

**WEST LINN PLANNING COMMISSION
FINAL DECISION AND ORDER
FILE NO. DR-23-01**

**IN THE MATTER OF A PROPOSAL FOR A CLASS II DESIGN REVIEW AT
1919 & 1949 WILLAMETTE FALLS DRIVE.**

I. Overview

At its meeting on February 21, 2024, the West Linn Planning Commission (“Commission”) held a public hearing to consider a request by Icon Construction & Development to approve a Class II Design review at 1919 & 1949 Willamette Falls Drive. The approval criteria are found in Chapters 19, 41, 46, 48, 55, 58, and 99 of the Community Development Code (CDC). The hearing was conducted pursuant to the provisions of CDC Chapter 99.

As documented in the staff report and project record, the first evidentiary hearing was held by the Historic Review Board (“HRB”) on June 13, 2023. At that hearing, the issue of building height was a central point of deliberation, including the definition of “story” and whether a proposed rooftop lounge and restroom constituted a mezzanine or a third-story. The definition of story was significant as the Willamette Falls Drive Commercial Design District (WFDCDD) limits new construction to no more than two stories (CDC 58.080.B.3). After considering testimony and deliberations, the HRB could not come to a decision regarding the project’s compliance with the two-story height limit. It therefore chose to defer the matter to the Commission, and voted 3 to 2 to recommend approval of the project, subject to five conditions of approval and a recommendation of “further analysis” of the mezzanine area (aka third-story) by the Commission.

On August 15 and September 13, 2023, the applicant submitted revised plans and findings that reduced the size of the third story and requested a Design Exception to exceed the two-story height limit. These materials were later withdrawn and superseded by materials provided by the applicant on January 29, 2024.

On October 4, 2023, the Commission opened its first Public Hearing on the project, but testimony was not received, nor deliberations begun at the recommendation of staff and the City Attorney. As noted by Ian and Audra Brown in their written testimony, only the HRB may approve a Design Exception to the WFDCDD Standards, and a new Design Exception had been introduced after the HRB made their recommendation on June 13th. Therefore, the Planning Commission voted to remand the new design exception back to the HRB so they could render a decision on the Design Exception to exceed the two-story limit.

On November 14, 2023, the HRB took up the matter of the added Design Exception to exceed the two-story height limit in the WFDCDD. After receiving testimony and deliberation, the HRB denied the Design Exception on grounds it failed to satisfy the approval criteria.

On January 29, 2024, the applicant submitted a letter rescinding their request for a Design Exception to exceed the two-story height limit, including associated materials submitted after the first HRB hearing on June 13th, and stated an intent to move forward with a revised design that directly responded to feedback provided by the HRB and commenting parties at the June 13th HRB hearing and associated recommendation.

On February 21, 2024, the Commission hearing commenced with a staff report presented by John Floyd, Senior Planner. The presentation included a procedural history of the project, the HRB recommendations, an explanation of the design changes, and a summary and staff response to written testimony received after publication of the staff report. Written testimony included comments by the Oregon Department of Transportation, Ian and Audra Brown, and Yarrow Currie. These comments were conveyed to the Planning Commission in two separate transmittal memorandums dated February 16 and February 21, 2024.

Licensed Architect Scot Sutton presented on behalf of the applicant. Oral testimony in opposition to the proposal was submitted by Audra Brown, Ian Brown, Yarrow Currie, Maria Blanc-Gonnet, James Estes, and Danny Schreiber.

Some of the community concerns raised at the public hearing included:

1. Height of the structure, including concerns that the proposed elevator and stairwell for rooftop access were not in compliance with the two-story height standard, and whether they qualified for a height exemption as unoccupied space per CDC Chapter 41.020.
2. The indeterminate future use of the rooftop deck, and potential noise impacts generated by use of this space.
3. Potential light impacts associated with rooftop lighting and the bright conditions created by the existing building next door, whose design closely matches the proposed application.
4. Preserving the structure located at 1919 Willamette Falls Drive, to be demolished as part of the project, due to its age and association with figures of local historical significance.
5. Whether the process standards of CDC Chapters 58 and 99 had been met in regards to compliance with the WFDCDD, and whether the HRB had been provided adequate opportunity to provide a recommendation on the revised plans submitted on January 29, 2024.

Scot Sutton provided applicant rebuttal. John Floyd and City Attorney Bill Monaghan provided staff rebuttal and answered questions from the commission.

The public hearing was closed and the Commission entered into deliberations. The Commission re-opened the public hearing for the purpose of considering additional conditions of approval to address noise and light impacts. The applicant was invited to comment on the proposed conditions and Scot Sutton requested clarification of the lighting condition by replacing the word “features” with “fixtures.” Sutton indicated the applicant had no objections to the noise condition. The Commission invited the public to speak on the new conditions, whereupon Ian

Brown and Audra Brown gave additional testimony. The hearing was then closed and deliberations resumed.

After deliberations a motion was made by Commissioner Walvatne and seconded by Commissioner Bonnington to approve the application with a total of ten condition of approvals. These included the eight recommended by Staff in the February 21, 2024 Staff Report, and two additional conditions pertaining to light impacts and noise impacts. The motion passed 4-0. (Commissioners Jones, Walvatne, Bonnington, and Metlen), with Watton recused and Carr and Boggess absent.

II. The Record

The record was finalized at the February 21st, 2024, hearing. The record includes the entire file from DR-23-01.

III. Findings of Fact

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

IV. Additional Planning Commission Findings

After review of the entire record of the proceedings, including the applicant submittal, HRB recommendation, staff report and findings, both oral and written public testimony, applicant rebuttal, staff rebuttal, and responses to Commission question by Planning staff and the City Attorney, the Planning Commission found the application to meet the applicable review criteria with ten (10) conditions of approval. Findings for conditions of approval one through eight are contained in the staff report for February 21, 2022. The Commission added two additional conditions of approval as part of the motion to approve, after receiving verbal confirmation from the applicant agreeing to the conditions. The two conditions and associated findings are:

1. Condition of Approval 9, Lighting Plan. The Commission found that the application did not meet the requirements of CDC 55.070.D.2(g) and 55.100.J(6) based upon the written and verbal testimony of Ian and Audra Brown and the lack of a lighting plan that included the rooftop area. The Commission found that with the imposition of this condition, the requirements of CDC 55.079.D.2(g) and 55.100.J(6) are met.
2. Condition of Approval 10, Noise Study for Rooftop Deck. The Commission found that the application did not meet the requirements of 55.100.D.4, which requires the preparation of a noise study when there are businesses that can reasonably be expected to generate noise in violation of Municipal Code Chapter 5.487. As the applicant could not confirm the ultimate tenant mix or future use of the rooftop deck, the Commission

found the future provision of noise studies as stipulated in the condition, would result in compliance with CDC 55.100.D.4.

V. Order

The Commission orders that DR-23-01 is approved based on the Record, Findings of Fact, and Findings above.

1. Approved Plans. All alterations and improvements shall substantially conform to all submitted tentative plan sheets and supporting materials contained in Exhibit PC-01.
2. Engineering Standards. All public improvements and facilities associated with the approved site design, including but not limited to street improvements, driveway approaches, curb cuts, utilities, grading, onsite and offsite stormwater, street lighting, easements, easement locations, and connections for future extension of utilities are subject to conformance with the City Municipal Code and Community Development Code. These must be designed, constructed, and completed prior to final building certificate of occupancy. The City may partner with the applicant to fund additional improvements as part of the project.
3. Joint Access. Prior to final building certificate of occupancy, the applicant shall present an easement or other legal evidence of continued joint access and egress between the project site and 11th street through the existing underground parking garage and driveway onto 11th street to the east (1969 & 1993 Willamette Falls Drive), in compliance with CDC 48.020.E and 48.025.
4. Street Improvements. Prior to final building certificate of occupancy, the applicant shall mitigate any impacts to existing right-of-way improvements along Willamette Falls Drive, 12th Street, and Knapps Alley. The mitigation will include replacement of impacted pavement, curbs, planter strips, street trees, street lights, sidewalks, pedestrian crossings, and street storm drainage.
5. Knapps Alley. The applicant shall improve, including repaving, the portion of Knapps Alley adjacent to the site. This must be completed prior to the issuance of the final building certificate of occupancy.
6. Vertical Breaks. Prior to issuance of building permits, the applicant shall submit building permit plans with revised western and southern elevations that demonstrate compliance with CDC 58.080.C.7 that requires strong vertical breaks or lines regularly spaced every 25 to 50 feet.
7. Entry Doors & Pedestrian Level Windows. Prior to issuance of building permits, the applicant shall submit building permit plans with revised elevations and door details that

demonstrate compliance the glazing and panel ratios for entry doors in CDC 58.080.C.13, and minimum pedestrian level window sill heights within CDC 58.080.C.15.

- 8. Awning. Prior to issuance of building permits, the applicant shall submit building permit plans that demonstrate compliance with the 5-foot minimum awning depth as required in CDC 58.080.C.11.
- 9. Lighting Plan. The applicants lighting plan shall be revised to show: (1) the location and type of lights to be used to illuminate the rooftop deck, and no part of these fixtures will be visible from neighboring properties;(2) the use of full cutoff fixtures on the rooftop deck and the rear elevation that are directed down with an luminescence area that does not reach beyond the edge of Knapp’s alley and includes glare guards that block glare from the sides; and (3) that a qualified lighting designer has reviewed the revised plan and concluded that, overall, the exterior lighting scheme will be less bright than the companion 1969 building.
- 10. Noise Study. The applicant shall submit a noise study upon 50% of the total floor area of the building being occupied. Subsequent to the first noise study the applicant shall submit a new noise study, not more than once per year, in response to a noise complaint associated with the rooftop deck. The noise study must address the provisions of West Linn Municipal Code Chapters 5.487(3) and be conducted in July or August.

Joel Metlen Digitally signed by Joel Metlen
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2/29/2024

JOEL METLEN, VICE-CHAIR
WEST LINN PLANNING COMMISSION

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 29 day of February, 2024.

Therefore, this decision becomes effective at 5 p.m., March 14, 2024.