

WEST LINN HISTORIC REVIEW BOARD

FINAL DECISION AND ORDER

DR-17-09

IN THE MATTER OF A CLASS II HISTORIC DESIGN REVIEW AT 1822 5TH AVENUE; FOR AN ADDITION TO AN EXISTING SINGLE FAMILY HOME

I. Overview

At its meeting on November 14, 2017, the Historic Review Board (“the Board of HRB”) held a public hearing to consider the request by Phil Check, applicant, to approve a proposal for an addition to an existing single story home at 1822 5th Ave. The approval criteria for Historic Design Review are found in Community Development Code (CDC) Chapter 25, Overlay Zones - Historic District. The hearing was conducted pursuant to the provisions of Chapter 99.

Board members Offer and Inman recused themselves. The applicant challenged the impartiality of Chair Lewis, and as a result, Chair Lewis recused herself. Remaining participating members were Watton, Schreiber, and Graves. Board member Neff was absent for this hearing. The remaining members appointed Graves as Interim Chair. The hearing commenced with a staff report presented by Jennifer Arnold, Associate Planner. Phil Check and his attorney, Andrew Stamp, presented as the applicant. The hearing was continued to December 19, 2017 with a request by the HRB that the applicant submit another design option for the board to consider. The record was left open until the December 19, 2017 hearing date.

At the December 19, 2017 meeting, Board members Offer, Lewis, and Inman recused themselves. The Board, Interim Chair Graves, Schreiber and Watton reopened the public hearing. The required ex parte contact disclosures were made. There was no objection to the ability of the remaining members to hear the case. The hearing began with a brief presentation by Jennifer Arnold, Associate Planner. Phil Check and his attorney, Andrew Stamp, presented as the applicant. Public testimony followed the applicant presentation. Many new pieces of written testimony were added into the record. During the public testimony, Jerry Offer testified as a neighbor to request a continuance in order for the public to review all testimony submitted into the record. The HRB asked the applicant, Phil Chek, if an extension of the 120 day deadline would be possible. The applicant approved the request to extend the statutory requirement to April 30, 2018 rather than the February 23, 2018 previously established deadline. A motion was made by HRB member, Tom Neff, to continue the hearing to January 23, 2018, the motion also left the record open for submission of new testimony, but it limited the scope of new testimony to: 1) ordinance 1614 (repeal/replacement of CDC Chapter 25), 2) the three decisions referenced by the applicant (DR-05-28, DR-09-09, & DR-10-04), and 3) discrepancies between the applicant’s map and the map submitted during public testimony related to the width of the house. Board Member Watton seconded the motion, which passed 3-1.

At the January 23, 2018, meeting, Board members Offer and Lewis recused themselves and Member Inman was absent. The Board, Interim Chair Graves, Schreiber and Watton reopened the public hearing. After appropriate disclosures, no objection was made to the ability of the remaining members to hear the case. The hearing began with a brief presentation by Jennifer Arnold, Associate Planner. Phil Check and his attorney, Andrew Stamp, presented as the applicant. Public testimony followed the applicant presentation. The hearing closed, and after deliberations, Board Member Watton made a motion, which was seconded by Board Member Schreiber, to deny the application based on the standards of CDC 25.060 design standards. The motion passed with a 3-1 vote. A motion was then made by Interim Chair Graves and seconded by Board Member Watton to deny the application based on the standards of CDC 25.070 and CDC 25.080, as described below. The motion carried with a 3-1 vote.

II. The Record

The record was finalized at the January 23, 2018, hearing. It includes all of the written testimony submitted during the open record periods.

III. Burden of Proof

The applicant bears the burden of proof to demonstrate that an application complies with applicable approval standards, and a local government is not required to approve a noncomplying development proposal. *Jurgenson v. County Court for Union County*, 42 Ore. App. 505, 510 (1979). The historic design review application requires decisions on land use applications that necessitate compliance with customary land use procedures. Therefore, the applicant is required to carry the burden of meeting each and every criterion for approval.

IV. General Findings of Fact

- 1) The Overview set forth above is true and correct.
- 2) The Applicant is Phil Check.
- 3) The Board finds that it has received all information necessary to make a decision based on the Staff Report; public comment, if any; and the evidence in the whole record, including any exhibits received at the hearing.

V. Findings and Determinations

- 1) The Board finds that the application does not satisfy CDC 25.060.A(3), time period consistency. The Board finds that the addition is not in keeping with the Queen Ann Victorian style because the elevations are too horizontal and because of the multiple roof planes. No reasonable condition could be applied to make the addition comply with the code requirement.
- 2) The Board finds that the application does not satisfy CDC 25.070.C(8), building shapes and sizes. The Board finds that since the code states no building shall exceed 35 feet in width, and the original building already exceeds this width requirement, approval would exceed the applicable standard. The building should not be

enlarged further because such a change would make the structure more nonconforming.

- 3) The Board finds that the application does not satisfy the requirement of CDC 25.080.B(3), addressing negative impacts. The Board finds that the applicant did not provide enough information to prove that the scale and mass will not have a negative impact or visually overwhelm adjacent properties. Substantial testimony from the community made the case that the designs created negative impacts.

The Board concludes that there is not substantial evidence in the record to demonstrate that all of the approval criteria in 25.060.A(3), 25.070.C(8), and 25.080.B(3) were satisfied.

VI. Order and Conditions of Approval

The Board concludes that DR-17-09 is denied based on the Record and the Findings above.


Peter Graves, INTERIM CHAIR
WEST LINN HISTORIC REVIEW BOARD

1-30-18
DATE

This decision may be appealed to the City Council pursuant to the provisions of Chapter 99 of the Community Development Code and any other applicable rules and statutes. This decision will become effective 14 days from the date of mailing of this final decision as identified below.

Mailed this 5th February day of January, 2018.

Therefore, this decision becomes effective at 5 p.m., February 19, 2018.