Lynda Myers  
Lucy Neely

**1. CALL TO ORDER**

Zoning Administrator Stump called the meeting to order at 11:08 a.m. in Conference Room No. 1, Ukiah Civic Center, 300 Seminary Avenue, Ukiah, California.

**2. SITE VISIT VERIFICATION**

Staff confirmed the site visit for item 6A.

**3. APPROVAL OF MINUTES: January 7, 2010**

**Zoning Administrator Stump** approved the minutes for January 7, 2010.

**4. APPEAL PROCESS**

**Zoning Administrator Stump** read the appeal process. For matters heard at this meeting, the final date to appeal is April 9, 2010.

**5. VERIFICATION OF NOTICE**

**Senior Planner Jordan** confirmed Minor Use Permit and Minor Variance 10-05-UP-VAR-ZA was legally noticed in accordance with the provisions of the Ukiah Municipal Code.

**6. PUBLIC HEARINGS**

**6A. Community Garden Minor Use Permit and Minor Variance at 168 Washing Avenue File No. 10-05-UP-VAR-ZA.** Request for approval of a minor use permit to allow a community garden at 168 Washington Avenue, APN 003-530-20 and a minor variance to allow a 6-foot tall fence to be located on the east property line to enclose the community garden.

**Senior Planner Jordan** presented the staff report and added:

- Staff has received several public comments regarding the project, one of which was not in support of the project and is included in the staff report as 'Attachment 8.'
- One additional Finding was made noting the proposed project is located in Airport Zone D that all uses are allowed except for hazards to flight and that there is no limit related to density, persons per acre, or open spaces requirements and therefore, the project is consistent with the Airport zone.
- To reiterate as a reminder because there was some question whether a tool shed would be constructed on the site, Condition of Approval No. 7 states: The proposed structures area includes a 5-foot shed and a 3-foot by 10-foot cold frame and if different or larger structures are proposed, a building permit may be required.

**PUBLIC HEARING OPENED: 11:12 a.m.**

**Patti Bruder, Kelly Burwell, Lucy Neely, Garden Project representatives** had no questions/concerns regarding the staff report.

**Pat Stefani:**

- Referred to her letter in opposition to the project.

- While the project intent is a great idea for the community participants, she is concerned with water conservation and the potential for the amount of water consumption a community garden would require.
- Because the Ukiah Valley has experienced drought conditions, she has taken personal measures to cut back on her water consumption by allowing her outdoor landscaping to die, as well as taken other drastic measures to reduce her water use.
- Resides in the neighborhood of the proposed project and noted the community garden would likely require large volumes of water due to soil conditions.

**Lynda Myers/property owner:**

- Is the property owner for the community garden.
- The project intent is to provide for a community garden benefiting those persons who do not have access to a garden because they live in apartments.
- The community members that would likely be involved with the garden project reside in the area.
- Even though a community garden requires some water consumption, she is of the opinion that the benefit of growing one's own food is a wonderful community opportunity and promotes healthier living and would save on food bills.
- A very nominal fee for the use of the land will be charged annually to pay for utilities and other associated costs.
- The garden is a good use of water.
- Water conservation has been the topic of discussion at meetings for the planning of the project wherein the intent is to use a drip system and hand water. A sprinkler system will not be installed.
- Fully supports the project.

**Zoning Administrator** stated the staff report addresses the methodology for watering.

**Kelly Burwell:**

- Commented in response to the water consumption measures taken, some of which include:
  1. Revision of the contract for the gardeners, which states that water conservation measures would be in effect with the use of a drip system on a timer for early morning and evening watering, mulch to reduce water evaporation, compost for appropriate water absorption, and no water use during the winter months.
  2. The intent is minimum water use for the garden for the amount of food being grown.
  3. The water would be completely turned off during the winter months.

**Yvette Moore:**

- Will be a community garden participant.
- Would be willing to provide water via containers to help with water conservation.

**Zoning Administrator Stump** inquired whether there is any estimate as to the volume of water that would be consumed for use on a daily basis. It is likely that the use would typically be less than what a single-family residence uses in a day, which is 250 gallons.

**Patty Bruder:** The use may be like a single-family residence or less.

**Lynda Myers:**

- Water use would vary according to the season. There would be more water consumption during the summer months compared to other times of the year when there would be no use.

**Lily Neely:**

- As time goes on additional water conservation practices will be implemented.

**Pat Stefani:**

- Expressed concern/opposition to the project.
- Further emphasized the importance of conserving water and implementing water conservation practices in observance of the water moratorium in effect.

**PUBLIC HEARING CLOSED: 11:25 p.m.**

**Zoning Administrator Stump** thanked everyone for their comments. He clarified there is currently no water moratorium in effect. If there was a water moratorium, staff would not have processed the Use Permit application. Even though the City is encouraging water conservation, there has been no direction by the City Council to deny any project based on water use whether it is a single-family dwelling, a new bathroom for a home, a new commercial business, or other type of project.

While the water usage for the community garden may be similar to a single-family residence for a portion of the year during the summer months, the project would not use the same amount that a person would use in a household during the winter months. It would be unreasonable to deny this project when saying 'yes' to new single-family dwellings, commercial establishments and/or other types of project uses. He also distinguished this project from others as a project benefiting the community rather than a single property owner.

**Zoning Administrator Stump** supports approval of the project, agrees with staff's findings and project conditions and acted to approve Minor Use Permit and Minor Variance 10-05-UP-VAR-ZA with the Findings and Conditions of Approval provided in the staff report and as modified and modified Finding No. 3 with the addition of subsection G to state, 'The project will practice water conservation techniques to help conserve the community's water.'

**MINOR USE PERMIT FINDINGS TO ALLOW A COMMUNITY GARDEN**

The following findings are supported by and based on information contained in this staff report, the application materials, and the public record.

1. The proposed project, as conditioned, is consistent with the City of Ukiah General Plan as described in Table 1 of the staff report.
2. The proposed project, as conditioned, is consistent with the purpose and applicable requirements of the High Density Residential (R-3) zoning district as described in Table 2 of the staff report, including the following:
  - A. Community gardens are an allowed use with approval of a use permit.
  - B. The zoning ordinance does not include any specific development standards for community gardens.
  - C. The zoning ordinance does not include a parking requirement specific to community gardens. Based on the information provided by the applicant and their experience with other community gardens, the garden would generate very little parking demand and there is adequate public street parking to serve the parking needs of the neighborhood and users of the garden.
  - D. Detached accessory structures are allowed by the Zoning Ordinance subject to the setbacks and height requirements of the zoning district in which they are located and zoning ordinance section 9179D.
3. The proposed project, as conditioned, is compatible with surrounding land uses and shall not be detrimental to the public's health, safety and general welfare based on the following:

- A. The project will provide a well maintained green space that will enhance the appearance of the area
  - B. The project will allow people to grow fruits and vegetables for their own consumption and/or donation
  - C. The project will provide a gardening and recreation opportunities in an area that has limited recreation opportunities
  - D. The project will result in more "eyes on the street"
  - E. The project will create an opportunity for interaction between neighborhood residents and a gathering place for families and neighbors involved in the garden.
  - F. The project is required to comply with all applicable local, state and federal codes and requirements, including the City's Noise Ordinance.
  - G. The project will practice water conservation techniques to help conserve the community's water.
4. The proposed project is consistent with the Ukiah Municipal Airport Master Plan based on the following:
- A. The project site is located in Airport Compatibility Zone D.
  - B. All uses except uses that are hazardous to flight are normally acceptable uses in Zone D. The community garden use, including the 6-foot tall fence, are not hazards to flight as defined by the FAA.
  - C. Zone D has no limits related to residential densities and people per acre.
  - D. Zone D has no open land requirement.
5. The proposed use permit is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15303, Section 15303 Class 3(e), New Construction or Conversion of Small Structures, which allows the construction of accessory structures and Section 15304, Class 4(b), Minor Alterations to Land, which allows new gardening.
- A. a 50 square foot shed for the storage of tools and materials and a 30 square foot cold frame may be installed/constructed which is consistent with the accessory structures exempted by Section 15303, Class 3(e);
  - B. a 6-foot tall fence would enclose the garden which is consistent with the accessory structures exempted by Section 15303, Class 3(e); and
  - C. the project includes the planting of 28 in ground garden plots which is consistent with the new gardening exempted by Section 15304, Class 4(b).
6. A notice of public meeting for the proposed project was provided in the following manner as required by the Ukiah Municipal Code:
- posted in three places on the project site on March 18, 2010;
  - mailed to property owners within 300 feet of the project site on March 17, 2010; and
  - published in the Ukiah Daily Journal on March 19, 2010.

**USE PERMIT CONDITIONS OF APPROVAL TO ALLOW A COMMUNITY GARDEN**

1. Approval is granted for the operation of community garden as described in the project description submitted to the Planning Department and date stamped February 18, 2010, the revised sample garden contract submitted to the Planning Department and date stamped March 24, 2010, and as shown on the site plan and garden plan submitted to the Planning Department and date stamped February 18, 2010 and the site plan with parking submitted to the Planning Department and date stamped February 26, 2010, except as modified by the following conditions of approval.

2. This Use Permit is granted subject to the following operating characteristics:
  - A. Days and hours of operation shall be daily from dawn to dusk.
  - B. Items grown shall be for personal consumption of the users of the garden and/or donation. Commercial sale of items grown on the site is prohibited.
  - C. Water conservation shall be practiced.
  - D. The project is required to comply with the City of Ukiah Noise Ordinance.
3. The sample garden contract for this community garden shall be revised to include the following and a copy of the contract shall be provided to the Planning Department prior to commencement of activities at the garden:
  - A. Encourage garden users to walk and/or bike to the site.
  - B. Use of water conservation measures.
  - C. Practice organic gardening when feasible and when not feasible limit the use of herbicides and pesticides to the maximum extent feasible.
  - D. Limits on the hours of use of motorized equipment.
4. Signs are not included as part of this approval. Signs require application for and approval of a sign/building permit from the Community Development Department.
5. All accessory structures shall comply with zoning ordinance requirements for accessory structures, including location and height.
6. On plans submitted for building permit, if a building permit is required, these conditions of approval shall be included as notes on the first sheet.

From the Department of Public Works ( Ben Kageyama)

7. Project activities shall be conducted to prevent sediment from entering the street or creek channel. Any materials tracked or deposited onto the street shall immediately be picked up. Disturbed areas and stockpiles within the property shall be protected and monitored during the rainy season, and silt fence or other measures installed if needed to contain sediment on the site.  
Please Note: The subject property is not located within the floodplain. The floodplain and floodway for Doolin Creek along the subject property is contained within the existing creek channel.

From the Building Official (David Willoughby)

8. The proposed structures area 5-foot by 10-foot shed and a 3-foot by 10-foot cold frame. If different or larger structures are proposed then a building permit may be required.

Standard City Requirements

9. This Use Permit may be revoked through the City's revocation process if the approved project related to this Permit is not being conducted in compliance with these stipulations and conditions of approval; or if the project is not established within two years of the effective date of this approval; or if the established use for which the permit was granted has ceased or has been suspended for 24 consecutive months.
10. Garden operations shall not commence until all permits required for the approved use, including but not limited to business license, tenant improvement building permit, have been applied for and issued/finaled.

11. No permit or entitlement shall be deemed effective unless and until all fees and charges applicable to this application and these conditions of approval have been paid in full.
12. The property owner shall obtain and maintain any permit or approval required by law, regulation, specification or ordinance of the City of Ukiah and other Local, State, or Federal agencies as applicable. All construction shall comply with all fire, building, electric, plumbing, occupancy, and structural laws, regulations, and ordinances in effect at the time the Building Permit is approved and issued.
13. A copy of all conditions of this Use Permit shall be provided to and be binding upon any future purchaser, tenant, or other party of interest.
14. All conditions of approval that do not contain specific completion periods shall be completed prior to building permit final.
15. This approval is contingent upon agreement of the applicant and property owner and their agents, successors and heirs to defend, indemnify, release and hold harmless the City, its agents, officers, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities, the purpose of which is to attack, set aside, void or annul the approval of this application. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted by any person or entity, including the applicant, arising out of or in connection with the City's action on this application, whether or not there is concurrent passive or active negligence on the part of the City. If, for any reason any portion of this indemnification agreement is held to be void or unenforceable by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect.

**VARIANCE FINDINGS TO ALLOW A 6-FOOT TALL FENCE  
TO BE LOCATED ON THE EAST (MULBERRY STREET) PROPERTY LINE**

1. The proposed variance is consistent with the findings for approval required by Zoning Ordinance Section 9264 D1 based on the following:
  - A. There are special circumstances related to the location and used of the site based in that 1) the site is located adjacent to Doolin Creek and has frontage on Mulberry Street which dead ends at the rear of the subject property 2) this section of Doolin Creek is known to be home to a transient homeless population that has the potential to cause damage to the community garden which has been the case with other community gardens located proximate to transient populations 3) creeks are also known to be home to animals that may cause damage to the garden or eat the plants and vegetables grown in the garden.

The use of the site as a community garden, the proximity to a transient population along Doolin Creek and the animals that are known to be present in creek settings create a combination of factors that deprive the property owner of the ability to establish and maintain and successful community garden without the installation of fence tall enough to prevent trespass and intrusion into the garden area.
  - B. The issuance of a variance would not result in the grant of special privilege since 1) as noted in item #1A above, the combination of the location adjacent to Doolin Creek, the homeless population known to frequent the area, the experience of theft and damage due to trespassing known to be associated with community gardens located proximate to homeless populations create a unique situation 2) other parcels in the area are allowed fences 3 feet in height to be located on the property line. However,

this height would not be adequate to prevent trespassing, theft, or incursion by animals.

Since, this combination of issues would likely not present itself again in a single application, this variance to allow a taller fence does not result in a grant of special privilege.

- C. The grant of the variance would not be detrimental to surrounding property owners in that 1) the fence setback location would allow for a larger community garden making the garden more successful, would by deter theft of the garden plantings, trespassing, and providing more “eyes on the street” 2) the garden would enhance the area by creating a well maintained “green space” in the area and by creating a sense of community, pride and ownership of the garden 3) the open style fence allows all areas of the garden to remain visible 4) allowing/requiring parts of the fence to be planted with flowers or vegetables would be enhance the appearance of the area and 5) the project is required to comply with all applicable local, state and federal regulations.
2. The proposed variance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15303, Section 15303 Class 3(e), New Construction or Conversion of Small Structures, which allows the construction of accessory structures and Section 15305, Class 5(a), Minor Alterations in Land Use Limitations, which allows variances in yard setbacks based on the following:
  - A. a 6-foot tall fence would enclose the garden which is consistent with the accessory structures exempted by Section 15303, Class 3(e); and
  - B. a section of the 6-foot tall fence that would enclose the garden would be located on the front property line rather than setback 15 feet as required by the zoning code and would not create a new parcel which is consistent with the setback variance exempted by Section 15305, Class 5(a).
3. A notice of public meeting for the proposed project was provided in the following manner as required by the Ukiah Municipal Code:
  - posted in three places on the project site on March 18, 2010;
  - mailed to property owners within 300 feet of the project site on March 17, 2010; and
  - published in the Ukiah Daily Journal on March 19, 2010.

**VARIANCE CONDITIONS OF APPROVAL TO ALLOW A 6-FOOT TALL FENCE TO BE LOCATED ON THE EAST (MULBERRY STREET) PROPERTY LINE**

1. Approval is granted to allow a 6-foot tall fence to be located on the Mulberry Street property line as shown on the site plan submitted to the Planning Department and date stamped February 18, 2010, except as modified by the following conditions of approval.
2. The approval of this variance is specific to the community garden use of the site.
3. The fence may not be relocated or extended except in such a manner as to be consistent with the zoning ordinance requirements for fence location and height.
4. At the time the community garden use of the site ceases, the section of the 6-foot tall fence located on the Mulberry Street property line shall be removed, relocated and/or modified to conform to the zoning ordinance requirements for fence location and fence height.

5. This approval is contingent upon agreement of the applicant and property owner and their agents, successors and heirs to defend, indemnify, release and hold harmless the City, its agents, officers, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities, the purpose of which is to attack, set aside, void or annul the approval of this application. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted by any person or entity, including the applicant, arising out of or in connection with the City's action on this application, whether or not there is concurrent passive or active negligence on the part of the City. If, for any reason any portion of this indemnification agreement is held to be void or unenforceable by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect.

**7. ADJOURNMENT**

There being no further business, the meeting was adjourned at 11:28 a.m.

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Charley Stump, Zoning Administrator

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Cathy Elawadly, Recording Secretary