



# CITY OF West Linn

## Memorandum

Date: July 17, 2023

To: Mayor Bialostosky  
West Linn City Council

From: John Floyd, Associate Planner

Subject: Additional Materials Received for AP-23-03

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On July 10, 2023, the City Council voted to leave the record open for written testimony as part of the AP-23-03 appeal hearing. As of 3:30pm today, four individuals have submitted five comment letters. Comments are attached and names listed below:

- Shannen Knight (7/11/23)
- Elizabeth Apen (7/11 & 7/17/23)
- Susana and Mike Sandmann (7/13/23)
- Tom Tomaszek (7/14/23)

**From:** [A Sight for Sport Eyes](#)  
**To:** [City Council](#); [Floyd, John](#)  
**Subject:** Testimony for AP-23-03  
**Date:** Tuesday, July 11, 2023 11:42:51 AM

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I was listening to the hearing last night as I waiting to testify. While listening, something came to mind during public testimony after hearing the neighbors give their testimony. I tried to raise my hand on WebEx to give testimony but I guess it wasn't seen. I'm glad you continued the hearing so I could give this testimony. If I was in the room, I would have been able to give a slip to testify, but since I was on WebEx I guess that I have to sign up in advance to testify for a different topic.

I haven't read through this application. But it sounds like there is no actual plan for the number of homes. It is just about "lot" access, if I'm correct? If so, does that mean with HB2001 there could there could potentially be 4x's the number of households on these lots? Just because they are "lots" does not mean that it will be a single family home. HB2001 will allow for up to a 4-plex be built on each individual lot. That's potentially 24 households using a single alleyway.

I'm assuming there was some logic in creating the code with a maximum of 4 homes from one driveway, and that code was before HB2001. I think at the very least council needs more information as to what type of dwelling units will be built. If single family homes will be built, then 6 may be ok. But if duplex/tri/quads, then that will be too many households using a single driveway.

I understand developers want to get these variances done before they invest in design. However, my issue in the last appeal for the WRA intrusion, without really knowing what is going to be built, it is hard to know the impacts. Again, my concern is that these decisions happening without any actual designs. We've now set this precedence for developers to just skip the design process. We won't know what the final product is going to be until it is too late. Again, I understand why developers want to do it, I'm just worried that at some point it may come back to be a huge problem. This is one scenario in which it may be a problem. If you allow the 6 lots access, that means you can't do anything to stop it from being 24 households that use the driveway as HB2001 prohibits the city from treating a 4-plex any differently than a single family home. For this application, I really think you need design on the homes being proposed before you can truly understand the impacts.

Also, parking is not required with any new build. So if I buy that 6th house, I could potentially have to park on the street or have my visitors park on that street and walk over a block just to visit my home. It is not very practical design without parking requirements. Again, if you had full design of the homes, and saw adequate on site parking was being proposed, then you could make a better decision about impacts.

This project needs to be built out more before a decision can be made. How many households will there be, will the homes have on site parking including garages for household members and guests, etc. Without this kind of information, it could turn out to be a disaster if 24

households are built without any garages or places to park. I also agree that a turnaround would be ideal. As someone who has difficulty backing up, I could turn on that alley by mistake trying to find another address and be stuck without the ability to get out of there. A full block is a long way to have to back up a vehicle of any size.

Thanks as always for your time and thoughtful consideration of this matter.

Shannen Knight

A Sight for Sport Eyes

1553 11<sup>th</sup> St.

West Linn, OR 97068

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[www.sporteyes.com](http://www.sporteyes.com)

**From:** [ElizabethApen](#)  
**To:** [Bialostosky, Rory](#); [Baumgardner, Mary](#); [Groner, Lou](#); [Erwin, Scott](#)  
**Cc:** [City Council](#); [Floyd, John](#)  
**Subject:** Revised request and additional testimony for VAR-23-01 (Marylhurst Drive/Upper Midhill development project)  
**Date:** Tuesday, July 11, 2023 9:44:00 PM  
**Attachments:** [Screenshot 2023-07-11 at 7.22.40 PM.png](#)

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Mr. Mayor, Council President Baumgardner, Councillors Groner and Erwin:

Thanks for the opportunity to address you yesterday. In my haste to start discussing the issue, I forgot to give a very kind thank you to Mr. Floyd for making himself available to me during this process. He has been a great help providing context on the variance and information on state statutes and how the apply to this situation.

That said, a comment I heard during the proceedings last night caught my attention and I think in fairness to the applicant, I need to modify my request. The comment was made by Mr. Floyd during the staff question section towards the end of the meeting. The question put to him was about the typical time a full program plan is available for a project this size. Mr. Floyd indicated that it is typical to not have a full plan at this point in the process. My understanding from his comment and subsequent discussion is that is because development cost for a set of plans is high and if the applicant is not granted the variance, there would be a negative impact to the applicant to have to revise the pans. Based on this new information, I believe my request to review the full set of development plans is not reasonable.

I would like to revise my request as follows:

1. The applicant's representatives mentioned multiple times that there were three (3) options considered and the one presented was the one they felt best. Can all plans or a summary document describing the plans and why they were rejected be provided?
2. Was there ever a plan considered that did not require a variance? If no, why not?

In addition I would like to submit the following additional testimony.

In my opinion, the cause for rejection by the planning commission was not adequately addressed last night. The clip below is the section I am referring to.

2. CDC Chapter 75.020.B.1(a) – Minimum variance necessary to make reasonable use of the property

The Commission finds the applicant did not meet its burden of proof to show all six lots required shared access from one driveway. The applicant did not provide evidence that either the four lots fronting Midhill Circle could not reasonably take access from that street, which would eliminate the need for a variance, or that the spacing standards along Marylhurst Drive could not be met if multiple access points were utilized.

The applicant did show that the code was inconvenient for their development plans, but provided no data on how compliance was preventing them from developing the site. On the

drive home my husband Tim and I were brainstorming and came up with the following concepts in the 10 minute drive home from City Hall.

1) Have 4 lots use the shared access drive and two lots have driveways on Midhill Circle. The 5th and 3rd lot on Midhill Circle would be good choices for single driveways as they are away from the corner and will be separated by the 4th lot. This would require the applicant to bring in fill dirt for those two driveways to level out the slope to meet code.

2) Put duplexes on combined lots facing Midhill Circle. Shared access drive would only be serving 4 structures which I believe would comply with the code.

Whether these ideas do comply with the code is not clear, but at first glance, it seems they could — which begs the repeat of question 2 above.

To be clear, my comment about not making it easy for the builders to receive variances is not to prevent change from happening in my neighborhood. I believe the lady with the knitting had a very valid point — we live in a city, if you want to live in a low density setting, the city is not the place for you! That argument needs only to be tempered by: we live in a city with rules that apply to everyone. We ask that you show why you cannot comply with them before requesting relief — and “it is hard” or “it costs too much” are not valid reasons. The failure of imagination of developers should not be funded by the citizens of West Linn.

In closing, I humbly request that you consider rejection of the appeal. If it is even possible, I would advocate for the applicants to resubmit of the variance request if they are able to demonstrate to the City Council, the Planning Commission and the citizens of West Linn that compliance with the development code is too onerous to allow them develop their lots — I think the Council might even have the authority to waive the fee for the resubmission :-)

Thanks for your consideration. If you have any questions or would like to meet with me, the neighbors or view the property from my place, please let me know.

Respectfully,

Elizabeth Apen

2615 Marylhurst Drive

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On May 9, 2023, at 11:44 AM, Floyd, John <JFloyd@westlinnoregon.gov> wrote:

Hi Elizabeth,

I have a meeting until 2pm but am free after that. Just call whenever's convenient for you.

John

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**From:** Elizabeth Apen [REDACTED]

**Sent:** Tuesday, May 9, 2023 8:46 AM

**To:** Floyd, John <JFloyd@westlinnoregon.gov>

**Subject:** Re: Question on File no VAR-23-01

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John:

Thanks so much for the fast follow up. I have a quick question for you and then will dig into the details of what you sent. Are you free between 1 and 2 for a quick call? If that time is not free, please suggest an alternate. Should take no more than 15 minutes.

Thanks,  
Elizabeth

Sent from my iPhone

On May 8, 2023, at 11:49 AM, Floyd, John <[JFloyd@westlinnoregon.gov](mailto:JFloyd@westlinnoregon.gov)> wrote:

Hi Elizabeth,

I am the assigned city planner reviewing this application and will be presenting to the Planning Commission next Wednesday night. Hopefully the information below resolves your questions. If not, please feel free to contact me at 503-742-6058 if you wish to discuss further.

1. The current application does not include a specific development proposal for each lot. Rather, the proposal is to establish consolidated access for six residential lots created in 1926 under the attached plat map. Specifically, lots 2 and 15-19 of Block 5. No further subdivision of these lots is required to construct a dwelling, and compliance with zoning standards will be verified through the normal building permit process. A copy of the staff report to the Planning Commission is below.  
[https://westlinnoregon.gov/sites/default/files/fileattachments/planning/project/55449/var-23-01\\_staff\\_report.pdf](https://westlinnoregon.gov/sites/default/files/fileattachments/planning/project/55449/var-23-01_staff_report.pdf)
2. I believe the historical application you are referring to is VAR-03-03, a Class II variance to develop two lots that were below the minimum lot width of 45', which at that time was the minimum standard for a non-conforming lot. I see your name included as a party of record to that application. Attached are the minutes of the 9/25/03 meeting of the Planning Commission, though the entire file is too large to share by email. To get around the size requirement, I've asked the records department to send you a link to the file under a separate email.
3. One thing to note is that the state legislature has changed the regulatory landscape since the 2003 public hearing. Per [ORS 197.761](#) and the City Attorney, we can no longer enforce our minimum dimensional standards for non-conforming lots. In other words, if a lot was legally platted as part of a residential subdivision, we generally have to allow development even if the lot is smaller and narrower than the current zoning requires. That is why this application is proceeding a little differently than in 2003.

Regards,

John

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**From:** Schroder, Lynn <[LSchroder@westlinnoregon.gov](mailto:LSchroder@westlinnoregon.gov)>  
**Sent:** Monday, May 8, 2023 8:55 AM  
**To:** Floyd, John <[JFloyd@westlinnoregon.gov](mailto:JFloyd@westlinnoregon.gov)>  
**Subject:** FW: Question on File no VAR-23-01

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**From:** ElizabethApen [REDACTED]  
**Sent:** Saturday, May 6, 2023 4:33 PM  
**To:** Planning Commission (Public) <[askthepec@westlinnoregon.gov](mailto:askthepec@westlinnoregon.gov)>  
**Subject:** Question on File no VAR-23-01

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Hello, WL planning commission!

I received notice for public hearing on variance noted in subject line and have a few questions.

-Since the current variance request does not include plans for development, where in the process going forward will ensure that current the R10 zoning will be complied with? If this is to be some type of subdivision that does not require a zoning change, can you please let me know where to review this in the CDC? I pulled what I think is the relevant information on minimum lot size from the COWL website as below. Based on the lot size posted on Redfin (0.7 acres), my estimate would be there should be no more than 3 or perhaps 4 houses in that area to comply with current zoning.

-We went through a similar experience with the planning commission in 2003 on the tax lots designated 2671 and 2695 Marylhurst Drive. The outcome of that meeting was not to allow the building of two houses on those tax lots because it would be a de facto change in the zoning.

Also during that meeting, evidence was presented by a Mr. Seims of Marylhurst Drive which described the creation of tax lots in 1929 not as intended to be the determinant for the number of houses in the neighborhood, but were used to ensure septic systems had large enough leach fields for the structures built (3 bathrooms required a set number of lots, 2 bathrooms fewer lots, etc.). Is there a way that the records related to that commission meeting could be pulled/reviewed in this case as well?

Lastly, how can I obtain a copy of the summary/notes from that commission meeting? My recollection is that the meeting was held in Sept or Oct 2003 so the records are not available on the COWL website that I can find.

If you are not the correct team to address this request, please let me know who I should contact.

Thanks in advance for your help!

Elizabeth Apen



<Screenshot 2023-05-06 at 4.12.38 PM.png>

**Lynn Schroder**

*Administrative Assistant*

Community Development

[#6061](#)



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**John Floyd**

*Associate Planner*

Planning

Pronouns: he, him, his

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<WLMR 15 682 Planning Commission Meeting 2003-09-25 Minutes.pdf>



**From:** [Susana Sandmann](#)  
**To:** [City Council](#)  
**Cc:** [Floyd, John](#)  
**Subject:** VAR-23-01  
**Date:** Thursday, July 13, 2023 1:41:28 PM

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July 12, 2023

Dear Members of the West Linn City Council:

We are writing in regards to the appeal by Tracey and Derek Peterson of VAR-23-01. We wrote a previous letter for the meeting that took place on July 10 and also presented orally our concerns about this variance and the related development. Thank you for the continuance dealing with this matter as you examine the request. The care with which you are evaluating the appeal is extremely important to us and we deeply appreciate it.

Given that the developers did not provide much new information during that meeting and that the turn around added to the plan does not change much of our concerns, we would like to emphasize some of the points we made previously. Contrary to what the developer of the property owners' team projected about our intentions in presenting our concerns on the development, we do not oppose starter homes nor change. After being on this earth for more that seventy years we are very well aware that change is constant. We don't live in a mansion nor in a neighborhood of luxury homes. To insinuate that elitism is the reason for our concerns is trying to distract from the real and serious problems with their plan. We also understand the present housing needs of our state. Our concerns are based on the density of the planned development on a small space that presents many problems. Those are the issues that cannot be ignored and that must be examined before accepting the variance and the plan. As was stated in the meeting, if they were planning for only four homes, they wouldn't need the variance. Who would benefit from those extra two units? Certainly not the neighborhood nor the future residents of those housing units.

The developer from the property owners' team also belittled our concern for the number of garbage containers that would have to be lined up on Marylhurst Dr. for collection. It's not a light or silly concern. Imagine 18 containers lining up next to each other on that block. Doesn't it look not only ridiculous but also dangerous as the waste collection trucks spend a lot of time emptying so many containers and blocking traffic on that busy road?

We reiterate our concern over traffic safety, as other neighbors also pointed out last Monday. The high number of vehicles entering and exiting a driveway shared by so many homes presents serious safety concerns on Marylhurst Dr., which is a busy street and likely to get busier when the tolls begin on highway 205. The Fire Department's approval of the driveway is not a blanket endorsement of safety. They are evaluating their needs for rapid and efficient responses to an emergency and do not address the day to day safety and logistical concerns we have.

There are also concerns about the environmental damage that the elimination of so many trees will have on the neighborhood. Erosion and water runoff are definitely going to negatively affect the area.

Therefore, there is a need for a study on the environmental and traffic impact of this development before any variances are approved. We emphasize: giving the variance now with so many unknowns is asking for trouble later on and perhaps with irreparable damage. Promises written in the wind are easily put aside.

We are part of those who will be directly affected by this development, either in a positive or negative way. At the moment we see negative outcomes for the neighborhood. We don't have lawyers or a team that can present our point of view and interests. We are trusting you, our city councils, to make fair decisions that give as much importance to our rights, views and needs as you give to those of the developers. After all, we pay property taxes, have been part of the West Linn community for a long time and contribute to it not only with money but also hard work to maintain a healthy and safe neighborhood. Please consider the impact of this development on the neighborhood as you evaluate the developer's proposal.

Thank you very much,

Sincerely,

Susana and Mike Sandmann

2655 Marylhurst Dr.

West Linn, OR 97068

**From:** [Mollusky, Kathy](#)  
**To:** [Floyd, John](#); [Schroder, Lynn](#)  
**Subject:** Fwd: Regarding VAR-23-01 and Appeal AP-23-03 of Class II Variance at 2622 Marylhurst Drive, et al  
**Date:** Friday, July 14, 2023 5:06:32 PM

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**From:** Tom Tomaszek [REDACTED]  
**Sent:** Friday, July 14, 2023 2:44:36 PM  
**To:** City Council <citycouncil@westlinnoregon.gov>; Bialostosky, Rory <RBialostosky@westlinnoregon.gov>  
**Cc:** Baumgardner, Mary <MBaumgardner@westlinnoregon.gov>; Erwin, Scott <SErwin@westlinnoregon.gov>; Groner, Lou <LGroner@westlinnoregon.gov>  
**Subject:** Regarding VAR-23-01 and Appeal AP-23-03 of Class II Variance at 2622 Marylhurst Drive, et al

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Regarding VAR-23-01 and Appeal AP-23-03 of Class II Variance at 2622 Marylhurst Drive and 18600, 18680, and 18690 Midhill Circle.

Honorable Mayor and Distinguished Councilors:

First, thank you for your service to our citizens and city. These are challenging times, and your commitment and leadership are greatly appreciated.

**Denial of Variance at Appeal.** At the council meeting last Monday, July 10, 2023, you heard testimony from developers regarding their appeal of the denial for variance by the WL Planning Commission from the city code allowing only 4 lots (instead of the six platted in 1926) to access a common driveway to a collector or arterial street, in this case Marylhurst Drive. The grounds for appeal, stated in the public hearing notice, is that the “result is more beneficial to the City than standard development.” I challenge that conclusion.

At that council meeting, you also heard testimony from me and other neighbors who live adjacent to the parcel in question that approving variance disregards the prudent decision made by the WL Planning Commission to affirm the limitations of the city code.

**Responsible Development.** I urge you to sustain that wise decision by the Planning Commission to deny the variance and defend reasonable and responsible development of the collective parcels. There are reasons for the limitation to access that go beyond the measure of a driveway and ability for service vehicles to turn around. While those access issues have been the focus of this appeal, they are intertwined with other issues that demand the Council’s consideration.

The appellants are pursuing the variance in response to steep slopes and nonconforming lot configuration that make compliance with access standards difficult. The appellants knew the challenges and limitations of slope and circumstance when they purchased the properties.

However, the developer's plan for increased access to Marylhurst Drive for additional housing units than the city code allows not only places greater burden on traffic safety and neighborhood access but risks a significant environmental impact as our neighborhood testimony tried to point out. While these related issues are not the direct subject of the appeal, they deserve due consideration by the City Council's overall responsibility to its citizenry. I described it as "not seeing the forest for the trees." These other factors are not insignificant and should not be dismissed as having no bearing on the situation, as the appellant's advisor opined.

**Mayor Bialostosky**, your proposal on Monday to delay the council's decision until additional information could be studied, respects the need for considering the greater context of this development. I would urge you and the other councilors to visit the property – especially on a Friday afternoon – when many cars speed up the steep grade of Marylhurst Drive – to observe some of these issues of responsible development that we raised. Several additional assessments of impact are needed.

**Councilor Erwin**, as you stated during Monday's meeting, the Council has a responsibility not only to the petitioners, but also to the citizens of the neighborhood, and to the future residents of these properties. Your call to consider the rights of all – including the environmental impact – is paramount. The context of a development plat from 1926 cannot possibly account for the number of vehicles, persons, or even size of buildings in our current times. There is no amount of man-made or engineered erosion control that would replace the natural control that destruction of 50 trees on that parcel of land would eliminate.

**Councilors:** I urge you to uphold the denial of variance by the Planning Commission. Doing so does not prevent the petitioners from fully developing their properties. In fact, affirming the denial would encourage a more reasonable and balanced plan for two, three, or four homes on these parcels, and maintains the city code limits.

Their neighbors would welcome such a balanced and responsible development plan that respects the rights of all neighbors, our treasured natural environment, and the future citizens of this part of West Linn.

Respectfully,

Tom Tomaszek  
2671 Marylhurst Drive  
West Linn OR 97068



**From:** [Elizabeth Apen](#)  
**To:** [Floyd, John](#)  
**Subject:** I heard we could not make any public comments tonight. Could you please forward this to the council? Or let me know what I need to do to get it into the record. Thanks!  
**Date:** Monday, July 17, 2023 1:37:30 PM  
**Attachments:** [image001.png](#)

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Mr. Mayor, Council President, and Councilors.

I have learned from last week that reading from a script might be much easier on all of us – so here we go

After listening to the testimony last week, I have come to the conclusion that discussions of safety and environmental concerns, logistical concerns such as delivery trucks and trash cans are all potential outcomes of the decision you make on this variance today, but they will all be hypothetical until your decision is made and a significant amount of time has passed.

My 3<sup>rd</sup> grade level understanding of the applicant's rights here are that if the city development codes are shown to be too onerous as to not allow the applicant to develop her property, she could and should be granted a variance that would then give her the opportunity to develop the land in accordance with all other applicable statutes. Is that basically correct?

Expecting a YES...

Continuing with my 3<sup>rd</sup> grade understanding, I would like to call to the fore something we all learned there – SHOW YOUR WORK.

The applicant has provided one proposal in her original application and during this appeal and has showed no detail on how a lot access plan which complies with the code is impossible – or so complicated as to make it impossible. Her representatives have NOT SHOWN THEIR WORK.

Instead, the applicant's representatives come here with loud voices to talk about land use rights, belittle the concerns of the citizens as NIMBY mentality and use any argument available to distract us from the fact that they have not met the criteria for a variance.

There is no evidence that I have access to which demonstrates that they have even considered how to do this without a variance. This is at best a failure in imagination and at worst a profit grab at the expense of the citizens. Time will tell where on that continuum this falls.

The Planning Commission got it right when they denied this variance. I quote a portion from their Final Decision and Order dated 30 May 2023:

end quote

**2. CDC Chapter 75.020.B.1(a) – Minimum variance necessary to make reasonable use of the property**

**The Commission finds the applicant did not meet its burden of proof to show all six lots required shared access from one driveway. The applicant did not provide evidence that either the four lots fronting Midhill Circle could not reasonably take access from that street, which would eliminate the need for a variance, or that the spacing standards along Marylhurst Drive could not be met if multiple access points were utilized.**

The applicant and her team were given a very clear roadmap on how to be successful in their appeal. Did they come back to this Council showing evidence to address the Planning Commission's finding?

No, they came here with the same claims hoping to redirect your attention from the fact that they did not listen to clear and concise feedback. The Planning Commission just asked them to SHOW THEIR WORK.

Please do not make it easy on the developers to change the face of our community under the banner of land use rights. Make them prove to us that they have done their best to comply with existing development code and cannot do.

**A separate request to the City Manager:** Has there been a benchmarking of the variance application requirements of nearby communities such as Oregon City, Wilsonville or Lake Oswego? Perhaps there is some best known method other communities have developed to ensure the initial application meets the requirement of proof needed to disposition requests such as this. Having this criteria required as part of the initial application would certainly have saved all of us a significant amount of time here.

**AND FINALLY: I would also like to make a comment to the applicant:** I sincerely welcomed you to the neighborhood when I met you on your property last year. You are still welcome – sincerely. Whether you end up building six units which enable young families to start building generational wealth in our community or set up a rental unit cluster to help build income for your family, it does not matter. You and the people who live in these buildings – however many there are and however they end up getting to their garages -- will be welcome.

My request for you is that you try a little harder to find solutions to your development challenges which comply with the code that is established in this city before requesting relief. The rest of us must do so when we make changes to our properties. As a fellow citizen of this city, I hope you understand why I am asking and will consider my request as your development of this site continues in the coming years.

Thank you and thank you to the Council.

Sent from my iPhone