



CITY OF West Linn

Memorandum

Date: November 9, 2023

To: Chair Manning
West Linn Historic Review Board

From: John Floyd, Senior Planner

Subject: Public Comments Received for November 14th, 2023 Hearing of DR-23-01

Two parties have submitted written testimony not included in the staff report distributed on November 2nd. Comments are attached and names listed below:

- Shannen Knight (10-26-23)
- Brenda Russell (11-09-23)

As staff has received questions on this matter, we wish to reiterate that the Historic Review Board has been tasked by the Planning Commission with the review of the new design exception regarding maximum height, which was not considered or contained in the existing HRB recommendation of June 13th of this year, and not an entire reconsideration of the application.

As always, please feel free to reach out to me with any questions at 503-742-6058 or ifloyd@westlinnoregon.gov.

From: [A Sight for Sport Eyes](#)
To: [Floyd, John](#)
Subject: DR-23-01 Testimony for HRB
Date: Thursday, October 26, 2023 11:03:11 AM

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Dear HRB:

Please accept my testimony for DR-23-01. I am writing on behalf of myself, not any affiliated group or organization.

Since you last met on this topic, I have done a bit more research into the code.

If we look at the code's definition of a "story", it states:

"Story. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above..."

The key here is the "ceiling or roof". The topmost story ends at the roof. Again, we have no "roof" definition so we go to Websters:

"Roof: The cover of a building"

Presumably there will be an entire roof that covers that topmost floor, and the patio is on top of that "roof". If so, then it is not a story per code definition of a "story". There is no "ceiling" or "roof" closing off the entire patioed area to make it a "story".

The part of the proposed plan that becomes a gray area is the storage areas as those have what looks to be "roofs". If there were no proposed storage areas, then it would be pretty cut and dry to me that this is not a story. But does the simple fact that there are storage areas on top of the roof make it a story? I don't think so. I believe they should be considered an "accessory structure" (or shed). If they were just portable sheds on top of the roof, again it would be clear that they are not part of the building and not a story. But does the pure fact that these are semi-permanent structures with "roofs" on top of the building then make them a story? Or is it simply a two story building with an accessory structure on top of the building?

If we look at the definition of an "accessory structure", there is some discretion here. The

code says

“Accessory Structure: a subordinate structure with a maximum area of 1500 square feet... where the use is clearly incidental and associated with the principal use.

Examples of accessory structures includes but is not limited to”.....

4. Sheds

10. Appurtenances such as mailboxes and heat pumps; and

11. Similar structures as determined by the Planning Director.”

These storage areas are clearly “incidental and associated with a principal use”. I don’t know the square footage of these storage units. It was unclear from the drawings. If over 1500 square feet each, then maybe a condition needs to be made so that they are under the 1500 square feet. However, under definition and I think these storage areas would qualify either as #4 Shed, or #11 definition of “similar structures as determined by the planning director”.

There is also nothing that says that an accessory structure can’t be located on top of a building. #10 references a heat pump, and heat pumps are sometimes located on the roof of a buildings. Thus, I think it is fair to assume that these storage areas (sheds) are accessory structures on top of the building and not a “story” under the code definition of a “story”.

To look at it another way, what if the applicant was proposing a rooftop garden instead of a patio? If it was a garden with “greenhouses” which are also accessory structures with roofs, would that be allowed? I’m sure if it was a rooftop garden, there would be less pushback from the neighbors. But does the simple fact that it will have patio furniture instead of plants make it a story?

Another way to also look at it is how integral are these storage areas to the structure itself? Let’s say lightning struck the roof of the storage shed. If it was a “story” (or roof of the building) the building department would require the roof to be properly replaced before the whole entire structure could be inhabitable as you can’t have people going into a building with no roof. That would be a safety hazard. But since these storage areas are incidental and independent of the “roof” of the building, the building could still be inhabited underneath without any risk of injury to those inside the building. This tells me that it is not a story as the “roof” of the building underneath the patio is what is protecting the building itself. If the roof of the building is indeed under the patio, then it is not a story.

Also, what would be the difference if someone came in with an application to convert the roof of an existing WFD building to patio space by adding a railing or façade to the building, and building in some storage areas? Would you approve that under this code? If so, then I feel like this application is no different and does meet the two story requirements.

Lastly, many of the buildings on the street do look like 3 stories because of the Western False fronts. The applicant also referenced this in their submittal with pictures. They are higher

pitched, typically in the center, and that can make it look like 3 stories. I also believe that the building where Rubia salon is may actually be 3 stories if you consider some of the attic offices they have as a “story”.

If attic spaces are considered a “story” (which it seems like they would be since they are under the “roof”) then I believe many of the buildings that have attics are then 3 stories and in violation therefore of the 2 story limit. Not to say that just because other buildings have it make it alright, but there is that “precedence” where code must have been interpreted to be that an attic (or storage space above the 2nd floor) is not a story for those buildings to be built (or for those attic spaces to be converted into living space).

As mentioned in my previous testimony, we are in need of more commercial spaces, and this has the potential bring new customers. I think between there being other buildings on the street that could be considered to be more than two stories, and that the code definition of a “story” ends at the roofline, it is reasonable to conclude that this is indeed a roof top patio with accessory structures, and not “story” per code definition, thus meeting the code.

Thanks as always for your service.

Shannen Knight
West Linn resident and Business Owner

From: [Brenda Bless Russell](#)
To: [Floyd, John](#)
Subject: Building 3 stories high??
Date: Thursday, November 9, 2023 3:14:43 PM

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Hello,

I was just informed that there has been a developer here in Willamette asking for an exception on a new construction of having 3 stories, when the limit is 2.

I object to this as it will open a door for other builders to do the same.

Willamettes' growth is out of hand. We need to remember this is a historical town, not to be abused by new urban growth. Please consider enforcing the Community Development Code so resident needs are met. Taller buildings are not welcome.

Sincerely,

Brenda Bless