

Agenda Bill 2025-05-12-04

Date Prepared: May 5, 2025

For Meeting Date: May 12, 2025

To: Rory Bialostosky, Mayor
West Linn City Council

Through: John Williams, City Manager *JRW*

From: Darren Wyss, Planning Manager *DSW*

Subject: AP-24-02 (Appeal of MIP-24-01/VAR-24-05 – Planning Commission Decision)

Purpose

Council deliberations and vote on the tentative decision made at the April 14, 2025 public hearing to approve the appeal ([AP-24-02](#)) and remove Condition of Approval 2 from the Planning Commission approval ([MIP-24-02/VAR-24-05](#)).

Question(s) for Council:

Should the Council vote to approve the tentative decision made on April 14, 2025 for AP-24-02?

Public Hearing Required:

No further hearing required.

Background & Discussion:

The applicant/appellants (Gary Alfson & Susie Alfson) submitted an application on August 1, 2024 for a 3-Parcel Minor Partition and Class II Variance ([MIP-24-02/VAR-24-05](#)) to allow the division of one property into three new parcels, with the existing detached single-family home remaining on newly created Parcel 1. The variance request is for an exception to the public street requirements of West Linn Community Development Code Chapter 48.030(D) for use of a private driveway by five residential units. Planning staff deemed the application complete on September 9, 2024.

The 3-Parcel Minor Partition and Class II Variance were conditionally approved by the Planning Commission at a quasi-judicial public hearing on [November 6, 2024](#). A [Final Decision and Order](#) was mailed to parties of record on November 21, 2024. Among other Conditions of Approval, Condition 2 required the applicant to amend their access easement that they held with their neighbors to ensure adequate access to the site for all three resulting parcels. The Planning Commission included Condition 2 in an effort to address a perceived public access issue for the three resulting parcels; the applicable private access easement together with a note on the Teresa's Vineyard subdivision plat arguably limited access via this private easement to a maximum of two applicant parcels.

The appellants submitted a timely appeal of the decision on December 5, 2024 to remove the requirement of Condition of Approval 2 of the Final Decision and Order. The grounds for the appeal specifically address the Planning Commission Conditional of Approval 2 including a letter from Kevin V. Harker of Harker/Lepore Attorneys at Law outlining findings in support of the request to remove Condition of Approval 2.

The appeal was originally scheduled to be heard by the City Council at its January 6, 2025 meeting. The hearing on January 6, 2025 was briefly opened by the Council, at which time the applicant/appellant requested a continuance to the April 14th, 2025 meeting and the City Council granted the applicant/appellant's request. At the January 6, 2025 hearing the applicant/appellant also agreed to extend the 120-day clock date to June 14, 2025.

At the continued hearing on April 14, 2025, Council conducted the public hearing, including hearing testimony by the applicant/appellant and the public. Council closed the public hearing and evidentiary record. Council deliberated and reached a tentative decision, which is standard procedure in an appeal decision, to approve the appeal and remove Condition of Approval 2 from the Planning Commission approval.

At the meeting on May 12, 2025, Council will deliberate and vote on the tentative decision. No additional evidence or testimony will be accepted as the evidentiary record is closed.

Staff has provided a draft Final Decision and Order based on the tentative decision made on April 14, 2025 and has also provided the draft Final Decision and Order previously developed to support the staff recommendation to deny the appeal and modify the Planning Commission Condition of Approval 2. Council may deliberate regarding each option and may ultimately choose to vote for whichever decision it believes is best supported by substantial evidence in the record.

Budget Impact:

None

Sustainability Impact:

None

Council Options:

1. Deliberate and vote to adopt the Final Decision and Order to approve the appeal and remove Condition of Approval 2 from the Planning Commission approval of MIP-24-02/VAR-24-05.
NOTE: This option supports applicant/appellant's argument that all applicable partition and variance criteria are met and supported by substantial evidence in the record, without condition 2. If adopted, the applicant/appellant's application would be approved, without condition 2.
2. Deliberate and vote to adopt the Final Decision and Order supporting denial of the appeal and modify Condition of Approval 2 from the Planning Commission approval of MIP-24-02/VAR-24-05.
NOTE: This option rejects applicant/appellant's argument that all applicable partition and variance criteria are met and supported by substantial evidence in the record, without condition 2. If adopted, the applicant/appellant's application would be approved, with amended condition 2.

Recommendation:

Make a decision to adopt one of the two draft Final Decision and Order documents.

Potential Motion:

1. Move to adopt the Final Decision and Order approving the appeal and removing Condition of Approval 2 from the Planning Commission approval of MIP-24-02/VAR-24-05.
2. Move to adopt the Final Decision and Order denying the appeal and modifying Condition of Approval 2, per the staff recommendation, of the Planning Commission approval of MIP-24-02/VAR-24-05.

Attachments:

1. AP-24-02 City Council Final Decision and Order Approving the Appeal and Removing Condition of Approval 2.
2. AP-24-02 City Council Final Decision and Order Denying the Appeal and Modifying Condition of Approval 2.
3. [MIP-24-02 Planning Commission Public Hearing Materials November 6, 2024](#)
4. [MIP-24-02/VAR-24-05 Planning Commission Final Decision and Order](#)
5. [MIP-24-02/VAR-24-05 Planning Commission Public Hearing November 6, 2024](#)
6. [AP-24-02 City Council Public Hearing Materials January 6, 2025 and April 14, 2025](#)
7. [AP-24-02 City Council Public Hearing January 6, 2025](#)
8. [AP-24-02 City Council Public Hearing April 14, 2025](#)

**WEST LINN CITY COUNCIL
FINAL DECISION AND ORDER
AP-24-02**

**IN THE MATTER OF AN APPEAL OF THE PLANNING COMMISSION APPROVAL OF
A THREE-PARCEL MINOR PARTITION AND A CLASS II VARIANCE TO ALLOW
MORE THAN FOUR SINGLE-FAMILY HOMES (FIVE PROPOSED) TO BE SERVED
FROM AN EXISTING PRIVATE DRIVEWAY AT 2830 COEUR D ALENE DRIVE (MIP-
24-02/VAR-24-05).**

I. Overview

Gary Alfson (Applicant) filed an application on August 1, 2024. The application was deemed incomplete on August 29, 2025. The Applicant submitted revised materials on September 9, 2024, and the application was deemed complete on September 9, 2024. The proposal was for a three-parcel partition and Class II Variance from West Linn Community Development Code Chapter 48.030(D) to allow more than 4 single-family homes to be served by an existing-shared-private driveway. The West Linn Planning Commission approved the application with four conditions of approval on November 6, 2024. The approval criteria for this proposal are Community Development Code (CDC) Chapter 12, Chapter 48, Chapter 75, Chapter 85, Chapter 92, and Chapter 99. The hearing was conducted pursuant to the provisions of CDC Chapter 99.170.

The initial evidentiary hearing commenced with a staff report presented by Aaron Gudelj, Associate Planner. The applicant(s) provided verbal testimony. Written testimony was submitted by Rich Faith and Cynthia Lacro, Rufus Timberlake & Julia Timberlake, Carlos Ugalde and Amy Ugalde, and David Baker. Oral testimony was provided at the hearing by Carlos Ugalde, Rufus Timberlake, Julia Timberlake, David Baker, and Thomas Laun. Applicant rebuttal was provided by the applicant(s). The primary concerns raised during testimony included:

- Traffic Safety
- Sharing of Access easement
- Plat notes
- Views
- Property Values
- Middle housing development on new lots

The hearing was closed, and the Commission deliberated whether the Class II Variance request meets the minimum necessary standards of CDC Chapter 75. A motion was made by Commissioner Evans to approve the application in accordance with the Staff Report, the recommended conditions of approval, and additional findings related to:

1. CDC 48.030(D) – Commission finds the application meets Class II Variance requirements thus granting relief from this provision.
2. CDC 75.020.B.1(c) – Commission finds the physical limitations of providing access to Tract C for Parcel 1 and that the property has been surrounded by subdivision development over time, thus limiting options for access, were not created by the applicant/owner requesting the variance.
3. CDC 85.200.B.8(b) – Commission finds the City, as a public agency, cannot legally prohibit development of middle housing on the newly created parcels and that this criterion is met without the proposed condition of approval in Finding No. 109.

The motion was seconded by Chair Carr. The motion passed unanimously, six in favor (Jones, Metlen, Walvatne, Evans, Schulte-Hillen, Carr) and zero opposed.

The Planning Commission approval of MIP-24-02/VAR-24-05 was appealed on December 5, 2024, by the applicant pursuant to CDC 99.250. As the Appellant (Gary Alfson and Susie Alfson) is both the applicant and property owner of the project site, the Appellant has standing.

The appeal hearing for AP-24-02 was held on January 6, 2025 and began with Mayor Bialostosky recusing himself from the hearing due to formerly working with and personally knowing the Appellant's attorney and personally knowing David Baker who submitted written comment on January 5, 2025. Council-President Baumgardner took over as the presiding officer in charge of the meeting. Shortly after Council-President and City Attorney Kaylie Klein read the legal proceedings the hearing was continued to April 14, 2025 at the Appellant's request. At the time of the request for a continuance the Appellant verbally agreed to extend the 120-day clock to June 14, 2025. The Appellant subsequently submitted the 120-day clock extension in writing on January 7, 2025.

The continued hearing on April 14th, 2025, began with Mayor Bialostosky recusing himself from the hearing. Council-President Baumgardner took over as the presiding officer in charge of the meeting. The hearing was opened by Council-President Baumgardner and the legal proceedings were read by the City Attorney, Ashleigh Dougill. After the legal proceedings were complete Associate Planner, Aaron Gudelj presented as the staff planner. Next, Gary Alfson and Susie Alfson presented as the Appellant.

At the completion of the presentations, the public testimony portion of the hearing commenced. Three individuals commented in-person: Carmen Timberlake, David Baker and their legal counsel Kyle Grant. Kyle Grant presented arguments that the applicant did not meet the criteria of a variance, specifically CDC 75.020.B.1(a) and (c). Mr. Grant argued that (1) the variance is not the minimum necessary to make reasonable use of the property because the applicant has access to Tract C, and (2) that the applicant is creating the need for the variance by declining to take access via Tract C. Mr. Grant pointed to the fact that the Applicant knew their land would be surrounded by development in 2007, when they originally applied to the Commission to subdivide their property. The Appellant, Gary Alfson and Susie Alfson, provided

rebuttal testimony stating that the substantial grade change from their property to Tract C, as well as the demolition of an existing detached garage and removal of mature trees that would be required to connect to Tract C, collectively would not allow them to make reasonable use of their property in terms of access via this point. The Appellant also rebutted the subdivisions were built around them, thereby creating the current access constraints and need for the variance. After rebuttal testimony was provided, The City Council moved to questions of staff. After questions of staff the public hearing was closed.

Deliberations then began and Councilor Bryck made a motion to make a tentative decision to approve the appeal (AP-24-02) and modify the Planning Commission approval of MIP-24-02/VAR-24-05 by removing Condition of Approval 2 because the applicant/appellant met the requirements of a Minor Partition and Class II Variance, and direct staff to bring back the findings for adoption on May 12, 2025. The motion was seconded by Councilor Groner. Additional deliberations took place and additional questions of staff were asked. After questions of staff concluded, the motion resulted in three votes in favor (Baumgardner, Bryck, Groner) and one vote opposed (Councilor Bonnington).

II. The Record

The record was finalized with the receipt of written and oral testimony at the continued hearing on April 14, 2025. The record includes the entire file for MIP-24-02/VAR-24-05 and AP-24-02.

III. 120-day Period

The application became complete on September 9, 2024. The 120-day maximum processing period ends on January 7, 2025. As permitted by ORS 227.178(1), the Applicant extended the 120-day period from January 7, 2025 to February 6, 2025 in writing on December 5, 2024. The applicant extended the 120-day period again from February 6, 2025 to June 14, 2025 in writing on January 7, 2025. The City Council's final decision was issued within the extended 120-day period.

IV. Scope of Review

The Appellant and Applicant agreed that the scope of the City Council hearings was de novo.

V. Findings of Fact

- 1) The Overview set forth above is true and correct.
- 2) The Appellant/Applicant is Gary Alfson and Susie Alfson.
- 3) The City Council finds that it has received all information necessary to make a decision based on the agenda reports, appeal application, the Applicant/Appellant's oral and written evidence and testimony, oral and written evidence and testimony by the public, and evidence in the whole record.

City Council Findings of Fact Approving the Appeal and modifying the Planning Commission decision.

City Council hereby adopts the following Findings supporting approval of the Application and Appeal based on the Incorporated Findings and the Substantial Evidence in the record.

- A. The City Council incorporates the Staff Report to the City Council prepared in advance of the January 6 and April 14, 2025 appeal hearings, and the Planning Department Power Point presentation presented at the April 14, 2025 appeal hearing.
- B. The City Council incorporates the staff report and staff presentation to the Planning Commission for the November 6, 2024 hearing.
- C. The City Council incorporates the Applicant's submittals dated July 20, 2024 and September 9, 2024; the Applicant's written appeal of December 5, 2024; and the Applicant's oral arguments at the April 14, 2025 hearing, as supplemental findings of approval.
- D. The above referenced documents are referred to in these supplemental findings as "Incorporated Findings".

If there is a conflict between these Supplemental Findings and the Incorporated Findings, these findings shall control.

Supplemental Findings in response to the Substantive Appeal Issues

1. CDC 75.020(B)(1)(a) – Requested variance is minimum necessary to make reasonable use of the property.

An opponent argued the Applicant/Appellant did not meet its burden of proof to show that the requested variance is the minimum necessary to make reasonable use of the property. The opponent argued the Applicant/Appellant has ready access to the north to Tract C, which they specifically requested in writing and verbally during the 2007 Planning Commission hearing on the Teresa's Vineyard subdivision proposal. The opponent also submitted alleged photographic evidence that it wouldn't be difficult to take access from Tract C. The opponent argued that Teresa's Vineyard Plat Note 9 and an email from City staff confirming the Appellant/Applicant's vested right to access Tract C further supports the standard that the variance is not necessary to funnel all three new parcels through the easement between Teresa's Vineyard Plat Lots 22 and 23.

The Council agrees with the Planning Commission findings that the Applicant's proposal is 1) a reasonable use of the property, 2) the new parcels are similar in size and intensity to the surrounding area, 3) the proposed use of the shared driveway by the new parcels is consistent with existing circulation patterns; 4) the removal of mature trees, the necessary retaining wall construction, and potential demolition of the existing garage make construction of an access from Tract C cost prohibitive for the applicant, 5) the proposed partition increases the economic development opportunities of the subject property, 6) the granting of the variance would not result in the violation of any other code standard, and 7) the variance is the minimum variance necessary to make reasonable use of the property.

Further, the Council finds that while the 2007 Planning Commission approval of the Teresa's Vineyard subdivision proposal does provide access for the Applicant/Appellant from Tract C, the decision does not compel access via a condition of approval, but merely provides an alternate access option. The Council also finds having a right to the access does not prohibit the request for or the approval of a variance for access to the existing shared driveway/easement. The Council finds the Applicant/Appellant testimony regarding the difficulty of constructing a new driveway from Tract C more persuasive than the opponent's photographic evidence. Council finds that the standards of CDC 75.020(B)(1)(a) to be met.

2. CDC 75.020(B)(1)(c) – Need for variance was not created by the applicant.

An opponent argued the Applicant/Appellant is creating the need for the variance by declining to take access from Tract C. The Applicant/Appellant knew they would be surrounded by development and foresaw Tract C as appropriate access, which they specifically requested access to during the approval of the Teresa's Vineyard subdivision/preliminary plat in 2007. The opponent argued the City's staff report failed to demonstrate that the need for the Variance was not created by the Applicant.

The Council agrees with the Planning Commission findings that 1) the existing shared driveway has been used by the Applicant and Lots 22 and 23 of Teresa's Vineyard subdivision since the development of Teresa's Vineyard after 2012, 2) historical aerial photos indicate the Applicant home and detached garage were constructed prior to the Teresa's Vineyard subdivision, and 3) the grade change from Tract C to the property was not created by the Applicant/Appellant, but by the developer of the Teresa's Vineyard subdivision. Further, the Council finds that 4) although the Applicant/Appellant has access to Tract C, there are no legal requirements for them to utilize that access and 5) notwithstanding any deliberations regarding this subdivision in 2007, present circumstances beyond the control of the Applicant/Appellant warrant the need of a variance. Council finds the standards of CDC 75.020(B)(1)(c) to be met.

3. CDC 48.020.(B) – Access from a public street or private platted street.

CDC 48.020(B) states that "all lots shall have access from a public street or from a platted private street approved under the land division chapter." The 20-foot Access Easement and Joint Maintenance Agreement (Instrument No. 2012-001415, Clackamas County Deed Records) between the Alfson property and Lots 22 and 23 arguably does not permit access

by a fifth lot/parcel. Although the easement contemplates future division of the Applicant's property, Teresa's Vineyard Plat Note 24 may be read to restrict the Applicant property to a maximum of two lots or parcels using the shared drive if the Applicant's original lot is so divided in the future, thus impacting the Applicant's ability to access its resulting parcels via such easement.

The Planning Commission found that the Applicant could not satisfactorily demonstrate that the three newly created parcels have established access to a public street as proposed. To resolve the conflict, the Planning Commission approved the Minor Partition and Class II Variance with Condition of Approval 2 requiring an access/utility easement and joint maintenance agreement that acknowledges the total number of lots using the private access and signed by all owners of land with access.

Council finds the Applicant/Appellant has access from a public street (Couer D'Lane Drive) for the three new parcels per the recorded 20-foot Access Easement and Joint Maintenance Agreement (Instrument No. 2012-001415, Clackamas County Deed Records) and the granting of the Class II Variance to CDC 48.030(D), which satisfies this criterion. The easement includes language that contemplates the future division of the Alfson property but does not restrict the future number of lots or homes that could utilize the shared access easement, thus making the Planning Commission Condition of Approval 2 unnecessary. Further, the Commission declines to determine the impact of the plat restriction on such private right, and instead determines this to be a private, civil matter for the Applicant to resolve with impacted neighbors. Accordingly, Council finds the standards of CDC 48.020(B) to be met.

4. CDC 48.020.(E) – Shared access with satisfactory legal evidence.

48.020.E states that "Owners of two or more...units of land may agree to utilize jointly the same access and egress when the combined access and egress...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." The 20-foot Access Easement and Joint Maintenance Agreement (Instrument No. 2012-001415, Clackamas County Deed Records) between the Alfson property and Lots 22 and 23, read in connection with Teresa's Vineyard plat note 24, arguably does not permit use of such easement by a third Applicant lot/parcel. Accordingly, these two legal documents taken together arguably do not present satisfactory legal evidence of the establishment of joint use.

The Planning Commission found the Applicant could not satisfactorily demonstrate, with legal evidence, that the three newly created parcels would have a right to the shared access as proposed. To resolve the conflict, the Planning Commission approved the Minor Partition and Class II Variance with Condition of Approval 2 requiring an access/utility easement and joint maintenance agreement that acknowledges the total number of lots using the private access and signed by all owners of land with access.

Council finds the Applicant/Appellant has provided satisfactory legal evidence of joint access for all resulting lots via a “deed, easement, lease, or contract to establish joint use” in the form of the recorded 20-foot Access Easement and Joint Maintenance Agreement (Instrument No. 2012-001415, Clackamas County Deed Records) and the granting of the Class II Variance to CDC 48.030(D) to satisfy this criterion. The easement includes language that contemplates the future division of the Alfson property and does not restrict the future number of lots or homes that could utilize the shared access easement, thus making the Planning Commission Condition of Approval 2 unnecessary. Council also finds Teresa’s Vineyard Plat Note 24 was not required or conditioned by the 2007 Planning Commission decision approving the Teresa’s Vineyard subdivision, nor agreed to by the Alfsons. Therefore, its interpretation and applicability in this context is a private matter between the Applicants and the other parties to the easement to rectify. Council finds the standards of CDC 48.020(E) to be met.

5. CDC 48.025.(B)(3)(b) – Access via driveway connected to another property with direct access to a public street with a recorded easement.

CDC 48.025.B.3(b) states that an applicant may request access via a private street “connected to an adjacent property that has direct access to a public street (i.e., “shared driveway”). The 20-foot Access Easement and Joint Maintenance Agreement (Instrument No. 2012-001415, Clackamas County Deed Records) between the Alfson property and Lots 22 and 23, read in connection with Teresa’s Vineyard plat note 24, arguably does not permit use of such easement by a third Applicant lot/parcel. Accordingly, these two legal documents taken together arguably do not present direct access for all three resulting Applicant parcels to a public street.

The Planning Commission found the Applicant could not satisfactorily demonstrate that the three newly created parcels would have access to a public street from the existing easement. To resolve the conflict, the Planning Commission approved the Minor Partition and Class II Variance with Condition of Approval 2 requiring an access/utility easement and joint maintenance agreement that acknowledges the total number of lots using the private access and signed by all owners of land with access.

Council finds the Applicant/Appellant has provided evidence of direct access to a public street via a shared driveway and a right to utilize the shared access for the three new parcels, per the recorded 20-foot Access Easement and Joint Maintenance Agreement (Instrument No. 2012-001415, Clackamas County Deed Records) and the granting of the Class II Variance to CDC 48.030(D), satisfactory to satisfy this criterion. The easement includes language that contemplates the future division of the Applicant property and does not restrict the future number of lots or homes that could utilize the shared access easement, thus making the Planning Commission Condition of Approval 2 unnecessary. Council also finds Teresa’s Vineyard Plat Note 24 was not required or conditioned by the 2007 Planning Commission decision approving the Teresa’s Vineyard subdivision, nor agreed to by the Alfsons. Therefore, its interpretation and applicability in this context is a

private matter between the Applicant and the other parties to the private easement to rectify. Council finds the standards of CDC 48.025.B.3(b) to be met.

VI. Conclusion

For the reasons contained herein, the City Council hereby approves the appeal, modifying the Planning Commission Decision and approves the Application with the following conditions of approval.

1. Site Plans. With the exception of modifications required by these conditions, the final plat shall substantially conform to the Tentative Plan.

2. Engineering Standards. All public improvements and facilities associated with the approved site design, including but not limited to street improvements, driveway approaches, curb cuts, utilities, grading, onsite and offsite stormwater, street lighting, easements, easement locations, and connections for future extension of utilities are subject to conformance with the City Municipal Code and Community Development Code. The City may partner with the applicant to fund additional improvements as part of the project.

3. Reciprocal Access and Utility Easement. Prior to final plat approval, the applicant shall record and show on the face of the plat a 20-foot-wide reciprocal access and utility easement and mutual maintenance agreement on Proposed Parcel 2 for the benefit of proposed Parcels 1 and 3. The easement will create legal access for ingress/egress and utility placement. The easement recording number shall be provided on the face of the final plat.

VII. Order

The Council concludes that AP-24-02 is approved. The Council modifies the Planning Commission decision of MIP 24-02/VAR-24-05 and removes Condition of Approval 2, based on the entire Record, Findings of Fact, and Findings above.

MARY BAUMGARDNER, COUNCIL-PRESIDENT
WEST LINN CITY COUNCIL

DATE

This decision may be appealed to the Land Use Board of Appeals in accordance with the applicable rules and statutes.

Mailed this _____ day of May, 2025.

Therefore, this decision becomes effective at 5 p.m., May _____, 2025.

**WEST LINN CITY COUNCIL
FINAL DECISION AND ORDER
AP-24-02**

**IN THE MATTER OF AN APPEAL OF THE PLANNING COMMISSION APPROVAL OF
A THREE-PARCEL MINOR PARTITION AND A CLASS II VARIANCE TO ALLOW
MORE THAN FOUR SINGLE-FAMILY HOMES (FIVE PROPOSED) TO BE SERVED
FROM AN EXISTING PRIVATE DRIVEWAY AT 2830 COEUR D ALENE DRIVE (MIP-
24-02/VAR-24-05).**

I. Overview

Gary Alfson (Applicant) filed an application on August 1, 2024. The application was deemed incomplete on August 29, 2025. The Applicant submitted revised materials on September 9, 2024, and the application was deemed complete on September 9, 2024. The proposal was for a three-parcel partition and Class II Variance from West Linn Community Development Code Chapter 48.030(D) to allow more than 4 single-family homes to be served by an existing-shared-private driveway. The West Linn Planning Commission approved the application with four conditions of approval on November 6, 2024. The approval criteria for this proposal are Community Development Code (CDC) Chapter 12, Chapter 48, Chapter 75, Chapter 85, Chapter 92, and Chapter 99. The hearing was conducted pursuant to the provisions of CDC Chapter 99.170.

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- Traffic Safety
- Sharing of Access easement
- Plat notes
- Views
- Property Values
- Middle housing development on new lots

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1. CDC 48.030(D) – Commission finds the application meets Class II Variance requirements thus granting relief from this provision.
2. CDC 75.020.B.1(c) – Commission finds the physical limitations of providing access to Tract C for Parcel 1 and that the property has been surrounded by subdivision development over time, thus limiting options for access, were not created by the applicant/owner requesting the variance.
3. CDC 85.200.B.8(b) – Commission finds the City, as a public agency, cannot legally prohibit development of middle housing on the newly created parcels and that this criterion is met without the proposed condition of approval in Finding No. 109.

The motion was seconded by Chair Carr. The motion passed unanimously, six in favor (Jones, Metlen, Walvatne, Evans, Schulte-Hillen, Carr) and zero opposed.

The Planning Commission approval of MIP-24-02/VAR-24-05 was appealed on December 5, 2024, by the applicant pursuant to CDC 99.250. As the Appellant (Gary Alfson and Susie Alfson) is both the applicant and property owner of the project site, the Appellant has standing.

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At the completion of the presentations, the public testimony portion of the hearing commenced. Three individuals commented in-person: Carmen Timberlake, David Baker and their legal counsel Kyle Grant. Kyle Grant presented arguments that the applicant did not meet the criteria of a variance, specifically CDC 75.020.B.1(a) and (c). Mr. Grant argued that (1) the variance is not the minimum necessary to make reasonable use of the property because the applicant has access to Tract C, and (2) that the applicant is creating the need for the variance by declining to take access via Tract C. Mr. Grant pointed to the fact that the Applicant knew their land would be surrounded by development in 2007, when they originally applied to the Commission to subdivide their property. The Appellant, Gary Alfson and Susie Alfson, provided

rebuttal testimony stating that the substantial grade change from their property to Tract C and the demolition of an existing detached garage and removal of mature trees that would be required to connect to Tract C, collectively would not allow them to make reasonable use of their property in terms of access via this point. The Appellant also rebutted the subdivisions were built around them, thereby creating the current access constraints and need for the variance. After rebuttal testimony was provided, The City Council moved to questions of staff. After questions of staff the public hearing was closed.

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Staff returned on May 12, 2025 with the Final Decision and Order to implement the Council's tentative approval of the appeal and removal of Condition of Approval 2. Based on legal advice from the City Attorney's office, staff also provided an alternate Final Decision and Order for Council consideration. The alternate Final Decision and Order is for a denial of the appeal and retention of the Planning Commission Condition of Approval 2, but modified as recommended in the April 14, 2025 appeal hearing staff report.

II. The Record

The record was finalized with the receipt of written and oral testimony at the continued hearing on April 14, 2025. The record includes the entire file for MIP-24-02/VAR-24-05 and AP-24-02.

III. 120-day Period

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IV. Scope of Review

The Appellant and Applicant agreed that the scope of the City Council hearings was de novo.

V. Findings of Fact

- 1) The Overview set forth above is true and correct.
- 2) The Appellant/Applicant is Gary Alfson and Susie Alfson.
- 3) The City Council finds that it has received all information necessary to make a decision based on the agenda reports, appeal application, the Applicant/Appellant's oral and written evidence and testimony, oral and written evidence and testimony by the public, and evidence in the whole record.

City Council Findings of Fact Approving the Appeal and modifying the Planning Commission decision.

City Council hereby adopts the following Findings supporting approval of the Application and Appeal based on the Incorporated Findings and the Substantial Evidence in the record.

- A. The City Council incorporates the Staff Report to the City Council prepared in advance of the January 6 and April 14, 2025 appeal hearings, and the Planning Department Power Point presentation presented at the April 14, 2025 appeal hearing.
- B. The City Council incorporates the staff report and staff presentation to the Planning Commission for the November 6, 2024 hearing.
- C. The City Council incorporates the Applicant's submittals dated July 20, 2024 and September 9, 2024; the Applicant's written appeal of December 5, 2024; and the Applicant's oral arguments at the April 14, 2025 hearing, as supplemental findings of approval.
- D. The above referenced documents are referred to in these supplemental findings as "Incorporated Findings".

If there is a conflict between these Supplemental Findings and the Incorporated Findings, these findings shall control.

Supplemental Findings in response to the Substantive Appeal Issues

1. **CDC 75.020(B)(1)(a) – Requested variance is minimum necessary to make reasonable use of the property.**

An opponent argued the Applicant/Appellant did not meet its burden of proof to show that the requested variance is the minimum necessary to make reasonable use of the property. The opponent argued the Applicant/Appellant has ready access to the north to Tract C, which they specifically requested in writing and verbally during the 2007 Planning Commission hearing on the Teresa's Vineyard subdivision proposal. The opponent also submitted alleged photographic evidence that it wouldn't be difficult to take access from Tract C. The opponent also argued that Teresa's Vineyard Plat Note 9 and an email from City

staff confirming the Appellant/Applicant's vested right to access Tract C further supports the standard that the variance is not necessary to funnel all three new parcels through the easement between Teresa's Vineyard Plat Lots 22 and 23.

The Council agrees with the Planning Commission findings that the Applicant's proposal is 1) a reasonable use of the property, 2) the new parcels are similar in size and intensity to the surrounding area, 3) the proposed use of the shared driveway by the new parcels is consistent with existing circulation patterns; 4) the removal mature trees, the necessary retaining wall construction, and potential demolition of the existing garage make construction of an access from Tract C cost prohibitive for the applicant, 5) the proposed partition increases the economic development opportunities of the subject property, 6) the granting of the variance would not result in the violation of any other code standard, and 7) the variance is the minimum variance necessary to make reasonable use of the property.

Further, the Council finds that while the 2007 Planning Commission approval of the Teresa's Vineyard subdivision proposal does provide access for the Applicant/Appellant from Tract C, the decision does not compel access via a condition of approval, but merely provides an alternate access option. The Council also finds having a right to the access does not prohibit the request for or the approval of a variance for access to the existing shared driveway/easement. The Council finds the Applicant/Appellant testimony regarding the difficulty of constructing a new driveway from Tract C more persuasive than the opponent's photographic evidence. Council finds that the standards of CDC 75.020(B)(1)(a) to be met.

2. CDC 75.020(B)(1)(c) – Need for variance was not created by the applicant.

An opponent argued the Applicant/Appellant is creating the need for the variance by declining to take access from Tract C. The Applicant/Appellant knew they would be surrounded by development and foresaw Tract C as appropriate access, which they specifically requested access to during the approval of the Teresa's Vineyard subdivision/preliminary plat in 2007. The opponent argued the City's staff report failed to demonstrate that the Variance request was not created by the Applicant.

The Council agrees with the Planning Commission findings that 1) the existing shared driveway has been used by the Applicant and Lots 22 and 23 of Teresa's Vineyard subdivision since the development of Teresa's Vineyard after 2012, 2) historical aerial photos indicate the Applicant home and detached garage were constructed prior to the Teresa's Vineyard subdivision, 3) the grade change from Tract C to the property was not created by the Applicant/Appellant, but by the developer of the Teresa's Vineyard subdivision. Further, the Council finds that 4) although the Applicant/Appellant has access to Tract C, there are no legal requirements for them to utilize that access and 5) notwithstanding any deliberations regarding this subdivision in 2007, present circumstances beyond the control of the Applicant/Appellant warrant the need of a variance. Council finds the need for the variance was not created by the Appellant/Applicant and the standards of CDC 75.020(B)(1)(c) to be met.

3. **CDC 48.020(B) – Access from a public street or private platted street.**

CDC 48.020(B) states that “all lots shall have access from a public street or from a platted private street approved under the land division chapter.” The 20-foot Access Easement and Joint Maintenance Agreement (Instrument No. 2012-001415, Clackamas County Deed Records) between the Alfson property and Lots 22 and 23 arguably does not permit access by a fifth lot/parcel. Although the easement contemplates future division of the Applicant’s property, Teresa’s Vineyard Plat Note 24 may be read to restrict the Applicant property to a maximum of two Applicant lots or parcels using the shared drive if Applicant’s original lot is so divided in the future, thus impacting the Applicant’s ability to access its resulting parcels via such easement.

The Planning Commission found that the Applicant could not satisfactorily demonstrate that the three newly created parcels have established access to a public street as proposed. To resolve the conflict, the Planning Commission approved the Minor Partition and Class II Variance with Condition of Approval 2 requiring an access/utility easement and joint maintenance agreement that acknowledges the total number of lots using the private access and signed by all owners of land with access.

Council agrees with the Planning Commission that the two documents (Instrument No. 2012-001415, Clackamas County Deed Records and Teresa’s Vineyard Plat Note 24) may restrict the Applicant’s ability to access three resulting parcels via this easement and require inclusion of a condition of approval to ensure that this access matter is appropriately privately resolved. However, Council finds it necessary to amend the condition to allow alternate solutions to satisfactorily demonstrate access to the City, including through judicial order, by clarifying the easement language, or other legal means that the Applicant may consider. Therefore, Council amends Condition of Approval 2 as found in Section VI and concludes the standards of CDC 48.020(B) to be met upon satisfactory compliance with Condition of Approval 2.

4. **CDC 48.020(E) – Shared access with satisfactory legal evidence.**

48.020.E states that “Owners of two or more...units of land may agree to utilize jointly the same access and egress when the combined access and egress...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.” The 20-foot Access Easement and Joint Maintenance Agreement (Instrument No. 2012-001415, Clackamas County Deed Records) between the Alfson property and Lots 22 and 23, read in connection with Teresa’s Vineyard plat note 24, arguably does not permit use of such easement by a third Applicant lot/parcel. Accordingly, these two legal documents taken together arguably do not present satisfactory legal evidence of the establishment of joint use.

The Planning Commission found the Applicant could not satisfactorily demonstrate, with legal evidence, that the three newly created parcels would have a right to the shared access as proposed. To resolve the conflict, the Planning Commission approved the Minor Partition

and Class II Variance with Condition of Approval 2 requiring an access/utility easement and joint maintenance agreement that acknowledges the total number of lots using the private access and signed by all owners of land with access.

Council agrees with the Planning Commission that the two documents (Instrument No. 2012-001415, Clackamas County Deed Records and Teresa's Vineyard Plat Note 24) as currently presented do not provide satisfactory legal evidence of established joint use, and require inclusion of a condition of approval to address the criterion. However, Council finds it necessary to amend the condition to allow alternate solutions to satisfactorily demonstrate access to the City, including through judicial order, by clarifying the easement language, or other legal means that the Applicant may consider. Therefore, Council amends Condition of Approval 2 as found in Section VI and concludes the standards of CDC 48.020(E) to be met upon satisfactory compliance with Condition of Approval 2.

5. CDC 48.025(B)(3)(b) – Access via driveway connected to another property with direct access to a public street with a recorded easement.

48.025.B.3(b) states that an applicant may request access via a private street "connected to an adjacent property that has direct access to a public street (i.e., "shared driveway"). The 20-foot Access Easement and Joint Maintenance Agreement (Instrument No. 2012-001415, Clackamas County Deed Records) between the Alfson property and Lots 22 and 23, read in connection with Teresa's Vineyard plat note 24, arguably does not permit use of such easement by a third Applicant lot/parcel. Accordingly, these two legal documents taken together arguably do not present direct access for all three resulting Applicant parcels to a public street.

The Planning Commission found the Applicant could not satisfactorily demonstrate that the three newly created parcels would have access to a public street from the existing easement. To resolve the conflict, the Planning Commission approved the Minor Partition and Class II Variance with Condition of Approval 2 requiring an access/utility easement and joint maintenance agreement that acknowledges the total number of lots using the private access and signed by all owners of land with access.

Council agrees with the Planning Commission that the two documents (Instrument No. 2012-001415, Clackamas County Deed Records and Teresa's Vineyard Plat Note 24) as currently presented do not provide satisfactory evidence of direct access to a public street for all three resulting legal parcels and therefore requires inclusion of a condition of approval to address the criterion. However, Council finds it necessary to amend the condition to allow alternate solutions to satisfactorily demonstrate access to the City, including through judicial order, by clarifying the easement language, or other legal means that the Applicant may consider. Therefore, Council amends Condition of Approval 2 as found in Section VI and concludes the standards of CDC 48.025(B)(3)(b) to be met upon satisfactory compliance with Condition of Approval 2.

VI. Conclusion

For the reasons contained herein, the City Council hereby denies the appeal with modifications to the Planning Commission Decision and approves the Application with the following conditions of approval.

1. **Site Plans.** With the exception of modifications required by these conditions, the final plat shall substantially conform to the Tentative Plan.
2. **Legal Access.** Prior to recordation of the plat with Clackamas County, the applicant shall provide the City with one or more recorded documents or court orders demonstrating that all three resulting legal parcels have (a) rights of access to a public right of way for ingress, egress, and utility purposes and (b) a joint agreement regarding maintenance of such access and utility location(s).
3. **Engineering Standards.** All public improvements and facilities associated with the approved site design, including but not limited to street improvements, driveway approaches, curb cuts, utilities, grading, onsite and offsite stormwater, street lighting, easements, easement locations, and connections for future extension of utilities are subject to conformance with the City Municipal Code and Community Development Code. The City may partner with the applicant to fund additional improvements as part of the project.
4. **Reciprocal Access and Utility Easement.** Prior to final plat approval, the applicant shall record and show on the face of the plat a 20-foot-wide reciprocal access and utility easement and mutual maintenance agreement on Proposed Parcel 2 for the benefit of proposed Parcels 1 and 3. The easement will create legal access for ingress/egress and utility placement. The easement recording number shall be provided on the face of the final plat.

VII. Order

The Council concludes that AP-24-02 is denied. The Council modifies the Planning Commission decision of MIP 24-02/VAR-24-05 with updated language for Condition of Approval 2, based on the entire Record, Findings of Fact, and Findings above.

MARY BAUMGARDNER, COUNCIL-PRESIDENT
WEST LINN CITY COUNCIL

DATE

This decision may be appealed to the Land Use Board of Appeals in accordance with the applicable rules and statutes.

Mailed this _____ day of May, 2025.

Therefore, this decision becomes effective at 5 p.m., May _____, 2025.