

**WEST LINN CITY COUNCIL
FINAL DECISION ON REMAND REQUEST AND FINDINGS**

AP-14-02/ZC-14-02

**IN THE MATTER OF A REQUEST TO REMAND
AP-14-02 AND ZC-14-02 TO THE HRB.**

I. Procedural History

In August 2014, the applicant completed applications for: 1) a request to remove the historic resource designation and remove the property from the historic district zone, and 2) a design review application for a porch addition, rear dormer addition, window replacement, and garage replacement.

The Historic Review Board (“HRB”) held a public hearing on October 21, 2014. At the hearing, staff provided a staff report and gave a presentation recommending that the HRB: 1) deny the applicant’s request to remove the property from the historic district, 2) approve the rear porch addition and dormer addition with conditions, and 3) deny the applicant’s proposals for window and garage replacement. During the hearing the applicant submitted additional photographic evidence to demonstrate that the windows had deteriorated, justifying replacement of the windows.

Following the public hearing, the HRB evaluated the applications and the criteria and: 1) recommended denial of applicant’s request to remove the property from the historic district, 2) approved the rear porch addition and dormer addition subject to conditions, 3) approved the window replacement, and 4) denied the garage replacement. The applicant appealed the final HRB decision denying the design review application for the rear dormer addition and the garage replacement, and the applicant requested in the appeal application that the Council send the decision back to the HRB. The recommendation on the zone change was consolidated with the design review appeal so that a hearing on both applications could be held at the same time.

The appellant appealed the design review decision on the grounds that the HRB erred by including the condition of approval related to the dormer because other conditions would have allowed approval of the dormer. The appellant also stated that they have “better information” to present to the HRB that may allow the HRB “to reach a different conclusion.” Appeal application, 3.

II. The Record

At the October 21, 2014, hearing the record was finalized. The record includes the file from AC-14-02 and ZC-14-02.

III. Limited Scope of Proceeding - Consideration of Remand

The scope of this proceeding is limited to the decision of whether these applications should be remanded to the Historic Review Board. An additional hearing on the merits will be scheduled for June if the appellant's remand request is not granted.

IV. Findings of Fact

- A. The Procedural History set forth above is true and correct.
- B. The appellant is Lonny and Kristine Webb.
- C. The Council finds that it has received all information necessary to make a decision based on the Agenda Report; public comment, if any; evidence in the whole record, including any exhibits received at the HRB hearing; and the findings below.

V. Findings and Determinations

An approval authority may remand a decision if it is satisfied that "testimony or other evidence could not have been presented or was not available at the hearing." CDC 99.290(C). The CDC also specifies five factors that an approval authority can consider and address when making a remand decision. These findings will address each of the factors.

A. CDC 99.290(C)(1): The prejudice to parties.

The appellant is also the applicant, and the appellant is requesting the remand. There is nothing to suggest that the appellant will be prejudiced if a remand is granted; in fact, it is more likely that the appellant would be prejudiced if the remand is *not* granted because the appellant has stated that there is additional evidence that is relevant to these applications. From the appeal application and the April 20, 2015, submitted on behalf of the applicant, it appears that there is additional testimony and evidence that was not available at the first evidentiary hearing, that the applicant would like to submit. The remand will also allow the HRB to make a specific recommendation on removal of the property from the historic district under ORS 197.772(3), which may require additional evidence to be submitted into the record.

The City will not be prejudiced because the appellant has granted an extension to allow the City an opportunity to complete its review of the applications. Staff supports the remand and finds that the parties will not be prejudiced by a remand.

B. CDC 99.290(C)(2): The convenience or availability of evidence at the time of the initial hearing.

From the appeal application and the April 20, 2015, letter submitted on behalf of the applicant, it appears that there is additional testimony and evidence that was not available at the first evidentiary hearing that the applicant would like to submit. The appellants believed that there would be an additional opportunity to present evidence and may not have submitted all relevant evidence at the October 21, 2014, hearing. The appeal application references additional evidence regarding the rear dormer addition that could have been presented to show alternative ways that the dormer could be modified to meet the criteria; however, those alternative designs were not presented at the time of the initial hearing.

Similarly, the appellants have obtained some relevant records to the zone change application that were not available at the time of the initial hearing. The City also has additional records that had not been located at the time of the initial hearing. Staff finds that there are records that had not been located and were unavailable at the time of the initial hearing.

C. *CDC 99.290(C)(3): The surprise to opposing parties.*

Staff finds that the remand would not be a surprise to opposing parties because staff is unaware of any opposing parties, and the appellant and the City are both in favor of a remand.

D. *CDC 99.290(C)(4): The date notice was given to other parties as to an attempt to admit.*

Public notice was mailed to the Willamette Neighborhood Association and to affected property owners on October 1, 2014, approximately 20 days prior to the hearing. Notice was also published in the newspaper and by posting the site on October 9, 2014, and October 10, 2014, respectively. If the remand is granted, the public hearing will be re-noticed in the same way, which will afford all interested parties the same opportunity to submit evidence. Staff finds that all parties had an opportunity to submit evidence, and that a remand hearing will provide an additional opportunity to admit evidence.

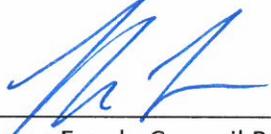
E. *CDC 99.290(C)(5): The competency, relevancy, and materiality of the proposed testimony or other evidence.*

Although the new evidence has not been received by the City, it appears from the appeal application and the April 20 letter that the appellants have evidence of other alternatives to the condition of approval regarding the rear dormer, as well as alternatives to the large garage. This evidence would be relevant and material to the HRB's decisions regarding the each of these decisions. In addition, relevant records related to the historic district designation have also

been obtained that may be material to the zone change decision. Staff finds that the types of records described here are relevant and material to the design review application and the zone change application.

VI. ORDER

The City Council concludes that the request for a remand of applications AP-14-02 and ZC-14-02 is justified to allow relevant and material evidence that was not presented or was not available at the October 21, 2014, to be submitted. Accordingly, based on the above Findings of Fact and conclusions of law, the appeal application, and the April 20 letter, the City Council orders a remand of AP-14-02 and ZC-14-02 to the Historic Review Board to allow additional evidence to be submitted on the rear dormer addition, garage replacement, and zone change.



Thomas Frank, Council President
WEST LINN CITY COUNCIL



DATE