

City of West Linn
PRE-APPLICATION CONFERENCE MEETING
SUMMARY NOTES
August 6, 2009

SUBJECT: Proposed Class II Variance for new garage partially in side street setback at 4693 Alder Street.

ATTENDEES: Quin Pond (applicant)
Staff: Tom Soppe (Planning), Dennis Wright (Engineering), Jim Whynot (Public Works Water Division) (Mr. Wright and Mr. Whynot attended only the first several minutes, to discuss the water line in the ROW)

The following is a summary of the meeting discussion provided to you from staff meeting notes. Additional information may be provided to address any "follow-up" items identified during the meeting. These comments are PRELIMINARY in nature. Please contact the Planning Department with any questions regarding approval criteria, submittal requirements, or any other planning-related items. Please note disclaimer statement below.

Project Details

The applicant's property is on the east side of Alder Street and has north side frontage on an undeveloped segment of Maple Street right of way (ROW). The property is in the R-4.5 zone, which has a side street setback of 15 feet. The required north side setback is considered to be the side street setback, not the interior side yard setback, as it abuts a ROW (even though the ROW is not developed as a street). The Maple Street undeveloped ROW actually dead ends at the east end of this property as the segment of Maple Street ROW between this property and Walnut Street (the next street to the east) has previously been vacated. Therefore it is incredibly unlikely that the Maple Street ROW alongside this property will ever be developed as a street. An apartment building lies across the Maple Street ROW from the subject property; the circular driveway for the apartment building traverses the westernmost section of the undeveloped ROW, at its commencement at Alder Street. Most of the other surrounding properties, like the subject property, contain single-family homes.

The applicant plans to build the garage in the approximate area where the carport now stands, however the garage would be larger than the current carport and would extend north towards the property line further than either the existing carport it would replace, and further north than the accessory structure east of the carport. The house is just south of this accessory structure.

The property has approximately 10,700 square feet in the R-4.5 zone. A historic lot line runs just south of the existing house, allowing the southern half of the lot to be divided into a separate developable lot via requesting the County to reimplement the line. This means the southern half of this lot is a lot of record that could be reestablished as a separate lot from the property and developed as such, without even going through the City's minor partition process.

Unless the garage for the existing house is developed on the southern half of the property, which would negate the possibility of reestablishing the historic lot unless the applicant would want to "give up" a new garage, the most logical place to put a garage is the general area where the

applicant proposes the garage. The house and existing accessory structure are at the rear of the property, with hardly any rear setback, so a garage behind these structures is not possible. Also, it would not be beneficial or functional to build a garage in front of the house as this would cut off the house's façade from the street itself and force the house's front windows to look out only at the rear of a very nearby garage.

The applicant should emphasize all of the above facts in his narrative responses to the variance criteria, particularly Criteria 1 regarding exceptional situations and Criteria 2 regarding the applicant's ability to fulfill the property rights those on most properties enjoy. The applicant should also emphasize why the garage needs to be the size it is proposed to be, i.e. why it needs to breach the 15-foot setback rather than be small enough to fit in the setback, in the context of these and the other four criteria.

The applicant should provide survey material showing the exact location of the property line, how far the existing structures are from the line, and how far the proposed garage will be from the line. There is a public water line along the north edge of the property, in the ROW. The applicant should have it located as part of the survey to determine if its location will conflict with the plan for the garage. There is a sewer line that also traverses the ROW, further north from the water line. The sewer line should not affect the plans as the garage will have to stay south of the water line whether a variance or street vacation is applied for or achieved, and the sewer line is north of the water line. The extent to which building the garage closer to the water line is feasible (via variance or street vacation) depends on the amount of setback the Public Works Department

Class II Variance

The approval criteria for a Class II Variance is strict. The applicant must meet all six criteria points in order to be approved. Per CDC Chapter 75, "*the approval authority shall deny the variance if any of the criteria are not met*":

1. *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, legally existing prior to the date of this ordinance, topography, or other circumstances over which the applicant has no control.*

2. *The variance is necessary for the preservation of a property right of the applicant, which is substantially the same as a right possessed by owners of other property in the same zone or vicinity.*

3. *The authorization of the variance will not be materially detrimental to the purposes and standards of this Code, will not be inconsistent with all other regulatory requirements, and will not conflict with the goals and policies of the West Linn Comprehensive Plan.*

4. *The variance request is the minimum variance, which would alleviate the exceptional and extraordinary circumstance.*

5. *The exceptional and extraordinary circumstance does not arise from the violation of this ordinance.*

The variance will not impose physical limitations on other properties or uses in the area, and will not impose physical limitations on future use of neighboring vacant or underdeveloped properties as authorized by the underlying zoning classification.

As indicated in the above discussion as well, criteria 1 and 2 will likely be the most challenging of the six, along with possibly Criteria 4 regarding whether the variance requested is the minimum variance necessary (i.e. why the garage needs to be this size). For Criteria 3, the applicant should research and list the relevant goals policies of the comprehensive plan regarding residential land use and other possibly appropriate topics and explain how this variance does not go against, or even how it helps fulfill, these goals and policies.

Street Vacation

Another option is for the applicant to apply for a street ROW vacation whereby the City would vacate this segment of the Maple Street ROW and the applicant would get title to half of the ROW. Maple is very unlikely to ever be developed as a street as areas east of this property have already been abandoned. The process takes about six months and requires a lot of leg work by the applicant plus a 2,500 dollar fee. This would add approximately 20 feet to the north side of the property, and make it so the setback for this side of the property is just 5 feet instead of 15 as it would be an interior side yard not a street side yard. An easement for the water line in the ROW would have to be granted as part of the vacation; there could be no development atop the easement.

Oregon Revised Statute 271 explains the process:

VACATION

271.080 Vacation in incorporated cities; petition; consent of property owners. (1)

Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefore setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.

(2) There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing. [Amended by 1999 c.866 §2] (note all signatures of consent must be notarized)

271.090 Filing of petition; notice. *The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition.*

271.100 Action by city governing body. *The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the*

petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition.

271.110 Notice of hearing. (1) *The city recorder or other recording officer of the city shall give notice of the petition and hearing by publishing a notice in the city official newspaper once each week for two consecutive weeks prior to the hearing. If no newspaper is published in such city, written notice of the petition and hearing shall be posted in three of the most public places in the city. The notices shall describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the petition, and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered.*

(2) *Within five days after the first day of publication of the notice, the city recording officer shall cause to be posted at or near each end of the proposed vacation a copy of the notice, which shall be headed, "Notice of Street Vacation," "Notice of Plat Vacation" or "Notice of Plat and Street Vacation," as the case may be. The notice shall be posted in at least two conspicuous places in the proposed vacation area. The posting and first day of publication of such notice shall be at least 14 days before the hearing.*

(3) *The city recording officer shall, before publishing such notice, obtain from the petitioners a sum sufficient to cover the cost of publication, posting and other anticipated expenses. The city recording officer shall hold the sum so obtained until the actual cost has been ascertained, when the amount of the cost shall be paid into the city treasury and any surplus refunded to the depositor. [Amended by 1991 c.629 §1; 2005 c.22 §196]*

Also, 271.140 states, "The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city." This implies that, despite that the applicant's property already includes part of the originally platted Maple Street ROW, the street vacation would split in half the current ROW, giving the applicant 20 feet (rather than just giving the applicant a few more feet than he currently owns based on the original center of the ROW).

Process

If the variance is selected then the submittal requirements and approval criteria of CDC Chapters 75. The West Linn Planning Commission decides Class II Variance cases. The application would include site plan to scale plus architectural drawings showing the proposed footprint relative to all property lines. The fee is 1800 dollars.

If a street vacation is selected then the procedures of ORS 271 would be followed. Staff can help you with this determination of the "affected property". The West Linn City Council decides ROW vacations. The fee is 2,500 dollars. It takes about six months to go through this process.

Once the application is complete, the application will go before the appropriate decision making authority after public notice. Building permits can be issued if decisions of approval are rendered and after a 14 day appeal period has been exhausted. If approved, the applicant has three years to initiate construction in the case of a variance and non conforming structure, and thereafter, the building permit is valid so long as substantial progress is being made towards completion of the permitted construction.

Typical land use applications usually take 2-6 months from beginning to end.

DISCLAIMER: This summary discussion covers issues identified to date. It does not imply that these are the only issues. The burden of proof is on the applicant to demonstrate that all approval criteria have been met. These notes do not constitute an endorsement of the proposed application. Staff responses are based on limited material presented at this pre-application meeting. New issues, requirements, etc. could emerge as the application is developed. Please note that these notes have a limited “shelf life” of about one to two years and may be eclipsed at any time by new code amendments or other regulations and laws.

p:/devrvw/pre-apps/8-5-09/PA-09-11 Alder variance