



CITY OF

West Linn

Memorandum

Date: April 30, 2009

To: Planning Commission

From: Chris Kerr, Acting Planning Director

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by 'Kerr', enclosed in a circular scribble.

Subject: Additional correspondence on Parker Crest Variances

For the record, attached is additional public testimony on this item which was received by Staff after the Staff Report was prepared.



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April 23, 2009

VIA EMAIL

Mr. Chris Kerr
Interim Planning Director
City of West Linn Planning and Building Department
22500 Salamo Road, Suite 1000
West Linn, OR 97068

Re: My Client, D.R. Horton — Parker Crest Subdivision Variances

Dear Chris:

I am writing to respond to the comments from Mr. Bill Relyea of the Parker Crest Neighborhood Association (the "Association") in a letter to the City of West Linn dated March 16, 2009.¹ The comments represent a fundamental misunderstanding of why the frontyard setback encroachments occurred and the effect of those encroachments.

First, and there is no dispute about this, D.R. Horton made a mistake — it inadvertently located four single family homes within the 20 foot front yard setback required by the R-7 zoning district. Horton acknowledges that this was a mistake and has since instituted practices to avoid this happening in the future. However, Horton also sent "hub and tack" surveys to the City showing the setbacks prior to completing the homes.

Second, the encroachments into the required frontyard setbacks did not result in larger homes than would otherwise be allowed in the R-7 zoning district. Each of the homes continues to meet the lot coverage standard of 40% in the R-7 zoning district. Each of

¹ The March 16, 2009 letter from William Relyea, President of the Parker Crest Neighborhood Association, does not state that the Association authorized Mr. Relyea to send the letter. As you know, I made several offers to appear before the Association but my offers were not accepted.

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the homes has a larger rear yard setback than is otherwise required. In other words, the City can find that the total amount of perimeter setbacks on these lots required by the R-7 zoning district is still provided, albeit in the form of a larger rear yard setback and a reduced front yard setback. However, the reduced front yard setbacks did not result in larger homes. The homes placed on these lots were not larger than would otherwise be allowed in the R-7 zoning district if the required setbacks had been met.

Third, the areas of the encroachments are quite small. The amount of the encroachment within the required front yard setback of each lot is shown below:

Lot 1 = 4' 5"
Lot 3 = 4'
Lot 28 = 3' 6"
Lot 17 = 1' 2"

Horton has proposed landscaping mitigation addressing the reduced front yard setbacks. It has proposed enhanced frontyard landscaping for each of the four lots (assuming that Horton can receive permission from the owner of Lot 1 for enhanced landscaping on that lot), and has proposed additional landscaping within a common tract in the Parker Crest Subdivision to ameliorate any adverse impacts from the reduced setbacks. This will adequately address whatever impacts have occurred from the reduced setbacks.

There are no adverse impacts from the reduced front yard setbacks. If the property line were on the front of the sidewalk rather than on the back of the sidewalk, then each lot would meet the required front yard setback. The point is that most people do not know where the property line is (in this case, as noted above, it is on the back of the sidewalk), and most people walking along the public street would be unable to see any difference between these four lots and any other lots in the Parker Crest Subdivision, let alone discern any adverse impact.

The above information shows that Horton did not knowingly and intentionally violate the setbacks. Since the houses are the same size as if the front yard setbacks had been met, there is no possibility that Horton profited from the encroachments.

Additionally, there is no requirement for a "cost/benefit" analysis. Horton has not received additional value; if anything, the cost of these variances has reduced the profitability of these homes.

Mr. Chris Kerr
April 23, 2009
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We appreciate the time that the Association took in reviewing the applications, and we hope that it will support the variances with appropriate mitigation. As always, we remain willing to meet with the Association at any time.

Very truly yours,



Michael C. Robinson

MCR:cfr

Enclosure

cc: Mr. Jimmy Luker (w/encl.) (via email)
Ms. Melissa Trunnell (w/encl.) (via email)
Mr. William Relyea (w/encl.) (via email)
Mr. Jeff Smith (w/encl.) (via email)



PARKER CREST NEIGHBORHOOD ASSOCIATION

Subject: Land Use Pre-Application Meeting

Case : PA-09-04

Type: One Class I Variance and three Class II Variances to non-garage front yard setback standard for (4) lots in Parker Crest

Address: 2921 Winkel Way; 2977 Winkel Way; 2982 Winkel Way; 2998 Winkel Way

Applicant Name: Jeff Smith and Michael Robinson

Date: March 16, 2009

Dear Mr. Kerr,

The applicants have filed a variance request for the properties listed above. The file appears complete. The issue raised within the variance request is in part premised upon the need to allow the variance, because the properties are already built, and a cost benefit analysis does not justify demolition of the houses in order to meet the code.

The variance request raises multiple questions about how a property could move through the permitting process, when the properties are not in conformance with the current CDC requirements. These questions will need to be addressed by City staff and appropriate steps taken to ensure that future developments are not impacted by this issue. Analysis of the variance issue, brings the Parker Crest Neighborhood Association (PCNA) to the conclusion that the developer benefited from the act of building the property in a non-conforming manner. The developer makes reference to the non-conformance and states that they were not aware of the non-conformance, until after the homes were built. In response the PCNA poses that it is the developers responsibility to know the requirements and conform to them prior to permitting and building.

The PCNA community should receive a benefit in exchange for the enrichment that the developer has received. The developer has posed that mitigation can take place by increasing front yard landscaping on other lots within the subdivision. This proposed mitigation would be a benefit to the developer, and not the community.

The PCNA proposes that the city take into account the total square footage of the house as built and compare it to the total square footage of the house, as it would have been built had the developer conformed to the code. The delta in the square footage represents a known value, upon which restitution can be made in the form of capital. The PCNA in conjunction with the City would then utilize the capital for infrastructure improvements within the PCNA, per our Neighborhood Development Plan.

Best regards,

William Relyea, President

Parker Crest Neighborhood Association (PCNA)

Cc: PCNA; City of West Linn, Planning Department; City of West Linn Planning Commission; City of West Linn, City Manager, Chris Jordan; Jeff Smith and Michael Robinson

Kerr, Chris

From: Hidden Springs Neighborhood Assoc. [WLHSNA@msn.com]
Sent: Thursday, April 23, 2009 1:43 PM
To: Kerr, Chris
Subject: Re: Planning Commission Agenda for May 6, 2009

Hello Chris,

Thank you for your prompt and helpful reply.

Cordially,

Lynn Fox, President
Hidden Springs NA

----- Original Message -----

From: Kerr, Chris
To: Hidden Springs Neighborhood Assoc. ; Zak, Teresa
Cc: City Council ; Jordan, Chris
Sent: Thursday, April 23, 2009 9:33 AM
Subject: RE: Planning Commission Agenda for May 6, 2009

Good morning Lynn -

I have added my responses to your questions below. Call me with any questions or clarifications.

I will put your comments into the public record. Thanks

*Chris Kerr
723-2538*

From: Hidden Springs Neighborhood Assoc. [mailto:WLHSNA@msn.com]
Sent: Wednesday, April 22, 2009 10:07 PM
To: Zak, Teresa
Cc: City Council; Kerr, Chris
Subject: Re: Planning Commission Agenda for May 6, 2009

Hello Ms. Zak,

If I understand the agenda and attachments correctly regarding VAR 09-04,09-05 and 09-06 scheduled for the May 6,2009 meeting of the Planning Commission, the applicant that received approval to build three homes on Winkler Way is requesting variances. Apparently the developer made significant mistakes in setback measurements and inadvertently reduced the front setbacks from the required 20 feet to 16.5 feet, a change of over 15% in front yard setback space required by the CDC. It appears the original applicant is proposing that the city reward this mistake by providing a variance that has apparently received approval from the Director of the Park and Recreation Department.

There have been several questions which I would appreciate assistance in answering.

1.) Does the Planning Department or the Public Works Department periodically inspect approved developments during the course of construction? [**Kerr, Chris**] Yes, the Building Dept.

completes various inspections during the course of construction, depending on the type of permit.

2.) Is it the function of the Director of Park and Recreation to provide evaluation and approval regarding a CDC violation of a front yard setback? **[Kerr, Chris]** No, that Department is not involved.

3.) When there has been a violation of a plan approved by the planning commission, what is the process to address the violation and are there generally fines involved? **[Kerr, Chris]** Permits should be consistent with the plans approved by the planning commission. Violations are addressed by notifying the offending party of the violation and requiring them to come into compliance. Fines can be imposed for certain violations, but it is rare.

4.) If there is a construction error larger than 10% of the approved application, is it necessary to apply for a new permit and approval from the Planning Commission? **[Kerr, Chris]** Not sure I understand this question. If an applicant wants to modify their plans from the plan that was approved by the PC (or CC) the CDC has a process to do so - and it may involve returning to the Planning Commission.

5.) Could the current request for variances to legitimize these mistakes set a precedent and create expectations that future violations of the CDC would be rewarded with a variance? **[Kerr, Chris]** No. Could future developers that are not granted variances to legitimize their oversights seek legal redress against the City? **[Kerr, Chris]** Not sure I understand this question, But keep in mind that every applicant always has the opportunity to appeal a land use decision made by the City. Could granting the currently requested variances place the city at risk for future litigation and legal costs which the tax payers would have to absorb? **[Kerr, Chris]** No more so than any other land use decision.

There are current and potential developments that impact the Suncrest, Carriage Way, Hidden Springs, Churchill Downs Way, Bay Meadows, Martin Court, Hidden Springs Court and Furlong areas of HSNA. The orderly development of these areas is of much interest to local residents. They would like to know which department is responsible for providing the necessary oversight during construction, how to assure compliance with the decisions of the Planning Commission and the process for addressing issues like those regarding the Winkler Way properties. **[Kerr, Chris]** I think I've answered these in my responses above - but the scope may be going beyond the variance applications being reviewed on Winkle Way. If you have specific questions about these other projects, give me a call about your concerns and questions.

Thank you for your assistance regarding this matter.

Cordially,

Lynn Fox, President
Hidden Springs NA

----- Original Message -----

From: Zak, Teresa

Sent: Wednesday, April 22, 2009 9:36 AM

Subject: Planning Commission Agenda for May 6, 2009

Good Morning,

You will find the City web site has been updated with the Planning Commission agenda and associated projects for the meeting of May 6, 2009.

Thank you.

*Teresa Zak
City of West Linn
Planning Department Administrative Assistant
503.723.2533
tzak@westlinnmoregon.gov*