



**STAFF REPORT
FOR THE PLANNING COMMISSION**

FILE NUMBER: VAR-20-03

HEARING DATE: October 21, 2020

REQUEST: Class II Variance to allow five single-family homes to take access from a 20-foot wide shared private drive and modify a condition of approval from the original subdivision approval (SUB-15-02) at 2196 Tannler Drive.

APPROVAL CRITERIA: Community Development Code (CDC) Chapter 48; Chapter 75; and Chapter 99.

STAFF REPORT PREPARED BY: Jennifer Arnold, Associate Planner

Planning Manager's Initials DSW

TABLE OF CONTENTS

STAFF ANALYSIS AND RECOMMENDATION

GENERAL INFORMATION 2

EXECUTIVE SUMMARY 3

PUBLIC COMMENTS..... 3

RECOMMENDATION 3

ADDENDUM 4

EXHIBITS

PC-1 APPLICANT SUBMITTAL 14

PC-2 WEST LINN ENGINEERING COMMENTS..... 20

PC-3 TUALATIN VALLEY FIRE & RESCUE COMMENTS 22

PC-4 ACCESS EASEMENT (LOT 6)..... 25

PC-5 AFFIDAVIT AND NOTICE PACKET 31

PC-6 COMPLETENESS LETTER..... 36

GENERAL INFORMATION

OWNER/APPLICANT: Toll West Coast LLC
Toll Brothers: JJ Portlock
4949 Meadows Road
Lake Oswego, OR 97035

SITE LOCATION: 2196 Tannler Drive

LEGAL DESCRIPTION: Clackamas County Assessor's Map 2S-1E-35BA, Tax lot 20806

SITE SIZE: 7,137 square feet

ZONING: R-7, Single-Family Residential Detached and Attached

COMP PLAN DESIGNATION: Low-Density Residential

120-DAY PERIOD: This application became complete on September 30, 2020. The 120-day maximum application-processing period ends on January 28, 2021.

PUBLIC NOTICE: Notice was mailed to property owners within 500 feet of the subject property and all neighborhood associations September 30, 2020. Notice was published in the West Linn Tidings on October 7, 2020. The property was posted with a notice sign on October 8, 2020. The notice and application were posted on the City's website September 30, 2020. Therefore, public notice requirements of CDC Chapter 99 have been met.

EXECUTIVE SUMMARY

The applicant has applied for a Class II Variance to relocate an approved driveway from Tannler Drive to a shared private drive. The variance is required to allow five single-family homes to take access from the shared private drive, which is 20-feet in width but not built to public street standards. Approval of the variance would also require a modification of approval of SUB-15-02, specifically Condition of Approval 13, which required the subject property (Lot 6) to take access directly onto Tannler Drive. Prior to issuance of the building permit, allowing the applicant to construct the single-family home on the property, an access and maintenance agreement was required for the subject property to use the shared private drive. The applicant has a sale pending on the single-family home and scheduled to close on the property the third week of October.

The West Linn Engineering Division (Exhibit PC-2) has reviewed and supports the proposed design. Tualatin Valley Fire & Rescue reviewed the design and had no conditions to add (Exhibit PC-3).

Public comment:

As of the publication date of this report, staff had received no written public comment.

RECOMMENDATION

Staff recommends approval of application VAR-20-03, based on: 1) the findings submitted by the applicant, which are incorporated by this reference, 2) supplementary staff findings included in the Addendum below, and 3) the addition of conditions of approval below. With these findings, the applicable approval criteria are met. The conditions are as follows:

1. **Tannler Driveway.** The existing driveway approach off of Tannler shall be removed and replaced with a sidewalk separated from the curb per City of West Linn Construction Standards.

ADDENDUM
PLANNING COMMISSION STAFF REPORT
October 21, 2020

STAFF EVALUATION OF THE PROPOSAL'S COMPLIANCE
WITH APPLICABLE CODE CRITERIA

I. CHAPTER 12, SINGLE-FAMILY RESIDENTIAL DETACHED AND ATTACHED, R-7
12.030 PERMITTED USES

The following uses are permitted outright in this zone.

- 1. Single-family detached residential unit.*

Staff Finding 1: This property is one lot in a 6-lot subdivision approved in 2015 (SUB-15-02). The proposed use is residential as the applicant has applied for a driveway modification to a single-family home. The criteria are met.

II. CHAPTER 48, ACCESS, EGRESS AND CIRCULATION
48.020 APPLICABILITY AND GENERAL PROVISIONS
(...)

B. All lots shall have access from a public street or from a platted private street approved under the land division chapter.

Staff Finding 2: The subject property was approved with a driveway access directly onto Tannler Drive, a public street. The applicant has proposed moving the driveway location from Tannler Drive to a shared private drive that leads directly to Tannler Drive. This criteria are met.

C. No building or other permit shall be issued until scaled plans are presented to the City and approved by the City as provided by this chapter, and show how the access, egress, and circulation requirements are to be fulfilled. Access to State or County roads may require review, approval, and permits from the appropriate authority.

D. Should the owner or occupant of a lot, parcel or building enlarge or change the use to which the lot, parcel or building is put, resulting in increasing any of the requirements of this chapter, it shall be unlawful and a violation of this code to begin or maintain such altered use until the provisions of this chapter have been met, and, if required, until the appropriate approval authority under Chapter [99](#) CDC has approved the change.

E. Owners of two or more uses, structures, lots, parcels, or units of land may agree to utilize jointly the same access and egress when the combined access and egress of both uses, structures, or parcels of land satisfies the requirements as designated in this code; provided,

that satisfactory legal evidence is presented to the City Attorney in the form of deeds, easements, leases, or contracts to establish joint use. Copies of said instrument shall be placed on permanent file with the City Recorder.

F. Property owners shall not be compelled to access their homes via platted stems of flag lots if other driveways and easements are available and approved by the City Engineer.

Staff Finding 3: Prior to issuance of the building permit to construct the single-family home on the subject property, the applicant requested to relocate the approved driveway from Tannler Drive to the shared access drive. Staff required an access easement be recorded granting legal access for Lot 6 to use the shared private drive. The building permit was issued in January 2020, after a multi-department review of the submitted plans (Planning, Engineering/Public Works, and Building Departments). The driveway location change did not alter the use of the property as the only use proposed is a single-family home. The access easement captures required shared maintenance requirements of the shared access. The criteria are met.

48.025 ACCESS CONTROL

B. Access Control Standards

1. Traffic impact analysis requirements. The City or other agency with access jurisdiction may require a traffic study prepared by a qualified professional to determine access, circulation and other transportation requirements. (See also CDC [55.125](#), Traffic Impact Analysis.)

Staff Finding 4: No Traffic Impact Analysis (TIA) is required since none of the criteria of 85.170(B)(2) are met. No changes in traffic patterns from the approved subdivision will result from granting the variance. The criteria are met.

2. The City or other agency with access permit jurisdiction may require the closing or consolidation of existing curb cuts or other vehicle access points, recording of reciprocal access easements (i.e., for shared driveways), development of a frontage street, installation of traffic control devices, and/or other mitigation as a condition of granting an access permit, to ensure the safe and efficient operation of the street and highway system. Access to and from off-street parking areas shall not permit backing onto a public street.

3. Access options. When vehicle access is required for development (i.e., for off-street parking, delivery, service, drive-through facilities, etc.), access shall be provided by one of the following methods (planned access shall be consistent with adopted public works standards and TSP). These methods are “options” to the developer/subdivider.

a) Option 1. Access is from an existing or proposed alley or mid-block lane. If a property has access to an alley or lane, direct access to a public street is not permitted.

b) Option 2. Access is from a private street or driveway connected to an adjoining property that has direct access to a public street (i.e., “shared driveway”). A public access easement covering the driveway shall be recorded in this case to assure access to the closest public street for all users of the private street/drive.

c) *Option 3. Access is from a public street adjacent to the development lot or parcel. If practicable, the owner/developer may be required to close or consolidate an existing access point as a condition of approving a new access. Street accesses shall comply with the access spacing standards in subsection (B) (6) of this section.*

Staff Finding 5: The applicant proposes one access point to the subject property via a 20-foot wide shared private drive (Option 2). The applicant has recorded an access easement for the subject property to utilize the shared private drive (see Exhibit PC-4). The West Linn Engineering Division has reviewed and supports the proposed driveway location change (See Exhibit PC-2). The proposed design will not require backing onto a public street. The criteria are met.

4. *Subdivisions fronting onto an arterial street. (...)*
5. *Double-frontage lots. (...)*

Staff Finding 6: The subject property has frontage along Tannler Drive, which has a functional classification of a local street in this area. This property is not a double frontage lot and does not front an arterial street. The criteria do not apply.

6. *Access spacing.*
 - a. *The access spacing standards found in Chapter 8 of the adopted Transportation System Plan (TSP) shall be applicable to all newly established public street intersections and non-traversable medians.*
 - b. *Private drives and other access ways are subject to the requirements of CDC 48.060.*

Staff Finding 7: The proposal does not create any new intersections or non-traversable medians. CDC 48.060 is addressed in Staff Findings 14 to 17. The criteria are met.

7. *Number of access points. (...)*
8. *Shared driveways. (...)*

Staff Finding 8: The applicant proposes one access on a shared private drive. The shared access was approved in 2015 with SUB-15-02 and the subject property was conditioned to take direct access via Tannler Drive. The applicant has proposed to modify that Condition of Approval and relocate the driveway from Tannler Drive to the 20-foot wide shared private drive. Per Condition of Approval 1, the applicant shall replace the existing curb cut on Tannler Drive with a sidewalk per City Construction Standards. This proposal will minimize the number of driveways on the local street and the applicant has recorded an access easement for the subject property to utilize the shared private drive. Subject to the condition of approval, the criteria are met.

- C. *Street connectivity and formation of blocks required.*

In order to promote efficient vehicular and pedestrian circulation throughout the City, land divisions and large site developments shall produce complete blocks bounded by a connecting network of public and/or private streets, in accordance with the following standards:

- 1. Block length and perimeter. The maximum block length shall not exceed 800 feet or 1,800 feet along an arterial.*

Staff Finding 9: The applicant proposal is bounded by existing development and does not create any new blocks. The criteria do not apply.

- 2. Street standards. Public and private streets shall also conform to Chapter 92 CDC, Required Improvements, and to any other applicable sections of the West Linn Community Development Code and approved TSP.*

Staff Finding 10: Proposed street designs and improvements were found to be consistent with the provisions of the West Linn Community Development Code and the West Linn Transportation System Plan with the approval of SUB-15-02. The applicant has proposed to relocate the approved driveway location for Lot 6 from Tannler Drive to a 20-foot wide shared private drive. See West Linn Engineering comments in Exhibit PC-2. The criteria are met.

(...)

48.030 MINIMUM VEHICULAR REQUIREMENTS FOR RESIDENTIAL USES

- A. Direct individual access from single-family dwellings and duplex lots to an arterial street (...)*

Staff Finding 11: The subject property has access to only one public street, with a functional classification of a local street. The applicant has proposed to relocate the approved driveway curb cut to the shared private drive. The criteria do not apply.

- B. When any portion of any house is less than 150 feet from the adjacent right-of-way, access to the home is as follows:*

- 1. One single-family residence, including residences with an accessory dwelling unit as defined in CDC 02.030, shall provide 10 feet of unobstructed horizontal clearance. Dual-track or other driveway designs that minimize the total area of impervious driveway surface are encouraged.*
- 2. Two to four single-family residential homes equals a 14- to 20-foot-wide paved or all-weather surface. Width shall depend upon adequacy of line of sight and number of homes.*
- 3. Maximum driveway grade shall be 15 percent. The 15 percent shall be measured along the centerline of the driveway only. Variations require approval of a Class II variance by the Planning Commission pursuant to Chapter 75 CDC. Regardless, the last 18 feet in front of the garage shall be under 12 percent grade as measured along the centerline of the driveway only. Grades elsewhere along the driveway shall not apply.*
- 4. The driveway shall include a minimum of 20 feet in length between the garage door and the back of sidewalk, or, if no sidewalk is proposed, to the paved portion of the right-of-way.*

C. When any portion of one or more homes is more than 150 feet from the adjacent right-of-way, the provisions of subsection B of this section shall apply in addition to the following provisions.

- 1. A turnaround may be required as prescribed by the Fire Chief.*
- 2. Minimum vertical clearance for the driveway shall be 13 feet, six inches.*
- 3. A minimum centerline turning radius of 45 feet is required unless waived by the Fire Chief.*
- 4. There shall be sufficient horizontal clearance on either side of the driveway so that the total horizontal clearance is 20 feet.*

Staff Finding 12: The applicant has constructed one single-family home on the subject property. The property fronts Tannler Drive and no aspect of the home is more than 150 feet from public right-of-way. The applicant has proposed moving the driveway from Tannler Drive to the shared access drive, which is paved and has a width of 20-feet. The grade of the proposed driveway will be less than 15 percent and there is 20-feet of distance between the garage door and the shared private drive. The grade of the shared private drive is approximately two percent and contains an approved fire access turnaround. The variance request is to allow a fifth single-family home to take access from the shared private drive. Subject to the approval of the Class II Variance, the criteria are met.

D. Access to five or more single-family homes shall be by a street built to full construction code standards. All streets shall be public. This full street provision may only be waived by variance.

Staff Finding 13: The applicant has applied for a Class II Variance to allow five single-family homes to take access from a 20-foot wide shared private drive. The shared private drive is not built to full construction code standards, but it is wider than the City public alley standard of 16-feet. The applicant is requesting a waiver from the full street provisions through this application for a Class II Variance. The applicant asserts the setback provisions would only permit a 33-foot deep single-family home with the driveway configuration directly from Tannler Drive. The average home in this area is approximately 50 feet deep. The applicant has secured building permits and constructed a single-family home that is consistent with those neighboring the subject property. A decision to deny the Class II Variance would require significant modification to the constructed single-family home located on the subject property. The applicant has recorded an access and maintenance agreement for Lot 6 to grant legal use of the shared private drive (See Exhibit PC-4). Granting the requested variance will not alter traffic patterns from the subdivision, will not create safety issues, nor will it hinder emergency response. Subject to the approval of the Class II Variance, the criteria is met.

E. Access and/or service drives for multi-family dwellings shall be fully improved with hard surface pavement:

(...)

F. Where on-site maneuvering and/or access drives are necessary to accommodate required parking, in no case shall said maneuvering and/or access drives be less than that required in Chapters 46 and 48 CDC.

- G. The number of driveways or curb cuts shall be minimized on arterials or collectors. Consolidation or joint use of existing driveways shall be required when feasible.*
- H. In order to facilitate through traffic and improve neighborhood connections, it may be necessary to construct a public street through a multi-family site.*
- I. Gated accessways to residential development other than a single-family home are prohibited.*

Staff Finding 14: The applicant has constructed one single-family home on the subject property and does not propose a gated accessway. The criteria are met.

48.060 WIDTH AND LOCATION OF CURB CUTS AND ACCESS SEPARATION REQUIREMENTS

- A. Minimum curb cut width shall be 16 feet.*
- B. Maximum curb cut width shall be 36 feet, except along Highway 43 in which case the maximum curb cut shall be 40 feet. For emergency service providers, including fire stations, the maximum shall be 50 feet.*

Staff Finding 15: The existing shared private drive has one curb cut with a width of approximately 24-feet. The criteria are met.

- C. No curb cuts shall be allowed any closer to an intersecting street right-of-way line than the following:*
 - 1. On an arterial when intersected by another arterial, 150 feet.*
(...)
 - 6. On a local street when intersecting any other street, 35 feet.*

Staff Finding 16: The original approval of SUB-15-02 conditioned the subject property to take access directly onto Tannler Drive. The approved curb cut is approximately 17 feet from the shared private drive serving lots 2-5 and approximately 57 feet from the intersection of Bland Circle (neighborhood route) and Tannler Drive. Tannler Drive is classified as a local street in this area. The criteria are met.

- D. There shall be a minimum distance between any two adjacent curb cuts on the same side of a public street, except for one-way entrances and exits, as follows:*
 - 1. On an arterial street, 150 feet.*
 - 2. On a collector street, 75 feet.*
 - 3. Between any two curb cuts on the same lot or parcel on a local street, 30 feet.*

Staff Finding 17: The subject property is adjacent to a local street and contains one curb cut in an existing right-of-way. The applicant proposes to eliminate that curb cut and take access from the shared private drive. The criteria are met.

- E. A rolled curb may be installed in lieu of curb cuts and access separation requirements.*

F. *Curb cuts shall be kept to the minimum, particularly on Highway 43. Consolidation of driveways is preferred. The standard on Highway 43 is one curb cut per business if consolidation of driveways is not possible.*

G. *Adequate line of sight pursuant to engineering standards should be afforded at each driveway or accessway.*

Staff Finding 18: The applicant has proposed to relocate the driveway curb cut to the shared private drive. The shared private drive complies with line of sight engineering standards. No rolled curbs are proposed. The criteria are met.

III. CHAPTER 75, VARIANCES AND SPECIAL WAIVERS

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. (...)*
2. *Off-street parking dimensional and minimum number of space requirements may be modified up to 10 percent (...)*
3. *Dimensional sign requirements may be modified up to 10 percent (...)*
4. *Landscaping requirements in the applicable zone may be modified up to 10 percent (...)*

Staff Finding 19: The applicant did not request any Class I Variances. The criteria are not applicable.

B. *Class II Variance. Class II variances may be utilized when strict application of code requirements would be inconsistent with the general purpose of the CDC and would create a burden upon a property owner with no corresponding public benefit. A Class II variance will involve a significant change from the code requirements and may create adverse impacts on adjacent property or occupants. It includes any variance that is not classified as a Class I variance or special waiver.*

Staff Finding 20: The applicant is requesting a Class II Variance to relocate a driveway from Tannler Drive to a shared private drive. The variance is to code section 48.030(D). Without granting the variance, the applicant would need to remodel the constructed home, moving living space below grade in order for the garage entrance and driveway to be located on Tannler Drive. Staff adopts the applicant's findings (see page 1 of the applicant's submittal). The criteria are met.

1. *Class II Variance Approval Criteria. The approval authority may impose appropriate conditions to ensure compliance with the criteria. The appropriate approval authority shall approve a variance request if all the following criteria are met and corresponding findings of fact prepared.*

a. *The variance is the minimum variance necessary to make reasonable use of the property. To make this determination, the following factors may be considered, together with any other relevant facts or circumstances:*

1) *Whether the development is similar in size, intensity and type to developments on other properties in the City that have the same zoning designation.*

Staff Finding 21: The applicant has constructed one single-family home on a lot of record zoned R-7. This proposal is consistent with the code provisions of CDC 48.060(F) which requires curb cuts to be kept to a minimum with a preference for consolidated driveways. Per the applicant's submittal, this is the minimum variance to allow reasonable use of the property. The criteria are met.

2) *Physical characteristics of the property such as lot size or shape, topography, or the existence of natural resources.*

Staff Finding 22: The topography of the subject property and the lot dimensions, make this variance necessary to make reasonable use of the property. The subject property is sloped about 10 percent down to the southeast corner of the property. The approved driveway location would require significant grading to accommodate a driveway on the cross slope. The setback provisions would only permit a 33 foot deep single family home. The average home in this area is approximately 50 feet deep. The applicant has constructed a single-family home that is consistent with those neighboring this property. The criteria are met.

3) *The potential for economic development of the subject property.*

Staff Finding 23: The topography of the subject property and the lot dimensions, make this variance necessary to make reasonable use of the property. The subject property is sloped about 10 percent down to the southeast corner of the property. The approved driveway location would require significant grading to accommodate a driveway on the cross slope. The setback provisions would only permit a 33 foot deep single family home. The average home in this area is approximately 50 feet deep. The applicant has paid the system development charges to construct the single-family home on the property. The home is under contract and scheduled to close the third week of October. Without this variance granted, the applicant could lose the sale of the home which would be a significant financial loss by the applicant. The criteria are met.

b. *The variance will not result in violation(s) of any other code standard, and the variance will meet the purposes of the regulation being modified.*

Staff Finding 24: Approval of the variance for a driveway onto the shared private access will not result in the violation of any other code standard and will allow the reasonable use of the property. The criteria are met.

c. *The need for the variance was not created by the applicant and/or owner requesting the variance.*

Staff Finding 25: The applicant purchased the subject property from the previous developer after the final plat had been recorded. The slope and dimensions of Lot 6, created by the previous developer, were not conducive to driveway access directly from Tannler Drive and not created by the applicant. Prior to issuance of the building permit for the subject property, the applicant asked permission to relocate the driveway. Staff approved the relocation of the driveway with the understanding it was consistent with CDC 48.060(F) and 85.085. An access and maintenance agreement was required to grant legal access for the subject property to take access via the private street. Staff adopts the applicant findings on page 2 of the applicant submittal. The applicant did not create the lot slope/dimension issues, nor were they advised that moving the driveway from Tannler Drive to the shared private street would require a variance. The criteria are met.

d. *If more than one variance is requested, the cumulative effect of the variances results in a project that is consistent with the overall purpose of the zone.*

Staff Finding 26: The applicant has requested one variance. The criteria are met.

IV. CHAPTER 96, STREET IMPROVEMENT CONSTRUCTION

96.010 CONSTRUCTION REQUIRED

A. New construction.

(...)

Staff Finding 27: The applicant shall remove and mitigate the existing curb cut on Tannler Drive per Condition of Approval 1. All other required improvements were installed and approved prior to recording of the final plat. Subject to the Condition of Approval, the criteria are met.

96.020 STANDARDS

Street improvements shall be installed according to the City standards and shall be completed prior to the issuance of any occupancy permit for the new or remodeled structure or building. In unimproved areas of the City, the City Engineer may grant a time extension of the provisions of this section; provided, that the applicant provides sufficient security in amount and quantity satisfactory to the City Attorney to assure payment of such improvement costs.

Staff Finding 28: The applicant shall remove and mitigate the existing curb cut on Tannler Drive per Condition of Approval 1. Subject to the Condition of Approval, the criteria are met.

XIII. CHAPTER 99, PROCEDURES FOR DECISION MAKING: QUASI-JUDICIAL

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

(...)

B. *Pre-application conferences.*

1. *Subject to subsection (B)(4) of this section, a pre-application conference is required for, but not limited to, each of the following applications:*

(...)

o. *Variances;*

(...)

Staff Finding 29: Per the September 30, 2020 emailed notice from Acting Planning Manager Darren Wyss, the pre-application conference requirement was waived. The criteria are met.

99.060 APPROVAL AUTHORITY

B. *Planning Commission authority. The Planning Commission shall have the authority to:*

(...)

e. *Class II variance or special waiver (Chapter 75 CDC).*

(...)

Staff Finding 30: The applicant proposal will be heard by the Planning Commission at a public hearing scheduled for October 21, 2020.

99.080 NOTICE

Notice shall be given in the following ways:

A. *Class A Notice. (...)*

Staff Finding 31: The applicant proposal has been properly noticed by the City. Please see Staff Report for the Planning Commission Exhibit PC-6. These criteria are met.

EXHIBIT PC-1: APPLICANT SUBMITTAL



DEVELOPMENT REVIEW APPLICATION

For Office Use Only		
STAFF CONTACT Jennifer Arnold	PROJECT NO(S): VAR-20-03	PRE-APPLICATION NO.
NON-REFUNDABLE FEE(S) \$2,900	REFUNDABLE DEPOSIT(S)	TOTAL \$2,900

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 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: 2196 TANNER DR	Assessor's Map No.: 21E35BA
	Tax Lot(s): 21E35BA20806
	Total Land Area: 7137 sq ft

Brief Description of Proposal: **SEE NARRATIVE**

Applicant Name: TOLL BROTHERS <small>(please print)</small>	Phone: 425-829-1566
Address: 4949 MEADOWS RD	Email: jportlock@tollbrothers.com
City State Zip: LAKE OSWEGO, OR 97035	

Owner Name (required): TOLL WEST COAST LLC <small>(please print)</small>	Phone: 425-829-1566
Address: 4949 MEADOWS RD	Email: jportlock@tollbrothers.com
City State Zip: LAKE OSWEGO, OR 97035	

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

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

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.

DocuSigned by: Applicant's signature	09-30-2020 Date	DocuSigned by: Owner's signature (required)	09-30-2020 Date
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Dear Jennifer,

At the request of the City, I am submitting a post-construction variance request for Lot 6. This request is consistent with and will further confirm our ongoing good faith discussions with the City, and the attached building permit issued by the City, which previously approved our access to Lot 6 in the Savannah Heights Subdivision.

Because our access to Lot 6 from the private street was already approved by the City, both through extensive email discussions, and through the resulting building permit, and because the home and related access have already been constructed consistent with that building permit, with a sale pending, it is paramount that this post-construction access variance be immediately approved by the Planning Commission. In submitting this application at the City's request, we reserve all of our rights to rely on the good faith communication between staff and ourselves, which previously approved this access to Lot 6, as evidenced by the approved building permit attach to this application.

In summary, we remain willing to work collaboratively with the city on this issue, but must emphasize that because of our pending sale of the home on Lot 6, time is of the essence. Any delay in that regard will cause Toll additional damages. We thereby reserve our rights accordingly.

Respectfully,

JJ Portlock
Division President, Oregon Division
Toll Brothers
4949 Meadows Rd, Suite 420

Lake Oswego, OR 97035
Office: (971) 339-5176 | Cell: (425) 829-1566

Applicant's Response to Class II Variance Criteria - -CDC 75.020(B)(1)(a)-(d):

a.) The variance is the minimum variance necessary to make reasonable use of the property. To make this determination, the following factors may be considered, together with any other relevant facts of circumstances:

1.) Whether the development is similar in size, intensity and type to developments on other properties in the City that have the same zoning designation.

2.) Physical characteristics of the property such as lot size or shape, topography, or the existence of natural resources.

3.) The potential for economic development of the subject property.

Applicant's Response: The proposed variance is the minimum variance necessary to make reasonable use of the property, for at least the following reasons. First, the physical characteristics of this lot, including its size, shape and topography, make access from the public street both impractical and unreasonable. Second, it should be noted that this subdivision was not platted by the applicant. When the developer obtained plat approval, the developer and the city may not have appreciated the challenges of locating a reasonably designed home on this lot, with vehicular access on a side slope. The resulting home design would likely require a portion of the main living area to be located below grade in order for the entrance and garage to front on Tannler Drive, and would require either a very shallow home, or a front and rear yard setback variance. Neither of these design options are practical and reasonable, given the quality of the proposed homes in the neighborhood, the high cost to construct such improvements relative to the desirability of such a design, and the availability of access from the private street through a variance procedure. Third, by locating the driveway for lot 6 on the public street, so close to the turning path of a vehicles turning right to exit the private street and enter Tannler Drive, traffic safety issues could arise. These traffic safety issues can be avoided by the proposed variance. For all of these reasons, this criterion is met.

b.) The variance will not result in violations of any other code standard, and the variance will meet the purposes of the regulation being modified.

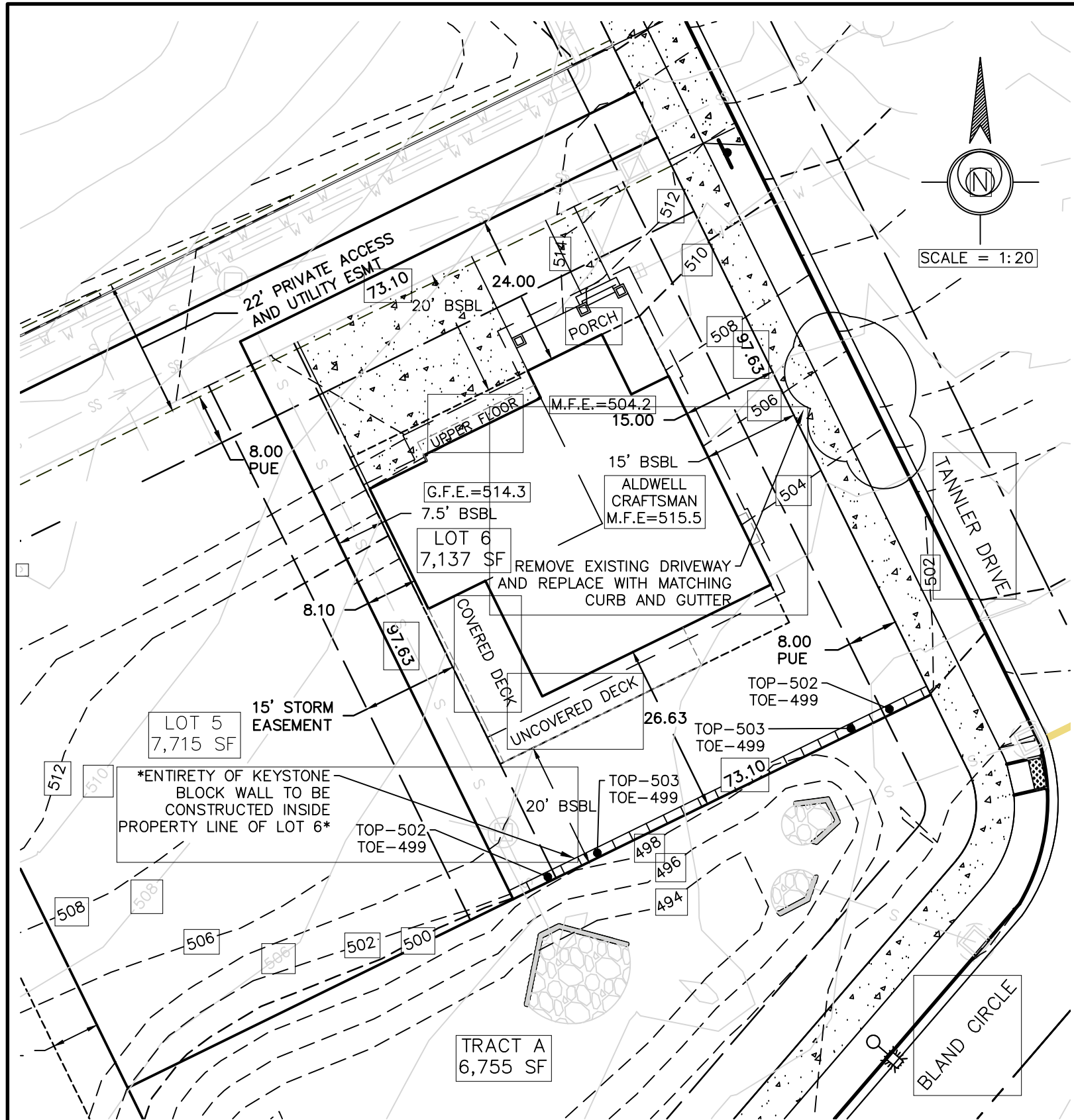
Applicant's Response: The proposed variance will not result in violation of any other known code standards. Furthermore, the variance will meet the purposes of the regulation being modified, because one of the purposes of CDC Chapter 48 (Access, Egress and Circulation), and CDC Section 48.030(D) (Minimum Vehicle Requirements for Residential Uses) in particular, is to seek to balance mobility, the need "to provide efficient, safe and timely travel with the ability to allow access to individual properties." Generally speaking, that balance has been struck in a clear and objective, but somewhat arbitrary way through the provisions in CDC Section 48.030(D), which limits access to private streets that are not built to full public street standards, to 4 lots. In this case, however, allowing one more lot, specifically lot 6, to access the private street, creates a more practical, more reasonable and arguably more safe access, egress and circulation pattern and produces a more well designed home, relative to the existing size, shape and slope of the lot. For these reasons, this criterion is met.

c.) The need for the variance was not created by the applicant and/or owner requesting the variance.

Applicant's Response: The current applicant/owner did not create the need for the variance. The prior applicant/developer, created the need for an access variance on lot 6, by not anticipating that it would be impractical and unreasonable to construct a home on the lot with access from the public street, rather than the private street. For these reasons, this criterion is met.

d.) If more than one variance is requested, the cumulative effect of the variances results in a project that is consistent with the overall purpose of the zone.

Applicant's Response: Only one variance is requested, and that variance would apply to only one lot. This criterion therefore does not apply.



BUILDING COVERAGE

MAIN:	1,319 SF.
GARAGE:	655 SF.
PORCH:	176 SF.

LOT COVERAGE: 50% MAX

LOT AREA:	7,137 SF.
BUILDING AREA:	2,150 SF.
PERCENTAGE:	30%

IMPERVIOUS SURFACES

DRIVEWAY (INCLUDING ACCESS):	915 SF.
ROOF:	2,703 SF.
WALKWAY	65 SF.
TOTAL:	3,683 SF.

UTILITIES

STORM DRAINAGE LINE	— S —
SANITARY SEWER LINE	— SS —
WATER LINE	— W —
BSBL	BUILDING SETBACK LINE

TOPOGRAPHY

EXISTING CONTOUR LINES	— — — — —
PROPOSED CONTOUR LINES	- - - - -

FLOOR TO AREA RATIO

FIRST FLOOR	1,294 SF.
SECOND FLOOR	1,682 SF.

ESE Land Planning Engineering Land Surveying	ESE Consultants, Inc. 8815 122ND AVE NE, Suite 200 Kirkland, WA 98033 TEL: 425-825-5367	LOT 6 SITE PLAN SAVANNA HEIGHTS WEST LINN, OR TOLL BROS., INC., 8815 122ND AVE NE, SUITE 200 KIRKLAND, WA 98033
	10-04-19	

EXHIBIT PC-2: WEST LINN ENGINEERING COMMENTS



CITY OF West Linn

Memorandum

Date: October 2, 2020

To: West Linn Planning Commission

From: Amy Pepper, PE, Senior Project Engineer West Linn Engineering Department

Subject: VAR-20-03 – Class II Variance to allow 5 driveways on a shared private access and modify a condition of approval from original subdivision approval (SUB-15-02) at 2196 Tannler Drive.

Engineering has reviewed the request for a variance for the driveway at 2196 Tannler Drive. The private drive has been constructed wider than the City's public alley standard, which only requires 16 feet of paved width. The distance between the driveway approach for the private drive and the driveway approach on Tannler is only 15 feet. To the extent feasible, consolidation of driveway approaches is encouraged. As such, Engineering has no opposition to the proposed variance provided the following condition of approval is applied:

1. The existing driveway approach off of Tannler shall be removed and replaced with a sidewalk separated from the curb per City of West Linn Construction Standards.

EXHIBIT PC-3: TUALATIN VALLEY FIRE & RESCUE COMMENTS

From: [Arn, Jason S.](#)
To: [Arnold, Jennifer](#)
Subject: RE: Hoping for a quick turnaround on a simple review
Date: Monday, October 5, 2020 12:47:08 PM

Hi Jennifer,

This change is still in line with our fire access requirements. I have no additional comments to add.

Let me know if you have any questions or need further.

Thanks,

Jason Arn | Deputy Fire Marshal

Tualatin Valley Fire & Rescue

Direct: 503-259-1510

www.tvfr.com

From: Arnold, Jennifer <jarnold@westlinnoregon.gov>
Sent: Friday, October 2, 2020 11:44 AM
To: Arn, Jason S. <Jason.Arn@tvfr.com>
Subject: Hoping for a quick turnaround on a simple review
Importance: High

*****The sender is from outside TVF&R – Do not click on links or attachments unless you are sure they are safe*****

Hi Jason,

A 2015 subdivision is coming back up for discussion as one of the lots is proposing to change their driveway location. I believe Ty reviewed the original subdivision. The link below will take you to the application materials. Essentially they are taking an approved driveway access from Tannler Drive and moving it to a shared access. The shared access has a TVFR approved turnaround but the Planning Commission will want to see that TVFR has reviewed this change and will be interested in your comments (if any).

Thanks,
Jennifer

<https://westlinnoregon.gov/planning/2196-tannler-drive-type-2-variance>

Jennifer Arnold
Associate Planner
Planning

22500 Salamo Rd.
West Linn, Oregon 97068
jarnold@westlinnoregon.gov
westlinnoregon.gov
503-742-6057



Please consider the impact on the environment before printing a paper copy of this email.
This e-mail is subject to the State Retention Schedule and may be made available to the public

EXHIBIT PC-4: ACCESS/MAINTENANCE AGREEMENT

Clackamas County Official Records
Sherry Hall, County Clerk

2019-059455



\$123.00

09/27/2019 10:34:20 AM

D-EAMD Cnt=3 Stn=9 COUNTER1
\$25.00 \$10.00 \$16.00 \$62.00 \$10.00

**AFTER RECORDING
RETURN TO:**

Toll West Coast LLC
4949 Meadows Road, Suite 420
Lake Oswego, OR 97035
Attn: Nick Peets, LEM

**FIRST AMENDMENT
TO
DECLARATION OF ACCESS EASEMENT, PRIVATE UTILITY EASEMENT,
MAINTENANCE AGREEMENT, AND COVENANTS RUNNING WITH THE LAND**

THIS FIRST AMENDMENT TO DECLARATION OF ACCESS EASEMENT, PRIVATE UTILITY EASEMENT, MAINTENANCE AGREEMENT AND COVENANTS RUNNING WITH THE LAND (this "Amendment") is made this 27th day of September, 2019, by **TOLL WEST COAST LLC**, a Delaware limited liability company ("Lots 2-6 Owner") and **JEREMIAH JAMES PORTLOCK and ACACIA CODI PORTLOCK**, husband and wife (collectively, "Lot 1 Owner", and collectively with Lots 2-6 Owner, the "Owners"), to amend and modify that certain Declaration of Access Easement, Private Utility Easement, Maintenance Agreement and Covenants Running with the Land, recorded on July 17, 2018 in the real property records of Clackamas County, Oregon, under File No. 2018-044356 (the "Declaration"). Capitalized terms not otherwise defined in this Amendment shall have the meanings given to them in the Declaration.

WITNESSETH:

WHEREAS, the Owners are all of the owners of certain real property located in the City of West Linn, Clackamas County, Oregon, legally described on Exhibit A attached hereto (the "Property"), which property is comprised entirely of the "Lots" as defined in the Declaration;

WHEREAS, the Declaration, *inter alia*, provides legal access to and from Tannler Drive for Lots 2-5; and

WHEREAS, the Owners desire to provide Lot 6 with legal access to and from Tannler Drive.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto agree as follows:

AMENDMENT

1. All references in Sections 1(a) and 2 of the Declaration to “Lots 2-5” are hereby amended to read “Lots 2-6”.

2. Section 2.9 of the Declaration is hereby amended to delete the original paragraph in its entirety and substitute the following in lieu thereof:

Owner of Lot 1. The Owner of Lot 1 shall have no obligations under this Section 2 of this Agreement.

3. Except as expressly amended by this Amendment, the Declaration is hereby confirmed and ratified and shall remain in full force and effect. If any of the provisions of this Amendment be found to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be stricken and the remainder of this Amendment shall nonetheless remain in full force and effect unless striking such provision shall materially alter the intention of the parties. This Amendment may be executed and delivered in counterparts, each of which shall be deemed as an original and all of which shall constitute one and the same agreement. Each person signing this Amendment on behalf of the respective parties represents and warrants that he or she is authorized to execute and deliver this Amendment.

EXHIBITS:

A - Legal Description of the Property

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the Owners have executed this Amendment as of the day and year first above-written.

OWNERS:

LOTS 2-6 OWNER:

TOLL WEST COAST LLC,
a Delaware limited liability company

By: _____

Name: JJ Portlock

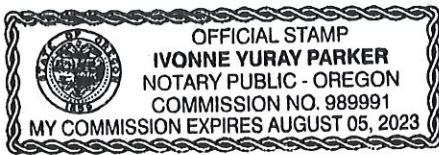
Title: DIVISION VICE PRESIDENT

STATE OF OREGON

COUNTY OF Clackamas

ss.

This instrument was acknowledged before me on this 27 day of September, 2019, by JJ Portlock, as Vice President, of Toll West Coast LLC, a Delaware limited liability company, on behalf of the company.



Ivonne Yuray Parker
NOTARY PUBLIC FOR OREGON
My Commission Expires: Aug. 5, 2023

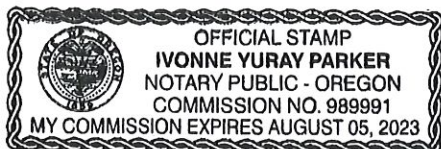
LOT 1 OWNER:

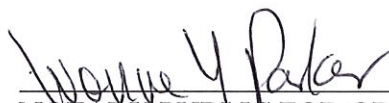

Jeremiah James Portlock


Acacia Codi Portlock

STATE OF OREGON)
) ss.
County of Clackamas)

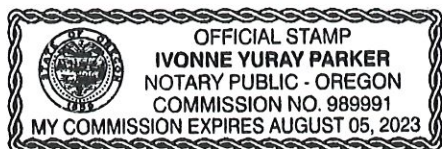
On this 27 day of September, 2019, appeared Jeremiah James Portlock, personally known or proved to me to be the person, whose name is subscribed to the foregoing instrument.




NOTARY PUBLIC FOR OREGON
My Commission Expires: Aug. 5, 2023

STATE OF OREGON)
) ss.
County of Clackamas)

On this 27 day of September, 2019, appeared Acacia Codi Portlock, personally known or proved to me to be the person, whose name is subscribed to the foregoing instrument.



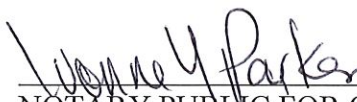

NOTARY PUBLIC FOR OREGON
My Commission Expires: Aug. 5, 2023

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lots 1 thru 6, SAVANNA HEIGHTS, City of West Linn, Clackamas County, Oregon,
recorded on July 17, 2018 as Plat No. 4542 and as Document Number 2018-044355

5

EXHIBIT PC-5: AFFIDAVIT AND NOTICE PACKET



**AFFIDAVIT OF NOTICE
Type A**

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:

PROJECT

File No.: **VAR-20-03**

Applicant's Name: **Toll Brothers**

Development Name: **2196 Tannler Drive**

Scheduled Decision Date: **Planning Commission Decision on October 21, 2020**

MAILED NOTICE

Notices were mailed at least 20 days prior to the decision date per Section 99.080 of the Community Development Code to:

1	Toll Brothers, Applicant	9/30/20	<i>Lynn Schroder</i>
2	Toll Brothers West Coast LLC	9/30/20	<i>Lynn Schroder</i>
6	Property Owners within 500 feet	9/30/20	<i>Lynn Schroder</i>
7	All Neighborhood Associations	9/30/20	<i>Lynn Schroder</i>

TIDINGS

Notice was posted in the West Linn Tidings at least 10 days prior to the decision date.

10/7/20 | *Lynn Schroder*

WEBSITE

Notice was posted on the City's website at least 10 days prior to the decision date.

9/30/20 | *Lynn Schroder*

SIGN

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

10/8/20 | *Juik Aald*

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

10/8/20 | *Juik Aald*

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

**CITY OF WEST LINN PLANNING COMMISSION
PUBLIC HEARING NOTICE
FILE NO. VAR-20-03**

The West Linn Planning Commission will hold a **virtual** public hearing on **Wednesday, October 21, 2020, starting at 6:30 pm** to consider a request for a Class II Variance to allow five driveways on a shared private access and modify a condition of approval from the original subdivision approval (SUB-15-02) at 2196 Tannler Drive.

The Planning Commission will decide the application based on the applicable criteria in Chapters 48 and 75 of the West Linn Community Development Code (CDC).

You have been notified of this proposal because County records indicate that you own property within 500 feet of the subject property (Clackamas County Assessor's Map 2S-1E-35BA, Tax Lot 20806), or as otherwise required by Chapter 99 of the CDC.

It is important to submit all testimony in response to this notice. All comments submitted for consideration of the application should relate specifically to the applicable criteria. Failure to raise an issue at the hearing or by written comment, or failure to provide sufficient specificity to respond to the issue, precludes raising the issue on appeal or before the Land Use Board of Appeals.

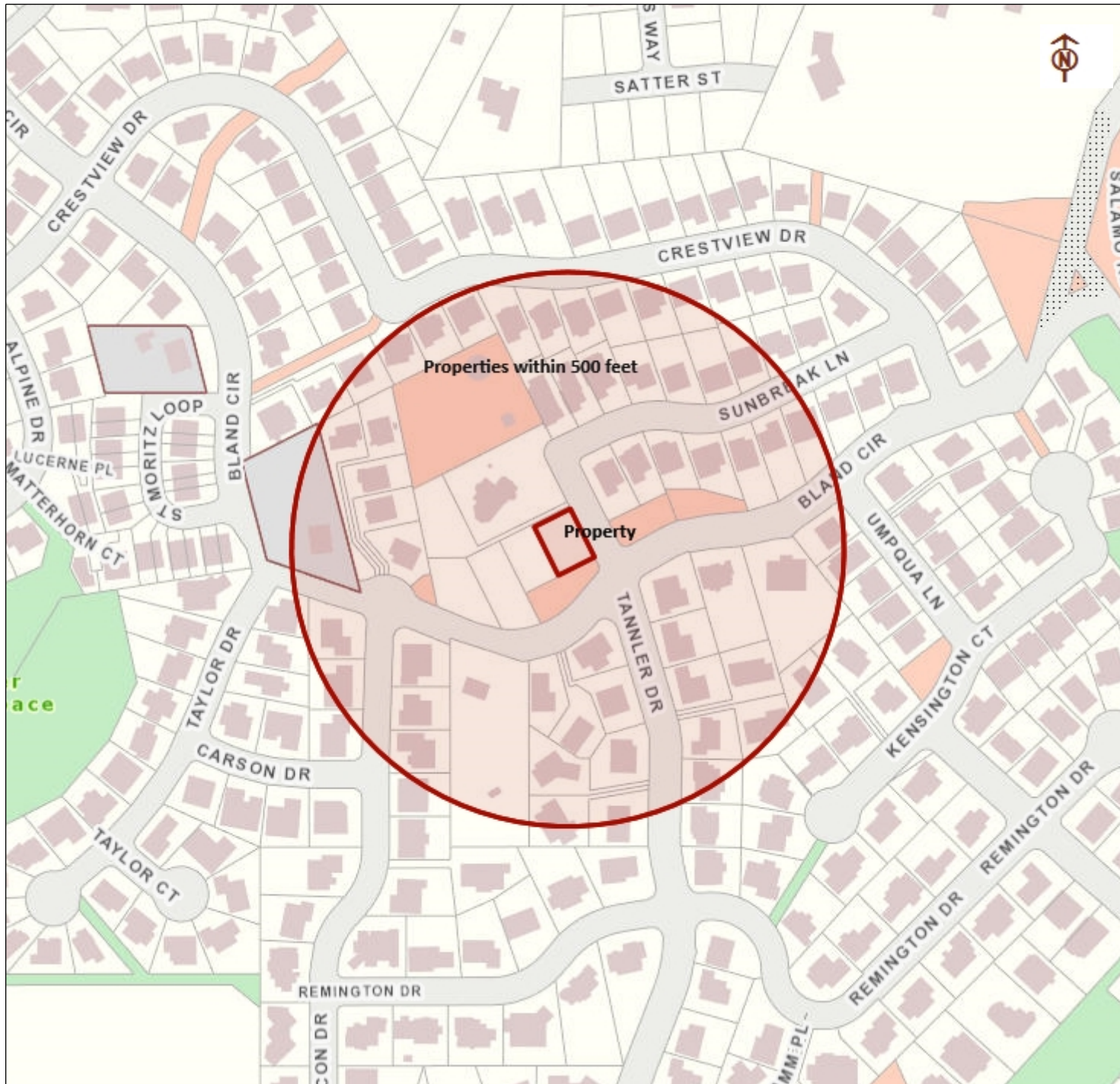
The complete application is posted on the City's <https://westlinnoregon.gov/planning/2196-tannler-drive-type-2-variance>. Alternatively, the complete application is available for inspection at no cost at City Hall, or copies can be obtained for a minimal charge. The staff report will be posted on the website ten days before the hearing and available for inspection at City Hall.

The hearing will be conducted according to Section 99.170 of the CDC. **Anyone wishing to present written testimony for consideration shall submit all materials before 12:00 pm on October 21, 2020.** Written comments can be emailed to jarnold@westlinnoregon.gov or mailed to City Hall.

The public can watch the meetings online at www.westlinnoregon.gov/meetings or on Cable Channel 30. To speak during the meeting, go to <https://westlinnoregon.gov/citycouncil/meeting-request-speak-signup> to **complete the speaker sign-up form before 12:00 pm on the day of the meeting.** Instructions on how to access the virtual meeting will be emailed before the meeting. If you do not have email access or need assistance under the Americans with Disabilities Act, please call 503-742-6061 for assistance 48 hours before the meeting.

The final decision will be posted on the website. Persons with party status can appeal the decision by submitting an appeal application and fee to the Planning Department within 14 days of the final decision date.

Contact Jennifer Arnold, Associate Planner, City Hall, 22500 Salamo Rd., West Linn, OR 97068, 503-742-6057 for additional information.



Legend

- City Limit
- ⋯ Unimproved ROW
- Parks and Open Space
- City Owned Property

0 0.06 0.11 Miles



1: 4,514



Notes

This map was automatically generated using Geocortex Essentials.



**NOTICE OF UPCOMING
PLANNING COMMISSION DECISION**

**PROJECT # VAR-20-03
MAIL: 09/30/20 TIDINGS: 10/7/20**

CITIZEN CONTACT INFORMATION

To lessen the bulk of agenda packets and land use application notice, and to address the concerns 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.

EXHIBIT PC-6: COMPLETENESS LETTER



CITY OF
West Linn

September 30, 2020

Toll Brothers
ATTN: JJ Portlock
4949 Meadows Rd, Suite 420
Lake Oswego, OR 97035

SUBJECT: VAR-20-03 an application for a Class II Variance to allow 5 driveways on a shared private access and modify a condition of approval from the original subdivision approval (SUB-15-02) at 2196 Tannler Drive.

Dear Mr. Portlock:

You submitted this application on September 30, 2020 and after reviewing the submittal, the Planning Department finds this application is **complete**. The city has 120 days to exhaust all local review; that period ends January 28, 2021.

Please be aware that 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 Commission to render a decision on your proposal.

The 20-day public notice will be prepared and mailed for a public hearing before the West Linn Planning Commission tentatively scheduled for **October 21, 2020**.

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