



**STAFF REPORT
FOR THE PLANNING COMMISSION**

FILE NUMBER: VAR-23-01

HEARING DATE: May 17, 2023

REQUEST: Class II variance to allow more than 4 lots (six total) to be served from a private driveway on Marylhurst Drive, approximately midblock between Upper and Lower Midhill Circle.

APPROVAL CRITERIA: Community Development Code (CDC) Chapter 11: Residential (R-10); Chapter 48: Access, Egress and Circulation ; Chapter 75: Variances and Special Waivers; Chapter 99: Procedures for Decision-Making: Quasi-Judicial.

STAFF REPORT PREPARED BY: John Floyd, Associate Planner

Planning Manager: DSW

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GENERAL INFORMATION

OWNER/APPLICANT: Tracy & Derek Peterson
24350 SW Nodaway Lane
Wilsonville OR 97070

APPLICANT'S REPRESENTATIVE: Hillary Harris
HHPR
205 SE Spokane Street, Suite 200
Portland, OR 97202

SITE LOCATION: 2622 Marylhurst Drive and 18600, 18680, and 18690 Midhill Circle

LEGAL DESCRIPTION: Lots 2 & 15-19 of the 1926 Replat of Robinwood
Clackamas County Assessor's Map 2S1E14DC; Tax Lots 5800,
6500, 6600, 6601, 6700, and 6701,

SITE SIZE: 0.7 Acres

ZONING: R-10, Residential

COMP PLAN DESIGNATION: Low-Density Residential

120-DAY PERIOD: This application became complete on April 18, 2023. The 120-day maximum application-processing period ends on August 16, 2023.

PUBLIC NOTICE: Notice was mailed to property owners within 500 feet of the subject property and the Robinwood Neighborhood Association on April 25, 2023. Notice was published in the West Linn Tidings on May 3, 2023. The property was posted with a notice sign on May 4, 2023. The notice and application were posted on the City's website on April 24, 2023. Therefore, public notice requirements of CDC Chapter 99 have been met.

EXECUTIVE SUMMARY

The applicant is requesting a Class II variance to allow more than four lots (6 total) to be served from a private accessway on Marylhurst Drive, approximately midblock between Upper and Lower Midhill Circle in an alley configuration.

The project site includes six lots of record that were created in 1926 under the Replat of Robinwood (Clackamas County Plat No. 541) and include Lots 2 and 15 through 19. All are undeveloped with the exception of a single-family home on lot 19, which the applicant intends to remove prior to development.



As shown on the grading plan, topography on the site slopes downhill from west to east, with substantial slopes along the Midhill Circle frontages which is the basis for the variance.

In lieu of providing steep driveways and substantial grading, the applicant is proposing consolidated access through the center of the block where the grades are less steep. The private accessway would include two 7' travel lanes, a 5-foot sidewalk, and a curb. Along the southernmost portion, a retaining wall with safety fence would be included to maintain grade. This single accessway would remove up to six new driveways onto Midhill Circle.

Frontage improvements are also proposed along Marylhurst Drive, identified as a Collector in the West Linn Transportation System Plan.

The project site and surrounding neighborhood are zoned residential, R-10, and are substantially built out. No environmental overlays or restrictions are on or adjacent to the project site.

Tualatin Valley Fire & Rescue (TVF&R) has issued Service Provider Permit #2023-0034 that approves the proposed access, and the West Linn Engineering Division did not have any comments on the application.

Public comment:

One public comment was received as of the writing of this report. On May 4, 2023, a letter was submitted by Arnold H. Sackett, JR (Exhibit PC-5). His letter made four requests related to the restriction of building heights, the placement of no parking signs along Midhill Circle, the restriction of water and sewer connections to Marylhurst Drive, and mandatory removal of a large fir tree adjacent to 18670 Midhill Circle. As the application is limited to a variance regarding the number of lots utilizing a private accessway, and these matters are better addressed by the Transportation Safety Committee and West Linn Code Enforcement, no further action or conditions are recommended by Planning Staff in response to this testimony.

RECOMMENDATION

Staff recommends approval of application VAR-23-01, 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. **Site Plans.** With the exception of modifications required by these conditions, the project shall substantially conform to all Tentative Plan Sheets and TVF&R Service Provider Permit 2023-0034 in Exhibit PC-1.
2. **Demolition and Construction.** Prior to issuance of building permits on the affected lots, the applicant shall obtain a demolition permit and receive final demolition inspection for the existing home on the site.
3. **Easement.** Prior to the issuance of building permits, the applicant shall record a private access and utility easement for the shared access drive. A draft of the easement shall be presented to the City Engineering and Planning Divisions for review and approval prior to recordation.
4. **Improvements.** Prior to final inspection and issuance of a certificate of occupancy for a new dwelling unit on the affected lots, all proposed private and public improvements in Exhibit PC-1 shall be completed and accepted by the city.

**ADDENDUM
PLANNING COMMISSION STAFF REPORT**

**STAFF EVALUATION OF THE PROPOSAL’S COMPLIANCE
WITH APPLICABLE CODE CRITERIA**

CHAPTER 11

RESIDENTIAL, R-10

11.030 PERMITTED USES

The following are uses permitted outright in this zoning district:

1. *Single-family attached or detached residential unit.*
 - a. *Duplex residential units.*
 - b. *Triplex residential units.*
 - c. *Quadplex residential units.*

Staff Finding 1: The proposal is to provide alternative access for the future development of single-family attached or detached residential units. This standard is met.

11.070 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:

<i>STANDARD</i>	<i>REQUIREMENT</i>	<i>ADDITIONAL NOTES</i>
<i>Minimum lot size Average minimum lot or parcel size for a townhouse project</i>	<i>10,000 sf 1,500 sf</i>	<i>For a single-family attached or detached unit</i>
<i>Minimum lot width at front lot line</i>	<i>35 ft</i>	<i>Does not apply to townhouses or cottage clusters</i>
<i>Average minimum lot width</i>	<i>50 ft</i>	<i>Does not apply to townhouses or cottage clusters</i>
<i>Minimum yard dimensions or minimum building setbacks</i>		<i>Except as specified in CDC 25.070(C)(1) through (4) for the Willamette Historic District. Front, rear, and side yard setbacks in a cottage cluster project are 10 ft. There are no additional setbacks for individual structures on individual lots, but minimum distance between structures shall follow applicable building code requirements.</i>
<i>Front yard</i>	<i>20 ft</i>	<i>Except for steeply sloped lots where the provisions of CDC 41.010 shall apply</i>
<i>Interior side yard</i>	<i>7.5 ft</i>	<i>Townhouse common walls that are attached may have a 0-ft side setback.</i>
<i>Street side yard</i>	<i>15 ft</i>	
<i>Rear yard</i>	<i>20 ft</i>	

<i>STANDARD</i>	<i>REQUIREMENT</i>	<i>ADDITIONAL NOTES</i>
<i>Maximum building height</i>	<i>35 ft</i>	<i>Except for steeply sloped lots in which case the provisions of Chapter 41 CDC shall apply.</i>
<i>Maximum lot coverage</i>	<i>35%</i>	<i>Maximum lot coverage does not apply to cottage clusters. However, the maximum building footprint for a cottage cluster is less than 900 sf per dwelling unit.</i> <ul style="list-style-type: none"> • <i>This does not include detached garages, carports, or accessory structures.</i> • <i>A developer may deduct up to 200 sf for an attached garage or carport.</i>
<i>Minimum accessway width to a lot which does not abut a street or a flag lot</i>	<i>15 ft</i>	
<i>Maximum floor area ratio</i>	<i>0.45</i>	<i>Maximum FAR does not apply to cottage clusters.</i>
<i>Duplex, triplex, and quadplex</i>	<i>0.60</i>	<i>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.</i>

Staff Finding 2: No development is proposed at this time, but the proposed plans in Exhibit PC-1 include building envelopes sufficient to comply with setback requirements listed above. These standards will be met at the time of development.

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.*
- 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.*

[...]

- 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: As shown on the scaled civil plan and grading plan in PC-1, all affected lots will be provided access to Marylhurst Drive, a public street. A condition of approval requiring the recording of a cross-access and utility easement over the proposed joint accessway is recommended to ensure compliance with “E” and “F”. As conditioned, this standard will be met.

48.025 ACCESS CONTROL

A. *Purpose. The following access control standards apply to public, industrial, commercial and residential developments including land divisions. Access shall be managed to maintain an adequate level of service and to maintain the functional classification of roadways as required by the West Linn Transportation System Plan.*

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, Transportation Impact Analysis.)*

Staff Finding 4: The proposal to increase the number of lots utilizing a shared driveway from four to six does not warrant a traffic impact analysis due to the minimal impact and disproportional burden it would impose. This standard does not apply.

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.*

Staff Finding 5: The proposal is for a variance to allow the consolidation of six potential driveways into a single access point on Marylhurst Drive. A condition of approval is recommended to ensure a reciprocal access easement is recorded. This standard is met.

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” as approved by the City Engineer.*

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 6: The applicant proposes to construct a shared private driveway from Marylhurst Drive, a public street adjacent to the development site. Under Access Option (3)(b) above, this is a permitted method of providing access to the subject properties. This standard is met.

4. Subdivisions fronting onto an arterial street. New residential land divisions fronting onto an arterial street shall be required to provide alleys or secondary (local or collector) streets for access to individual lots. When alleys or secondary streets cannot be constructed due to topographic or other physical constraints, access may be provided by consolidating driveways for clusters of two or more lots (e.g., includes flag lots and mid-block lanes).

Staff Finding 7: A land division is not proposed. This standard does not apply.

5. Double-frontage lots. When a lot or parcel has frontage onto two or more streets, access shall be provided first from the street with the lowest classification. For example, access shall be provided from a local street before a collector or arterial street. When a lot or parcel has frontage opposite that of the adjacent lots or parcels, access shall be provided from the street with the lowest classification.

Staff Finding 8: Two of the tax lots have frontages on both Marylhurst Drive (a collector) and Midhill Circle (a local Street). However, with the requested variance, all of the tax lots on the project site will take access from the shared driveway from Marylhurst Drive. With the variance, this standard is met.

6. Access spacing.

a. The access spacing standards found in the adopted Transportation System Plan (TSP) shall be applicable to all newly established public street intersections and non-traversable medians. Deviation from the access spacing standards may be granted by the City Engineer if conditions are met as described in the access spacing variances section in the adopted TSP.

b. Private drives and other access ways are subject to the requirements of CDC 48.060.

Staff Finding 9: The applicant is not proposing any new public street intersections with this application, and the proposed shared driveway complies with all applicable standards of CDC 48.060 as addressed in staff finding 17. Therefore, this standard does not apply.

7. Number of access points. For single-family (detached and attached), two-family, and duplex housing types, one street access point is permitted per lot or parcel, when alley access cannot otherwise be provided; except that two access points may be permitted corner lots (i.e., no more

than one access per street), subject to the access spacing standards in subsection (B)(6) of this section. The number of street access points for multiple family, commercial, industrial, and public/institutional developments shall be minimized to protect the function, safety and operation of the street(s) and sidewalk(s) for all users. Shared access may be required, in conformance with subsection (B)(8) of this section, in order to maintain the required access spacing, and minimize the number of access points.

Staff Finding 10: Each of the six lots will only have one access point. All six lots take access from the shared driveway off Marylhurst Drive.

8. *Shared driveways. The number of driveway and private street intersections with public streets shall be minimized by the use of shared driveways with adjoining lots where feasible. The City shall require shared driveways as a condition of land division or site design review, as applicable, for traffic safety and access management purposes in accordance with the following standards:*

- a. *Shared driveways and frontage streets may be required to consolidate access onto a collector or arterial street. When shared driveways or frontage streets are required, they shall be stubbed to adjacent developable parcels to indicate future extension. "Stub" means that a driveway or street temporarily ends at the property line, but may be extended in the future as the adjacent lot or parcel develops. "Developable" means that a lot or parcel is either vacant or it is likely to receive additional development (i.e., due to infill or redevelopment potential).*
- b. *Access easements (i.e., for the benefit of affected properties) shall be recorded for all shared driveways, including pathways, at the time of final plat approval or as a condition of site development approval.*

[...]

Staff Finding 11: The applicant is proposing the consolidation of access for six developable lots onto a shared driveway on Marylhurst Drive. The consolidation of access will prevent multiple driveways onto the adjacent streets and maximize the frontage improvements that can be provided on Marylhurst Drive. As noted in prior staff findings, a condition of approval requiring the recordation of an access and utility easement is recommended. As conditioned, these standards 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, as designated in the transportation element of the Comprehensive Plan, is prohibited for lots or parcels created after the effective date of this code where an alternate access is either available or is expected to be available by imminent development application. Evidence of alternate or future access may include temporary cul-de-sacs, dedications or stubouts on adjacent lots or parcels, or tentative street layout plans submitted at one time by adjacent property owner/developer or by the owner/developer, or previous owner/developer, of the property in question.

[...]

Staff Finding 12: Marylhurst Drive is classified as a Collector, not an Arterial Street. Therefore, the above standard does not apply to this application.

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.

Staff Finding 13: As shown on the civil sheets in Exhibit PC-1, the applicant is proposing a 20-foot wide paved driveway for the first two lots, followed by a 14-foot wide driveway with a five-foot-wide sidewalk. Finished grade along centerline will be under 2%, well below maximum grade. Tualatin Valley Fire & Rescue has approved the adequacy of the proposed cross section per the Service Provider contained in Exhibit PC-1. Driveway depths will be confirmed at the time of building permits. Therefore, these standards are met.

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 14: Tualatin Valley Fire & Rescue has issued a Service Provider Permit for the application and has not requested a turnaround. Total horizontal clearance will be twenty feet based upon the proposed cross section. No structures are proposed above the proposed accessway that would limit the vertical clearance. These standards 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 15: The proposed variance is to permit access to six existing lots of record on a shared, private access drive. With the variance, this standard no longer applies.

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.
[...]

Staff Finding 16: The proposal would result in a single, consolidated access on Marylhurst Drive, a collector. This standard is 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 17: The proposed curb cut is 20 feet, in compliance with the minimum and maximum curb cut widths. These standards 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.
 - 2. On an arterial when intersected by a collector, 100 feet.
 - 3. On an arterial when intersected by a local street, 100 feet.
 - 4. On a collector when intersecting an arterial street, 100 feet.
 - 5. On a collector when intersected by another collector or local street, 35 feet.
 - 6. On a local street when intersecting any other street, 35 feet.

Staff Finding 18: The proposed accessway fronts Marylhurst Drive, a collector, and will be located approximately 150 feet from the intersecting lines of Midhill Circle, a local street, substantially in excess of the 35-foot minimum. This standard is 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 19: The applicant is only proposing a consolidated curb cut on the development site that is over 100 feet from both intersections of Midhill Circle and Marylhurst Drive. If the variance is not granted and two driveways had to be provided on Marylhurst Drive (a collector) or four to five on Midhill Circle (a local street), it would be very difficult to meet the minimum distance requirements with the site dimensions and local topography. Granting the

variance allows for just a single driveway on Marylhurst Drive that can meet all minimum distance requirements. With the variance, this standard is met.

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

Staff Finding 20: The applicant is not proposing to install a rolled curb adjacent to the development site. Therefore, this standard does not apply.

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.

Staff Finding 21: The applicant is requesting a variance to allow the consolidation of six required access points into a single shared driveway, thus minimizing the number of future curb cuts. This standard is met.

CHAPTER 75, VARIANCES AND SPECIAL WAIVERS

75.020 CLASSIFICATION OF VARIANCES

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.

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.*
- 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.*

Staff Finding 22: Staff incorporates applicant findings (Exhibit PC-1) as described below:

“The requested variance is the minimum necessary to make reasonable use of the property while also prioritizing pedestrian safety and walkability of the area for the following reasons:

- 1. The physical characteristics of the lots, including size and shape, make two separate access drives from Marylhurst Drive impractical. This would require multiple curb cuts on the street, closer proximity between driveways and street intersections, as well as**

requiring additional space on the lots themselves, limiting the buildable area of the residential properties.

2. Due to the topography of the project site and the extremely steep slopes that requires retaining walls, minimizing the number of driveways onto Marylhurst Drive will limit pedestrian-vehicle and vehicle-vehicle conflicts.
3. It should be noted that the City requested the property owner abandon the original development plans for the project site that had each lot taking individual direct access from Midhill Circle in lieu of making all public improvements and access off Marylhurst Drive. The property owner revised the development plan in accordance with the City's request to support the potential future redevelopment vision of pedestrian safety and walkability down to Highway 43."

This criterion is 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 23: Staff incorporates applicant findings (Exhibit PC-1) as described below: "The requested variance will not result in a violation of any other known code standards while still meeting the purpose of the regulation being modified. Chapter 48 in the CDC seeks to balance mobility and the need to provide efficient and safe access to individual properties. Allowing for all six lots to be accessed via a single private drive creates a more practical development pattern for the area, as well as a safer situation for access, egress, and pedestrian circulation by limiting curb cuts on a Collector. Additionally, the requested variance will produce more well-designed homes relative to the site size, shape and existing development pattern of the area and on Marylhurst Drive."

This criterion is met.

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

Staff Finding 24: The steep topography was not created by the applicant/owner, nor was the lot layout which was replatted in 1926. 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.

Staff Finding 25: The applicant has requested one variance. This criterion does not apply.

96.010 CONSTRUCTION REQUIRED

A. Street improvements for residential construction are required when:

1. Construction of a new single-family attached or detached structure (replacement of an existing structure is exempt); or

[...]

Staff Finding 26: The applicant is not proposing the construction of any new residential units at this time. However, the six lots of record will eventually be developed with single-family attached or detached homes as permitted in the R-10 zone. With the requested variance to allow all the properties on the development site to have access from a single shared driveway, the applicant is also proposing street frontage improvements on Marylhurst Drive, including a six foot sidewalk, stormwater facilities, and new street paving. The length of improvements along Marylhurst is approximately 283 feet, which is greater than the approximately 255 feet of frontage improvements that would be required if provided along Midhill Circle. As the lots may be sold to different buyers prior to development and therefore constructed on differing timetables, a condition of approval has been added requiring the construction of the improvements prior to the first home to ensure the work is completed. As conditioned, this standard is met.

96.020 FEE-IN-LIEU

A. *An applicant may apply for a waiver of street improvements and the option to pay a fee-in-lieu (in accordance with the City's adopted fee structure) of constructing street improvements if one of the following are met:*

1. *Located on a cul-de-sac with no existing curb and/or no existing sidewalk; or*
2. *Located on a street less than 1,320 linear feet in length and not planned as a through street;*
or
3. *Located more than 1,320 linear feet from nearest street improvements on the same street or connecting street. (Ord. 1739 § 2 (Exh. B), 2022)*

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 13: A pre-application meeting was held on February 16, 2023 (Exhibit PC-4). This standard is 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 14: The applicant proposal will be heard by the Planning Commission at a public hearing scheduled for May 17, 2023. This standard will be met.

99.080 NOTICE

Notice shall be given in the following ways:

A. Class A Notice. (...)

Staff Finding 15: The applicant proposal has been properly noticed by the City per Exhibit PC-6. This standard is met.

EXHIBIT PC-1: APPLICANT SUBMITTAL



Planning & Development • 22500 Salamo Rd #1000 • West Linn, Oregon 97068
 Telephone 503.656-3535 • westlinnoregon.gov

DEVELOPMENT REVIEW APPLICATION

For Office Use Only		
STAFF CONTACT John Floyd	PROJECT NO(S). VAR-23-01	PRE-APPLICATION NO. PA-22-02
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"/> Code Interpretation | <input type="checkbox"/> Lot Line Adjustment (LLA) | <input type="checkbox"/> Time Extension |
| <input type="checkbox"/> Conditional Use (CUP) | <input type="checkbox"/> Minor Partition (MIP) (Preliminary Plat or Plan) | <input checked="" type="checkbox"/> Variance (VAR) |
| <input type="checkbox"/> Design Review (DR) | <input type="checkbox"/> Modification of Approval | <input type="checkbox"/> Water Resource Area Protection/Single Lot (WAP) |
| <input type="checkbox"/> Tree Easement Vacation | <input type="checkbox"/> Non-Conforming Lots, Uses & Structures | <input type="checkbox"/> Water Resource Area Protection/Wetland (WAP) |
| <input type="checkbox"/> Final Plat or Plan (FP) | <input type="checkbox"/> Planned Unit Development (PUD) | <input type="checkbox"/> Willamette & Tualatin River Greenway (WRG) |
| <input type="checkbox"/> Flood Management Area | <input type="checkbox"/> Street Vacation | <input type="checkbox"/> Zone Change |

Pre-Application, Home Occupation, Sidewalk Use, Addressing, and Sign applications require different forms, available on the City website.

Site Location/Address: 2622 Marylhurts Drive and 18600-18690 Midhill Circle	Assessor's Map No.: 2S1E14DC
	Tax Lot(s): 5800, 6700, 6701, 6601, 6600, 6500
	Total Land Area: 0.7 acres

Brief Description of Proposal:

The applicant is requesting a Type II variance to allow for more than four lots (six total) to be served from one private driveway.

Applicant Name: Tracy Peterson <small>(please print)</small> Address: 24350 SW Nodaway Lane Wilsonville, OR 97070 City State Zip:	Phone: Email:
--	------------------

Owner Name (required): Tracy & Derek Peterson <small>(please print)</small> Address: 24350 SW Nodaway Lane Wilsonville, OR 97070 City State Zip:	Phone: Email:
---	------------------

Consultant Name: Hillary Harris, Harper Houf Peterson Righellis <small>(please print)</small> Address: 205 SE Spokane Street, Suite 200 Portland, OR 97202 City State Zip:	Phone: 503-221-1131 Email: hillaryh@hhpr.com
---	---

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. The permit approval will not be effective until the appeal period has expired.
4. Submit this form and supporting documents through the [Submit a Land Use Application](https://westlinnoregon.gov/planning/submit-land-use-application) web page:
<https://westlinnoregon.gov/planning/submit-land-use-application>

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.

Applicant's signature	3/17/2023 1:38 PM	DocuSigned by: Owner's signature (required)
Date	Date	Date

Marylhurst Drive Variance
Land Use Application Narrative & Findings Document
Class II Variance

Owner/Applicant: Tracy & Derek Peterson
24350 SW Nodaway Lane
Wilsonville, OR 97070

Planner: Hillary Harris, Planner
Harper Houf Peterson Righellis, Inc.
205 SE Spokane Street, Suite 200
Portland, OR 97202
(503) 221-1131
hillaryh@hhpr.com

Engineer: Alex Simpson, PE
Harper Houf Peterson Righellis, Inc.
205 SE Spokane Street, Suite 200
Portland, OR 97202
(503) 221-1131
alexs@hhpr.com

Site Location: 2622 Marylhurst Drive & 18600-18690 Midhill Circle

Tax Map: 2S1E14DC

Tax Lots: 5800, 6700, 6701, 6601, 6600, 6500

Parcel Size: 0.7 acres

Zoning Designation: R-10

Summary of Request: The applicant is requesting a Type II variance to allow for more than four lots (six lots total) to be served from one private driveway.

Date: March 6, 2023

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I. PROJECT OVERVIEW

EXISTING CONDITIONS & PROPOSAL

The project site includes six properties located off Marylhurst Drive and Midhill Circle (Tax Lots 2S1E14DC5800, 2S1E14DC6500, 2S1E14DC6600, 2S1E14DC6601, 2S1E14DC6700, and 2S1E14DC6701). The site is approximately 0.7 acres in size and zoned R-10 on the West Linn Zoning Map. The site has been subdivided and approved for the construction of single-family homes.

Due to the limited space of the project site, the steep topography, and the City prioritizing the area for future walkability, the properties can only be accessed from a single private driveway off Marylhurst Drive. The West Linn Community Development Code allows for up to four properties to take access from a shared private drive, and there are a total of six properties on the project site. Therefore, the applicant is requesting a Class II Variance to allow for all six properties on the project site to be accessed from the shared private drive.

VICINITY MAP



II. RESPONSE TO APPLICABLE APPROVAL CRITERIA FOR A CLASS II VARIANCE

CHAPTER 11: SINGLE-FAMILY RESIDENTIAL DETACHED, R-10

SECTION 11.030: PERMITTED USES

The following are uses permitted outright in this zoning district:

1. Single-family attached or detached residential unit.
 - a. Duplex residential units.
 - b. Triplex residential units.
 - c. Quadplex residential units.
2. Cottage clusters.
3. Townhouse.
4. Community recreation.
5. Family day care.
6. Residential home.
7. Utilities, minor.
8. Transportation facilities (Type I).
9. Manufactured home.
10. Community building on City-owned property at 3706 Cedaroak Drive and indicated on the map below.

Response: The project site is comprised of six existing lots that are proposed for eventual development as either single-family attached or detached residential dwellings. However, there is no proposed development with this application, only the request for a variance.

CHAPTER 48: ACCESS, EGRESS, AND CIRCULATION

SECTION 48.020: APPLICABILITY AND GENERAL PROVISIONS

- A. The provisions of this chapter do not apply where the provisions of the Transportation System Plan or land division chapter are applicable and set forth differing standards.

Response: Neither the provisions of the Transportation System Plan nor the land division chapter are applicable to this project. Therefore, the standards of Section 48.020 apply.

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

Response: The applicant is proposing all six lots have access from Marylhurst Drive, a public street, via a shared private driveway. Standard (B) above is satisfied with the proposed design – please see the attached site plan for details.

- 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.

Response: Included with this application is a detailed and scaled civil plan set that includes a site plan and grading plan. Please see these plans for details on compliance with the standards of this chapter.

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.

Response: The property owner is not proposing to change the use of the existing lots or enlarge the lots included in the project site.

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.

Response: The property owner owns all six lots included on the project site and proposes to have all six lots utilize a joint access driveway from Marylhurst Drive. This combined access satisfies all requirements of this code or is requesting a variance to the code standard.

SECTION 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, Transportation Impact Analysis.)

Response: A traffic impact analysis is not required or included with this variance application.

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.

Response: The applicant is requesting a variance to allow for the consolidation of driveways and allow for all six properties to take access from a single point off Marylhurst Drive. In addition, the applicant will provide frontage improvements along Marylhurst Drive, including a six foot wide sidewalk and new street paving. Please see the attached site plan, Sheet C3.0, for details on the proposed improvements.

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" as approved by the City Engineer.*
 - 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.*

Response: The applicant proposes to construct a shared private driveway from Marylhurst Drive, a public street directly adjacent to the development site. Under Access Option (3)(c) above, this is a permitted method of providing access to the subject properties.

4. *Subdivisions fronting onto an arterial street. [...]*

Response: The applicant is not proposing a subdivision or new residential land division with this application. Therefore, the above standard does not apply, and the remaining code language has been omitted from this narrative.

5. *Double-frontage lots. When a lot or parcel has frontage onto two or more streets, access shall be provided first from the street with the lowest classification. For example, access shall be provided from a local street before a collector or arterial street. When a lot or parcel has frontage opposite that of the adjacent lots or parcels, access shall be provided from the street with the lowest classification.*

Response: One of the lots (Tax Lot 5800) has frontage on both Marylhurst Drive (a Collector) and Midhill Circle (a Local Street). However, with the requested variance, all of the tax lots on the project site will take access from the shared driveway from Marylhurst Drive.

6. *Access spacing.*
 - a. *The access spacing standards found in the adopted Transportation System Plan (TSP) shall be applicable to all newly established public street intersections and non-traversable medians. Deviation from the access spacing standards may be granted by the City Engineer if conditions are met as described in the access spacing variances section in the adopted TSP.*

Response: The applicant is not proposing any new public street intersections with this application. Therefore, Standard (6)(a) does not apply.

- b. *Private drives and other access ways are subject to the requirements of CDC 48.060.*

Response: The proposed shared driveway on the project site complies with all applicable standards of CDC 48.060. Please see the responses in that section of this narrative for details on compliance.

7. *Number of access points. For single-family (detached and attached), two-family, and duplex housing types, one street access point is permitted per lot or parcel, when alley access cannot otherwise be provided; except that two access points may be permitted corner lots (i.e., no more than one access per street), subject to the access spacing standards in subsection (B)(6) of this section. The number of street access points for multiple family, commercial, industrial, and public/institutional developments shall be minimized to protect the function, safety and operation of the street(s) and sidewalk(s) for all users. Shared access may be required, in conformance with subsection (B)(8) of this section, in order to maintain the required access spacing, and minimize the number of access points.*

Response: Each of the lots included on the project site will only have one access point. All six lots take access from the shared driveway off Marylhurst Drive. Please see the attached site plan for details on site access.

8. *Shared driveways. The number of driveway and private street intersections with public streets shall be minimized by the use of shared driveways with adjoining lots where feasible. The City shall require shared driveways as a condition of land division or site design review, as applicable, for traffic safety and access management purposes in accordance with the following standards:*
 - a. *Shared driveways and frontage streets may be required to consolidate access onto a collector or arterial street. When shared driveways or frontage streets are required, they shall be stubbed to adjacent developable parcels to indicate future extension. "Stub" means that a driveway or street temporarily ends at the property line, but may be extended in the future as the adjacent lot or parcel develops. "Developable" means that a lot or parcel is either vacant or it is likely to receive additional development (i.e., due to infill or redevelopment potential).*

Response: The applicant is proposing all six lots take access from a shared driveway off Marylhurst Drive. The consolidation of the driveways will prevent multiple driveways onto the adjacent streets and maximize the frontage improvements that can be provided on Marylhurst Drive. Please see the attached site plan for details on site access.

- b. *Access easements (i.e., for the benefit of affected properties) shall be recorded for all shared driveways, including pathways, at the time of final plat approval or as a condition of site development approval.*

Responses: Acknowledged by the applicant.

- 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: [...]*

Response: The applicant is not proposing any new streets or blocks with this application. Only a variance to allow for a single shared driveway for all six lots is requested. Therefore, Standard (C) above does not apply to this application and the remaining code language has been omitted.

SECTION 48.030: MINIMUM VEHICULAR REQUIREMENTS FOR RESIDENTIAL USES

- A. *Direct individual access from single-family dwellings and duplex lots to an arterial street, as designated in the transportation element of the Comprehensive Plan, is prohibited for lots or parcels created after the effective date of this code where an alternate access is either available or is expected to be available by imminent development application. Evidence of alternate or future access may include temporary cul-de-sacs, dedications or stub outs on adjacent lots or parcels, or tentative street layout plans submitted at one time by adjacent property owner/developer or by the owner/developer, or previous owner/developer, of the property in question.*

Response: Marylhurst Drive is classified as a Collector, not an Arterial Street. Therefore, the above standard does not apply to this application.

- 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: [...]*
- 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. [...]*

Response: There are no existing houses on the project site, nor are there any houses proposed with this variance application. Therefore, Standards (B) and (C) above do not apply and the remaining code language has been omitted.

- 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.*

Response: The applicant is requesting a variance to allow for a driveway to be constructed to serve all six of the residential lots on the development site. This driveway will be 20 feet wide and comply with all applicable standards for a driveway.

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

Response: The applicant is not proposing any multi-family dwellings with this application. Therefore, Standard (E) does not apply, and the remaining code language has been omitted.

- 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.*

Response: When developed, each residential site will have adequate parking provided that complies with the West Linn Community Development Code.

- 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.*



Response: Granting the requested variance will allow for only one driveway to be constructed on Marylhurst Drive, minimizing the number of curb cuts and possible vehicle-pedestrian conflicts on the street. Because the orientation and location of the site, as well as the City’s desire to make the area a more pedestrian oriented and walkable neighborhood, consolidating all six driveways into one shared private driveway is not only feasible, but ideal for the site.

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.

Response: The applicant is not proposing any multi-family dwellings with this application. Therefore, Standard (H) does not apply to this application.

I. Gated accessways to residential development other than a single-family home are prohibited.

Response: The applicant is not proposing any gated accessways with this application. Therefore, Standard (I) does not apply to this application.

SECTION 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.*

Response: The proposed driveway off Marylhurst Drive has a curb cut of 20 feet, complying with the minimum and maximum curb cut width allowed above. Please see the attached site plan, Sheet C3.0, for details.

- 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.*
 - 2. On an arterial when intersected by a collector, 100 feet.*
 - 3. On an arterial when intersected by a local street, 100 feet.*
 - 4. On a collector when intersecting an arterial street, 100 feet.*
 - 5. On a collector when intersected by another collector or local street, 35 feet.*
 - 6. On a local street when intersecting any other street, 35 feet.*

Response: In the City of West Linn’s Transportation Systems Plan (Figure 17), Marylhurst Drive is classified as a Collector Street and Midhill Circle is classified as a Local Street. Therefore, no curb cut is allowed any closer than 35 feet of these intersecting. The proposed curb cut is well over 100 feet from both intersections, complying with the above standard. Please see the attached site plan, Sheet C3.0, for details.

- 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.*



Response: The applicant is only proposing one curb cut on the development site that is over 100 feet from both intersections of Midhill Circle and Marylhurst Drive. If the variance was not granted and two driveways had to be provided on Marylhurst Drive (a collector) or four to five on Midhill Circle (a local street), it would be very difficult to meet the minimum distance requirements with the site dimensions and local topography. Granting the variance allows for just a single driveway on Marylhurst Drive that can meet all minimum distance requirements.

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

Response: The applicant is not proposing to install a rolled curb adjacent to the development site. Therefore, the above standard does not apply to this application.

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.

Response: The applicant is requesting a variance to allow for all six residential properties to have vehicle access from a single shared driveway. Granting the requested variance will allow for all the properties to consolidate their access into one shared driveway and only require one curb cut on Marylhurst Drive.

CHAPTER 75: VARIANCES AND SPECIAL WAIVERS

SECTION 75.020: CLASSIFICATION OF VARIANCES

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.

- 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.*
 - 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.*

Response: The requested variance is the minimum necessary to make reasonable use of the property while also prioritizing pedestrian safety and walkability of the area for the following reasons:

1. The physical characteristics of the lots, including size and shape, make two separate access drives from Marylhurst Drive impractical. This would require multiple curb cuts on the street, closer proximity

between driveways and street intersections, as well as requiring additional space on the lots themselves, limiting the buildable area of the residential properties.

2. Due to the topography of the project site and the extremely steep slopes that requires retaining walls, minimizing the number of driveways onto Marylhurst Drive will limit pedestrian-vehicle and vehicle-vehicle conflicts.
3. It should be noted that the City requested the property owner abandon the original development plans for the project site that had each lot taking individual direct access from Midhill Circle in lieu of making all public improvements and access off Marylhurst Drive. The property owner revised the development plan in accordance with the City's request to support the potential future redevelopment vision of pedestrian safety and walkability down to Highway 43.

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.

Response: The requested variance will not result in a violation of any other known code standards while still meeting the purpose of the regulation being modified. Chapter 48 in the CDC seeks to balance mobility and the need to provide efficient and safe access to individual properties. Allowing for all six lots to be accessed via a single private drive creates a more practical development pattern for the area, as well as a safer situation for access, egress, and pedestrian circulation by limiting curb cuts on a Collector. Additionally, the requested variance will produce more well-designed homes relative to the site size, shape and existing development pattern of the area and on Marylhurst Drive.

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

Response: The two primary reasons the property owner is requesting a variance to allow for all six lots to take access from a single shared private drive is the steep topography of Marylhurst Drive and the project site and the City's request to not have access from Midhill Circle. Neither the steepness of the area nor the City's request was created by the property owner.

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.

Response: Only one variance is requested, and that variance would apply to all six lots and the road would remain private and our responsibility.

CHAPTER 96: STREET IMPROVEMENT CONSTRUCTION

SECTION 96.010: CONSTRUCTION REQUIRED

- A. *Street improvements for residential construction are required when:*
1. *Construction of a new single-family attached or detached structure (replacement of an existing structure is exempt); or*
 2. *Construction of a new multifamily structure; or*
 3. *Increase in dwelling unit density on site (accessory dwelling units are exempt).*

Response: The applicant is not proposing the construction of any new residential units at this time. However, the property will eventually be developed with single-family attached or detached homes in the future. With the requested variance to allow all the properties on the development site to have access from a single shared driveway, the applicant is also proposing street frontage improvements on Marylhurst Drive, including a six foot sidewalk, stormwater facilities, and new street paving. Please see the attached civil plan set for details on the proposed improvements.

B. Street improvements for commercial construction are required when: [...]

Response: The applicant is not proposing any commercial construction on the project site. Therefore, Standard (B) does not apply, and the remaining code language has been omitted.

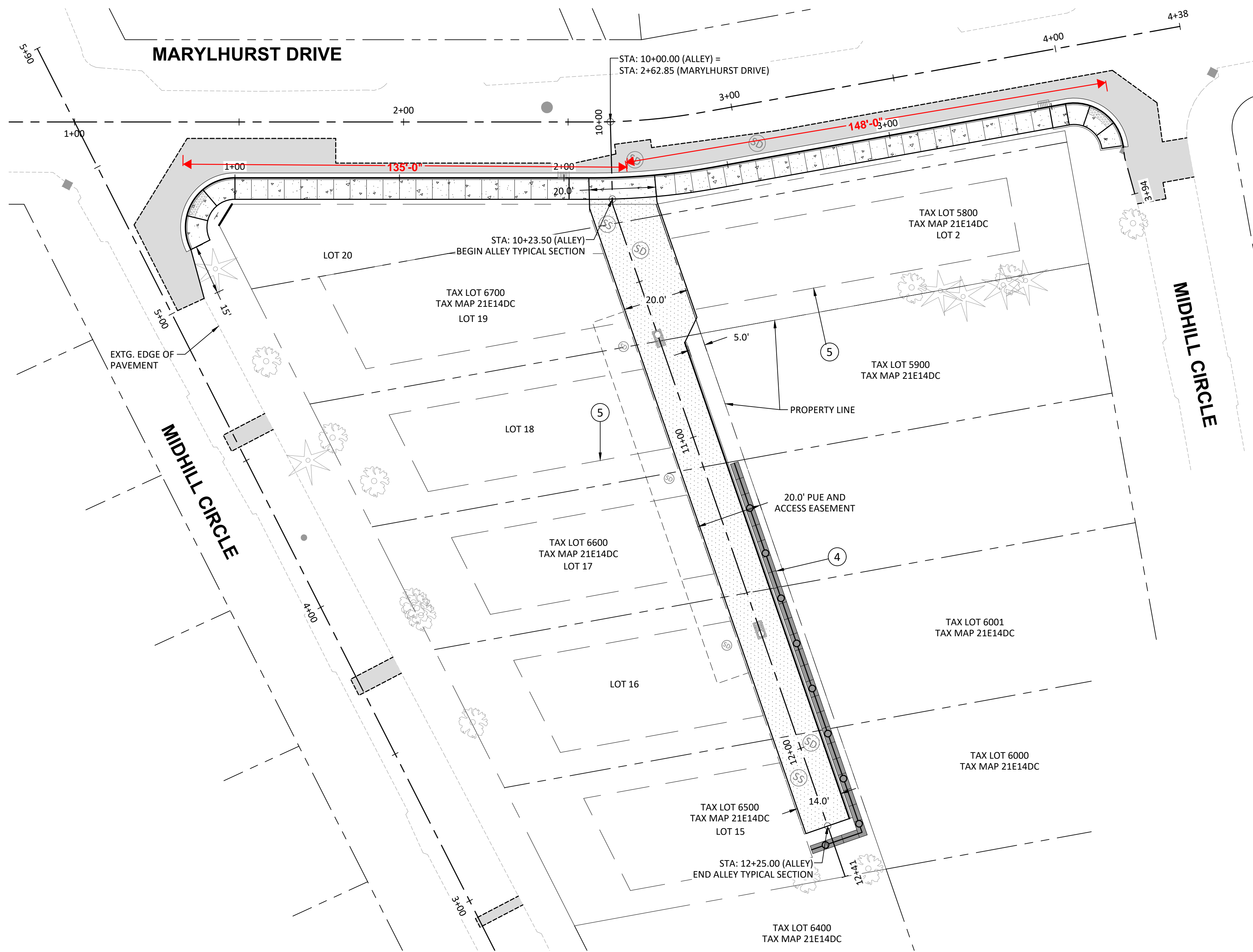
SECTION 96.030: STANDARDS

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 the applicant submit sufficient security in an amount and quantity satisfactory to the City Attorney to assure payment of such improvement costs.

Response: The applicant is proposing street improvements on Marylhurst Drive and Midhill Circle, including right-of-way dedication, a sidewalk, and improved asphalt concrete paving. These street improvements will be installed according to all applicable City standards and complete prior to the issuance of any occupancy permit for the residential sites.

III. CONCLUSION

This written statement and the accompanying supporting documents demonstrate compliance with the applicable approval criteria for a Class II Variance in the City of West Linn. Therefore, the applicant respectfully requests that the City approve the application.

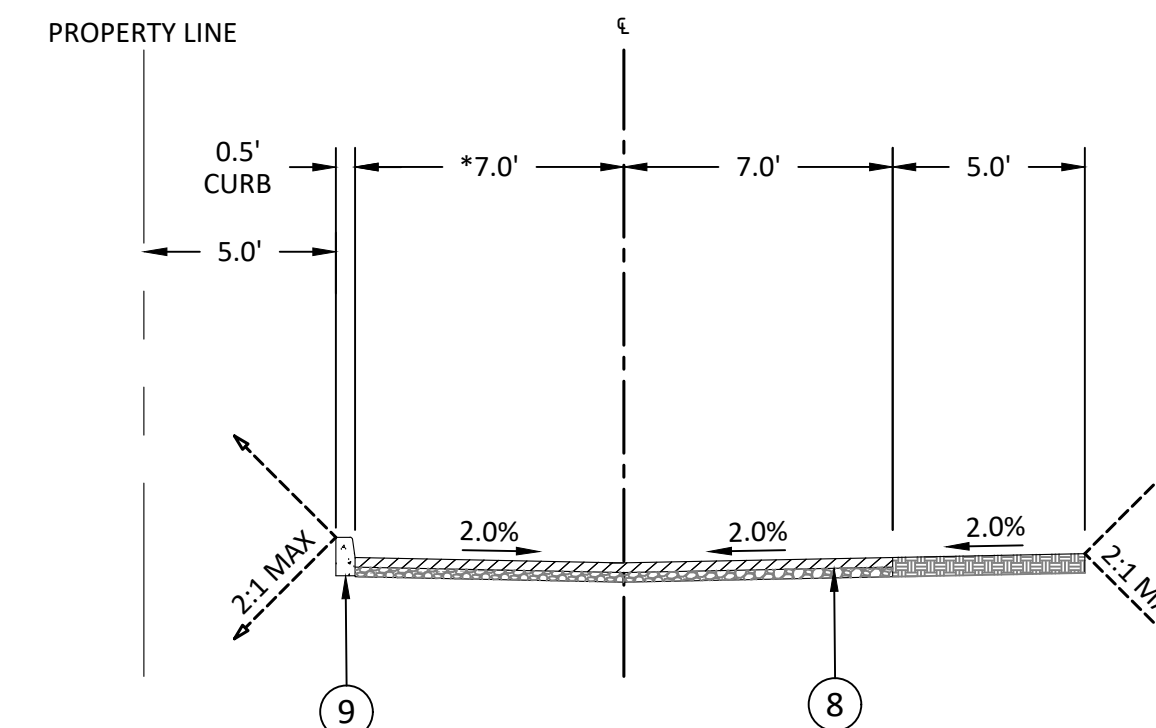


CONSTRUCTION NOTES:

- 4 CONSTRUCT ULTRABLOCK RETAINING WALL (OR EQUIVALENT) WITH CHAINLINK FALL-PROTECTION FENCING MOUNTED TO TOP OF WALL. WALL TO BE DESIGN-BUILD. CONTRACTOR TO SUBMIT ENGINEERED (STAMPED & SIGNED) SHOP-DRAWINGS TO ENGINEER FOR REVIEW PRIOR TO CONSTRUCTION. COORDINATE WITH GEOTECHNICAL ENGINEER FOR SUBGRADE PREPARATION AND REVIEW PRIOR TO CONSTRUCTION.
- 5 SETBACK LINE/FUTURE BUILDING ZONE FOOTPRINT (TYP.).
- 8 CONSTRUCT ASPHALT PAVEMENT SECTION PER DETAIL ON SHEET C6.4.
- 9 CONSTRUCT PRIVATE CURB PER STANDARD DETAIL ON SHEET C6.4.

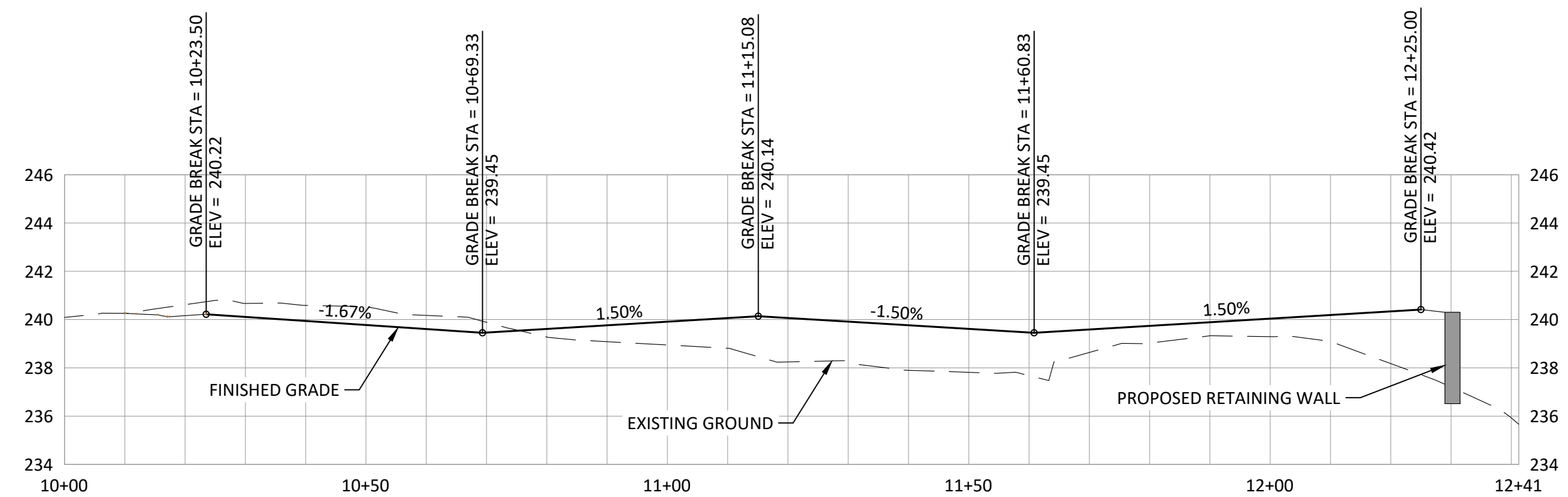
LEGEND

- ASPHALT CONCRETE (AC)
- ASPHALT PAVEMENT
- CONCRETE
- PROPOSED RETAINING WALL
- SAWCUT LINE
- EXISTING ROW LINE
- PROPOSED ROW LINE
- EXISTING PROPERTY LINE
- CENTERLINE
- FALL-PROTECTION FENCE
- PUBLIC UTILITY EASEMENT (PUE)
- SETBACK LINE/FUTURE BUILDING ZONE FOOTPRINT

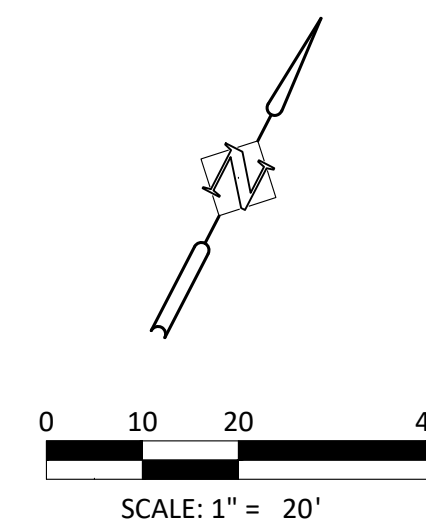


ALLEY TYPICAL SECTION

STA. 10+23.50 - STA. 12+25.00
 *STA 10+23.50 - 10+66.16, 13.0' WIDTH
 *STA 10+23.50 - 10+71.96, NO CURB



PRIVATE ALLEY
 SCALE: 1" = 20' (HORIZ.)
 1" = 5' (VERT.)



PRIVATE ALLEY PLAN AND PROFILE
MARYLHURST SUBDIVISION
 WEST LINN, OR

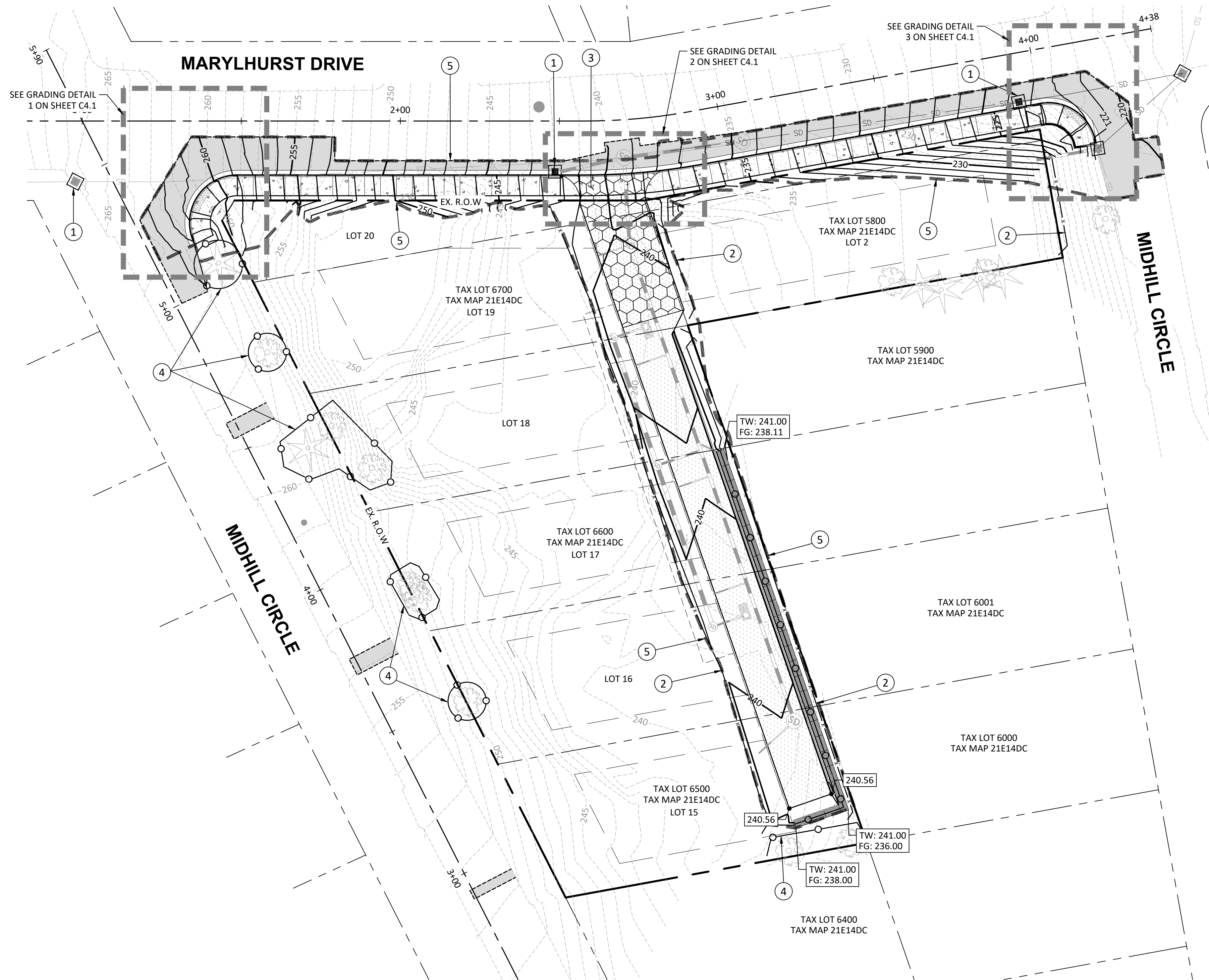
Harper Houf Peterson Righellis Inc.
 ENGINEERS * PLANNERS
 LANDSCAPE ARCHITECTS * SURVEYORS
 206 SE Spokane Street, Suite 200, Portland, OR 97202
 phone: 503.221.1131 www.hhpri.com fax: 503.221.1171

REGISTERED PROFESSIONAL ENGINEER
 ALEXANDER J. SIMPSON
 OREGON
 SEPT. 15, 2016
 EXPIRES: 06/30/2024

DESIGNED:	HHPR
DRAWN:	HHPR
CHECKED:	HHPR
DATE:	02/02/2023

DATE	NO.	DESCRIPTION

SHEET NO.
C3.2
 JOB NO.
 TPH-02



LEGEND

- ASPHALT CONCRETE (AC)
- ASPHALT PAVEMENT
- CONCRETE
- CONSTRUCTION ENTRANCE
- TREE PROTECTION FENCE
- SEDIMENT FENCE
- LIMITS OF GRADING
- INLET PROTECTION
- EXISTING CONTOUR
- PROPOSED MINOR CONTOUR
- PROPOSED MAJOR CONTOUR
- EXISTING ROW LINE
- PROPOSED ROW LINE
- RETAINING WALL
- PUBLIC UTILITY EASEMENT (PUE)
- STORM LINE
- STORMWATER MANHOLE
- CATCH BASIN

CONSTRUCTION NOTES:

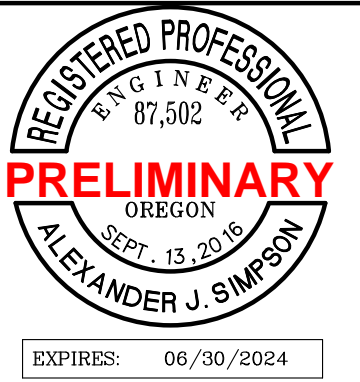
- ① PROPOSED INLET PROTECTION PER DETAIL ON SHEET C6.4.
- ② PROPOSED SEDIMENT FENCE PER DETAIL ON SHEET C6.4.
- ③ PROPOSED CONSTRUCTION ENTRANCE PER DETAIL ON SHEET C6.4.
- ④ INSTALL 6' TALL CHAINLINK TREE PROTECTION FENCING.
- ⑤ LIMITS OF GRADING.

NOTE:

ALL GRADING FILL MATERIAL PROPOSED ON SITE SHALL BE COORDINATED AND APPROVED BY A GEOTECHNICAL ENGINEER PRIOR TO CONSTRUCTION. HHPR PROVIDES NO INSTRUCTION AND TAKES NO RESPONSIBILITY REGARDING FILL MATERIAL AND PLACEMENT DURING CONSTRUCTION.

MASS GRADING & EROSION CONTROL PLAN
MARYLHURST SUBDIVISION
 WEST LINN, OR

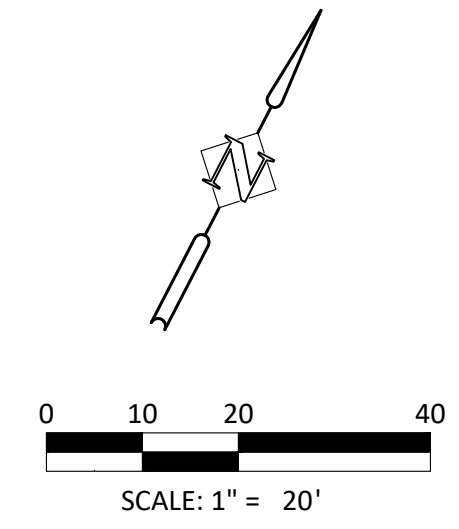
Harper Houf Peterson
Righellis Inc.
ENGINEERS & PLANNERS
 LANDSCAPE ARCHITECTS & SURVEYORS
 206 SE Spokane Street, Suite 200, Portland, OR 97202
 phone: 503.221.1131 www.hhpr.com fax: 503.221.1171

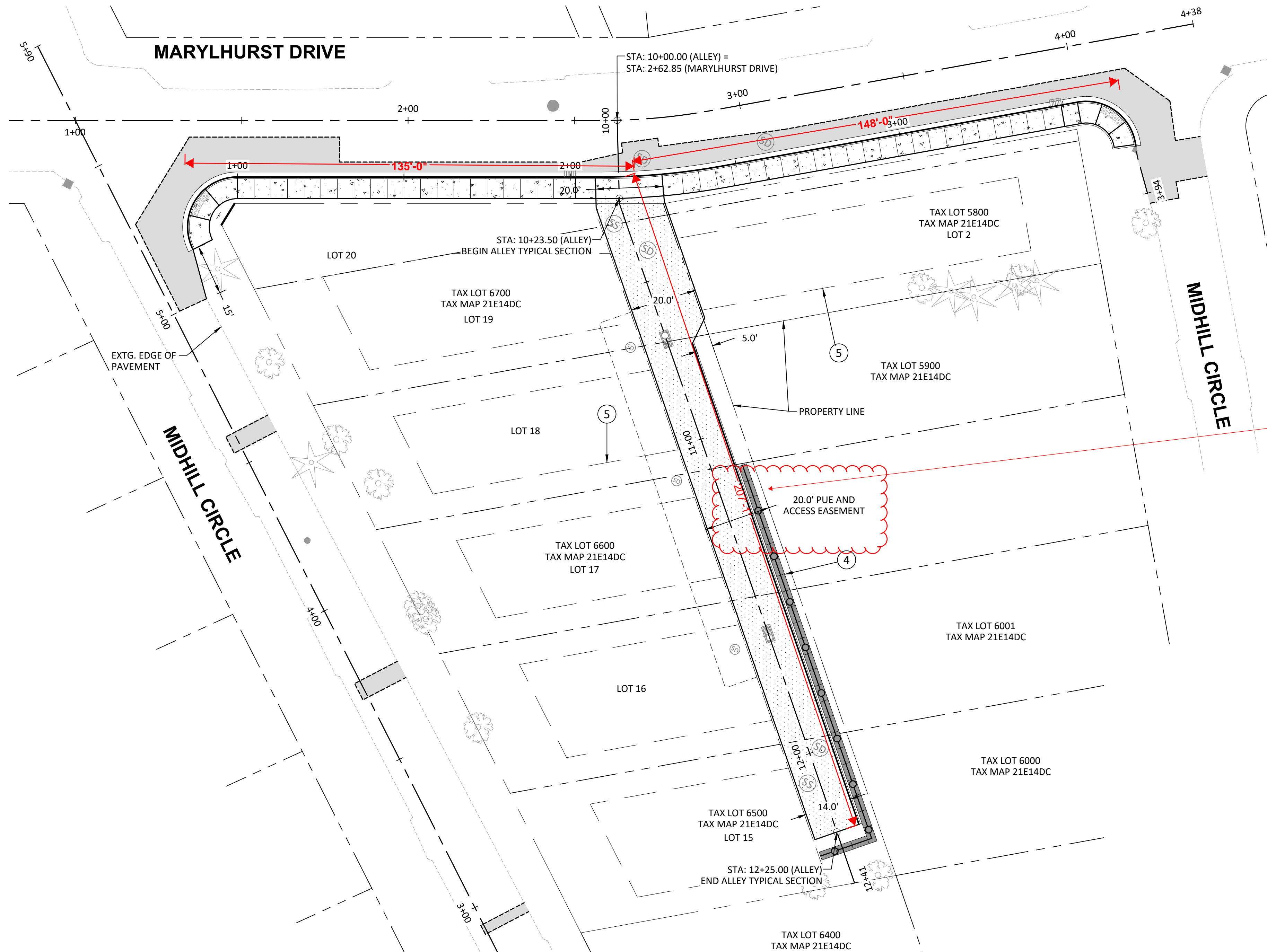


DESIGNED:	HHPR
DRAWN:	HHPR
CHECKED:	HHPR
DATE:	03/15/2023

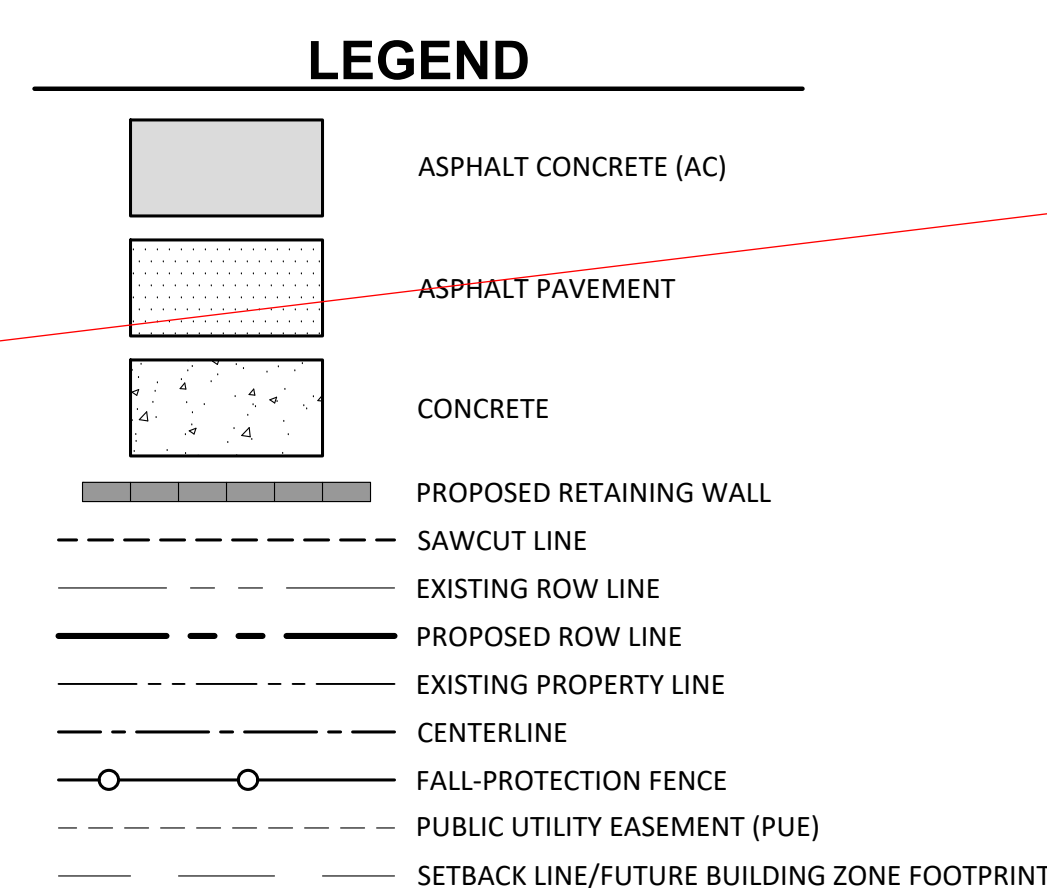
DATE	NO.	DESCRIPTION

SHEET NO.
C4.0
 JOB NO.
 TPH-02





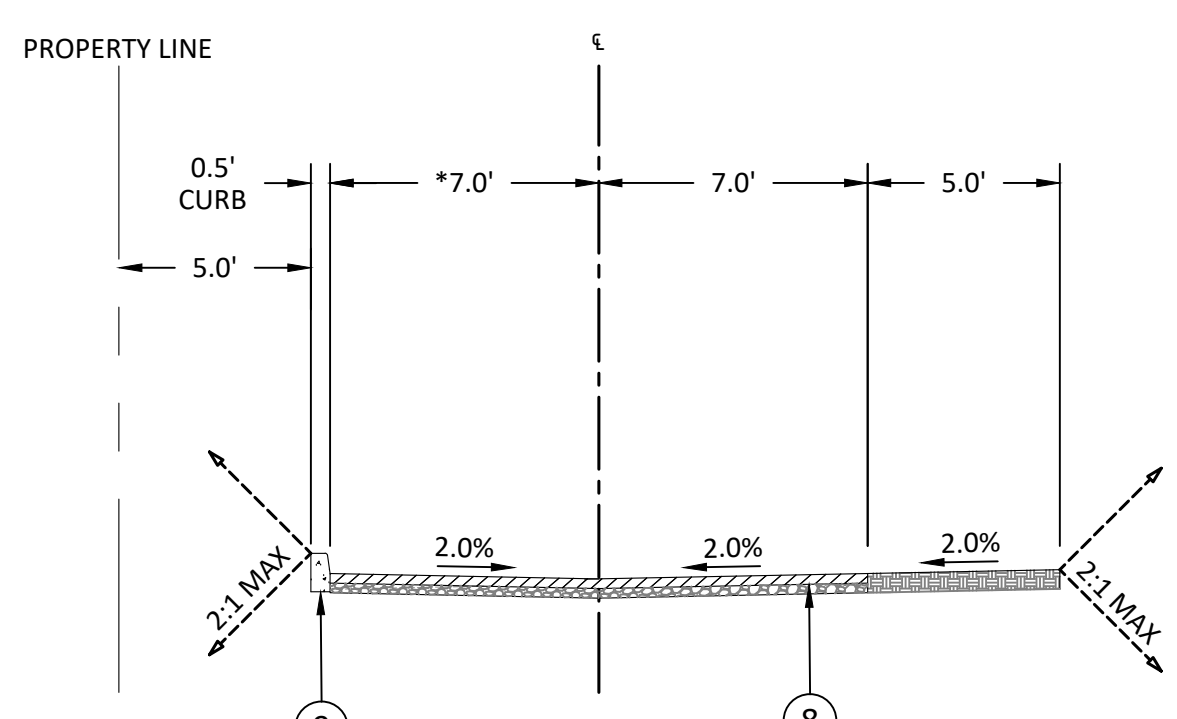
- CONSTRUCTION NOTES:**
- ④ CONSTRUCT ULTRABLOCK RETAINING WALL (OR EQUIVALENT) WITH CHAINLINK FALL-PROTECTION FENCING MOUNTED TO TOP OF WALL. WALL TO BE DESIGN-BUILD. CONTRACTOR TO SUBMIT ENGINEERED (STAMPED & SIGNED) SHOP-DRAWINGS TO ENGINEER FOR REVIEW PRIOR TO CONSTRUCTION. COORDINATE WITH GEOTECHNICAL ENGINEER FOR SUBGRADE PREPARATION AND REVIEW PRIOR TO CONSTRUCTION.
 - ⑤ SETBACK LINE/FUTURE BUILDING ZONE FOOTPRINT (TYP.).
 - ⑧ CONSTRUCT ASPHALT PAVEMENT SECTION PER DETAIL ON SHEET C6.4.
 - ⑨ CONSTRUCT PRIVATE CURB PER STANDARD DETAIL ON SHEET C6.4.



FD NOTES:

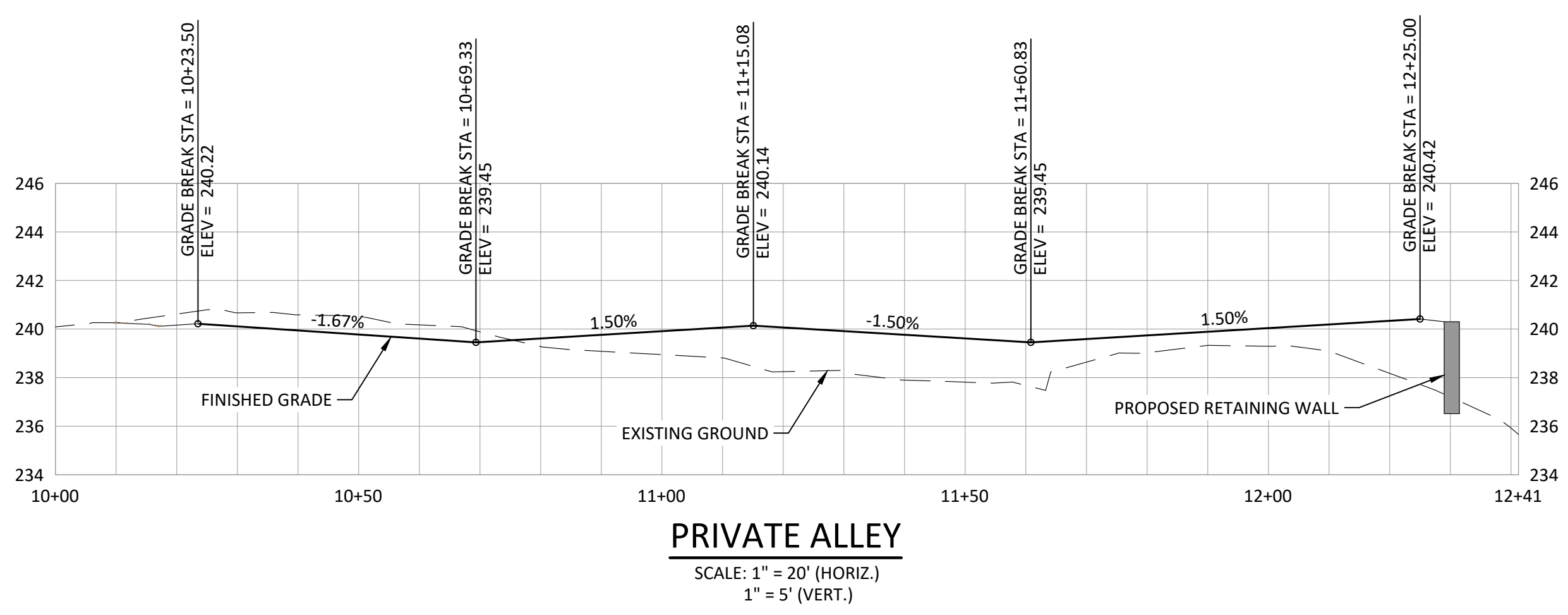
FIRE ACCESS is within TVF&R'S 200' allowance as per fire code exception 1.3 OFC 503.1.1 for 1 & 2 family residences.

NO PARKING fire lane signs required along private road. 20' minimum road width OFC D103.6.1-2.

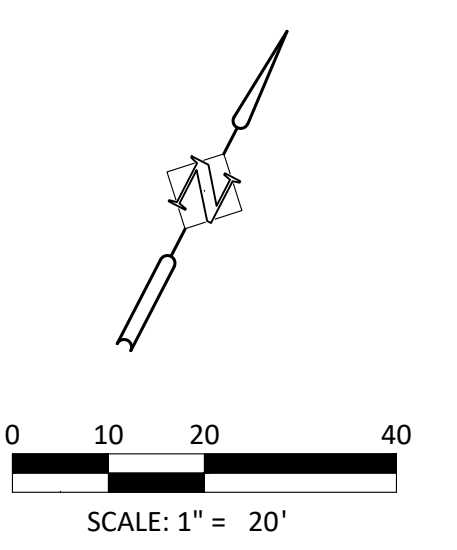


ALLEY TYPICAL SECTION

STA. 10+23.50 - STA. 12+25.00
 *STA 10+23.50 - 10+66.16, 13.0' WIDTH
 *STA 10+23.50 - 10+71.96, NO CURB



TVF&R
 Tualatin Valley
 Fire & Rescue
 APPROVED PLANS
 APPROVAL OF PLANS IS NOT AN APPROVAL OF OMISSIONS OR OVERSIGHTS
 Jason Ann
 Deputy Fire Marshal II
 TVF&R Permit# 2023-0034



PRIVATE ALLEY PLAN AND PROFILE
MARYLHURST SUBDIVISION
 WEST LINN, OR

Harper Houf Peterson Righellis Inc.
 ENGINEERS * PLANNERS
 LANDSCAPE ARCHITECTS * SURVEYORS
 206 SE Spokane Street, Suite 200, Portland, OR 97202
 phone: 503.221.1131 www.hhpjr.com fax: 503.221.1171

REGISTERED PROFESSIONAL ENGINEER
 ALEXANDER J. SIMPSON
 OREGON
 SEPT 15 2016
 EXPIRES: 06/30/2024

DESIGNED:	HHPR
DRAWN:	HHPR
CHECKED:	HHPR
DATE:	02/02/2023

DATE	NO.	DESCRIPTION

SHEET NO.
C3.2
 JOB NO.
 TPH-02

From: Lumpkin, Jameson
Sent: Wednesday, February 15, 2023 7:38 AM
To: Myers, Chris
Cc: Schroder, Lynn
Subject: Request for Comment - PA-23-02, Proposed Class 2 Variance

Good Morning Chris,

I apologize for getting my comments back a day later than requested.

Engineering does believe it would be beneficial to allow additional access from the private drive for this subdivision. Engineering has no other comments regarding this request.

Best,
Jameson

Jameson Lumpkin
Associate Engineer
Public Works

[#4739](#)



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-2: REPLAT OF ROBINWOOD

MAP
OF
AMENDED REPLAT OF A PORTION OF ROBINWOOD
SITUATE IN THE GABRIEL WALLING D.L.C.
T. 2 S., R. 1 E., WM.
CLACKAMAS COUNTY OREGON

Scale 100ft = 1 inch

Surveyed Sept. 1926
By U. Ernest Nelson
Civil Engineer

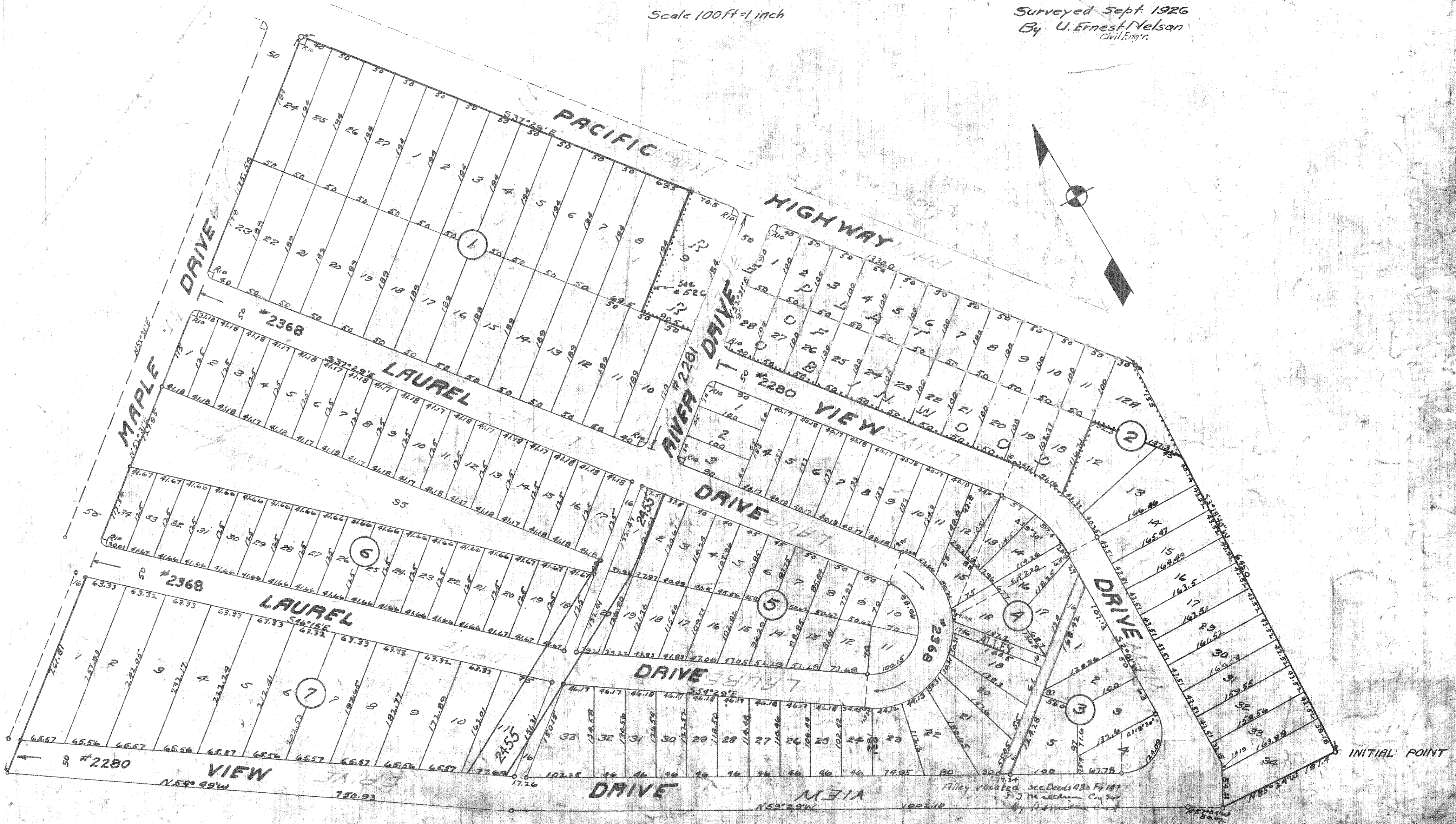


EXHIBIT PC-3: COMPLETENESS LETTER



CITY OF
West Linn

April 18, 2023

Hillary Harris
Harper Houf Peterson Righellis
205 SE Spokane Street, Suite 200
Portland, OR 97202

SUBJECT: VAR-23-01 Application for a Class II Variance at 2622 Marylhurst Drive

Dear Ms. Harris:

The city accepted this application for review on March 21, 2022. The Planning and Engineering Departments find the revised application to be **complete** as of April 18, 2023. The city has 120 days to exhaust all local review once an application has been deemed complete; that period ends August 16th, 2023.

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 20-day public notice will be prepared and mailed. This notice will identify the earliest potential decision date by the Planning Commission which is tentatively scheduled for May 17th, 2023.

Please contact me at 503-742-6058, or by email at jfloyd@westlinnoregon.gov if you have any questions or comments.

Sincerely,

John Floyd
Associate Planner

EXHIBIT PC-4: PRE-APPLICATION MEETING SUMMARY NOTES

CITY OF WEST LINN
PRE-APPLICATION CONFERENCE MEETING
SUMMARY NOTES
February 16, 2023

SUBJECT: Proposed Variance for a 6 lot private access drive
FILE: PA-23-02
ATTENDEES: Applicant: Tracy Peterson; Hillary Harris
Staff: Chris Myers (Planning), Lynn Schroder (Planning)
Public: No public in attendance

The following is a summary of the meeting discussion provided to you from staff meeting notes. Additional information may be provided to address any "follow-up" items identified during the meeting. These comments are PRELIMINARY in nature. Please contact the Planning Department with any questions regarding approval criteria, submittal requirements, or any other planning-related items. Please note disclaimer statement below.

Site Information:

Site Address: 2622 Marylhurst Drive & 18600-18690 Midhill Circle
Tax Lot No.: 21E14DC06700, 5800, 6700, 6701, 6601, 6600, 6500
Site Area: .70 acres +/- per site plan submitted with application
Neighborhood: Robinwood Neighborhood Association
Comp. Plan: Low Density Residential
Zoning: Residential, R-10
Zoning Overlays: N/A

Project Site and Proposed Project

Relevant details of the project and project site include the following:

- The proposed project is to construct a shared access drive for 6 lots of record.
- Variance is required as the Community Development Code allows for no more than 4 lots takes access from a shared access drive.
- A class II Variance is required which requires a pre-application conference
- The decision making authority for a Class II Variance is the Planning Commission
- All 6 lots are lots of record and thus each can be developed independently of one another. This is not a subdivision which would require street improvements
- There are no environmental constraints on the property. No streams, no riparian corridor restrictions, no easements on any of the properties, and the properties are not located within a Flood Management Area.
- The site has slope which makes access from Midhill Circle challenging. The slope can be mitigated by taking access from the proposed shared access drive.

Planning Staff Comments

Planning staff has the following comments on the application:

- For a Class II Variance there are four total Community Development Code (CDC) chapters that apply:
 - Chapter 11 Single-Family Residential Detached R-10
 - Chapter 48 Access, Egress, and Circulation
 - Chapter 75 Variances and Special Waivers
 - Chapter 96 Street Improvement Construction
 - Chapter 99 Procedures for Decision Making: Quasi-Judicial

- The West Linn Public Works and Engineering Departments express (via email) that they support the single shared access drive for all six lots as the safest option for motor vehicles and pedestrians alike.

Discussion:

Staff :

- Staff discussed each chapter that is applicable to the variance application with notations of relevant sub-chapters.
 - Chapter 11: Single-Family Residential Detached, R-10
 - Chapter 48: Access, Egress, and circulation
 - 48.020 Applicability and General Provisions
 - 48.025 Access Control
 - 48.030 Minimum Vehicle Requirements for Residential Uses
 - 48.060 Width and Location of Curb Cuts and Access Separation Requirements
 - Chapter 75: Variances and Special Waivers
 - 75.020 Classifications of Variances
 - Chapter 96: Street Improvement Construction
 - 96.010 Construction Required
 - 96.020 Standards
 - Chapter 99: Procedures for Decision Making Quasi-Judicial
 - 99.030 Application Process: Who May Apply, Pre-Application Conference, Requirements...
 - 99.060 Approval Authority

Further discussion during the pre-app conference:

- Tualatin Valley Fire & Rescue service provider permit required prior to land use application

Engineering:

The Engineering department provided the following comments. For further details, please contact Maryna Asuncion at 503-722-3436 or MAasuncion@westlinnoregon.gov.

Building:

For building code and ADA questions, please contact Adam Bernert at abernert@westlinnoregon.gov or 503-742-6054 or Alisha Bloomfield at abloomfield@westlinnoregon.gov or 503-742-6053.

Tualatin Valley Fire & Rescue:

Please contact Jason Arn at jason.arn@tvfr.com or 503-259-1510 with any questions. **Note that a Service Provider Permit must be presented with the application in order for the application to be deemed complete.**
<https://www.tvfr.com/399/Service-Provider-Permit>

Process:

For the proposal, address the submittal requirements and standards for decision making in the Community Development Code (CDC) chapters in the compliance narrative, plans, and other submittal requirements:

- Chapter 11: Residential, R-10
- Chapter 48: Access, Egress, and Circulation
- Chapter 75: Variances and Special Waivers (if needed)
- Chapter 92: Street Improvement Construction
- Chapter 99: Procedures for Decision Making: Quasi-Judicial

Compliance Narrative:

When preparing the compliance narrative, N/A is not an acceptable response to the approval criteria. The submittal requirements may be waived, but the applicant must first identify the specific submittal requirement and request, in letter form, that it be waived by the Planning Manager and must identify the specific grounds for that waiver.

Fees:

The **fee** for a Class II Variance is \$2900.

Timelines: Once the application and deposit/fee are submitted, the City has 30 days to determine if the application is complete or not. If the application is not complete, the applicant has 180 days to make it complete or provide written notice to staff that no other information will be provided. Once complete, the City has 120 days from the date of completeness to make a final decision on the application.

Typical land use applications can take 6-10 months from beginning to end.

DISCLAIMER: This summary discussion covers issues identified to date. It does not imply that these are the only issues. The burden of proof is on the applicant to demonstrate that all approval criteria have been met. These notes do not constitute an endorsement of the proposed application **or provide any assurance of potential outcomes**. Staff responses are based on limited material presented at this pre-application meeting. New issues, requirements, etc. could emerge as the application is developed. Pre-application notes are void after 18 months. After 18 months with no application approved or in process, a new pre-application conference is required. Any changes to the CDC standards may require a different design or submittal.

EXHIBIT PC-5: SACKET COMMENT LETTER 05.04.23

File # Var. - 23-01
Class # Variance, Lots 2, and 15-20
Plat 541

From Arold H. Sackett Jr
18665 Midhill Cir., West Linn, Ore 97068

to. John Floyd, Associate Planner, City
Hall, 22500' Salamo Rd., West Linn, Ore

Concerns about Variance - 23-01

1. No Houses or Structures taller than the House located at 18670 Midhill Cir.
2. ~~Parking~~ No Parking signs, 24 Hours a day between 18670 Midhill Circle to Marylhurst Dr. on North or Northeast side of Midhill Circle. Subject to be towed.
3. Water supply and Sewer lines to be taken off of Marylhurst Drive and NOT off Midhill Cir.
4. The Big Fir tree closest to 18670 Midhill Circle to be taken down before any building of homes starts.

EXHIBIT PC-6: AFFIDAVIT AND NOTICE PACKET

**CITY OF WEST LINN PLANNING COMMISSION
PUBLIC HEARING NOTICE
FILE NO. VAR-23-01**

The West Linn Planning Commission will hold a hybrid public hearing on **Wednesday, May 17, 2023** at 6:30 pm in the Council Chambers of City Hall, 22500 Salamo Road, West Linn, to consider a request for a Class II Variance at 2622 Marylhurst Drive and 18600, 18680, and 18690 Midhill Circle (Lots 2, and 15-20) of the 1926 Replat of Robinwood, Clackamas County Plat 541). The applicant is requesting approval to allow more than 4 lots (six total) to be served from a private driveway on Marylhurst Drive, approximately midblock between Upper and Lower Midhill Circle.

The Planning Commission will make its decision based on applicable criteria found in Chapters 11, 48, 75, 96, and 99 of the Community Development Code (CDC). The CDC approval criteria are available for review on the City website <http://www.westlinnoregon.gov/cdc> or at City Hall and the City Library.

The application is posted on the City's website, <https://westlinnoregon.gov/planning/2622-marylhurst-drive-class-2-variance-driveway-access>. The application, all documents or evidence relied upon by the applicant, and applicable criteria are available for inspection at City Hall at no cost. Copies may be obtained at a reasonable cost. The staff report will be posted on the website and available for inspection at no cost, or copies may be obtained at a reasonable cost, at least ten days before the hearing.

The hearing will be conducted according to CDC Section 99.170 in a hybrid format with some Commissioners, staff, presenters, and members of the public attending remotely via Webex and others attending in-person at City Hall. The public can watch the meeting online at <https://westlinnoregon.gov/meetings> or on Cable Channel 30.

Anyone wishing to present written testimony for consideration should submit all materials before 12:00 pm on the meeting day to jfloyd@westlinnoregon.gov or mail them to City Hall.

Those who wish to participate remotely should complete the speaker form at <https://westlinnoregon.gov/citycouncil/meeting-request-speak-signup> **before 4:00 pm on the meeting day** to receive an invitation to join the meeting. Virtual participants can log in through a computer, mobile device, or call-in.

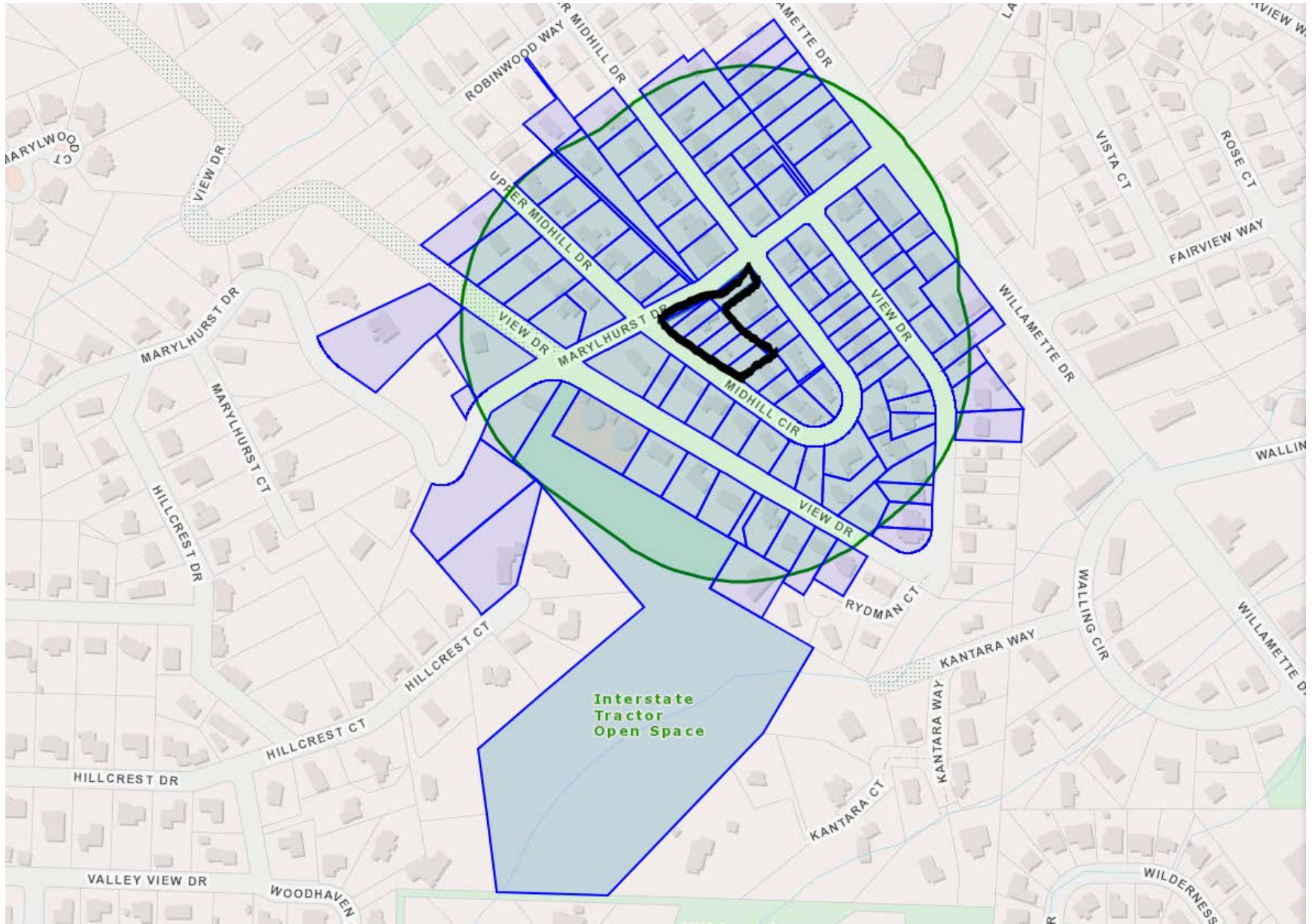
It is important to submit all testimony in response to this notice. All comments submitted for consideration of this application should relate specifically to the applicable criteria. Failure to raise an issue in a hearing, in person, or by letter, or failure to provide sufficient specificity to afford the decision-maker an opportunity to respond to the issue, precludes appeal to the Oregon Land Use Board of Appeals based on that issue (CDC Section 99.090).

The final decision will be posted on the website and available at City Hall. Persons with party status may appeal the decision by submitting an appeal application to the Planning Department within 14 days of mailing the final decision notice pursuant to CDC [99.240](#).

For additional information, please contact John Floyd, Associate Planner, City Hall, 22500 Salamo Rd., West Linn, OR 97068, 503-742-6058 for additional information.

Publish: West Linn Tidings May 4, 2023

VAR-23-01 - NOTIFIED PROPERTIES WITHIN 500 FT OF 2622 Marylhurst Circle & 18600, 18680, and 18690 Midhill Circle





**NOTICE OF UPCOMING
PLANNING MANAGER DECISION**

**PROJECT # VAR-23-01
MAIL: April 25, 2023 TIDINGS: May 3, 2023**

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.

**AFFIDAVIT OF NOTICE
TYPE A
PLANNING COMMISSION DECISION**

We, the undersigned, 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-23-01

Applicant's Name: **Tracy & Derek Peterson**

Development Address: 2622 Marylhurst Circle & and 18600, 18680, and 18690 Midhill Circle

Planning Commission Decision no earlier than May 17, 2023

APPLICATION

The application was posted on the website at least 20 days before the hearing. All documents or evidence relied upon by the applicant, and applicable criteria are available for review at least 20 days before the hearing at City Hall, per Section 99.040 of the Community Development Code.

4/24/23	<i>Lynn Schroder</i>
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MAILED NOTICE

Notice of Upcoming Hearing was mailed at least 20 days before the hearing, per Section 99.080 of the CDC to:

Tracy & Derek Peterson, applicant	4/25/23	<i>Lynn Schroder</i>
Hillary Harris, applicant representative	4/25/23	<i>Lynn Schroder</i>
Property owners within 500ft of the site perimeter	4/25/23	<i>Lynn Schroder</i>
Robinwood Neighborhood Association	4/25/23	<i>Lynn Schroder</i>

EMAILED NOTICE

Notice of Upcoming Planning Manager Decision was emailed at least 20 days before the decision date to:

All Neighborhood Associations	4/24/23	<i>Lynn Schroder</i>
Tracy & Derek Peterson, applicant	4/24/23	<i>Lynn Schroder</i>
Hillary Harris, applicant consultant	4/24/23	<i>Lynn Schroder</i>

WEBSITE

Notice was posted on the City's website at least 20 days before the hearing.

4/24/23	<i>Lynn Schroder</i>
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TIDINGS

Notice was posted in the West Linn Tidings at least 10 days before the hearing, per Section 99.080 of the CDC.

5/3/23	<i>Lynn Schroder</i>
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SIGN

A sign was posted on the property at least 10 days before the hearing, per Section 99.080 of the CDC.

5/4/23	<i>John M Floyd</i>
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STAFF REPORT

The staff report was posted on the website and provided to the applicant and Planning Commissioners at least 10 days before the hearing, per Section 99.040 of the CDC.

	<i>Lynn Schroder</i>
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FINAL DECISION

Notice of Final Decision was mailed to the applicant, all parties with standing, and posted on the City's website, per Section 99.040 of the CDC.

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