



# CITY OF West Linn

## Memorandum

Date: April 12, 2024

To: Mayor Bialostosky, Mayor  
West Linn City Council

From: Darren Wyss, Planning Manager

Subject: Appellant Testimony for AP-24-01 (Icon Commercial Building)

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Between the publishing of the AP-24-01 Appeal Hearing Packet on April 4, 2024 and today at 5:00pm, the City received additional testimony from the Appellant. The testimony is attached.

If any additional Appellant testimony is received, it will be forwarded under a separate memorandum after closure of the written comment period at noon on Monday, April 15, 2024.

As always, please contact me with any questions at [dwyss@westlinnoregon.gov](mailto:dwyss@westlinnoregon.gov) or 503-742-6064.

April 10, 2024

VIA EMAIL ([jfloyd@westlinnoregon.gov](mailto:jfloyd@westlinnoregon.gov))

West Linn City Council  
c/o John Floyd, Associate City Planner  
22500 Salamo Road  
West Linn, OR 97068

Re: City File No. DR 23-01  
1919 & 1949 Willamette Falls Drive Design Review Appeal

Dear Mayor Bialostosky and City Council,

This firm represents Ian and Audra Brown, the appellants in the above-referenced case. The Browns' home is located directly across Knapps Alley within sight and sound of the development that is the subject of this application. The Browns have actively participated in all of the proceedings before the Planning Commission and Historic Review Board leading up to this appeal. Although the Planning Commission was able to identify a number of conditions addressing some of the Browns' concerns, a few issues still remain. All of these objections relate to the area above the ceiling or roof that encloses a majority of the proposed improvements, referenced hereafter as the "primary roofline."

Although I only represent the Browns in this matter, a number of other members of the public have offered comments in opposition, for various different reasons, at different stages. James Estes, Kristen Woofter, Albert Secchi, Laura Secchi, Dee Deathridge, Jason Hall, Rachel Gobert, Brenda Bless, Robert Beegle, Lorraine Beegle, Karin Pappin-O'Brien, Nicholette Hydes, Yarrow Curie, Maria Blanc-Gonnett, and Kathi Halicki speaking as the president of the Willamette Neighborhood Association have all raised concerns with this project.

### **Lack of Evaluation and Buffering for the Rooftop Deck Noise**

This application includes a request for a 745 square foot outdoor deck that will be located above the primary roofline. Being zoned General Commission, this deck could be used for a wide range of commercial uses including an "eating and drinking establishment" such as a restaurant or bar. West Linn Community Development Code (CDC) 19.030(10). The CDC does not expressly authorize rooftop decks and it is also silent on imposing any design standards on outdoor uses more generally. Although it is quite common for restaurants along Willamette Falls Drive to make use of their on-street frontage or sidewalk to accommodate tables when weather permits, there are no other existing rooftop patios in existence along Willamette Falls Drive.

Pursuant to the City's design standards, where a commercial use abuts a residential use, buffering is required in order to decrease noise. CDC 55.100(C) and (D)(3). The proposed rooftop deck does not include any buffering to serve this purpose. The revised plan set dated February 21, 2024, includes a Screen Wall Detail illustrating that the deck is elevated slightly above a proposed 5' 6" steel screening wall. Plan C5. As such, this wall will be lower than average person height and as such, will not serve to attenuate human conversation noise, particularly when people are standing. Further, being made of steel, this wall is much more likely to reverberate noise rather than to absorb it. CDC 55.110(D)(4) provides:

“Businesses or activities that can reasonably be expected to generate noise in excess of the noise standards contained in West Linn Municipal Code Section 5.487 shall undertake and submit appropriate noise studies and mitigate as necessary to comply with the code.”

Because there is no zoning prohibition on the use of the deck for the serving or consumption of alcohol in a bar setting that may include broadcasting music, it would be reasonable to expect that it will generate customer noise that could exceed the City's noise standards. Without any buffering, it may be that the City's noise standards would be violated by casual use by families enjoying morning coffee. We do not know because no noise study has been provided and no buffering proposed.

During the proceedings before the Planning Commission, the applicant's representative Mr. Sutton indicated that the rooftop deck would not be an “outdoor dining facility” and although the potential tenants are not yet known, it is anticipated to be used for quiet uses like coffee breaks, reading books, working outdoors to get breaks from cubicles, staff lunches for the tenants. He also mentioned catered lunches as possible. 2/21/24 PC hearing at 1:27. Later in the hearing, at 2:09, Mr. Sutton indicated that there were "no plans for musical events, parties, bar crawls, or any of those sorts of things."

Assuming that is true, the Browns would like to see conditions of approval imposed to limit the uses consistent with Mr. Sutton's representations and to ensure the noise mitigation obligations required by the CDC. These conditions include:

- (1) The rooftop lounge shall not be used by retail customers for the consumption of food or beverages that is purchased onsite.
- (2) Except for small, handheld, blue tooth speakers, no amplification of sound within the rooftop lounge is permitted.
- (3) When the total building occupancy reaches 50% and the rooftop lounge is fully improved for occupancy, the applicant shall submit an acoustic study completed by a licensed, professional engineer evaluating the noise levels for compliance

with West Linn Municipal Code Chapters 5.487(3) with levels taken when the deck is fully occupied on a date and time that occupancy is reasonably expected to occur. Subsequent to the first noise study the applicant shall submit a new noise study, not more than once per year, in response to a noise complaint associated with the rooftop deck.

These conditions are similar to the ones proposed to the Planning Commission. Although the Planning Commission appeared to share the Browns concern over noise from the rooftop patio, it did not impose a condition constraining the use because of City staff-stated concerns over distinguishing tenant guest use from the general public. In response, the condition has been revised to only prohibit retail customers from consuming food or drinks purchased onsite on the patio. This should have no impact use by tenant employees or their guests. Further, it is likely that a restaurant, café, or bar will advertise its terrace for use by the public which should ease concerns over enforcement.

The third condition is a slight modification from the condition agreed to by the Planning Commission to make it clear that the noise study must be accomplished with the deck fully occupied at a time of day that it is likely that such occupation will occur. By including these three feasible conditions, the Council could conclude that CDC 55.110(D) requirements are satisfied.

### **The Building Height Exceeds 35 Feet and Two Stories**

CDC 58.080.B.3 limits buildings within the Willamette Falls Drive Commercial Design District to a maximum of 35 feet and a maximum of two stories. The purpose for this requirement is to make development compatible with historic 1880 – 1915 architectural styles which are uniform in their height and their placement of windows. See drawing at CDC 58.080.B.3. As initially proposed and as amended, the west side of the Willamette Falls frontage includes three rows of double-hung windows (or for the 3<sup>rd</sup> story along the 12<sup>th</sup> street frontage panels that look like windows). As the attached photos of other recent new Willamette Falls Drive construction illustrates, there is no building that includes three rows of windows of stacked double-hung windows. This gives the impression that the building is three stories, one story taller than the required standard.

As part of its initial review in June/July 2023, the HRB and Planning Commission, expressing this same concern, sent the matter back to the HRB for an exception. In November, the HRB denied the request for an exception, and it was subsequently withdrawn. In January 2024, the applicant submitted a modified application that replaced the upper-level windows on a portion of the 12<sup>th</sup> Street façade with wooden panels surrounded by wooden frames that continue to give the effect of a third story. The applicant did not return to the HRB to obtain review of this modified design – a defect that is addressed in greater detail below.

During the previous reviews, the applicant argued that these upper story windows do not create a third story because the lower two rows of windows enclose a mezzanine such that the interior building space includes only two floors with ceilings. The applicant relies on the prevalence of Western false-front architecture where pediments are used to hide rooftop utilities claiming that this is similar. The appellants do not dispute that false front designs are common along Willamette Falls Drive. However, by including a 3<sup>rd</sup> row of windows, this area does not look like a pediment. See attached exhibit. The effect will be to create a precedent for new development that looks like it has three stories, which serves to detract from the design uniformity of buildings built between 1880 to 1915 that this District is intended to protect.<sup>1</sup>

Moving beyond the 3<sup>rd</sup> floor window concern, CDC 41.030 allows for exceptions to the height limitation for the following building elements:

“Projections such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flag poles, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.”

This modified application still includes a small third story including a stairwell and an elevator stop with an elevator lobby. Unlike an elevator shaft housing, all of these areas contain the essential elements of a “story” including a floor and a ceiling and are suitable for human occupancy. Without applying the CDC’s height limitations to these structures, there would be no limit to how tall a tower with an observation deck, accessed by an elevator and a stairwell, could be. That is not the outcome that CDC 41.030 allows.

Additionally, as seen in the front elevation drawings (Page 54 of the Staff Report), the center of the front parapet exceeds the 35-foot line by a small amount, despite the applicant’s representation that the parapet has been lowered below the 35-foot line. Contrary to the applicant’s position that CDC 58.080.B.3 allows a parapet to exceed 35 feet in height, CDC 58.080.B.3 specifies that “A false front shall be considered as the peak of the building if it exceeds the gable roof ridgeline.”

To ensure conformance with CDC 50.080.B.3, the following additional conditions of approval must be included:

- (1) The upper story windows and panels shall be removed and replaced with a true false front pediment. If any windows are included, they shall be significantly smaller than the double hung windows below and resemble historic attic vent.
- (2) The elevator lobby and enclosed stairwell shall be removed.

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<sup>1</sup> Attached is a photo of the Hood River Hotel, built in 1911, which illustrates what a historic window enclosing a mezzanine would look like. This clearly shows that the building only has two stories in the mezzanine area.

- (3) Except for that portion of the elevator housing the cables and motorized equipment, no portion of the stairwell, parapet, or other portion of the building may exceed 35 feet above grade.

With these conditions, the City Council could conclude that the building height limitations of CDC 50.080.B.3 will be satisfied.

### **HRB Review of the January 2024 Modifications is Required**

CDC 99.060(D) provides that the:

“The Historic Review Board shall review an application for compliance with Chapters 25 and 58 CDC, as applicable. The Historic Review Board shall have the authority to:

2. Make recommendations to the approval authority specified in this section regarding the following:
  - c. Class I or Class II design review on a property within the Willamette Falls Drive Commercial Design District that is not a historic landmark or within the Willamette Historic District;”

Generally, an appellate review body has authority to review modified proposal for compliance with applicable criteria. CDC 99.290(B). In the alternative, CDC 99.290(C) provides:

“C. The approval authority may remand the matter if it is not satisfied that testimony or other evidence could not have been presented or was not available at the hearing. In deciding to remand the matter, the approval authority shall consider and make findings and conclusions regarding:

1. The prejudice to parties;
2. The convenience or availability of evidence at the time of the initial hearing;
3. The surprise to opposing parties;
4. The date notice was given to other parties as to an attempt to admit; or
5. The competency, relevancy, and materiality of the proposed testimony or other evidence.”

In this case, remand to the HRB is necessary under subsection 5 in order to obtain the expertise of the HRB in reviewing and responding the modified proposal. None of the improvements proposed above the primary roof including the windows / panels within the pediment, the

elevator lobby or the enclosed stairs were reviewed by the HRB. As noted, the HRB expressly rejected the exception for the third story windows but yet those same windows remain on the northwest corner of the building. This portion of the building as well as the full 12<sup>th</sup> Street façade do not look like it has a Western false front.

Although mentioned above, it is worth quoting the CDC 58.080 purpose statement in full as illustrating the essential role that the HRB plays with respect to new construction within the Willamette Falls Drive Design District:

“Standards are needed to provide a clear and objective list of design elements that are needed to bring new construction and remodels into conformance with 1880 – 1915 architecture. Buildings of the period saw relatively few deviations in design. *Consequently, the Historic Review Board will require conformance with the standards.* Deviations or deletions from the standards are addressed in the design exception procedure of this chapter.” (Emphasis added.)

It is the HRB that is charged with interpreting and applying the design standards in the first instance in order to ensure “conformance with 1880-1915 architecture.” The HRB never got a chance to review this design. For this reason, this matter should be remanded back to the HRB for an evaluation of the design above the “primary roof.” Since the matter has been reviewed and approved by the Planning Commission, the HRB’s decision could serve as the City’s final decision, assuming that it is not appealed.

### Conclusion

In summary, although the proposed design is a significant improvement over what was initially proposed, the failure to respond to the buffer obligations with respect to noise and the excessive height requires modifying the conditions before granting approval. Even with modified conditions, this application should be remanded to the HRB to review the above-identified concerns.

Please place this letter into the record for this proceeding and provide me notice once the decision is made.

Very truly yours,

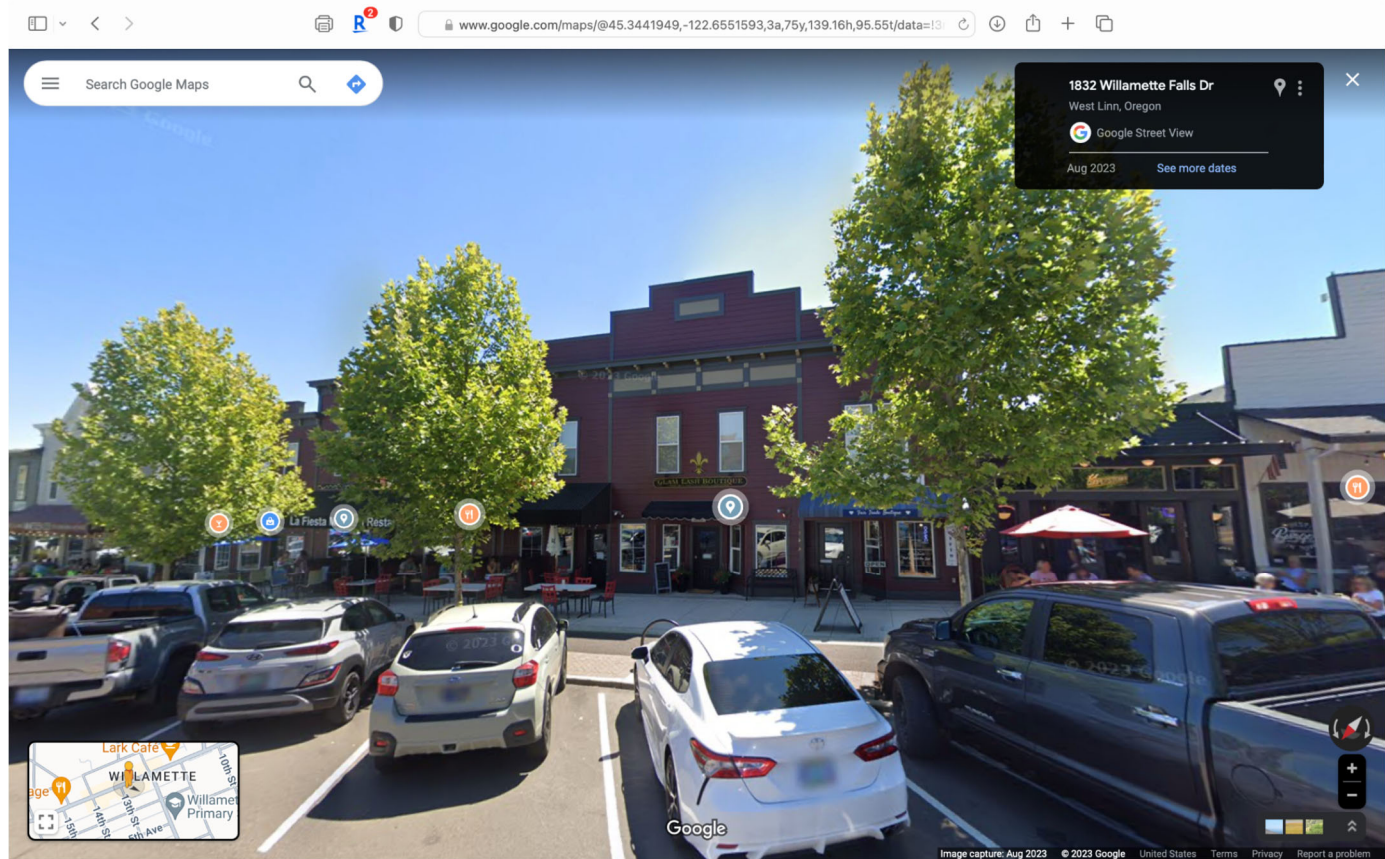


Carrie A. Richter

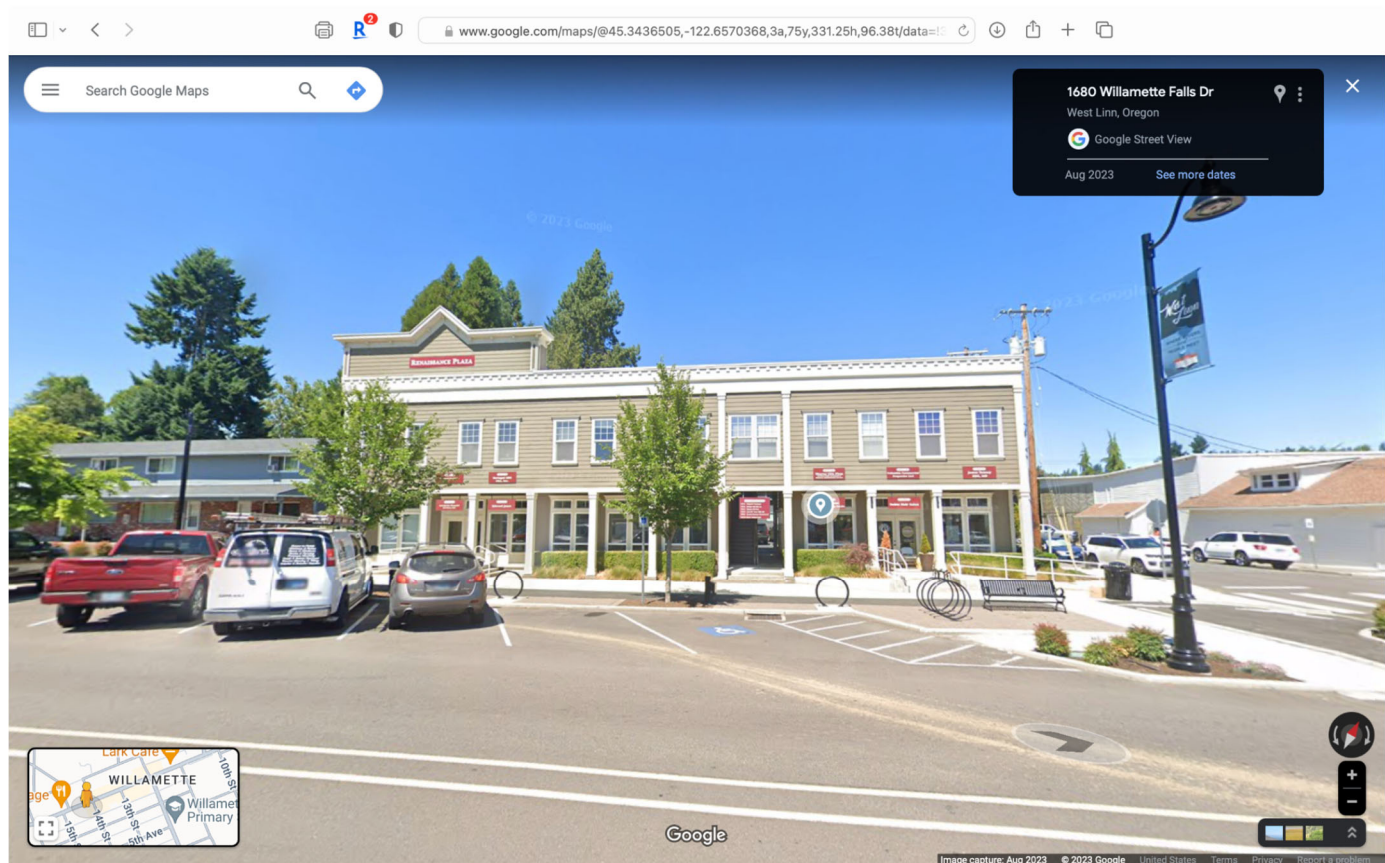
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cc: Clients



## SURVEY OF OTHER FALSE FRONT BUILDINGS ALONG WILLAMETTE FALLS DRIVE

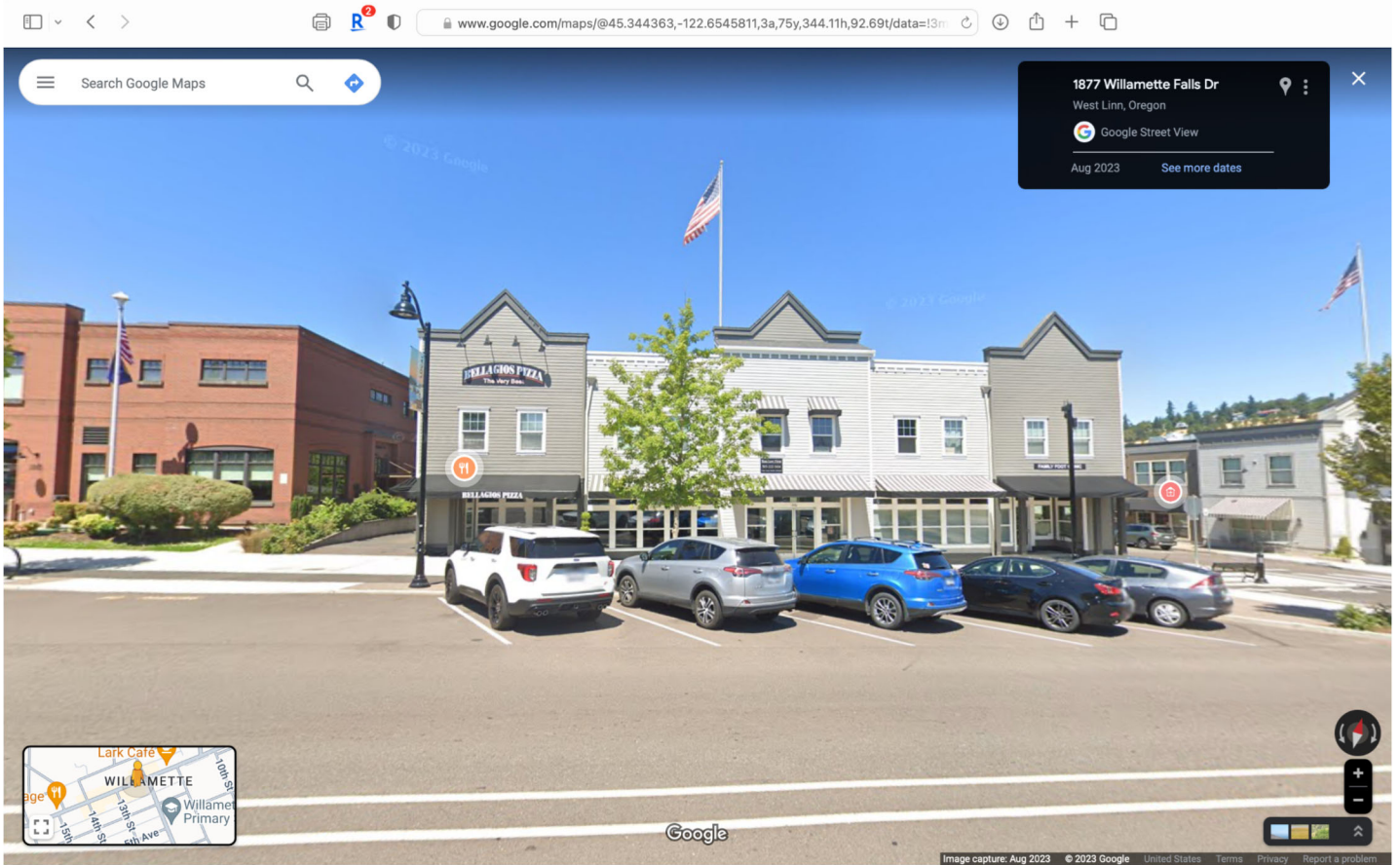


1849 Willamette Falls Drive – conventional “half-story” configuration, making use of the space under a gable roof which is hidden by the pediment. No windows in the pediment.

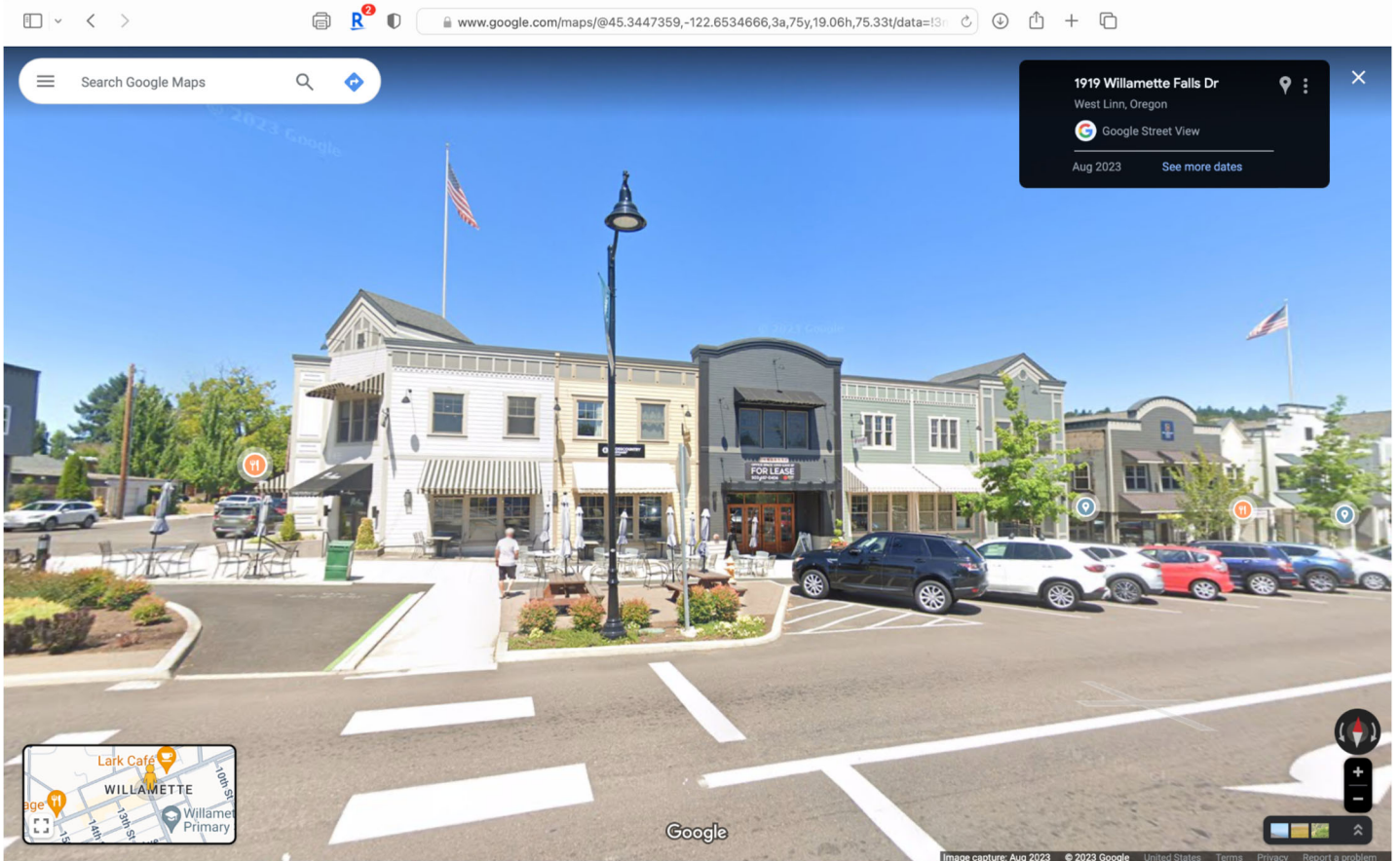


1672 Willamette Falls Drive – built in 1990. False front hides a gabled half-story with no pediment windows.



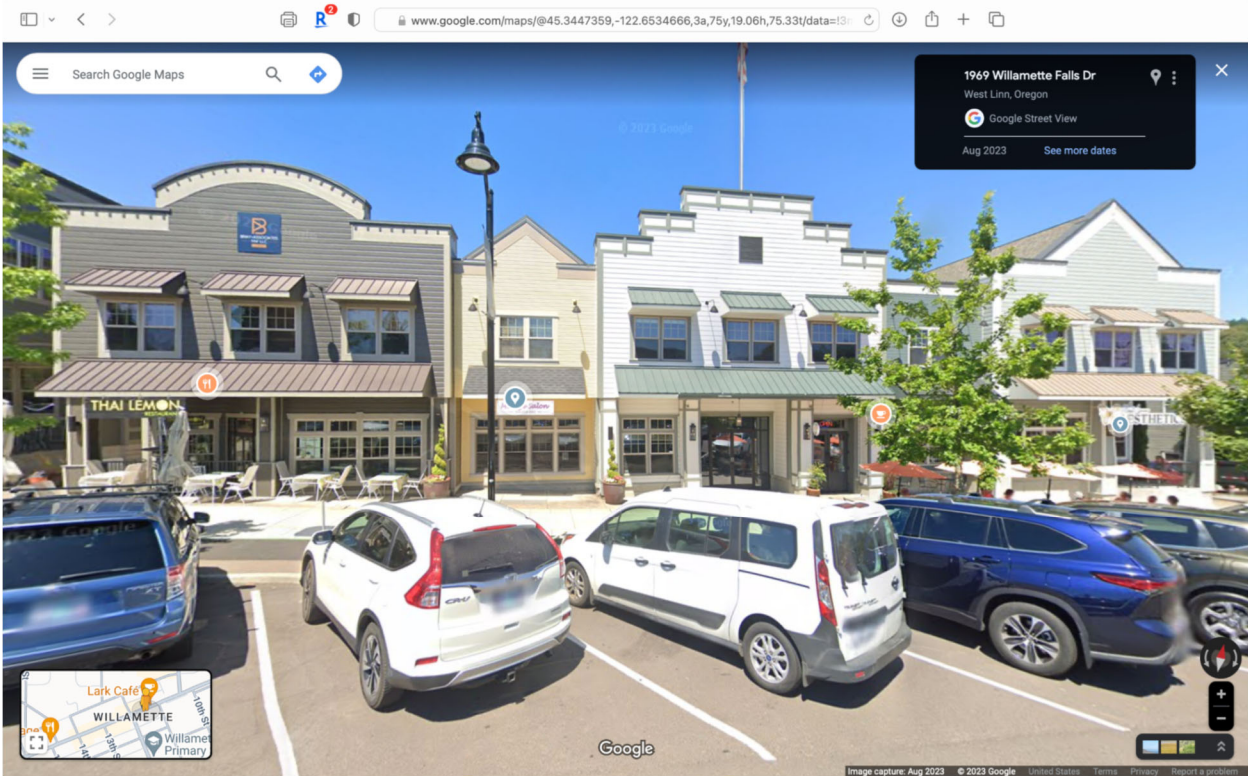


1880 Willamette Falls Drive – built in the 2000s. False front with no pediment windows.



1914 Willamette Falls Drive – built in the 2000s. Gabled rooftop structure that does not run the length of any façade suggesting any measurable, usable third-floor space. Upper window appears as what would cover an attic vent and does not match the style or scale of the windows below.





1980 Willamette Falls Drive – Built in the 2000s. Land use review required two of the three vents proposed for inclusion within the false fronts to be removed.

Taken as a group, these three most recent examples (1880, 1914, and 1980 Willamette Falls Drive) show a pattern of allowing structures above the second story only to house mechanical equipment, and only when designed to eliminate that those rooftop structures and only where it can be accomplished avoiding the appearance of a third story. The applicant’s proposal attempts to showcase that this building has what appears to be a “third story.”



Built in 1911, the Hood River Hotel illustrates historically appropriate mezzanine windows.