



CITY OF
West Linn

22500 Salamo Road
West Linn, OR 97068

**STAFF REPORT
FOR THE CITY COUNCIL**

FILE NUMBER: AP-17-02

HEARING DATE: September 11, 2017

REQUEST: Appeal of the Planning Manager decision to approve a Lot Line Adjustment (LLA-17-04) and two Class I Variances (VAR-17-02) (VAR-17-03)

APPLICABLE CRITERIA UNDER APPEAL: Community Development Code (CDC):
 CDC 25.070.B(1)(a)
 CDC 25.070.C(6)
 CDC 85.210 Diagram
 CDC 85.210.A.3
 CDC 99.030.C.2

STAFF REPORT PREPARED BY: Jennifer Arnold, Associate Planner

Planning Manager Review AB

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GENERAL INFORMATION

APPELLANT: Jerry Offer (Neighbors of 1822 5th Avenue)
1825 5th Avenue
West Linn, OR 97068

APPEAL DEADLINE: The appeal deadline was 5:00 p.m. on August 8, 2017. The appellant filed the appeal application at 2:05 p.m. on August 8, 2017, thus meeting the deadline.

PUBLIC NOTICE: Public notice was mailed to all persons with standing, neighborhood associations, and property owners within 500-feet on August 22, 2017. The property was posted with a notice sign on August 24, 2017. The notice was published in the West Linn Tidings on August 31, 2017. The notice requirements of CDC Chapter 99 have been met. In addition, the application was posted on the City's website August 22, 2017.

SITE LOCATION: 1822 5th Avenue

LEGAL DESCRIPTION: Clackamas County Assessor's Map 3S-1E-02BA, Tax lot 6800

SITE SIZE: 10,000 square feet

ZONING: R-5 (single family residential detached and attached/duplex, R-5; 5,000 square foot minimum lot size)

COMP PLAN DESIGNATION: Medium Density Residential

OWNER: Elizabeth Warren
1822 5th Avenue
West Linn, OR 97068

APPLICANT: Phill Chek & Associates
148 B Avenue; Suite 100
Lake Oswego, OR 97034

120-DAY PERIOD: This approved application became complete on June 8, 2017. The 120-day maximum application-processing period ends on October 6, 2017.

BACKGROUND

Phil Chek submitted a land use application in May 2017 for a lot line adjustment and two class I variances to lot dimensional standards. This application was deemed complete on June 8, 2017. The request required approval by the West Linn Planning Manager for a Lot Line Adjustment (LLA-17-04) and two Class I Variances (VAR-17-02 and VAR-17-03). The Planning Manager approved the application on July 25, 2017.

The proposed lot line adjustment (LLA) involved two historical lots (referred to collectively for taxation purposes only as tax lot 6800). Although, these lots have been under single ownership for many years, ORS 92.017 a lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. The original decision (LLA 17-04) identified the historical lots record as contained in Willamette Falls Subdivision Block 12 and are Lots 7 and 8. The proposed LLA will move the common lot line to allow for a more functional building envelope(s) on the eastern most lot (Lot 2), and for the existing historical home to meet the east side yard setback requirements. The applicant is requesting two Class I variances. The first Class I variance request is to reduce the minimum lot size by 5% on proposed lot 2. The second Class I variance is to reduce the minimum lot width by 10% on proposed lot 2. These requests are to insure proposed lot 2 meets the dimensional standards and other provisions of the underlying R-5 zone. Proposed lot 2 is currently vacant of any structures.

PROCEDURAL HISTORY

The applicant (LLA 17-04, VAR 17-02 & VAR 17-03) submitted their application on May 11, 2017 and on May 30, 2017 the application was deemed incomplete. The applicant submitted additional materials on June 6, 2017 and the application was deemed complete on June 8, 2017.

The West Linn Planning Manager signed a decision on July 25, 2017 for a Lot Line Adjustment and two Class I variances to lot dimension standards. There is no public hearing for Planning Manager decisions. Notice was sent out to all property owners within 300 feet of the subject property and to Neighborhood Association Presidents on June 27, 2017. Notice was also posted on the City's website and a sign was posted on the subject property.

On July 25, 2017, the Planning Manager approved the applicant proposal by finding compliance with the applicable criteria (Exhibit CC-1):

- Chapter 13, Single-Family Residential Detached and attached/Duplex, R-5;
- Chapter 85, General Provisions for Land Division;
- Chapter 75, Variances and Special Waivers;

The appellant (AP-17-02) met the application requirements by referencing the application to be appealed, providing a statement of standing, paying the required fee, and identifying the applicable approval criteria that were misapplied. The appellant did not identify grounds for a procedural irregularity, nor did the appellant request the Council re-open the record.

ANALYSIS

In this analysis, staff has provided the provisions of the West Linn Community Development Code the appellant contends were misapplied, with a summary of the record regarding each provision, including appellant arguments and associated findings or a reference to where the information can be found in the record.

APPROVAL CRITERIA #1 CONTENDED TO BE MISAPPLIED

99.030 APPLICATION PROCESS: WHO MAY APPLY, PRE-APPLICATION CONFERENCE, REQUIREMENTS, REFUSAL OF APPLICATION, FEES

...

99.030.C.2 THE REQUIREMENTS FOR MAKING AN APPLICATION.

2. The application shall be complete and shall contain the information requested on the form, shall address the appropriate submittal requirements and approval criteria in sufficient detail for review and action, and shall be accompanied by the deposit or fee required by CDC 99.033. No application will be accepted if not accompanied by the required fee or deposit. In the event an additional deposit is required by CDC 99.033 and not provided within the time required, the application shall be rejected without further processing or deliberation and all application materials shall be returned to the applicant, notwithstanding any determination of completeness. (Ord. 1527, 2005; Ord. 1568, 2008; Ord. 1590 § 1, 2009; Ord. 1599 § 6, 2011; Ord. 1614 § 14, 2013; Ord. 1622 § 30, 3014; Ord. 1635 § 36, 2014; Ord. 1636 § 60, 2014; Ord. 1638 § 3, 2015)

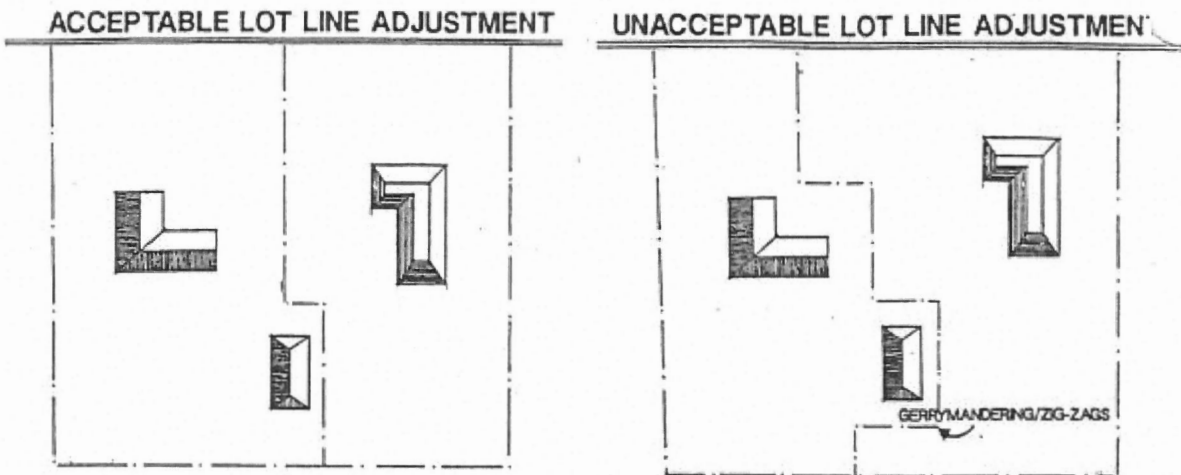
The appellant contends applicant did not submit a narrative addressing all of the approval criteria of CDC 85.210 and that the statements given in the narrative were conclusory to the other approval standards. The appellant believes these conclusory statements do not satisfy the applicant's burden of proof.

The appellants rely on testimony submitted by The Neighbors of 1822 5th Avenue (a group of 14 neighbors) contending that the proposed Lot Line Adjustment application did not contain necessary information to address the approval criteria. The appellant believes that since the criteria was not addressed in the narrative the application should be denied. The Neighbors of 1822 5th Avenue submitted their analysis dated July 10, 2017 which can be found in the record and also in attached Exhibit CC-1 of this staff report.

A completeness determination dated May 30, 2017 stated approval criteria was missing from the narrative and the application was deemed incomplete. The applicant submitted information addressing necessary approval criteria cited in the May 30, 2017 letter on June 6, 2017. A completeness determination dated June 8, 2017 deemed the application complete. The completeness determination dated June 8, 2017 is in the record and also in attached Exhibit CC-1. The completeness determination dated May 30, 2017 is in attached Exhibit CC-2.

APPROVAL CRITERIA #2 CONTENDED TO BE MISAPPLIED

85.210 PROPERTY LINE ADJUSTMENTS – APPROVAL STANDARDS. (Diagram)



The appellant contends the proposed lot line is too similar to the diagram under 'Unacceptable Lot Line Adjustment' with seven line segments. The appellant also contends that the 'unacceptable lot line adjustment' diagram and the proposed lot line adjustment contain seven (7) segments, making the proposed lot line adjustment unacceptable.

The Planning Manager's approved findings are found in the Staff Report dated July 25, 2017. Staff Finding 6 addresses the diagram as follows:

Staff Finding 6: The provisions of ORS 92 are met by this LLA application. ORS 92.010 Definitions for ORS 92.010 to 92.192 defines LLA or property line adjustment as follows:

(12) "Property line adjustment" means a relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel.

This LLA meets the ORS definition in that the existing lot lines are being relocated and no additional parcel is created. All lots meet the dimensional standards of the underlying R-5 zone with the requested Class I variances.

In 2014, Ordinance 1635 was adopted by the West Linn City Council. This ordinance removed approval criteria related to 'Acceptable Lot Line Adjustment' and 'Unacceptable Lot Line Adjustment.' See the amendment below:

~~4. The lot lines shall be generally straight with only a few deviations. Lot lines shall not gerrymander or excessively zigzag long to accommodate tool sheds, accessory structures, other buildings, etc. The figure below serves as a guide to lot line adjustments.~~

Research on this legislation found the intent was to remove the two diagrams referred to in this subsection. However, removal of the diagrams was overlooked in publication. Since the intent was removal of the criteria and the diagrams, these criteria have been deleted and are no longer applicable.

Even if the diagrams were retained, the graphics standing alone are not clear enough to apply as criteria. It therefore cannot be a basis for denial.

The criteria has been satisfied.

Ordinance 1635 was approved in December 2014. This Ordinance removed the language associated with the diagrams referenced by the appellant. Without the associated approval code criteria, Staff could not deny the application.

The appellant also asserts that the Planning Manager made a legislative decision in a quasi-judicial decision. Below is an excerpt from the appellant's submittal:

...

In addition, we assert that the Planning Manager has over-stepped his bounds in interpreting that the intent of the 2014 City Council to remove the acceptable/unacceptable diagram of Section 85.210 or to determine that "[E]ven if the diagrams were retained, the graphics standing alone are not clear enough to apply as criteria."

...

CDC 01.060 INTERPRETATION

- A. *The Planning Director shall have the initial authority and responsibility to interpret all terms, provisions and requirements of this code.*

...

CDC 99.060 APPROVAL AUTHORITY

- A. *Planning Director authority.* *The Planning Director shall have the authority to:*

...

- 3. *Make initial interpretations of the provisions of the code.*

...

The Planning Manager has the authority to interpret the Community Development Code per CDC Chapters 01 and 99. In cases where the code is ambiguous, the Planning Manager has responsibility to interpret the code and has the express authority to do so. To do so is not exceeding the authority granted by the code.

APPROVAL CRITERIA #3 CONTENDED TO BE MISAPPLIED

85.210 PROPERTY LINE ADJUSTMENTS – APPROVAL STANDARDS.

...

- 3. *Reducing the lot or parcel size shall not violate the site development regulations for that district. For example, the property line adjustment shall not result in an overall loss of density below 70 percent except as allowed by CDC 85.200(J)(7).*

The appellant contends that the proposed lot line adjustment undermines the historic character of the historic districts. The two lots would not have the same shape or size of the original Willamette Falls Plat. The appellant also stated that the adjustment would be inconsistent with the neighboring properties in the historic district. The appellant acknowledges the two class I variances to lot dimensions (one for average lot width; one for a reduction in lot size up to 20%), but lists the applicant’s reason for the adjustment is unacceptable and inconsistent with the site plan submitted. The applicant submitted a site plan showing a potential home on the adjusted vacant lot. The location of the potential home is in the same location as the fruit trees cited to be the asset worth saving, and one reason for the adjustment.

Staff Finding 2, of the Staff Report dated July 25, 2017, addresses the concerns of a new home on the adjusted vacant lot:

Staff Finding 2: No new structures are proposed on the subject properties at this time. Any proposed future structure must be approved by the Historic

Review Board in a separate land use action. There is an existing single family historic home on proposed lot 1 which encroaches on lot 2. The existing historic home is to be preserved per Planning Department file number DR-16-05. The purpose of this proposed LLA and Class I variances are to insure dimensional standards are satisfied for the underlying R-5 zone. The criteria has been satisfied.

Staff Finding 5, of the Staff Report dated July 25, 2017, addresses the concerns of the lot dimensions:

Staff Finding 5: The re-alignment of the lot lines which has the net effect of adding 113 square feet to lot 1 from lot 2 will not compromise future development of either lot. Any future development of these lots will be reviewed under the applicable criteria at such time that a development permit application is submitted to the City. The criteria has been satisfied.

APPROVAL CRITERIA #4 CONTENDED TO BE MISAPPLIED

25.070 ADDITIONAL STANDARDS APPLICABLE TO HISTORIC DISTRICTS

...

B. Standards for new construction. The standards in this section apply only to new construction in a historic district beyond alterations and additions, including new accessory structures. These standards shall apply in addition to any other applicable standards (see the Standards Applicability Matrix in CDC 25.020).

1. New construction shall complement and support the district. The historic district's defining characteristics include a discernible aesthetic rhythm of massing, scale, and siting. Infill buildings shall not deviate in a detracting manner from these elements, but appear as complementary members of the district, by conforming to the following:

a. Lot or parcel size, massing, scale, proportion, form, siting, floor area ratio, window patterns, building divisions, and height shall correspond to the contributing buildings within the district, and any specific historic district standards and the applicable requirements of the underlying zone.

...

The appellant contends that no positive finding could be made addressing the above referenced CDC Chapter 25 applicable standards as it relates to any future development on the adjusted vacant parcel.

25.070 ADDITIONAL STANDARDS APPLICABLE TO HISTORIC DISTRICTS

...

C. Willamette Historic District general design standards. This subsection applies only to alterations and additions, new construction, and accessory structure construction of residential and historically residential properties in the Willamette Historic District. Other buildings are subject to the requirements in Chapter 58 CDC. Dimensional and other requirements of the underlying zone, as applicable, shall apply.

...

6. New lot configuration. In addition to other requirements of the CDC, all new lots in the historic district shall be perpendicular to the street and extend directly from the lot line along the street to the opposite lot line. The primary structure and any other contributing structures on the original property shall not be located on separate lots.

The appellant contends that the criteria listed in 25.070.C.6 would also apply to the adjusted vacant parcel. The appellant stated that the applicant proposes to significantly reconfigure the property which would undermine the integrity of the Historic District.

The Staff Report, dated July 25, 2017, does not make any findings addressing criteria listed in Chapter 25 of the Community Development Code. Chapter 25 criteria is applied to structures within the district, and any newly created lots in the event of a subdivision or partition.

PUBLIC COMMENT

As of the publication date of this report, staff has not received any submittals from citizens, in favor of the proposal or in opposition.

RECOMMENDATION

Staff supports the Planning Manager's decision and recommends Council uphold the approval of Phil Chek's proposal to adjust property lines via two class I variances, by denial of application AP-17-02 based on: 1) the West Linn Planning Manager Decision and Order, 2) the staff report dated July 25, 2017, 3) the supplemental staff report dated September 11, 2017 and 4) all other testimony found in the record of LLA/17/04, VAR-17-02, and VAR-17-03

EXHIBIT CC-1 PLANNING MANAGER DECISION



**STAFF REPORT
PLANNING MANAGER DECISION**

DATE: July 25, 2017
FILE NO.: LLA-17-04/VAR-17-02/VAR-17-03
REQUEST: Lot Line Adjustment (LLA) between two legal lots: 1822 5th Avenue, Lots 7 and 8 of block 12, "Willamette Falls"
PLANNER: Jennifer Arnold, Associate Planner

Planning Manager

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GENERAL INFORMATION

OWNER/ APPLICANT:

Phill Chek & Associates
148 B Avenue; Suite 100
Lake Oswego, OR 97034

SITE LOCATION: The corner of 13th Street and 5th Avenue (1822 5th Avenue)

SITE SIZE: Lot 1: 5,113 sq. ft.
Lot 2: 4,887 sq. ft.

LEGAL

DESCRIPTION: Tax lot 6800 of Assessor's Map 31E02BA Lots 7 and 8 of block 12 of "Willamette Falls"

COMP PLAN

DESIGNATION: Medium Density Residential

ZONING: R-5 (single family residential detached and attached/duplex, R-5; 5,000 square foot minimum lot size)

APPROVAL

CRITERIA: Community Development Code (CDC) Chapter 13 R-5 Zone; Chapter 85 Land Division; Chapter 75 Variances and Special Waivers.

120-DAY RULE: The application became complete on June 8, 2017. The 120-day period therefore ends on October 6, 2017.

EXECUTIVE SUMMARY

This lot line adjustment (LLA) involves two historical lots (referred to collectively for taxation purposes only as tax lot 6800). Although, these lots have been under single ownership for many years, Oregon land use law is clear that such old lot divisions must be honored. The historical lot line will be adjusted per this lot line adjustment. Both lots are currently owned by Elizabeth Warren. No additional lots are being created by the LLA. The LLA will move the common lot line to allow for a more functional building envelope(s) on the eastern most lot (Lot 2), and for the existing historical home to meet the east side yard setback requirements. The applicant is requesting two Class I variances. The first Class I variance request is to reduce the minimum lot size by 5% on proposed lot 2. The second Class I variance is to

reduce the minimum lot width by 10% on proposed lot 2. These requests are to insure proposed lot 2 meets the dimensional standards and other provisions of the underlying R-5 zone. Proposed lot 2 is currently vacant of any structures.

	Prior to Lot Line Adjustment	After Proposed Lot Line Adjustment
Lot 1	5,000 sq. ft.	5,113 sq. ft.
Lot 2	5,000 sq. ft.	4,887 sq. ft.

DECISION

The Planning Manager (designee) approves this application (LLA-17-04/VAR-17-02/VAR-17-03), based on: 1) the findings submitted by the applicant, which are incorporated by this reference; 2) supplementary staff findings included in the Addendum; and, 3) by the conditions of approval below:

Condition of Approval

- 1. The final plat shall conform to the submittal dated May 11, 2017. (See Staff Finding 1)**

The provisions of the Community Development Code Chapter 99 have been met.


 Jennifer Arnold, Associate Planner

7/25/17
 DATE

Appeals to this decision must be filed with the West Linn Planning Department within 14 days of mailing date. Cost is \$400. An appeal to City Council of a decision by the Planning Manager shall be heard on the record. The appeal must be filed by an individual who has established standing by submitting comments prior to the decision date. Approval will lapse 3 years from effective approval date if the final plat is not recorded.

Mailed this 25th day of July 2017.

Therefore, the 14-day appeal period ends at 5 p.m., on August 8th, 2017.

ADDENDUM
APPROVAL CRITERIA AND FINDINGS
LLA-17-04/VAR-17-02/VAR-17-03

This decision adopts the findings for approval contained within the applicant's submittal, with the following exceptions and additions:

Chapter 13

SINGLE-FAMILY RESIDENTIAL ATTACHED AND DETACHED/DUPLEX, R-5

13.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS

Except as may be otherwise provided by the provisions of this code, the following are the requirements for uses within this zone:

A. *The minimum lot size shall be:*

- 1. For a single-family detached unit, 5,000 square feet.*
- 2. For each attached single-family unit, 4,500 square feet. No yard shall be required between the units.*

B. *The minimum front lot line length, or the minimum lot width at the front lot line, shall be 35 feet.*

C. *The average minimum lot width shall be 50 feet.*

Staff Finding 1: Currently, both lots are 5,000 square feet which meets the minimum lot size for the R-5 zone. Currently, the existing single family historic home on proposed lot 1 encroaches on proposed lot 2 by 1.9 feet. The purpose for the LLA is to address this issue and insure the existing home meets the setback requirements of the R-5 zone. The existing home meets the setback requirements with the proposed lot line adjustment as shown on S-2 of the applicant's submittal. The proposed lot sizes, after the LLA, will be 5,113 square feet (Lot 1), 4,887 square feet (Lot 2). See condition of approval 1.

Both lots will exceed the minimum front lot line width of 35 feet and have a front lot line width of 50 feet. The proposed average width is 49.14 feet. A Class I variance has been requested with this application for average lot width reduction. The criteria has been satisfied.

E. *Except as specified in CDC 25.070(C)(1) through (4) for the Willamette Historic District, the minimum yard dimensions or minimum building setback areas from the lot line shall be:*

1. For a front yard, 20 feet; except for steeply sloped lots where the provisions of CDC 41.010 shall apply.

2. For an interior side yard, five feet.

3. For a side yard abutting a street, 15 feet.

4. For a rear yard, 20 feet.

F. The maximum building height shall be 35 feet except for steeply sloped lots in which case the provisions of Chapter 41 CDC shall apply.

G. The maximum lot coverage shall be 40 percent.

H. The minimum width of an accessway to a lot which does not abut a street or a flag lot shall be 15 feet.

I. The floor area ratio shall be 0.45. Type I and II lands shall not be counted toward lot area when determining allowable floor area ratio, except that a minimum floor area ratio of 0.30 shall be allowed regardless of the classification of lands within the property. That 30 percent shall be based upon the entire property including Type I and II lands. Existing residences in excess of this standard may be replaced to their prior dimensions when damaged without the requirement that the homeowner obtain a "non-conforming structures" permit under Chapter 66 CDC

J. The sidewall provisions of Chapter 43 CDC shall apply. (Ord. 1538, 2006; Ord. 1622 § 24, 2014)

Staff Finding 2: No new structures are proposed on the subject properties at this time. Any proposed future structure must be approved by the Historic Review Board in a separate land use action. There is an existing single family historic home on proposed lot 1 which encroaches on lot 2. The existing historic home is to be preserved per Planning Department file number DR-16-05. The purpose of this proposed LLA and Class I variances are to insure dimensional standards are satisfied for the underlying R-5 zone. The criteria has been satisfied.

85.210 PROPERTY LINE ADJUSTMENTS – APPROVAL STANDARDS

A. The Director shall approve or deny a request for a property line adjustment based on the criteria stated below:

1. An additional lot or parcel shall not be created by the line adjustment.

Staff Finding 3: This LLA comprises two lots. With this LLA decision, there will still be two lots. No additional lots have been created. The criteria has been satisfied.

2. *The existing property shall not be reduced in size by the adjustments below the minimum lot or parcel size established by the approved zoning for that district.*

Staff Finding 4: The proposed lot sizes, after the LLA, will be 5,113 square feet (Lot 1) and 4,887 square feet (Lot 2) which will meet or exceed the 4,500 square feet minimum lot size of the R-4.5 zone. The criteria has been satisfied.

3. *Reducing the lot or parcel size shall not violate the site development regulations for that district. For example, the property line adjustment shall not result in an overall loss of density below 70 percent except as allowed by CDC [85.200\(J\)](#) (7).*

Staff Finding 5: The re-alignment of the lot lines which has the net effect of adding 113 square feet to lot 1 from lot 2 will not compromise future development of either lot. Any future development of these lots will be reviewed under the applicable criteria at such time that a development permit application is submitted to the City. The criteria has been satisfied.

4. *The property line adjustment is as defined by ORS Chapter [92](#).*

92.192 Property line adjustment; zoning ordinances; lot or parcel size. (1) Except as provided in this section, a unit of land that is reduced in size by a property line adjustment approved by a city or county must comply with applicable zoning ordinances after the adjustment.

(2) Subject to subsection (3) of this section, for properties located entirely outside the corporate limits of a city, a county may approve a property line adjustment in which:

(a) One or both of the abutting properties are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large as or larger than the minimum lot or parcel size for the applicable zone; or

(b) Both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment.

(3) On land zoned for exclusive farm use, forest use or mixed farm and forest use, a property line adjustment under subsection (2) of this section may not be used to:

(a) Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;

(b) Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or

(c) Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard. [2008 c.12 §2]

Staff Finding 6: The provisions of ORS 92 are met by this LLA application. ORS 92.010 Definitions for ORS 92.010 to 92.192 defines LLA or property line adjustment as follows:

(12) "Property line adjustment" means a relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel.

This LLA meets the ORS definition in that the existing lot lines are being relocated and no additional parcel is created. All lots meet the dimensional standards of the underlying R-5 zone with the requested Class I variances.

In 2014, Ordinance 1635 was adopted by the West Linn City Council. This ordinance removed approval criteria related to 'Acceptable Lot Line Adjustment' and 'Unacceptable Lot Line Adjustment.' See the amendment below:

~~4. The lot lines shall be generally straight with only a few deviations. Lot lines shall not gerrymander or excessively zigzag long to accommodate tool sheds, accessory structures, other buildings, etc. The figure below serves as a guide to lot line adjustments.~~

Research on this legislation found the intent was to remove the two diagrams referred to in this subsection. However, removal of the diagrams was overlooked in publication. Since the intent was removal of the criteria and the diagrams, these criteria have been deleted and are no longer applicable.

Even if the diagrams were retained, the graphics standing alone are not clear enough to apply as criteria. It therefore cannot be a basis for denial.

The criteria has been satisfied.

5. The lot line adjustment will not affect existing easements or existing utilities unless an easement vacation is obtained, replacement easements are dedicated or any required utility relocations are paid for by the applicant.

Staff Finding 7: There are no easements along the common lot line between lots 1 and 2.

6. *Any appeal must be filed in accordance with CDC [99.240](#).*

Staff Finding 8: This only applies to appeals and is therefore not applicable.

B. *The provisions of CDC [85.070](#) shall also apply to lot line adjustments.*

Staff Finding 9: The provisions of CDC section 85.070 “ADMINISTRATION AND APPROVAL PROCESS” are satisfied by this application and by the applicant’s proof of ownership. The application is being processed in agreement with the provisions of CDC Chapter 99. The criteria has been satisfied.

75.020 CLASSIFICATION OF VARIANCES

A. *Class I Variance. Class I variances provide minor relief from certain code provisions where it can be demonstrated that the modification will not harm adjacent properties, and it conforms with any other code requirements. Class I variances are allowed for the following code provisions:*

1. *Required Yard and Minimum Lot Dimensional Requirements. Required yards may be modified up to 20 percent, lot dimensions by up to 10 percent and lot area by up to five percent if the decision-making authority finds that the resulting approval:*
 - a. *Provides for a more efficient use of the site;*
 - b. *Preserves and incorporates natural features into the overall design of the project;*
 - c. *Does not adversely affect adjoining properties in terms of light, air circulation, noise levels, privacy, and fire hazards; and*
 - d. *Provides for safe vehicular and pedestrian access to the site and safe on-site vehicular and pedestrian circulation.*
2. *Off-street parking dimensional and minimum number of space requirements may be modified up to 10 percent if the decision-making authority finds that the use is designed for a specific purpose, which is intended to be permanent in nature.*
3. *Dimensional sign requirements may be modified up to 10 percent if the decision-making authority finds that the proposed larger sign is:*
 - a. *Necessary for adequate identification of the use on the property; and*

b. Compatible with the overall site plan, the structural improvements, and with the structures and uses on adjoining properties.

4. Landscaping requirements in the applicable zone may be modified up to 10 percent if the decision-making authority finds that the resulting approval:

a. Provides for a more efficient use of the site;

b. Preserves and incorporates natural features into the overall design of the project; and

c. Will have no adverse effect on adjoining property.

Staff Finding 10: The applicant has requested two Class I variances. The first Class I variance is to reduce the lot area by approx. 3%. The proposed lot size is 4887 square feet for proposed lot 2. Staff adopts the applicant's findings (see page 4 of applicant's submittal). The second Class I variance is to reduce the lot dimension up to 10%. The lot dimension proposed to be altered is the average lot width requirement which is proposed to be 49.14 feet. Staff adopts the applicant's findings (see page 5 of applicant's submittal).

PD-1 COMPLETENESS LETTER



CITY OF
West Linn

June 8, 2017

Phil Chek & Associates
148 B Ave Suite 100
Lake Oswego, OR 97034

SUBJECT: LLA-17-04 application for a Lot Line Adjustment and two Class I variances at 1822 5th Avenue.

Dear Phil:

You submitted this application on May 11, 2017. The Planning Department found that this application was **incomplete** on May 30, 2017. You then submitted supplemental materials on June 6, 2017. The Planning Department found this application is now **complete**. The City has 120 days to exhaust all local review; that period ends October 6, 2017.

Please be aware that a determination of a complete application does not guarantee a recommendation of approval from staff for your proposal as submitted – it signals that staff believes you have provided the necessary information for the Planning Director to render a decision on your proposal.

A 14-day public notice informing property owners of the lot line adjustment and Class I variances that are associated with this property will be prepared and mailed. This notice will identify the earliest potential decision date.

Please contact me at 503-742-6057, or by email at jarnold@westlinnoregon.gov if you have any questions or comments.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Arnold". The signature is written in a cursive, flowing style.

Jennifer Arnold
Associate Planner

PD-2 APPLICANT'S SUBMITTAL

DEVELOPMENT REVIEW APPLICATION

For Office Use Only		
STAFF CONTACT: <u>Jennifer Arnold</u>	PROJECT NO(S): <u>LLA-17-04/VA-17-02/VA-17-03</u>	
NON-REFUNDABLE FEE(S): <u>2650-</u>	REFUNDABLE DEPOSIT(S)	TOTAL: <u>2650-</u>

Type of Review (Please check all that apply):

- | | | |
|--|---|--|
| <input type="checkbox"/> Annexation (ANX) | <input type="checkbox"/> Historic Review | <input type="checkbox"/> Subdivision (SUB) |
| <input type="checkbox"/> Appeal and Review (AP) * | <input type="checkbox"/> Legislative Plan or Change | <input type="checkbox"/> Temporary Uses * |
| <input type="checkbox"/> Conditional Use (CUP) | <input checked="" type="checkbox"/> Lot Line Adjustment (LLA) */** | <input type="checkbox"/> Time Extension * |
| <input type="checkbox"/> Design Review (DR) | <input type="checkbox"/> Minor Partition (MIP) (Preliminary Plat or Plan) | <input checked="" type="checkbox"/> Variance (VAR) |
| <input type="checkbox"/> Easement Vacation | <input type="checkbox"/> Non-Conforming Lots, Uses & Structures | <input type="checkbox"/> Water Resource Area Protection/Single Lot (WAP) |
| <input type="checkbox"/> Extraterritorial Ext. of Utilities | <input type="checkbox"/> Planned Unit Development (PUD) | <input type="checkbox"/> Water Resource Area Protection/Wetland (WAP) |
| <input type="checkbox"/> Final Plat or Plan (FP) | <input type="checkbox"/> Pre-Application Conference (PA) */** | <input type="checkbox"/> Willamette & Tualatin River Greenway (WRG) |
| <input type="checkbox"/> Flood Management Area | <input type="checkbox"/> Street Vacation | <input type="checkbox"/> Zone Change |
| <input type="checkbox"/> Hillside Protection & Erosion Control | | |

Home Occupation, Pre-Application, Sidewalk Use, Sign Review Permit, and Temporary Sign Permit applications require different or additional application forms, available on the City website or at City Hall.

Site Location/Address: <u>1822 5TH AVE WEST LINN, OR 97068</u>	Assessor's Map No.: <u>31E02BA</u>
	Tax Lot(s): <u>6400</u>
	Total Land Area: <u>10,000 S.F.</u>

Brief Description of Proposal: LOT LINE ADJUSTMENT
& (2) CLASS I VARIANCES
• LOT SIZE • LOT DIMENSIONS

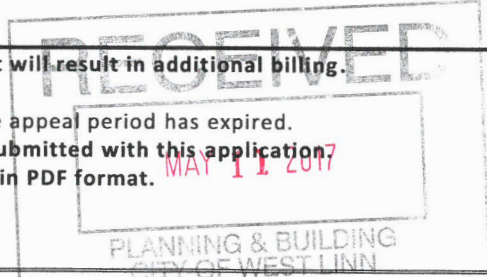
Applicant Name: <u>PHIL CHEK & ASSOCIATES</u> <small>(please print)</small>	Phone: <u>503.224.4500</u>
Address: <u>148 B AVE SUITE 100</u>	Email: <u>phil@philchek.com</u>
City State Zip: <u>LAKE OSWEGO, OR 97034</u>	

Owner Name (required): <u>PHIL CHEK</u> <small>(please print)</small>	Phone: <u>503.224.4500</u>
Address: <u>148 B AVE SUITE 100</u>	Email: <u>philephilchek.com</u>
City State Zip: <u>LAKE OSWEGO, OR 97034</u>	

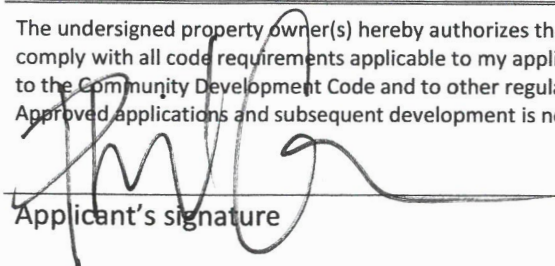
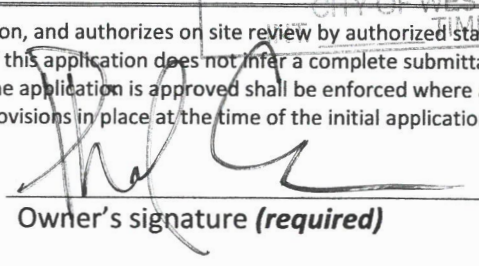
Consultant Name: <u>CENTERLINE CONCEPTS</u> <small>(please print)</small>	Phone: <u>503.650.0188</u>
Address: <u>19370 HOLMAN AVE, SUITE 120</u>	Email:
City State Zip: <u>OR CITY, OR 97045</u>	

- All application fees are non-refundable (excluding deposit). **Any overruns to deposit will result in additional billing.**
- The owner/applicant or their representative should be present at all public hearings.
- A denial or approval may be reversed on appeal. No permit will be in effect until the appeal period has expired.
- Three (3) complete hard-copy sets (single sided) of application materials must be submitted with this application.**
One (1) complete set of digital application materials must also be submitted on CD in PDF format.
If large sets of plans are required in application please submit only two sets.

* No CD required / ** Only one hard-copy set needed



The undersigned property owner(s) hereby authorizes the filing of this application, and authorizes on site review by authorized staff. I hereby agree to comply with all code requirements applicable to my application. Acceptance of this application does not infer a complete submittal. All amendments to the Community Development Code and to other regulations adopted after the application is approved shall be enforced where applicable. Approved applications and subsequent development is not vested under the provisions in place at the time of the initial application.

	<u>5/10/17</u>		<u>5/10/17</u>
Applicant's signature	Date	Owner's signature (required)	Date

Proposed lot line adjustment with Historic lot line & (2) Class I Variances for lot size and dimensions

Site Information

Site Address: 1822 5th Ave

Area: 10,000 sq. ft.

Zoning Classification: R-5 (5,000 square foot minimum lot size)

Subdivision Name: Willamette Falls Blocks 1-17

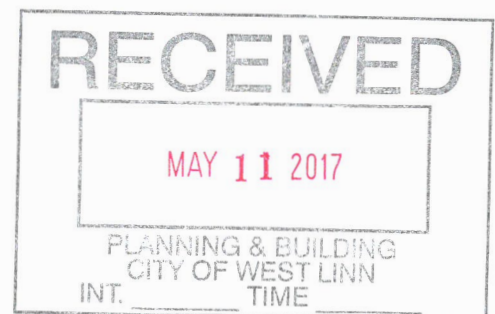
Block: 12

Lots: 7&8

Tax Lot: 31E02BA06800

Project Details

The applicant proposes to reestablish the existing historical lot line and adjust it so as to make the existing home conform to the setback requirements. The two legal lots were created by the original plat "Willamette Falls" Block 12; Lots 7 and 8 (TL 6800). In adjusting the lot line to reestablish two legal lots and maintaining setback requirements, Lot 8 would be reduced below the 5,000 square feet requirement of the R-5 underlying zone. The first Class I Variance is to reduce the lot dimensions requirement by the zone by up to 10 percent. The second Class I Variance is to reduce the average lot width requirement.



Class I Variance Narratives:

13.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS

Except as may be otherwise provided by the provisions of this code, the following are the requirements for uses within this zone:

A. The minimum lot size shall be:

1. For a single-family detached unit, 5,000 square feet.

CLASS 1 VARIANCE TO REDUCE BY 5% (4750 sf min lot size; 4887 sf lot area proposed)

2. ~~For each attached single family unit, 4,500 square feet. No yard shall be required between the units.-N/A~~

B. The minimum front lot line length, or the minimum lot width at the front lot line, shall be 35 feet.
COMPLIANT.

C. The average minimum lot width shall be 50 feet.

CLASS 1 VARIANCE TO REDUCE BY 10% (45' avg min lot width; 49.14'avg min lot width proposed)

VARIANCE 1-

CLASS 1 VARIANCE TO REDUCE MINIMUM LOT SIZE BY 5%, WHICH RESULTS IN A 4,750sf MINIMUM LOT SIZE. (4,887sf LOT SIZE PROPOSED)

NARRATIVE: (FROM CH. 75.020 - CLASSIFICATION OF VARIANCES)

A. Class I Variance. Class I variances provide minor relief from certain code provisions where it can be demonstrated that the modification will not harm adjacent properties, and it conforms with any other code requirements. Class I variances are allowed for the following code provisions:

1. Required Yard and Minimum Lot Dimensional Requirements. Required yards may be modified up to 20 percent, lot dimensions by up to 10 percent and **lot area by up to five percent** if the decision-making authority finds that the resulting approval:
 - a. Provides for a more efficient use of the site;
The reduced lot area provides for a more practical and efficient use of the lot for both properties and allows for yard space and required setbacks around the existing home that currently encroaches on the dividing line between the two lots while maintaining the maximum lot area possible.
 - b. Preserves and incorporates natural features into the overall design of the project;
The existing fruit trees will be preserved and future landscaping will be designed to create a greenspace with natural features between the two lots.
 - c. Does not adversely affect adjoining properties in terms of light, air circulation, noise levels, privacy, and fire hazards; and
The reduced lot area has no effect on adjoining properties in terms of light, air circulation, noise levels, privacy, and fire hazards
 - d. Provides for safe vehicular and pedestrian access to the site and safe on-site vehicular and pedestrian circulation.
This criterion is not applicable as no changes are being made to vehicular and pedestrian access or circulation.
2. Off-street parking dimensional and minimum number of space requirements may be modified up to 10 percent if the decision-making authority finds that the use is designed for a specific purpose, which is intended to be permanent in nature.
This criterion is not applicable as there is no proposed change to off-street parking.
3. Dimensional sign requirements may be modified up to 10 percent if the decision-making authority finds that the proposed larger sign is:
This criterion is not applicable as there is no proposed change to dimensional signs.
 - a. Necessary for adequate identification of the use on the property; and
 - b. Compatible with the overall site plan, the structural improvements, and with the structures and uses on adjoining properties.
4. Landscaping requirements in the applicable zone may be modified up to 10 percent if the decision-making authority finds that the resulting approval:
This criterion is not applicable as there is no proposed change to landscaping requirements.
 - a. Provides for a more efficient use of the site;
 - b. Preserves and incorporates natural features into the overall design of the project; and
 - c. Will have no adverse effect on adjoining property.

VARIANCE 2-

CLASS 1 VARIANCE TO REDUCE MINIMUM LOT WIDTH BY 10%, WHICH CREATES A MINIMUM 45' AVERAGE LOT WIDTH (49.14' AVERAGE LOT WIDTH PROPOSED)

NARRATIVE: (FROM CH. 75.020)

A. Class I Variance. Class I variances provide minor relief from certain code provisions where it can be demonstrated that the modification will not harm adjacent properties, and it conforms with any other code requirements. Class I variances are allowed for the following code provisions:

1. Required Yard and Minimum Lot Dimensional Requirements. Required yards may be modified up to 20 percent, **lot dimensions by up to 10 percent** and lot area by up to five percent if the decision-making authority finds that the resulting approval:

a. Provides for a more efficient use of the site;

The reduced average lot width provides a more practical and efficient use of the lot for both properties and allows for yard space and required setbacks around the existing home that currently encroaches on the dividing line between the two lots while maintaining the maximum lot width possible.

b. Preserves and incorporates natural features into the overall design of the project;

The existing fruit trees will be preserved and future landscaping will be designed to create a greenspace with natural features between the two lots.

c. Does not adversely affect adjoining properties in terms of light, air circulation, noise levels, privacy, and fire hazards; and

The reduced average lot width has no effect on adjoining properties in terms of light, air circulation, noise levels, privacy, and fire hazards

d. Provides for safe vehicular and pedestrian access to the site and safe on-site vehicular and pedestrian circulation.

This criterion is not applicable as no changes are being made to vehicular and pedestrian access or circulation.

2. Off-street parking dimensional and minimum number of space requirements may be modified up to 10 percent if the decision-making authority finds that the use is designed for a specific purpose, which is intended to be permanent in nature.

This criterion is not applicable as there is no proposed change to off-street parking.

3. Dimensional sign requirements may be modified up to 10 percent if the decision-making authority finds that the proposed larger sign is:

This criterion is not applicable as there is no proposed change to dimensional signs.

a. Necessary for adequate identification of the use on the property; and

b. Compatible with the overall site plan, the structural improvements, and with the structures and uses on adjoining properties.

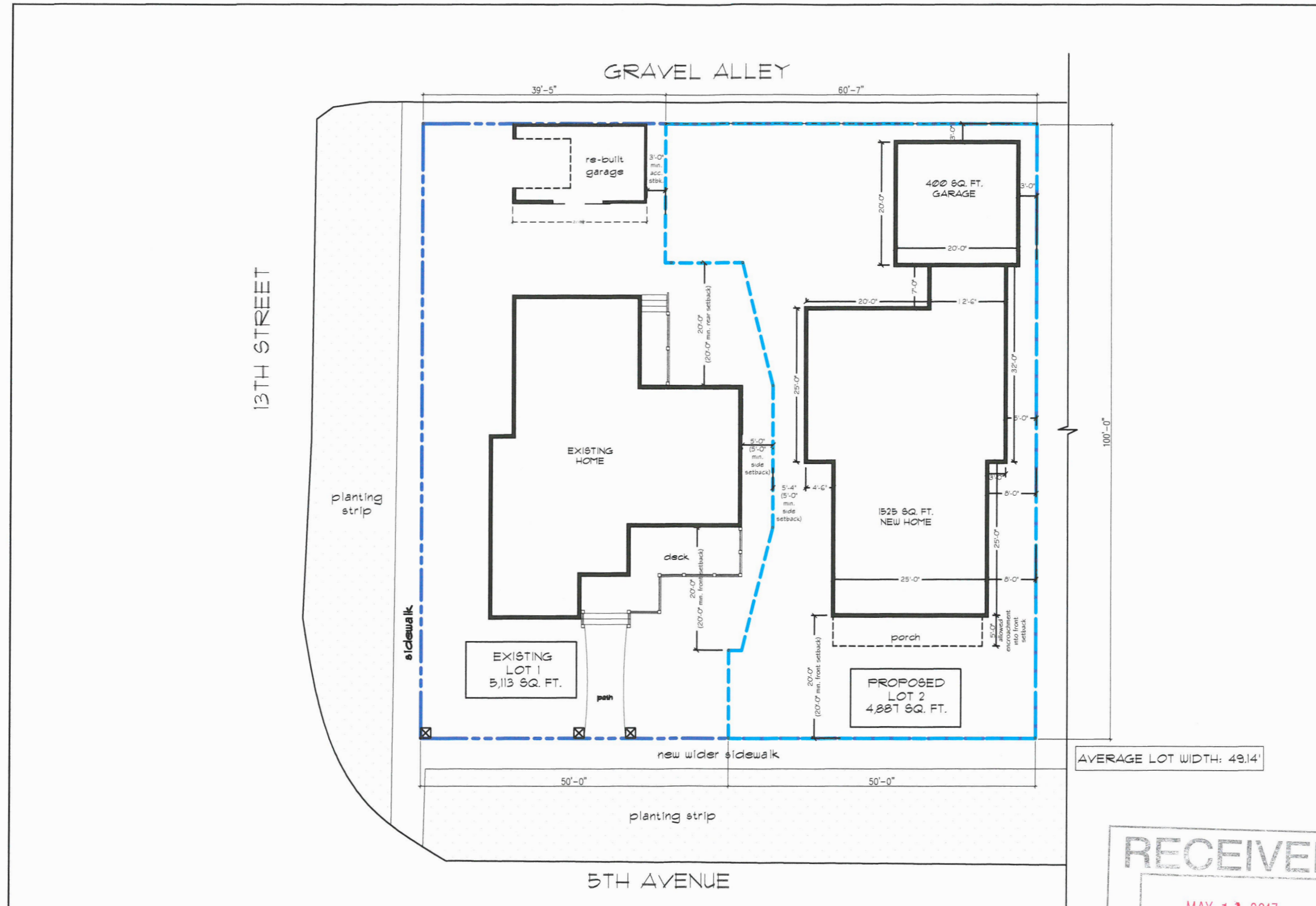
4. Landscaping requirements in the applicable zone may be modified up to 10 percent if the decision-making authority finds that the resulting approval:

This criterion is not applicable as there is no proposed change to landscaping requirements.

a. Provides for a more efficient use of the site;

b. Preserves and incorporates natural features into the overall design of the project; and

c. Will have no adverse effect on adjoining property.



13TH STREET

GRAVEL ALLEY

5TH AVENUE

1 PROPOSED LOT LINE ADJUSTMENT
 SCALE: 1/16" = 1'-0"

AVERAGE LOT WIDTH: 49.14'

RECEIVED
 MAY 11 2017
 PLANNING & BUILDING
 CITY OF WEST LINN

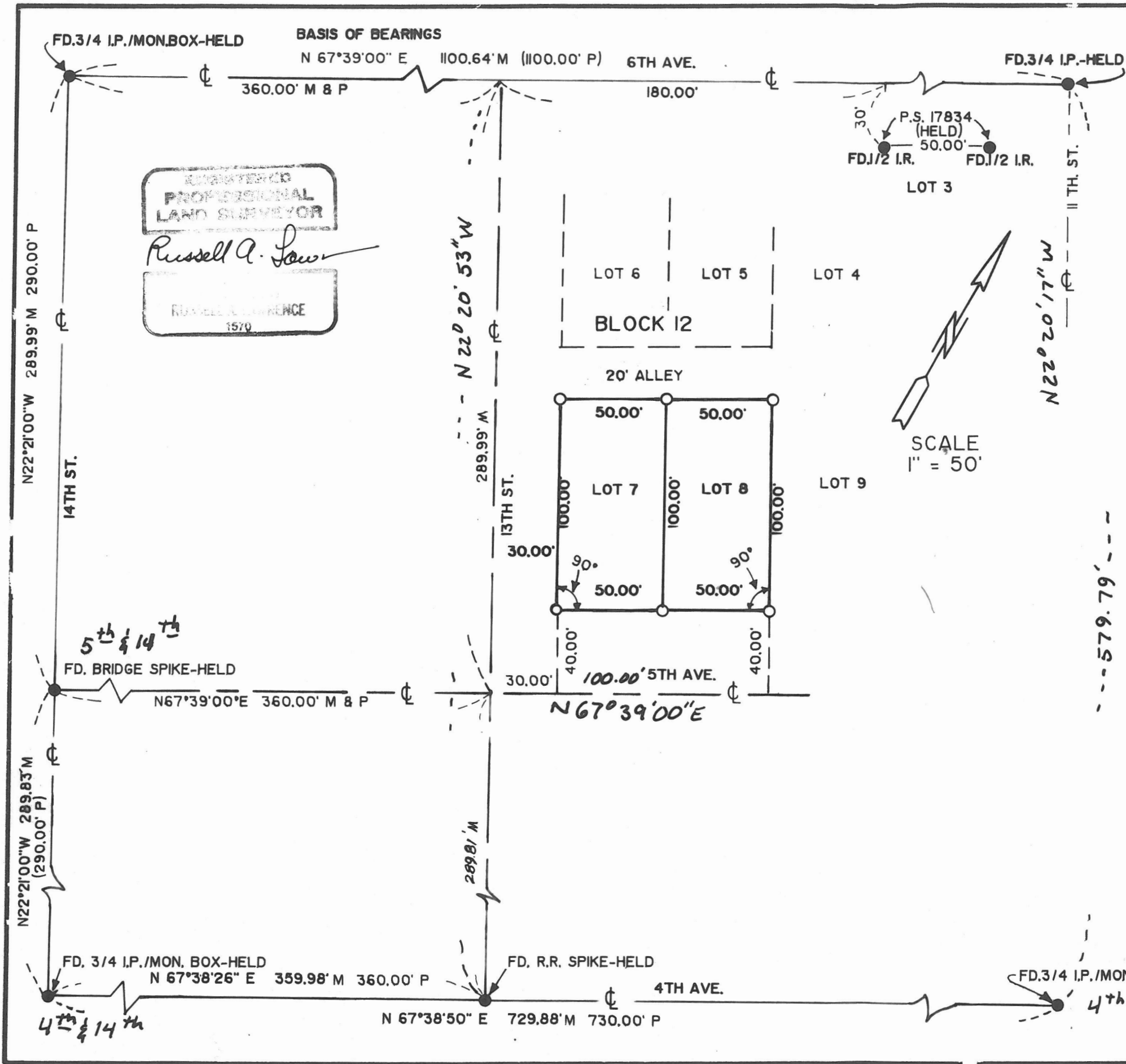
148 B AVENUE
 LAKE OSWEGO,
 OREGON 97034
 503.224.4500 phone
 503.636.4565 fax

Phil Chok
 AND ASSOCIATES

DATE:
 04/24/2017
 DRAWN BY:
 NS
 JOB NAME:
 Willamette
 REVISIONS:
 1
 2
 3
 APPROVED BY:
 PC

PROJECT:
WARREN RESIDENCE
 1822 5th Ave
 West Linn, OR 97068

S-2



REGISTERED
**PROFESSIONAL
 LAND SURVEYOR**
Russell A. Lawrence
 RUSSELL A. LAWRENCE
 1979

A DEPENDENT RESURVEY

LOTS 7 & 8, BLOCK 12, "WILLAMETTE FALLS"
 LOCATED IN THE N.W. 1/4 OF SEC. 2, T.35., R.1E., W.B.8M.
 CITY OF WEST LINN, CLACKAMAS CO., OREGON
 M.K. PERRINE D.L.C. #50 DECEMBER 21, 1989

NARRATIVE:

THE PURPOSE OF THIS SURVEY IS TO RE-ESTABLISH THE CORNERS OF LOTS 7 & 8, BLOCK 12. THE CONTROLLING ELEMENTS WERE THE PLAT OF "WILLAMETTE FALLS", MONUMENTS FOUND AND HELD, AND REFERENCED SURVEYS AS SHOWN. BASIS OF BEARINGS IS AS SHOWN, AND THE PLAT OF "WILLAMETTE FALLS".

REFERENCE SURVEYS:

PLAT OF WILLAMETTE FALLS P.S. 17834 P.S. 19493
 P.S. 20232 P.S. 8466 P.S. 8038

LEGEND:

- MONUMENTS FOUND AS NOTED
- SET 5/8 x 30" IRON ROD W/ORANGE CAP "RAL ASSOC"
- P PLAT DISTANCE
- M MEASURED DISTANCE

CLACKAMAS COUNTY
 RECEIVED

FEB 21 1990

Thomas A. Milne, County Surveyor
 Deputy
 Filed 4-16-96
 PS 23603

R. A. LAWRENCE & ASSOCIATES, INC.

5001 WILLAMETTE FALLS DRIVE
 WEST LINN, OREGON 97068
 PHONE (503) 656-6804

ACCT # 689-1-89

PS 23603 (B)

Proposed lot line adjustment with Historic lot line & (2) Class I Variances for lot size and dimensions

Additional information as requested by Jennifer Arnold, associate planner for West Linn.

SITE INFORMATION

Site Address: 1822 5th Ave

Area: 10,000 sq. ft.

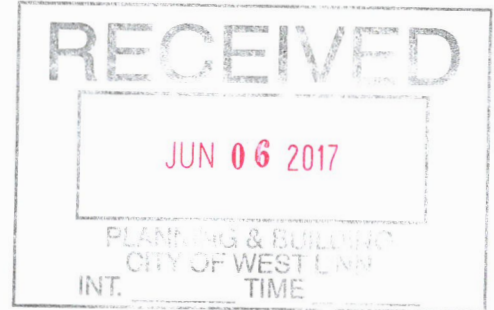
Zoning Classification: R-5 (5,000 square foot minimum lot size)

Subdivision Name: Willamette Falls Blocks 1-17

Block: 12

Lots: 7&8

Tax Lot: 31E02BA06800



85.070 ADMINISTRATION AND APPROVAL PROCESS

A. The application shall be filed by the record owner(s) of the property or by an authorized agent who has a letter of authorization from the property owners of record. The burden of proof will be upon the applicant to demonstrate the validity of the ownership, if challenged.

[Please see agent authorization form, attached.](#)

5.210 PROPERTY LINE ADJUSTMENTS – APPROVAL STANDARDS

A. The Director shall approve or deny a request for a property line adjustment based on the criteria stated below:

1. An additional lot or parcel shall not be created by the line adjustment.

[There is no additional lot or parcel created by the line adjustment. The line adjustment is to re-establish the historic lot line on the property.](#)

2. The existing property shall not be reduced in size by the adjustments below the minimum lot or parcel size established by the approved zoning for that district.

[The existing property is not reduced in size by the adjustments below the minimum lot or parcel size.](#)

3. Reducing the lot or parcel size shall not violate the site development regulations for that district. For example, the property line adjustment shall not result in an overall loss of density below 70 percent except as allowed by CDC [85.200\(j\)\(7\)](#).

[Reducing the lot size does not violate the site development regulations for this district.](#)

4. The property line adjustment is as defined by ORS Chapter [92](#).

[The property line adjustment meets the definitions as outlined in ORS Chapter 92.](#)

5. The lot line adjustment will not affect existing easements or existing utilities unless an easement vacation is obtained, replacement easements are dedicated or any required utility relocations are paid for by the applicant.

[The lot line adjustment will not affect existing easements or utilities.](#)

6. Any appeal must be filed in accordance with CDC [99.240](#).

[No appeals are being filed at this time.](#)

AGENT AUTHORIZATION FORM

PROPERTY LEGAL DESCRIPTION:

LOT NO. LOTS 748, BLOCK 12, WILLAMETTE FALLS

MAP/ PLAN NO. 31E02BA

LOT/ PARCEL ID: 6800

STREET ADDRESS:

1822 5th Avenue
West Linn, OR

Property Owner: Elizabeth Warren

The undersigned, registered property owners of the above noted property, do hereby authorize Phil Chek (Contractor / Agent), of Phil Chek and Associates (Name of consulting firm), to act on my behalf and take all actions necessary for the processing, issuance and acceptance of this permit or certification and any and all standard and special conditions attached.

Property Owner's Address (if different than property above):

Elizabeth Warren

2111 SW 21st Ave Portland OR 97201

Telephone: 503-208-3829

We hereby certify the above information submitted in this application is true and accurate to the best of our knowledge.

Authorized Signature: Elizabeth Warren Date: 6/3/17

Authorized Signature: Phil Chek Date: 6/5/17

PD-3 PUBLIC COMMENTS

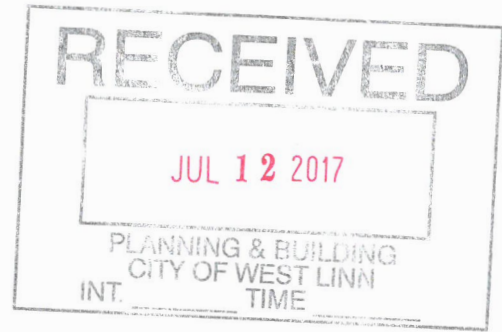
To: West Linn Planning Department

From:

Charles and Diane Awalt, neighbors of 1822 Fifth Avenue

CC: Phil Chek

Date: July 12, 2017



RE: Comments on proposed Lot Line Adjustment and Variances Case File LLA-17-04/VAR-17-02/VAR-17-03 affecting property at 1822 Fifth Avenue

Any new building must meet underlying zoning setbacks. The inability to rebuild any of the zero setback buildings built at zero setback once they were removed, was discussed at length at the HRB hearing for demolition of the other two zero setback structures on the proposed lot. Applicants were advised to take this into consideration before demolishing any zero setback building they intended to rebuild after demolition.

There was no Demolition Hearing for the removal of the turn of the century barn on this property. A hearing was required for this demolition per (25.120.A.2) The Willamette National Register District survey criteria to protect structures built before 1930 protected this pre 1911 structure associated with a significant structure in the district. The barn was the first structure built on the property after the construction of the house, and unlike the other two structures was built on the original 50' X 100' lot as the house and was directly associated with it. This was also the last of the simple "box construction" barns that most houses had in 1910. It easily met the standards for denial of demolition set in (25.120.A.2 and 25.120.B)

To reward a lot line adjustment for the construction of a new building after the demolition of the barn is in violation of (25.120.B) that requires the demolition permit and new structure review happen together.

(25.120.A.2) Non-contributing or not in period primary structure, accessory structure. An application for the demolition of a non-contributing or not in period primary structure or an accessory structure shall be approved if it is determined that the property does not have historic significance based on its architectural style, construction method or materials, or other pertinent factors as determined by the approval authority.

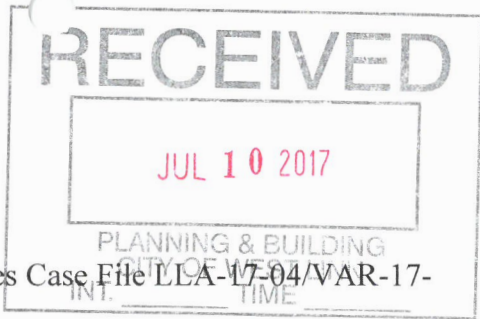
(25.120.B) Issuance of permits. A demolition permit for a historic resource shall not be issued prior to historic design review and any other required approval of plans for the site, if applicable, or the submittal of building plans for a permit for the site. (Ord. 1614 § 6, 2013)

B. Issuance of permits. A demolition permit for a historic resource shall not be issued prior to historic design review and any other required approval of plans for the site, if applicable, or the submittal of building plans for a permit for the site. (Ord. 1614 § 6, 2013)

Charles Awalt
Diane Awalt
1847 5th Ave
West Linn, OR

*Charles Awalt Charles Awalt 1847 5th Ave
West Linn 7/12/17*

*DIANE AWALT Diane Awalt 1847 5th Ave
WEST LINN
7/12/17*



To: West Linn Planning Department
 From: Neighbors of 1822 Fifth Avenue (see attached list)
 CC: Phil Chek
 Date: July 7, 2017
 RE: Comments on proposed Lot Line Adjustment and Variances Case File LLA-17-04/VAR-17-02/VAR-17-03 affecting property at 1822 Fifth Avenue

Neighbors of the property located at 1822 Fifth Avenue, which is subject to a Lot Line Adjustment and Variance application, submit the following comments on the proposal. We would like to be considered as parties to this application and have standing for further actions on the application, both jointly and individually.

The subject property was part of the Willamette Falls subdivision plat recorded in 1894. The property consisted of lots 7 and 8 of block 12 of that plat. A home was constructed on the property in approximately 1899 - 118 years ago. The home was constructed across the platted common boundary between lots 7 and 8 effectively combining the two platted lots and negating the ability to develop a second home on the lots.

The applicant, Phil Chek & Associates, has submitted a request to “reestablish the existing historical lot line and to adjust it so as to make the existing home conform to the setback requirements.”

In response, we would like to provide the following comments:

1. The West Linn Community Development Code does not provide a process to re-establish a prior lot line as the applicant has requested. The applicant has not provided a citation to a Code section which provides the City with authorization to approve a request to reestablish a historical lot line once it has been extinguished. The proper way to return the property to having the ability to contain two homes would be to divide the now combined lots 7 and 8 potentially through a subdivision replat or minor land partition process. We will not address the issues that might arise with such a proposal in these comments, but instead will stick with issues related to the current request.
2. Community Development Code Section 99.032.C.2. requires that “*an application shall be complete and shall contain the information requested on the form, shall address the appropriate submittal requirements and approval criteria in sufficient detail for review and action, and shall be accompanied by the deposit or fee required by CDC 99.033. (emphasis added)*” The applicant has not submitted a narrative addressing the approval standards for a lot line adjustment of Code Section 85.210. The applicant has only addressed the minor variance approval standards. Although we do not believe that a lot line adjustment is the proper application for what the applicant seeks to achieve, the applicant has not met their burden of proof requirement for approval of the current request. Therefore, the application should be denied.
3. If - for argument sake - the request was to be reviewed against the lot line approval standards of Section 85.210, positive findings could not be made to several of the applicable approval standards for a lot line adjustment as described below. Absent findings that all applicable approval standards are satisfied, the application should be denied.

First, the request does not satisfy Section 85.210.A.1 which requires that an additional lot or parcel not be created by the proposed adjustment. As noted in the applicant's own request statement that reestablishment (emphasis added) of a historical lot line is desired, there currently is no lot line separating the prior individual lots. There currently is one buildable lot consisting of the prior platted lots 7 and 8. The request therefore seeks to create an additional lot or parcel through the lot line adjustment process – which is specifically prohibited by this subsection.

Second, Section 85.210.A.3. says that a lot reduced in size by the proposed lot line adjustment shall not violate the site development standards of that district. The subject property is located in the R-5 zoning district and also is within the Willamette Historic District overlay zone. The applicant has requested approval of (1) a minor variance to the 5,000 square foot minimum lot size standard of the R-5 district for the proposed eastern lot and (2) has requested a variance to the minimum average lot width standard of the R-5 district. While we cannot really quibble with the applicant's responses to the very simple approval standards for minor variances, we are surprised that the applicant can cite preserving the existing fruit trees in their response to preserving natural features when their site plan for the intended future home on the eastern lot would likely require removal of those very trees. Our bigger concern (and probably the biggest concern of most of the signers to this memo) is that the proposed "adjustment" would leave the proposed eastern lot of a size and shape that would be inconsistent with the historic lotting pattern of the Willamette Falls plat and with the surrounding lots. This sort of change would undermine the historic integrity of both the Willamette Historic District overlay zone and the Willamette National Register Historic District that the neighbors and City have been working to maintain. Further, we do not understand that a positive finding could be made to Code Section 25.070.B for any future Historic District Design Review application for construction of a new home on the eastern lot. That section says:

New construction shall complement and support the district. The historic district's defining characteristics include a discernible aesthetic rhythm of massing, scale, and siting. Infill buildings shall not deviate in a detracting manner from these elements, but appear as complementary members of the district, by conforming to the following:

Lot or parcel size, massing, scale, proportion, form (emphasis added), siting, floor area ratio, window patterns, building divisions, and height shall correspond to the contributing buildings within the district, and any specific historic district standards and the applicable requirements of the underlying zone.

4. In addition, Code Section 25.070.C says the following:

New lot configuration. In addition to other requirements of the CDC, all new lots in the historic district shall be perpendicular to the street and extend directly from the lot line along the street to the opposite lot line. The primary structure and any other contributing structures on the original property shall not be located on separate lots.

If – somehow it can be found that the eastern lot is not a new lot – we do not believe that anyone would think that this standard would not also apply to the lot which is proposed to be adjusted. Again, the proposed lot configuration's common boundary would be in conflict with this standard and would undermine the integrity of the Historic District.

5. The proposed common boundary between the proposed “lots” is not perpendicular to the street. Code Section 25.070 (Property Line Adjustment – Approval Standards) provides a diagram of an “acceptable lot line adjustment” and an “unacceptable lot line adjustment.” The diagram of the “unacceptable lot line adjustment” illustrates and note “gerrymandering/zig-zags” of the unacceptable side lot line. The current proposal for 1822 Fifth Avenue sure looks like the unacceptable lot line adjustment illustrated in this diagram.

The above highlight our joint concerns with the proposed Lot Line Adjustment application for 1822 Fifth Avenue. We do not find that the proposal to “re-establish” prior lot lines is something that can be accomplished through the lot line adjustment procedures of the West Linn Community Code. Further, we do not find that the applicant has addressed the approval standards for a lot line adjustment and thus has not met their burden of proof for this application. Further, the requested adjustment would be in conflict of the Community Development Code as outlined above and, most importantly, would undermine the integrity of the Willamette Historic District that the citizens of Willamette and the City of West Linn work so hard to maintain. We therefore request that application Case File LLA-17-04/VAR-17-02/VAR-17-03 be denied.

Additional comments:

The applicant’s site plan illustrates a “re-built garage” directly behind the existing house. The garage is in the general location of a prior shed and chicken coop. The applicant had those buildings removed. Neither of those buildings served as a garage to our collective knowledge and there was never vehicular access from the buildings to 13th Street. The applicant’s demolition of those buildings has negated any non-conforming status with regard to setbacks or lot coverage. The absence of any mapped record or physical evidence of a driveway to 13th Street from those buildings (or knowledge of such a driveway by the neighbors - some of who have lived here for 35 years), should serve to inform the City and the applicant that there is no non-conforming status which would allow a driveway directly to the street. Any new garage should conform to all current setback and other standards. Any driveway to the new garage or parking spaces should be from the alley consistent with Code Section 25.070.C.1.

The applicant has installed several new windows in the existing house that are not consistent with the windows which were approved through the recent Historic Design Review application for that house. The windows which have been installed are not of a design which is consistent with a home of this era in the Willamette District. Several neighbors have mentioned this inconsistency with the applicant and/or City of West Linn Planning staff. The windows should be changed to be consistent with the approved windows or the City should take enforcement action against the applicant which may include fines. Fines should run with the property since the applicant has renovated the house with the intention of selling it. Any prospective purchaser should be made aware of any fines that would be due.

Addendum A: Lot Line Adjustment Approval Criteria from West Linn Community Development Code

Addendum B: Proposed Lot Line Adjustment Diagram from application package

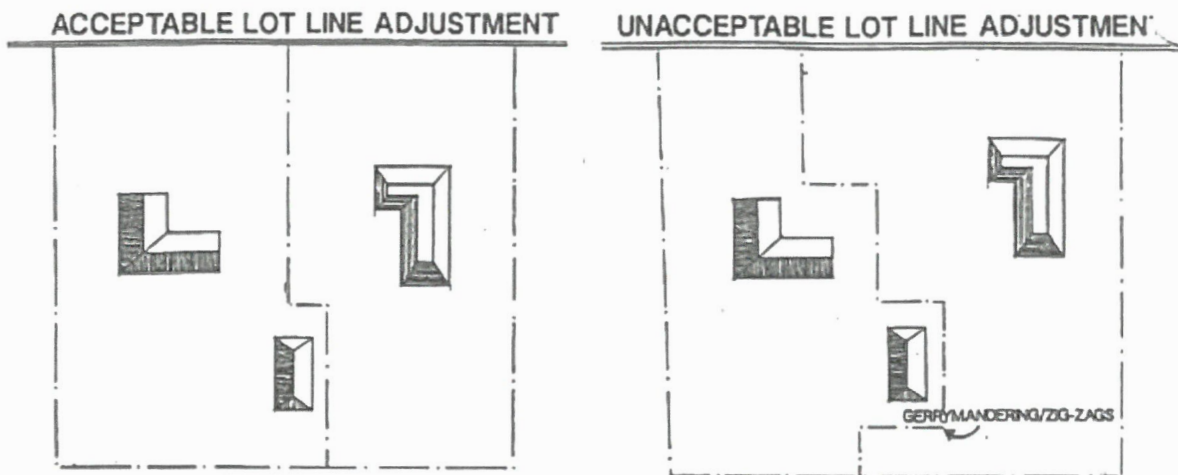
Addendum C: Signatories to Memo

Addendum A

City of West Linn Community Development Code

85.210 PROPERTY LINE ADJUSTMENTS – APPROVAL STANDARDS

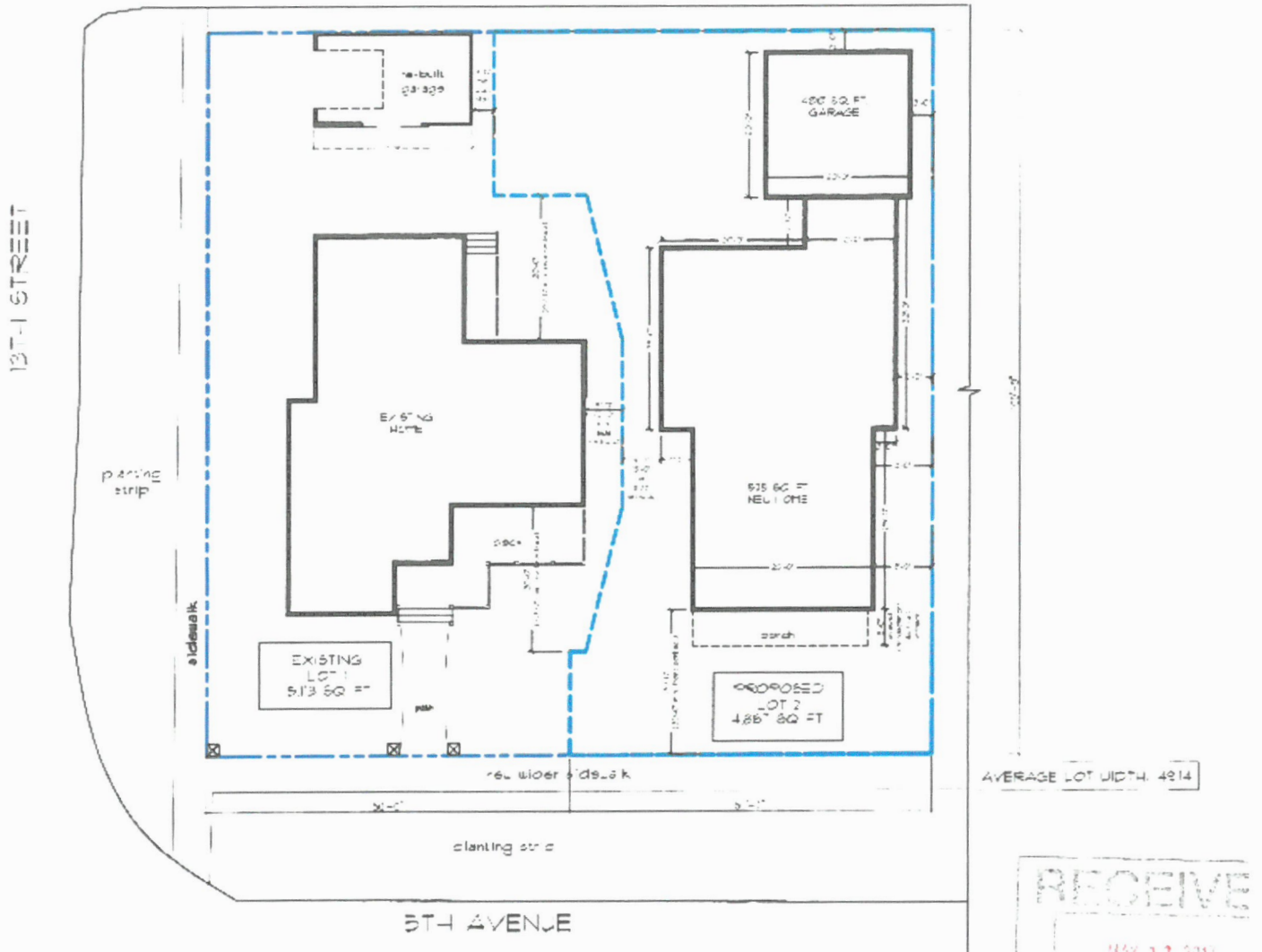
- A. The Director shall approve or deny a request for a property line adjustment based on the criteria stated below:
1. An additional lot or parcel shall not be created by the line adjustment.
 2. The existing property shall not be reduced in size by the adjustments below the minimum lot or parcel size established by the approved zoning for that district.
 3. Reducing the lot or parcel size shall not violate the site development regulations for that district. For example, the property line adjustment shall not result in an overall loss of density below 70 percent except as allowed by CDC [85.200\(J\)\(7\)](#).
 4. The property line adjustment is as defined by ORS Chapter [92](#).



5. The lot line adjustment will not affect existing easements or existing utilities unless an easement vacation is obtained, replacement easements are dedicated or any required utility relocations are paid for by the applicant.
 6. Any appeal must be filed in accordance with CDC [99.240](#).
- B. The provisions of CDC [85.070](#) shall also apply to lot line adjustments.

Addendum B

Proposed Lot Line Adjustment Diagram from application package




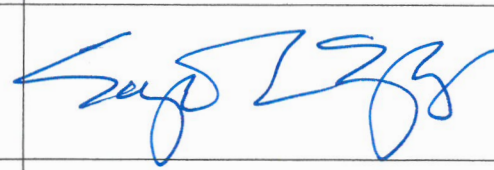

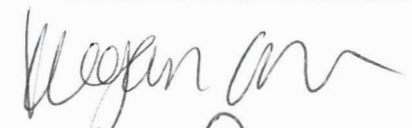
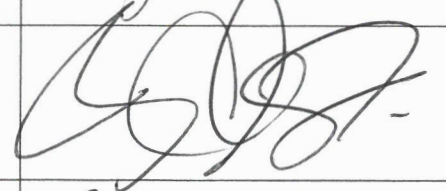
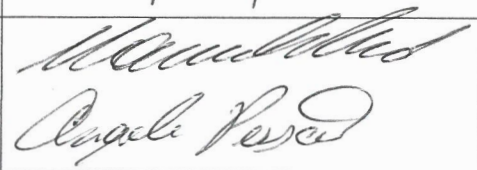

1 PROPOSED LOT LINE ADJUSTMENT
SCALE: 1/16" = 1'-0"

RECEIVED
MAY 11 2017
PLANNING & BUILDING
DIVISION OF WEST LIA

Addendum C

Signatories to Memo

We the undersigned have read the Memo entitled "Comments on proposed Lot Line Adjustment and Variances Case File LLA-17-04/VAR-17-02/VAR-17-03 affecting property at 1822 Fifth Avenue" and request our names be added as having standing in the hearing of the City of West Linn Planning Director related to Case File LLA-17-04/VAR-17-02/VAR-17-03. Further, we also request that the Planning Manager include us on the final decision and any further notices regarding this application.

Printed Name/Address	Signature	Date
Jerry & Ruth Offer 1822 Fifth Ave WL 97068	Jerry D. Offer Ruth C. Offer	7/6/17 7/6/2017
Elizabeth Smolens 1852 4th Ave		7/6/17
SONJA SOPHER 1883 5th AVE		7/6/17
MICHAEL SELVAGGIO 1790 FIFTH AVE.		7/6/17
Keegan Chastain 1831 5th ave		7/6/17
BRIAN CHASTAIN 1831 5th Ave		7/6/2017
BONNIE TAYLOR TALBOT 1242 13TH STREET	B. Taylor-Talbot	7.7.17
ANGELA & CLAUDIO FERNISCO 1798 4TH AVE	 Angela Fernisco	7-7-17
Diane Andri Kopowlos 1797 5th Ave		7/7/17

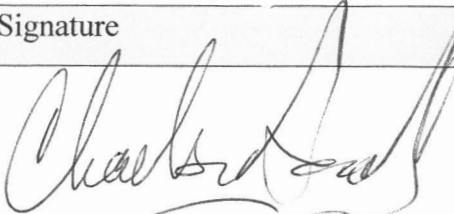


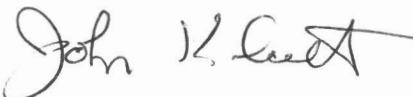
Printed Name/Address	Signature	Date
Charles Awalt 1847 5 th Ave		7/7/17
DIANE AWALT 1847 5 th Ave		7/7/17
Jody Carson 1296 12 th St.		7/7/17
John Klett 1296 12 th St		7/7/17

EXHIBIT CC-2 INCOMPLETENESS DETERMINATION



CITY OF West Linn

May 30, 2017

Phil Chek & Associates
148 B Ave Suite 100
Lake Oswego, OR 97034

SUBJECT: LLA-17-04 application for a Lot Line Adjustment and two Class I variances at 1822 5th Avenue.

Dear Phil:

You submitted this application on May 11, 2017. The Planning Department finds that this application is **incomplete**. The following items must be addressed:

85.070 ADMINISTRATION AND APPROVAL PROCESS

A. The application shall be filed by the record owner(s) of the property or by an authorized agent who has a letter of authorization from the property owners of record. The burden of proof will be upon the applicant to demonstrate the validity of the ownership, if challenged.

85.210 PROPERTY LINE ADJUSTMENTS – APPROVAL STANDARDS

A. The Director shall approve or deny a request for a property line adjustment based on the criteria stated below:

- 1. An additional lot or parcel shall not be created by the line adjustment.*
- 2. The existing property shall not be reduced in size by the adjustments below the minimum lot or parcel size established by the approved zoning for that district.*
- 3. Reducing the lot or parcel size shall not violate the site development regulations for that district. For example, the property line adjustment shall not result in an overall loss of density below 70 percent except as allowed by CDC 85.200(j)(7).*
- 4. The property line adjustment is as defined by ORS Chapter 92.*

5. *The lot line adjustment will not affect existing easements or existing utilities unless an easement vacation is obtained, replacement easements are dedicated or any required utility relocations are paid for by the applicant.*

6. *Any appeal must be filed in accordance with CDC 99.240.*

B. The provisions of CDC 85.070 shall also apply to lot line adjustments. (Ord. 1401, 1997; Ord. 1442, 1999; Ord. 1635 § 35, 2014; Ord. 1636 § 57, 2014)

* Pursuant to CDC 99.035, the Planning Director may require information in addition to that required by a specific chapter in the Community Development Code or may waive a specific requirement for information or a requirement to address a certain approval standards.

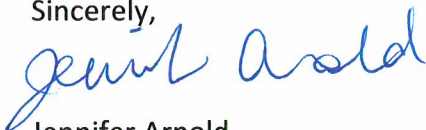
Pursuant to ORS 227.178 "If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designee of:

- (a) All of the missing information;
- (b) Some of the missing information and written notice from the applicant that no other information will be provided; or
- (c) Written notice from the applicant that none of the missing information will be provided.

You now have 180 days, to October 26, 2017, to make the application complete by providing the information outlined above. On the 181st day after first being submitted, the application will be considered void if the applicant has been notified of the missing information and has not submitted the information as requested above or a written notice responding to the above options.

Please contact me at 503-742-6057, or by email at jarnold@westlinnoregon.gov if you have any questions or comments.

Sincerely,



Jennifer Arnold
Associate Planner

EXHIBIT CC-3 APPELLANT'S APPLICATION

DEVELOPMENT REVIEW APPLICATION

For Office Use Only		
STAFF CONTACT <i>Jennifer Arnold</i>	PROJECT NO(S). <i>AP-17-02</i>	
NON-REFUNDABLE FEE(S) <i>400 -</i>	REFUNDABLE DEPOSIT(S)	TOTAL <i>400 -</i>

Type of Review (Please check all that apply):

- | | | |
|--|---|--|
| <input type="checkbox"/> Annexation (ANX) | <input type="checkbox"/> Historic Review | <input type="checkbox"/> Subdivision (SUB) |
| <input checked="" type="checkbox"/> Appeal and Review (AP) * | <input type="checkbox"/> Legislative Plan or Change | <input type="checkbox"/> Temporary Uses * |
| <input type="checkbox"/> Conditional Use (CUP) | <input type="checkbox"/> Lot Line Adjustment (LLA) */** | <input type="checkbox"/> Time Extension * |
| <input type="checkbox"/> Design Review (DR) | <input type="checkbox"/> Minor Partition (MIP) (Preliminary Plat or Plan) | <input type="checkbox"/> Variance (VAR) |
| <input type="checkbox"/> Easement Vacation | <input type="checkbox"/> Non-Conforming Lots, Uses & Structures | <input type="checkbox"/> Water Resource Area Protection/Single Lot (WAP) |
| <input type="checkbox"/> Extraterritorial Ext. of Utilities | <input type="checkbox"/> Planned Unit Development (PUD) | <input type="checkbox"/> Water Resource Area Protection/Wetland (WAP) |
| <input type="checkbox"/> Final Plat or Plan (FP) | <input type="checkbox"/> Pre-Application Conference (PA) */** | <input type="checkbox"/> Willamette & Tualatin River Greenway (WRG) |
| <input type="checkbox"/> Flood Management Area | <input type="checkbox"/> Street Vacation | <input type="checkbox"/> Zone Change |
| <input type="checkbox"/> Hillside Protection & Erosion Control | | |

Home Occupation, Pre-Application, Sidewalk Use, Sign Review Permit, and Temporary Sign Permit applications require different or additional application forms, available on the City website or at City Hall.

Site Location/Address: <i>1822 Fifth Avenue West Linn</i>	Assessor's Map No.: <i>CCTM 31E02BA</i>
	Tax Lot(s): <i>6800</i>
	Total Land Area: <i>approx. 10,000 sq. ft.</i>

Brief Description of Proposal:

Appeal of Director's decision for casefile LLA-17-04/VAR-17-02/VAR-17-03

Applicant Name: <i>Appellants - Willamette Historic District</i> <small>(please print)</small>	Phone: <i>503-890-6847</i>
Address: <i>1825 Fifth Ave, West Linn 97068</i>	Email: <i>offerdogs@gmail.com</i>
City State Zip: <i>97068</i>	

Owner Name (required): <i>Phil Chek (also original applicant)</i> <small>(please print)</small>	Phone:
Address: <i>148 B. Avenue, Suite 100</i>	Email:
City State Zip: <i>Lake Oswego, OR 97034</i>	

Consultant Name: <small>(please print)</small>	Phone:
Address:	Email:
City State Zip:	

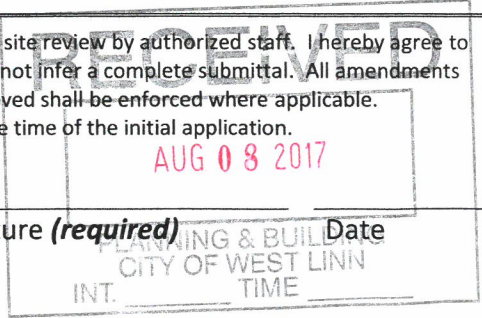
- All application fees are non-refundable (excluding deposit). **Any overruns to deposit will result in additional billing.**
- The owner/applicant or their representative should be present at all public hearings.
- A denial or approval may be reversed on appeal. No permit will be in effect until the appeal period has expired.
- Three (3) complete hard-copy sets (single sided) of application materials must be submitted with this application.**
One (1) complete set of digital application materials must also be submitted on CD in PDF format.
If large sets of plans are required in application please submit only two sets.

* No CD required / ** Only one hard-copy set needed

The undersigned property owner(s) hereby authorizes the filing of this application, and authorizes on site review by authorized staff. I hereby agree to comply with all code requirements applicable to my application. Acceptance of this application does not infer a complete submittal. All amendments to the Community Development Code and to other regulations adopted after the application is approved shall be enforced where applicable. Approved applications and subsequent development is not vested under the provisions in place at the time of the initial application.

Appellants - See attached list
 Applicant's signature _____ Date _____

Owner's signature (required) _____ Date _____



To: West Linn City Council
From: Neighbors of 1822 Fifth Avenue (see attached list)
CC: Planning Department
Date: August 8, 2017
RE: Appeal of the Planning Manager Decision on proposed Lot Line Adjustment and Variances Case File LLA-17-04/VAR-17-02/VAR-17-03 affecting property at 1822 Fifth Avenue

STANDING TO APPEAL

Neighbors of the property located at 1822 Fifth Avenue which is subject to Lot Line Adjustment and Variance application LLA-17-04/VAR-17-02/VAR-17-03 hereby appeal to the City Council for review of the Planning Manager's July 25, 2017 decision for that casefile. The neighbors filing this appeal all were parties to written comments on the original application submitted within the noticed public comment period on this application. The comments of the neighbors were stamped received by the Planning Department on July 10, 2017. As the appellants were timely commenters on the prior decision, the neighbors filing this appeal have standing to appeal the Planning Manager's decision to the City Council. The neighbors/appellants' signatures and their addresses are included in Addendum A to this appeal memo.

BRIEF BACKGROUND

The subject property located at 1822 Fifth Avenue is part of the Willamette Falls subdivision plat. The property consists of lots 7 and 8 of block 12 of that plat. The plat was recorded in 1894. A home was constructed on the property in approximately 1899 - 118 years ago. The home was constructed across the platted common boundary between lots 7 and 8, thereby leaving the eastern-most lot – lot 8 – without the minimum requisite unbuilt upon 5,000 square feet for a buildable lot within the R-5 zoning district currently applied to the site. The applicant, Phil Chek & Associates, has submitted a request to “reestablish the existing historical lot line and to adjust it so as to make the existing home conform to the setback requirements.” In addition, the applicant has requested a variance to the R-5 zoning district's 5,000 square foot minimum lot size standard so that the adjusted lot 8 could be 4,887 square feet in size. In addition, the applicant has requested a variance to the average minimum lot width standard of 50 feet so that lot 8 may instead have an average minimum lot width of 49.14 feet. See the applicant's proposed lot line adjustment plan in Addendum D to this report. The Planning Manager's July 25, 2017 decision approved those requests.

BASIS OF APPEAL

The appellants believe that the Planning Manager's July 25, 2017 decision on this matter is contrary to several provisions of Oregon land use case law and the West Linn Community Development Code, and therefore should be reversed and denied by the City Council. In brief, we assert the following:

1. Community Development Code Section 99.032.C.2. requires that “*an application shall be complete and shall contain the information requested on the form, shall address the appropriate submittal requirements and approval criteria in sufficient detail for review and action, and shall be accompanied by the deposit or fee required by CDC 99.033. (emphasis added)*” The applicant has not submitted a narrative addressing all of the approval standards for a lot line adjustment as listed in

Development Code Section 85.210 Lot Line Adjustment Approval Standards under the general heading of “criteria stated below.” The applicant’s proposed side lot line adjustment is a clear example of what is shown as an “unacceptable lot line adjustment.” Both the proposed lot line adjustment and the Code’s unacceptable lot line adjustment consist of breaking a single side lot line into seven separate segments. Both the proposed adjustment and the “unacceptable lot line adjustment” result in portions of front and rear yards from one of the lots being located in front of/in back of the similar yard of the other lot. The neighbors raised this similarity between the proposed adjusted lot configurations and the “unacceptable lot line adjustment” diagram in our initial comments on this case. In addition, we have noted that the applicant had not even addressed this diagram as a lot line adjustment approval standard.

In response to the neighbors’ comments regarding the Code Section’s 85.210 applicability to the proposed situation and the applicant’s failure to respond to that standard, the Planning Manager’s July 27, 2017 decision offers two alternative findings. First, the addendum to that decision asserts that the diagram was eliminated from the Code through Ordinance 1635 approved in 2014. This staff assertion is based upon text which was deleted from the Code through the common method of striking through the text to be deleted. However, neither the staff report to the City Council or the final signed Ordinance 1635 show an intent to delete this diagram by either illustrating a strike through, by bracketing, or by a narrative explanation. These are the common methods in ordinance construction which illustrate a proposed deletion. The instructions for interpreting the ordinance were written and explained to the City Council at the top of Ordinance 1635, where it states that the ordinance is “Annotated to show deletions” and that “Deletions are bold lined through”. No such affectation was made to the diagram in question.

In fact, the text of the ordinance used another common ordinance construction method to illustrate that the diagram was not to be affected by the proposed ordinance. The ordinance text places an ellipsis (three dots) in the left margin of the proposed ordinance amendment package. This common method of omitting unaffected portions of code was used extensively in the ordinance when dealing with other Code sections which were not to be affected by the proposed Code amendments. Other Code sections replaced by an ellipsis in the ordinance remain in the Code and are routinely used as approval standards or procedural standards by City staff. (For example, Section 16 of Ord 1635 replaces existing portions of CDC 28.040(A) through (S) with an ellipsis and these sections were not affected by the passage of the ordinance.) A reasonable person would therefore conclude that the diagram remains in the Community Development Code as an approval standard.

The staff addendum provided an alternative assessment that “[E]ven if the diagrams were retained, the graphics standing alone are not clear enough to apply as a standard. It therefore cannot be a basis for denial.” Although we might agree that this diagram might be difficult to use in some cases, it is not vague and clearly is able to be used as an approval standard for the current proposal. The current proposed lot line adjustment is so similar to what is shown as an “unacceptable lot line adjustment” that the diagram of the unacceptable adjustment clearly can be applied to the current proposal. Both the diagram of the “unacceptable lot line adjustment” and the proposed adjustment illustrate rectangular lots with similar lot width to depth ratios being reconfigured into seven distinct side lot line segments with both front and rear lot areas of the right-hand lots being located in front/rear of the left-side lots. The similarities between the proposal and the “unacceptable lot line adjustment” diagram are striking. In fact, the diagram explicitly notes the “gerrymandering” and “zig-zags” that leads to such unacceptability.

Therefore, we would urge the City Council to find that the proposed lot line adjustment is an “unacceptable lot line adjustment” and to deny the application.

In addition, we assert that the Planning Manager has over-stepped his bounds in interpreting that the intent of the 2014 City Council to remove the acceptable/unacceptable diagram of Section 85.210 or to determine that “[E]ven if the diagrams were retained, the graphics standing alone are not clear enough to apply as criteria.”

To fail to apply a section of code that the City Council voted to retain in 2014 would be tantamount to a legislative decision. If the understanding of the City Council had been that the diagram was to be omitted from the stated criteria of CDC 85.210, the Councilors may have easily come to a different conclusion with regards to elimination of subsection (4) of 85.210. By leaving the diagram of an “unacceptable lot line adjustment” and explicitly noting the “gerrymandering” and “zig-zags” that leads to such unacceptability, it is logical to see how the inclusion of the then-current subsection (4) stipulation that “Lot lines shall not gerrymander or excessively zigzag” becomes redundant. Conversely, if the ordinance had explicitly indicated that the diagram was in fact intended to be omitted, the stipulation in the then-current subsection (4) would have taken on additional significance, and the ordinance may have not passed in its current form.

(In addition, the re-inclusion of the language that Ordinance 1635 explicitly cut from CDC 85.210 in Ordinance 1636 further serves to confuse the intent of the Council. While this is likely an artifact of amending the same section of code without first engrossing the previous ordinance, it remains that the Council’s most recent action on CDC 85.210 was made to an ordinance that not only made no changes to the diagram in question, but included the prior text of 85.210(4) saying that “*New lot lines shall be generally straight with only a few deviations. Lot lines shall not gerrymander or excessively zigzag along to accommodate tool sheds, accessory structures, other buildings, etc.*”)

Further, it appears that the Planning Manager is attempting to make a determination regarding the existence of the diagram in the Code and/or the diagram’s applicability due to staff’s perception regarding a perceived lack of clarity in the diagram. Either way, the Planning Manager appears to be using a minor quasi-judicial application to determine applicability of the diagrams city-wide. Such determinations cannot be made by the Planning Manager. Decisions with a city-wide effect must be made by the City Council and must follow the legislative process and standards provided for by the City of West Linn Community Development Code. If the Planning Manager had a concern about the existence of a Code standard in the Community Development Code or how to apply a Code Section that staff finds is not clear to apply as an approval criteria, such concerns should be referred to the Council in advance of the review of an affected quasi-judicial application.

Also, please note that the diagram of acceptable and unacceptable lot line adjustments is illustrated within the copy of the Community Development Code which is online on August 6, 2017.

Also, please note that the text of CDC 85.210(4) online as of August 6, 2017 is not what was passed as Ordinance 1635; it is missing the phrase “not a replat”.

4. Section 85.210.A.3. says that a lot reduced in size by the proposed lot line adjustment shall not violate the site development standards of that district. The subject property is located in the R-5

zoning district and also is within the Willamette Historic District overlay zone. The applicant has requested approval of (a) a minor variance to the 5,000 square foot minimum lot size standard of the R-5 district for the eastern-most lot and (2) has requested a variance to the minimum average lot width standard of the R-5 district. While we cannot really quibble with the applicant's responses to the very simple approval standards for minor variances, we are surprised that the applicant can cite preserving the existing fruit trees in their response to preserving natural features when their site plan for the intended future home on the eastern lot would likely require removal of those very trees. Our bigger concern (and probably the biggest concern of most of the signers to this memo) is that the proposed "adjustment" would leave the proposed eastern lot of a size and shape that would be inconsistent with the historic lotting pattern of the Willamette Falls plat and with the surrounding lots. This sort of change would undermine the historic integrity of both the Willamette Historic District overlay zone and the Willamette National Register Historic District that the neighbors and City have been working to maintain. Further, we do not understand that a positive finding could be made to Code Section 25.070.B for any future Historic District Design Review application for construction of a new home on the eastern lot. That section says:

New construction shall complement and support the district. The historic district's defining characteristics include a discernible aesthetic rhythm of massing, scale, and siting. Infill buildings shall not deviate in a detracting manner from these elements, but appear as complementary members of the district, by conforming to the following:

Lot or parcel size, massing, scale, proportion, form (emphasis added), siting, floor area ratio, window patterns, building divisions, and height shall correspond to the contributing buildings within the district, and any specific historic district standards and the applicable requirements of the underlying zone.

5. In addition, Code Section 25.070.C says the following:

New lot configuration. In addition to other requirements of the CDC, all new lots in the historic district shall be perpendicular to the street and extend directly from the lot line along the street to the opposite lot line. The primary structure and any other contributing structures on the original property shall not be located on separate lots.

We do not believe that this standard would not also apply to existing lots within the Historic District which are proposed to be significantly reconfigured and only apply to brand new lots. Again, the proposed lot configuration's common boundary would be in conflict with this standard and would undermine the integrity of the Historic District.

The above highlight our joint concerns with the proposed Lot Line Adjustment application for 1822 Fifth Avenue. We do not find that the applicant has adequately addressed all of the approval standards for a lot line adjustment and thus has not met their burden of proof for this application. Further, the requested adjustment would be in conflict of the Community Development Code as outlined above and, most importantly, would undermine the integrity of the Willamette Historic District that the citizens of Willamette and the City of West Linn have worked so hard to maintain. We therefore request that the Planning Manager's decision for Case File LLA-17-04/VAR-17-02/VAR-17-03 be reversed and denied.

Addendum A: Appellants/Signatories to Memo


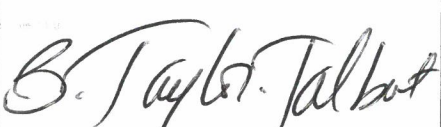
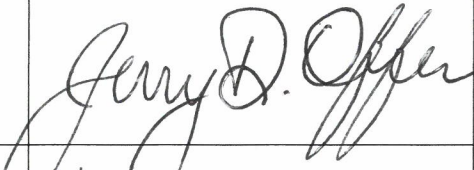

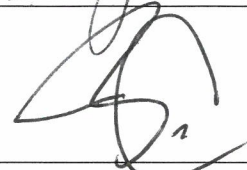

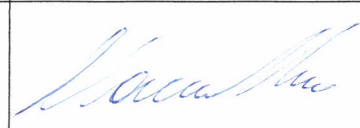
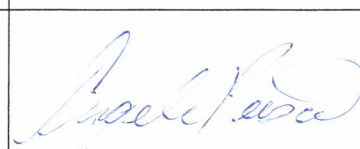
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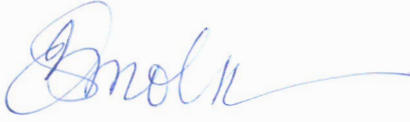

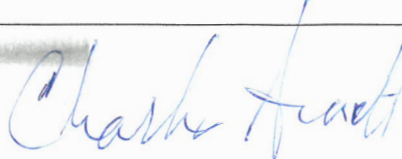
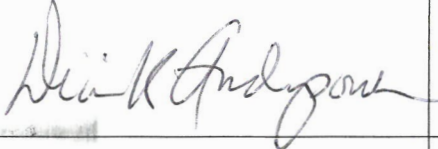
Addendum C: Proposed Lot Line Adjustment Diagram from application package

Addendum D: Pages 1 and 23 of Ordinance No. 1635

Addendum A

Appeal Signatories The undersigned hereby make an appeal to the West Linn City Council of the July 25, 2017 Planning Manager Decision for Casefile LLA-17-04/VAR-17-02/VAR-17-03 concerning a Lot Line Adjustment and Variances request affecting property at 1822 Fifth Avenue filed by Phil Chek Associates. The signatories were all signatories to a comment memo regarding this case file submitted to the Planning Department and stamped received by that Department on July 10, 2017. As such, the signatories have standing to appeal the Planning Manager's Decision for Casefile LLA-17-04/VAR-17-02/VAR-17-03 consistent with the standing requirements of Section 99.140.B.

Printed Name/Address	Signature	Date
Ruth Offer 1825 Fifth Ave West Linn, OR 97068		Aug 6, 2017
BONNIE TAYLOR TALBOT 1242 13TH ST. WEST LINN, OR 97068		Aug 7, 2017
Jerry Offer 1825 Fifth Avenue West Linn, OR		8-7-17
Keegan Chastein 1831 5th ave West Linn 97068		8-7-2017
Brian Chastein 1831 5th Ave West Linn 97068		8-7-2017
MICHAEL SELVAGGIO 1790 FIFTH AVENUE WEST LINN 97068		8/7/2017
CLAUDIO A. PERNISCO 1798 4TH AVENUE WEST LINN OR. 97068		8/8/17
ANGELA R. PERNISCO 1798 4TH AVENUE WEST LINN OR. 97068		8/8/17

Printed Name/Address	Signature	Date
Elizabeth Smolens P.O. Box 604 1852 4th Ave		8/7/17
DIANE AWALT 1847 5th AVE		8/7/2017
CHARLES AWALT 1847 5th AVE		2017 CH 8/7/17
Diane Andrikopoulos 1797 5th Ave		8/8/17

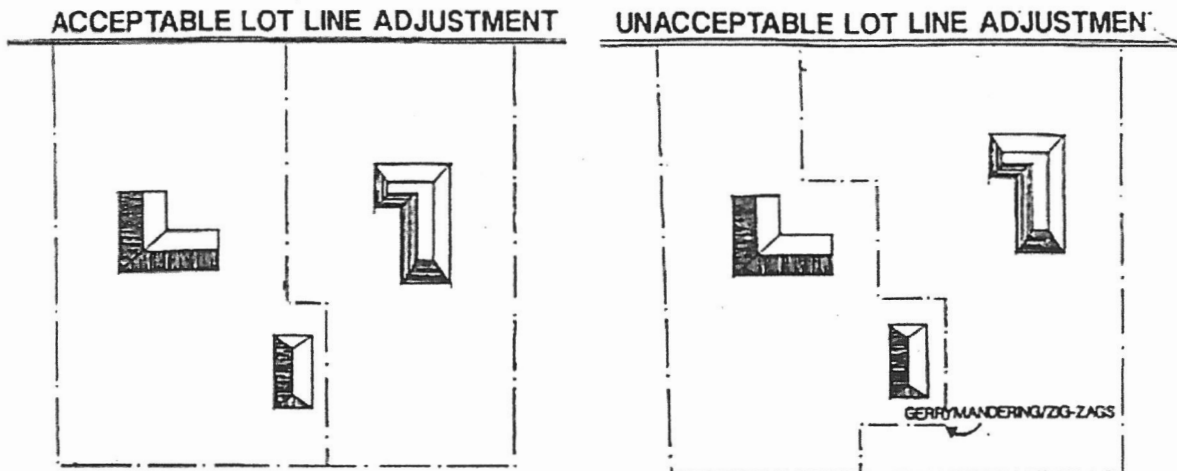
Addendum B

City of West Linn Community Development Code (as copied from the City's website on August 6, 2017)

85.210 PROPERTY LINE ADJUSTMENTS – APPROVAL STANDARDS

A. The Director shall approve or deny a request for a property line adjustment based on the criteria stated below:

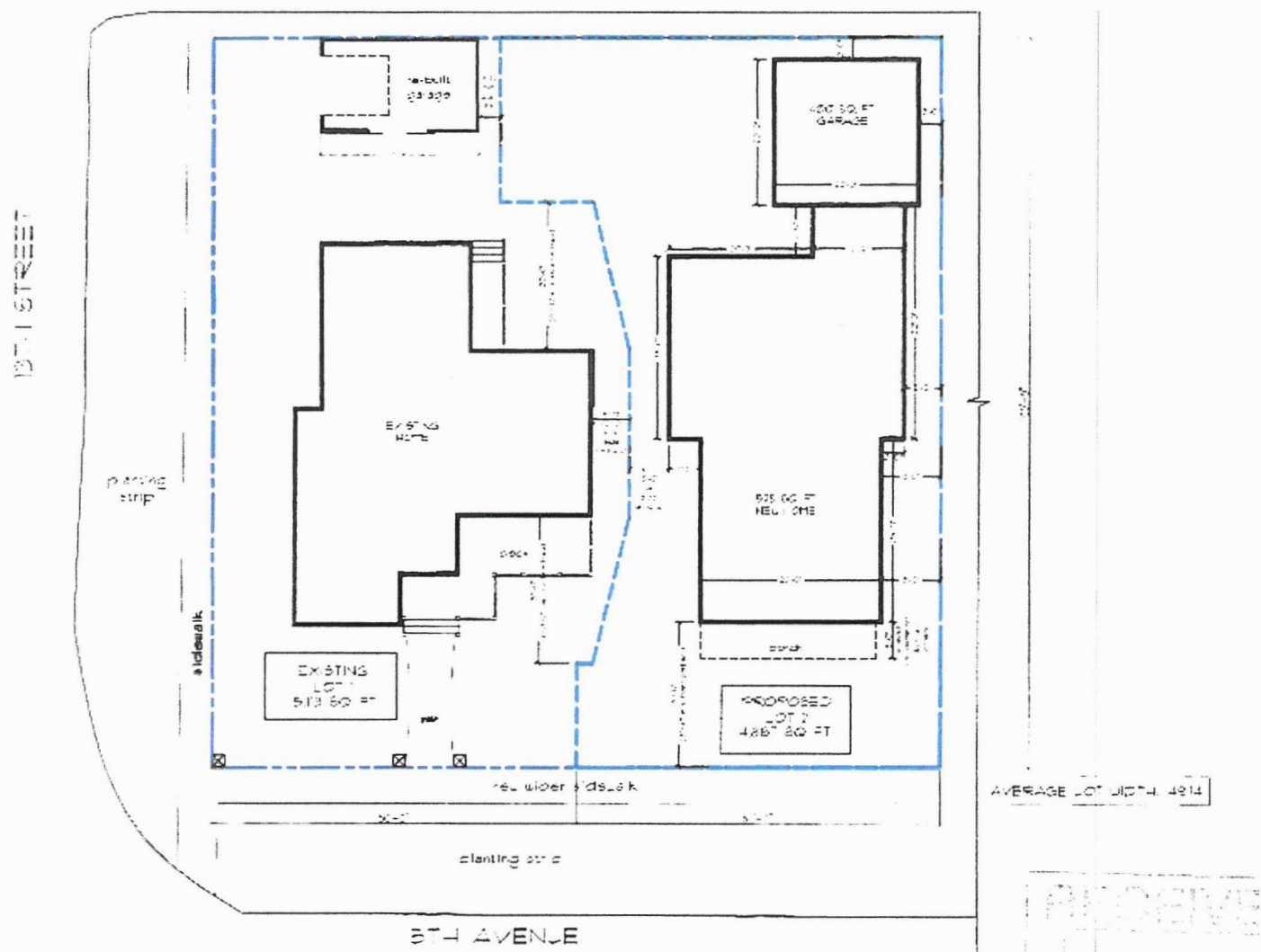
1. An additional lot or parcel shall not be created by the line adjustment.
2. The existing property shall not be reduced in size by the adjustments below the minimum lot or parcel size established by the approved zoning for that district.
3. Reducing the lot or parcel size shall not violate the site development regulations for that district. For example, the property line adjustment shall not result in an overall loss of density below 70 percent except as allowed by CDC 85.200(J)(7).
4. The property line adjustment is as defined by ORS Chapter 92.



5. The lot line adjustment will not affect existing easements or existing utilities unless an easement vacation is obtained, replacement easements are dedicated or any required utility relocations are paid for by the applicant.
 6. Any appeal must be filed in accordance with CDC 99.240.
- B. The provisions of CDC 85.070 shall also apply to lot line adjustments.

Addendum C

Proposed Lot Line Adjustment Diagram from application package



1 PROPOSED LOT LINE ADJUSTMENT
SCALE: 1/8" = 1'-0"

RECEIVED
NOV 11 2017
CITY OF WEST LAFAYETTE

ADDENDUM D

ADOPTED ORDINANCE 1635

ORDINANCE NO. 1635

AN ORDINANCE AMENDING NUMEROUS CHAPTERS OF THE COMMUNITY DEVELOPMENT CODE TO MAKE THE CODE CONSISTENT WITH THE OREGON REVISED STATUTES AND OREGON ADMINISTRATIVE RULES, RE-ORGANIZE TEXT, AND MAKE NECESSARY CORRECTIONS AND CLARIFICATIONS

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are ~~bold lined through~~ and additions are bold underlined.

WHEREAS, Chapter II, Section 4, of the West Linn City Charter provides:

Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers;

WHEREAS, City Council Goals provide for "Continue[d] efforts to update & improve the Community Development Code";

WHEREAS, The Planning Commission held a public hearing on October 1, 2014, and recommended the City Council adopt the proposed maintenance updates to the Community Development Code as contained within Chapters 1, 2, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 27, 28, 32, 34, 36, 37, 38, 42, 44, 46, 48, 54, 55, 56, 59, 60, 65, 67, 68, 75, 76, 81, 85, 91, 92, 99 and 106; and

WHEREAS, Community Development Code Chapter 98 defines the procedures for legislative decision making.

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

SECTION 1. Amendment. West Linn Community Development Code (CDC) Section 1.030 is amended as follows:

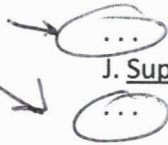
01.030 COMPLIANCE

- A. Except as otherwise specifically provided by this zoning code, no building or other structure shall be erected, constructed, established, occupied, altered, maintained, improved, ~~altered~~, enlarged or moved, nor shall any use or occupancy of premises within the City be commenced or changed, nor shall any condition of or upon real property be caused or maintained after the effective date of this code, except in conformity with conditions prescribed for each of the several zones and general regulations established in this code hereunder.
- B. It shall be unlawful for any person to erect, construct, establish, occupy, alter, improve, enlarge, or use, or cause to be used, any building, structure, improvement

landslide or slope failure. The City Engineer may impose conditions consistent with the purpose of these ordinances and with standard engineering practices including limits on type and intensity of land use, which have been determined necessary to assure landslide or slope failure does not occur.

6. All cuts and fills shall conform to the Uniform Building Code.

Other ellipsis



J. Supplemental provisions.

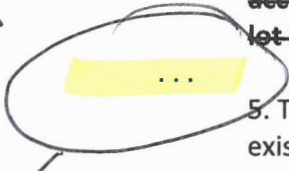
~~10. Annexation and street lights. Developer and/or homeowners association shall, as a condition of approval, pay for all expenses related to street light energy and maintenance costs until annexed into the City, and state that: "This approval is contingent on receipt of a final order by the Portland Boundary Commission, approving annexation of the subject property." This means, in effect, that any permits, public improvement agreements, final plats, and certificates of occupancy may not be issued until a final order is received.~~

SECTION 35. Amendment. West Linn CDC Section 85.210 is amended as follows:

85.210 LOT LINE ADJUSTMENT APPROVAL STANDARDS

A. The Director shall approve or deny a request for a lot ~~property~~ line adjustment based on the criteria stated below:

1. An additional lot or parcel ~~buildable lot~~ shall not be created by the lot line adjustment. ~~and~~
2. ~~The~~ existing parcel shall not be reduced in size by the adjustments below the minimum lot size established by the approved zoning for that district.
3. By reducing the lot size, the lot or structure(s) on the lot shall not be in violation of the site development regulations for that district. For example, the lot line adjustment shall maintain setback requirements and shall not result in an overall loss of density below 70 percent, except as allowed by CDC 85.200(J)(7).
4. ~~The lot line adjustment is 3. The lot line adjustment is intended to allow minor lot line deviations, or to consolidate undersized or irregular shaped lots. It can also be used to change a limited number of property lines up to the point that the County Surveyor would determine not a replat of the subdivision is in order. A replat is the complete reconfiguration and realignment of a subdivision's lot lines as defined by ORS chapter 92.~~
4. ~~The lot lines shall be generally straight with only a few deviations. Lot lines shall not gerrymander or excessively zigzag along to accommodate tool sheds, accessory structures, other buildings, etc. The figure below serves as a guide to lot line adjustments.~~



5. The lot line adjustment will not affect existing ~~public utility~~ easements ~~nor~~ existing utilities unless an easement vacation is obtained, replacement easements are dedicated or ~~and~~ any required utility relocations are paid for by the applicant.

Ellipsis

indicating Lot Line Adjustment diagram was omitted in this printing, not that it was to be deleted.

EXHIBIT CC-4 AFFIDAVIT AND NOTICE PACKET

AFFIDAVIT OF NOTICE

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

GENERAL

File No. AP-17-02 Applicant's Name Jerry Offer: "Willamette, Historic District Neighbors"
Development Name _____
Scheduled Meeting/Decision Date 9-11-17

NOTICE: Notices were sent at least 20 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE A

- A. The applicant (date) 8-22-17 (signed) S. Skoyev
- B. Affected property owners (date) 8-22-17 (signed) S. Skoyev
- C. School District/ Board (date) _____ (signed) _____
- D. Other affected gov't. agencies (date) _____ (signed) _____
- E. Affected neighborhood assns. (date) 8-22-17 ALL (signed) S. Skoyev
- F. All parties to an appeal or review (date) 8-22-17 (signed) S. Skoyev

At least 10 days prior to the scheduled hearing or meeting, notice was published/posted:

Tidings (published date) 8-31-17 (signed) S. Skoyev
City's website (posted date) 8-22-17 (signed) S. Skoyev

SIGN

At least 10 days prior to the scheduled hearing, meeting or decision date, a sign was posted on the property per Section 99.080 of the Community Development Code.

(date) 8-25-17 (signed) Jennifer Arnold

NOTICE: Notices were sent at least 14 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE B _____

- A. The applicant (date) _____ (signed) _____
- B. Affected property owners (date) _____ (signed) _____
- C. School District/ Board (date) _____ (signed) _____
- D. Other affected gov't. agencies (date) _____ (signed) _____
- E. Affected neighborhood assns. (date) _____ (signed) _____

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.
Date: _____ (signed) _____

STAFF REPORT mailed to applicant, City Council/Planning Commission and any other applicable parties 10 days prior to the scheduled hearing.

(date) _____ (signed) _____

FINAL DECISION notice mailed to applicant, all other parties with standing, and, if zone change, the County surveyor's office.

(date) _____ (signed) _____

**WEST LINN CITY COUNCIL
PUBLIC HEARING NOTICE
FILE NO. AP-17-02**

The West Linn City Council is scheduled to hold a public hearing on **Monday, September 11, 2017**, starting at **6:30 p.m.** in the Council Chambers of City Hall at 22500 Salamo Road, West Linn, to consider an appeal by Jerry Offer on behalf of 'Willamette Historic District Neighbors' of the Planning Manager's approval of the Lot Line Adjustment and two Class I Variances to lot dimensions at 1822 5th Avenue.

You have been notified of this proposal because County records indicate that you own property within 500 feet of the affected site on Clackamas County Assessor's Map 3S-1E-02 BA, Tax Lots 6800, or City records indicate that you had standing on case LLA-17-04/VAR-17-02/VAR-17-03 or because notice is required by Chapter 99 of the West Linn Community Development Code.

The hearing is limited to the issues clearly and distinctly set forth in the notice of appeal. Jerry Offer and 'Willamette Historic District Neighbors' asserts that the applicable approval criteria in **Community Development Code (CDC) 25.070.B(1)(a), 25.070.C(6), 85.210.A diagram, 85.210.A(3), and 99.30.C(2)** were misapplied. Therefore, the appellants disagree with the findings approved by the Planning Manager for the Lot Line Adjustment and two Class I Variances to lot dimensions, and the appellants assert the criteria have not been met.

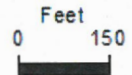
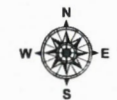
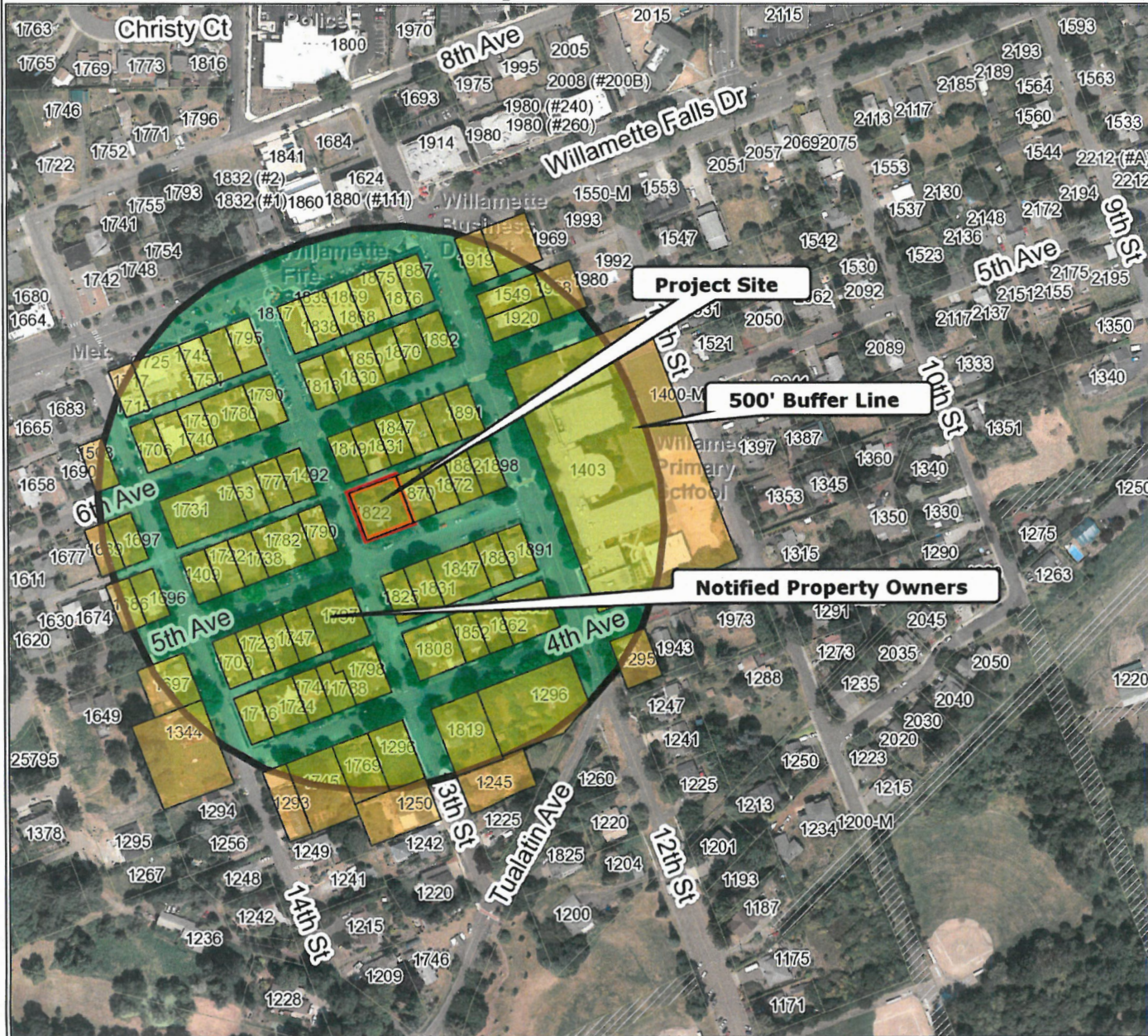
The City Council will make a decision to approve the application and uphold the Planning Manager's decision or overturn the Planning Manager's decision and deny the application based upon the applicable criteria and the evidence in the record. At the hearing, all written or oral comments must relate specifically to the applicable criteria and refer only to evidence and facts already in the record.

The notice of appeal and the complete application for AP-17-02 is available for inspection, at no cost, at City Hall or via the City of West Linn's website at <http://westlinnoregon.gov/planning/1822-fifth-avenue-appeal-planning-manager-approval>. Printed copies of these documents may be obtained for a minimal charge per page. At least 10 days prior to the hearing, a copy of the staff report will be available for inspection at no cost or copies can be obtained for a minimal charge per page. For further information, please contact Jennifer Arnold, Associate Planner, at City Hall, 22500 Salamo Road, West Linn, OR, (503) 742-6057, or jarnold@westlinnoregon.gov.

The appeal hearing is on the record, and it will be conducted in accordance with Community Development Code (CDC) 99.280(B), Council rules for on the record hearings and those rules in CDC Section 99.170 that are applicable to on the record hearings. **No new facts or evidence may be submitted in an on the record hearing.** If you wish to read material at the meeting, you may do so during the public testimony segment of the hearing.

Failure to raise an issue in person or by letter at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue.

1822 5th Avenue Notification Map AP-17-02



Scale 1:3,600 - 1 in = 300 ft
Scale is based on 8-1/2 x 11 paper size



Map created by: SSHROYER
Date Created: 22-Aug-17 08:53 AM

WEST LINN GIS

DISCLAIMER: This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information. Map scale is approximate. Source: West Linn GIS (Geographic Information System) MapOptix.



CITY OF West Linn

CITY OF WEST LINN NOTICE OF UPCOMING CITY COUNCIL MEETING

**PROJECT # AP-17-02
MAIL: 8/22/17 TIDINGS: 8/31/17**

CITIZEN CONTACT INFORMATION

To lessen the bulk of agenda packets, land use application notice, and to address the worries of some City residents about testimony contact information and online application packets containing their names and addresses as a reflection of the mailing notice area, this sheet substitutes for the photocopy of the testimony forms and/or mailing labels. A copy is available upon request.