

Memorandum

Date: May 10, 2017
To: West Linn Planning Commission
From: Jennifer Arnold, Associate Planner
Subject: Public Testimony for West Linn Planning Commission Public Hearing-Continued
DR-17-01

On April 19, 2017 the Planning Commission held a public hearing for DR-17-01, 2 story commercial building at 0 Willamette Falls Drive (adjacent to 1754). Before closing the record, a continuance was requested and granted as follows:

From April 19, 2017 to April 26, 2017 at 5pm (first 7 day period) the record was held open for new testimony and evidence. This recognized rights for opponents to respond and the applicant to rebut.

From April 27, 2017 to May 3, 2017 (second 7 day period) is open for the public to rebut testimony submitted during the first 7 day period. No new evidence will be accepted during this time.

May 4, 2017 to May 10, 2017 is open for the applicant's final rebuttal of testimony submitted. No new evidence will be accepted during this time.

Attached you will find the public testimony submitted during the third 7 day period (May 4, 2017 to May 10, 2017).

Also, attached is an untimely submission of written testimony. On April 26, 2017 Staff received written testimony in support of the application by Matthew A. Roane, DMD. The submission was received after the 5pm deadline (emailed 9:05pm). It is the Staff recommendation to not include this testimony as part of the record.

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May 10, 2017

VIA EMAIL (SENT BEFORE 5:00 PM)

Mr. Gary Walvatne, Chair
West Linn Planning Commission
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

**Re: City of West Linn File No. DR-17-01; Applicant's Final Written Argument
(Sent Before 5 pm)**

Dear Chair Walvatne and Members of the West Linn Planning Commission:

This office represents Trent and Jenny Doman and PNW Properties (the "Applicant"). This letter is the Applicant's final written argument. This letter contains no new evidence.

This letter addresses the primary issues before the Planning Commission: removal of two (2) significant trees, satisfaction of the relevant approval criteria in West Linn Community Development Code ("CDC") Chapters 55 and 58, reconciliation of the two (2) chapters and giving effect to the Historic Review Board's ("HRB") unanimous recommendation to the Planning Commission that this Design Review application be approved.

- 1. The site contains two significant trees and the Applicant has demonstrated that the criteria for removal of the trees under CDC Chapter 55 have been satisfied; further, the issue of tree ownership is not before the Planning Commission under the approval criteria in CDC Chapter 55.**

The record shows that of the three (3) trees on the property, the two (2) rear trees have been deemed significant by City Arborist Mike Perkins. Only the removal of the two (2) significant trees may be regulated by the Planning Commission pursuant to CDC Chapter 55. The third tree, the tree closest to the street, is not a significant tree and is not subject to regulation under CDC Chapter 55. Substantial evidence in the whole record demonstrates that the Applicant has satisfied the requirement for significant tree removal under CDC Chapter 55.

The Applicant has argued, and the City Attorney has advised the Planning Commission, that the tree ownership dispute between the two (2) neighboring property owners may not be resolved by the Planning Commission. As the City Attorney has noted, nothing in the CDC allows the Planning Commission to determine the ownership of the trees. The Applicant believes that it has the better argument regarding the tree ownership issue but resolution of this matter will occur outside the Planning Commission's jurisdiction. The Applicant will commit to reaching out to Mr. Sutherland prior to removal of the trees to attempt to resolve the dispute.

Finally, the Applicant agrees with the recommended condition of approval in the City Attorney's May 2, 2017 memorandum.

The Applicant requests that the Planning Commission find that the criteria for tree removal in CDC 55.100.2.b. are satisfied and that the tree ownership issue will be resolved between the two (2) parties outside of the land use proceeding.

2. The Planning Commission should give significant weight and deference to the HRB's unanimous recommendation that this Design Review application be approved.

The HRB fulfills the unique and specialized role of providing expertise in the analysis of Design Review applications in the Willamette Falls Drive Commercial Design District. Because of this, the Planning Commission should give significant weight to the HRB's unanimous recommendation that the Planning Commission approve this Design Review application. Not doing so fails to give effect to the City Council's decision that the HRB is the expert body on Design Review applications for this area. The Planning Commission is not bound to defer to the HRB but failing to do so is contrary to the intent of the CDC in establishing the HRB's unique and specialized rule.

3. The Planning Commission should find that where there is a conflict between CDC Chapters 55 and 58, CDC Chapter 58 controls.

The CDC requires this Design Review application to be subject to applicable approval criteria in both CDC Chapters 55 and 58.

CDC 58.010, "Purpose," of the Willamette Falls Drive Commercial Design District lists five (5) purposes that CDC Chapter 58 implements. All of the purposes are specifically directed to buildings in the Willamette Falls Drive Commercial Design District, such as this proposed building. Failing to give effect to CDC Chapter 58 where there is a conflict with CDC Chapter 55 undermines the purposes of CDC Chapter 58.

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Additionally, CDC 58.090.A, "Standards," provides that approval standards for the Willamette Falls Drive Commercial Design District are "needed to provide a *clear and objective* list of design elements that are needed to bring new construction . . . into conformance with 1880-1915 architecture." (Emphasis added.) Thus, unlike CDC Chapter 55, which is highly subjective, CDC Chapter 58 applies clear and objective (i.e., no discretion) to the approval standards. For this reason, the Planning Commission must give effect to the clear and objective standards in CDC Chapter 58 and, where conflicting subjective standards in CDC Chapter 55 might apply, not give effect to those conflicting standards.

The City Council clearly intended that buildings in the Willamette Falls Drive Commercial Design District have a unique architectural appearance, which is achieved by the application of the clear and objective approval criteria in CDC Chapter 58. Giving effect to conflicting and subjective provisions from CDC Chapter 55 thwarts the City Council's intent and fails to achieve the purposes of the Willamette Falls Drive Commercial Design District.

4. The adjacent bungalows are non-conforming structures and the Planning Commission should not apply the compatibility standard in CDC 55.100.6.a.

The bungalows on either side of this proposed building are non-conforming structures because they do not comply with CDC Chapter 58. The correct approval standard is the application of CDC Chapter 58 and the Planning Commission should not require a new building to conform to the appearance of non-conforming structures.

Additionally, the Planning Commission should not apply CDC 55.100.6.a. to this application because it contains the subjective standard of "compatibility", which is contrary to CDC Chapter 58's requirement that "clear and objective" criteria be applied to proposed structures in the Willamette Falls Drive Commercial Design District.

5. Conclusion

The Applicant appreciates the Planning Commission's consideration of its arguments. The Planning Commission's role as the decision maker is to apply substantial evidence to the approval criteria and make a decision based only on that analysis. Arguments unrelated to the approval criteria are not relevant to the Planning Commission's decisionmaking role. In this case, substantial evidence in the whole record supports the staff's recommendation for approval and the HRB's unanimous recommendation for approval that this application has satisfied the applicable approval criteria for the Design Review and variance requests. For these reasons, the Applicant respectfully requests that the Planning Commission approve the application with the

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recommended conditions of approval, including the additional condition of approval recommended by the City Attorney.

Very truly yours,



Michael C. Robinson

MCR:rsr

cc: Mr. and Mrs. Trent Doman (via email)
Mr. Scot Sutton (via email)
Mr. Kevin Godwin (via email)
Mr. Seth King (via email)
Ms. Jennifer Arnold (via email)
Mr. Dan Olsen (via email)

Arnold, Jennifer

From: Matt Roane <mattroane@gmail.com>
Sent: Wednesday, April 26, 2017 9:05 PM
To: Arnold, Jennifer
Subject: Reference DR-17-01

To Whom it may concern,

I am writing in favor of the building project referenced as DR-17-01.

I am a resident of West Linn and also own a dental practice in the Historic Willamette District of West Linn.

It is my understanding that the proposed building project by Mr. Trent Doman is in line with the Historic Willamette District code 58. As one who is personally interested in the commercial future of this area of West Linn I strongly encourage the members of the board to allow the building project to go forward as planned.

Please feel free to contact me with any questions,

Regards,

Matthew A. Roane, DMD