

Agenda Bill 2025-01-06-XX

Date Prepared: December 24, 2024

For Meeting Date: January 6, 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

To hold a public hearing and consider the appeal ([AP-24-02](#)) by Gary and Susie Alfson of the Planning Commission conditional approval ([MIP-24-02/VAR-24-05](#)) to allow 3-Parcel Minor Partition and a Class II Variance at 2830 Coeur D Alene Drive. The variance 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.

Question(s) for Council:

Should the Council approve the appeal AP-24-02 or deny the appeal and uphold the Planning Commission approval of MIP-24-02/VAR-24-05?

Public Hearing Required:

Yes

Background & Discussion:

The Applicant (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.

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.

Appeal Hearing Responsibility

The City Council is assigned the responsibility of hearing an appeal of a Planning Commission decision by CDC 99.060.C(3).

Appeal Applicable Criteria

The applicable criteria for this appeal are CDC Chapters 12, 48, 75, 85, 92, and 99.

Appeal Hearing Process

Appeal hearings in the City of West Linn are de novo, meaning new information can be submitted for consideration (CDC 99.280). An application for appeal also does not require the Appellant to identify the grounds for appeal or the applicable criteria that were misapplied. (CDC 99.250) These are the rules this appeal hearing must follow.

Budget Impact:

None

Sustainability Impact:

None

Council Goal/Priority:

Not related to a Council goal

Council Options:

1. Overturn the Planning Commission approval of MIP-24-02/VAR-24-05 by approving the appeal (AP-24-02).
2. Uphold the Planning Commission approval of MIP-24-02/VAR-24-05 by denying the appeal (AP-24-02).
3. Modify the Planning Commission approval of MIP-24-02/VAR-24-05 and deny the appeal (AP-24-02).

Recommendation:

City legal counsel recommends denial of the appeal (AP-24-02) based on the findings in the record for MIP-24-02/VAR-24-05 and modification of Condition #2 of the Planning Commission Final decision and Order to read as follows:

"2. 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)."

Potential Motion:

1. Move to tentatively deny the appeal AP-24-02 and **uphold** the Planning Commission approval of MIP-24-02/VAR-24-05 with the following modifications (**list modifications**), and direct staff to bring back findings for adoption.
2. Move to tentatively deny the appeal AP-24-02 and **uphold** the Planning Commission approval of MIP-24-02/VAR-24-05 and direct staff to bring back findings for adoption.
3. Move to make a tentative decision to approve the appeal AP-24-02, thereby **overturning** the Planning Commission approval of MIP-24-02/VAR-24-05 for the following reasons (**list reasons**), and direct staff to bring back findings for adoption.

Attachments:

1. AP-24-02 Staff Report to City Council
2. [Appellant application AP-24-02](#)
3. [MIP-24-02/VAR-24-05 Planning Commission Final Decision and Order](#)
4. [Planning Commission Meeting Notes for November 6, 2024, Public Hearing](#)
5. AP-24-02 City Council Hearing Affidavit and Notice Packet
6. [Staff Report to the Planning Commission for November 6, 2024 Public Hearing \(hyperlink only\)](#)
7. [MIP-24-02/VAR-24-05 Project Page \(hyperlink only\)](#)
8. [Planning Commission Hearing Video \(hyperlink only\)](#)

Attachment 1: AP-24-02 Staff Report to City Council



CITY OF
West Linn

**STAFF REPORT
FOR THE CITY COUNCIL**

FILE NUMBER: AP-24-02

HEARING DATE: January 6, 2025

REQUEST: Appeal of the Planning Commission’s approval with conditions of MIP-24-02/VAR-24-05 for approval of a 3-Parcel Minor Partition and a Class II Variance for five single-family homes to take access from a shared private driveway at 2830 Coeur D Alene Drive.

APPROVAL CRITERIA: Community Development Code (CDC) Chapters 12, 48, 75, 85, 92, and 99.

PREPARED BY: Aaron Gudelj, Associate Planner

Planning Manager _____

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GENERAL INFORMATION

**APPELLANT/
PROPERTY OWNER:**

Gary Alfson & Susie Alfson
2830 Coeur D Alene Drive
West Linn, OR 97068

APPEAL DEADLINE:

The appeal deadline was 5:00pm on December 5, 2024. The applicant filed a complete appeal application on December 5, 2024, thus meeting the deadline.

PUBLIC NOTICE:

Notice was mailed to property owners within 500 feet of the subject property and all neighborhood associations December 11, 2024. Notice was published in the West Linn Tidings on December 26, 2024. The property was posted with a notice sign on December 20, 2024. The notice and application were posted on the City's website December 11, 2024. Therefore, public notice requirements of CDC Chapter 99 have been met.

SITE LOCATION:

2830 Coeur D Alene Drive

TAX LOT ID:

21E35DA04400

SITE SIZE:

39,636 square feet

ZONING:

R-7, Single-Family Residential

**COMP PLAN
DESIGNATION:**

Low-Density Residential

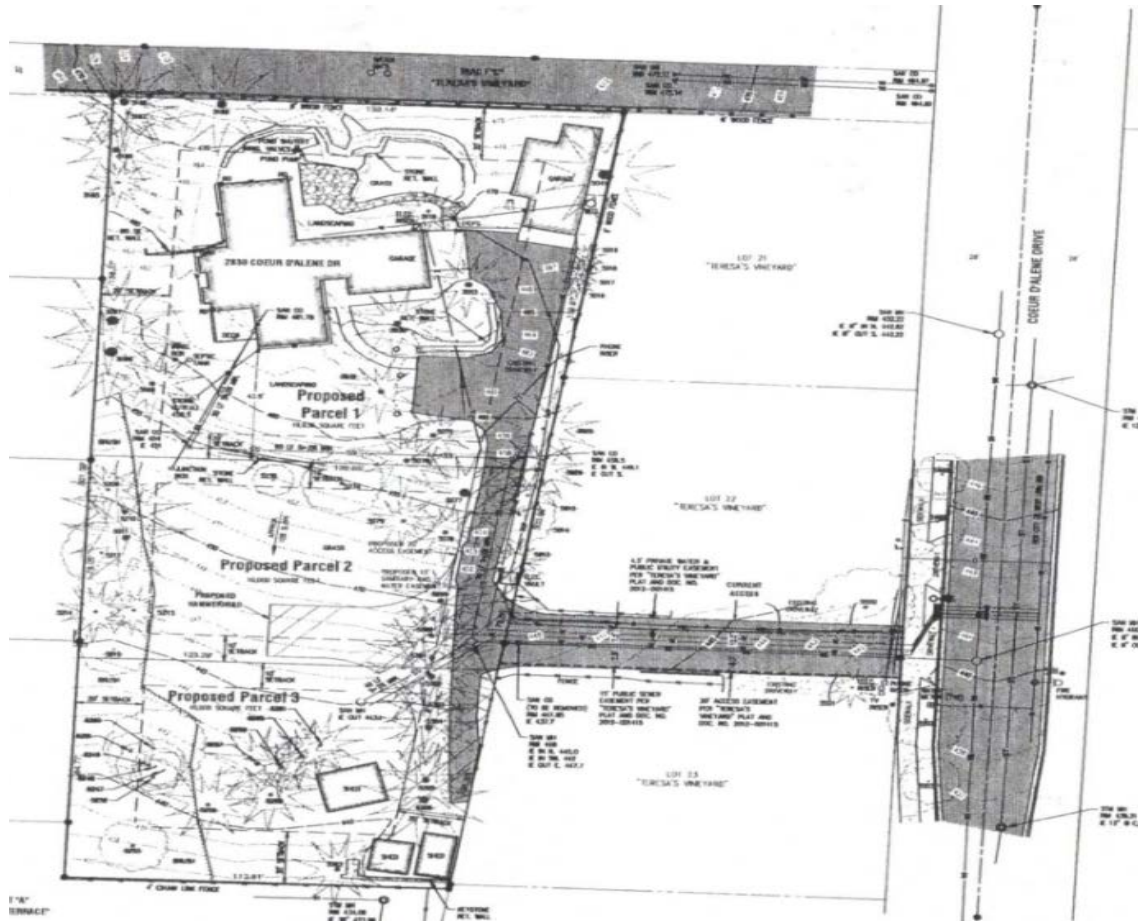
120-DAY PERIOD:

This application became complete on September 9, 2024. The applicant granted a 30-day extension on the 120-day period therefore, the 120-day maximum application-processing period ends on February 6, 2025.

BACKGROUND

Project Description

The applicant currently owns the subject property with an existing single-family home with detached garage on a 39,636 square foot lot at 2830 Coeur D Alene Drive. Existing access to the lot is provided via by a 20-foot-wide shared private driveway connecting to Coeur D Alene Drive via a shared access easement located on Lots 22 and 23 of the Teresa's Vineyard Tract, both developed with single-family homes.



The applicant proposes to divide the existing 39,636 sq. ft. lot into three parcels – Parcel 1 = 19,336 sq. ft., Parcel 2 = 10,000 sq. ft., Parcel 3 = 10,000 sq. ft. Access to the new parcels is proposed from the existing 20 ft. private access driveway currently shared with Lots 22 and 23 of Teresa's Vineyard. The proposed Minor Partition will increase the number of lots from one to three on the subject parcel and the applicant proposes to utilize the shared driveway - currently used for shared-access to the single-family homes at Lot 22 and 23 of Teresa's Vineyard Tract - as the access for the newly created lots thereby requesting 5 lots to use the private vehicle access.

Pursuant to West Linn Community Development Code Chapter (CDC) 48.030(D), "Access to five or more single-family homes shall be by a street built to City of West Linn Standards, consistent

with the TSP (Tables 26 through 30 and Exhibits 6 through 9) and the Public Works Design Standards. All streets shall be public. This full street provision may only be waived by variance.”; as such the applicant applied for a Class II Variance for an exemption to the public street standards of CDC 48.030(D) to allow the shared private driveway to be used as access for five single-family homes.

PUBLIC COMMENT

As of the publication date of this report, staff has received no public comment communications.

PROCEDURAL HISTORY

The applicant (Gary & Susie Alfson) applied for a Minor Partition and Class II Variance on August 1, 2024. The application was deemed incomplete on August 29, 2024 and the applicant re-submitted the requested materials on September 9, 2024, at which time the application was deemed complete. The application was heard and conditionally approved by the Planning Commission at its November 6, 2024 meeting.

The initial evidentiary hearing commenced with a staff report presented by Aaron Gudelj, Associate Planner, and with a recommendation of approval of the 3-parcel partition and Class II Variance subject to four conditions. Written and oral testimony was received by David Baker, Richard Faith & Cynthia Lacro, Rufus & Julia Timberlake, Carlos Ugalde-Meza, Amy Graham, & Tom Loun. Primary concerns raised during the testimony included:

- Traffic Safety and public street standards
- Sharing of access easement
- Plat notes
- Property views
- Property values
- Middle housing development on new lots.

After closing of the public hearing, the Planning Commission deliberated and discussed concerns regarding the plat notes, the existing septic system, easement requirements, potential access to the subject lot via the city-owned Tract C, historic development patterns and original property access, and homeowner association affiliation.

A motion was made by Commissioner Evans to approve MIP-24-01/VAR-24-05 as presented with the four conditions of approval. The motion was seconded by Chair Carr. The motion passed unanimously 5-0 (Carr, Evans, Jones, Metlen, Schulte-Hillen, and Walvatne).

The Planning Commission Conditional Approval of MIP-24-02/VAR-24-05 was appealed on December 5, 2024 by the applicant/appellant, pursuant to CDC 99.250. The appellant met the appeal application requirements by completing a form, providing the prerequisite fee, and referencing the findings and Conditions of approval of the Final Decision and Order. Since the appellant is both the applicant for MIP-24-02/VAR-24-05 and the owner of the subject site, the appellant has standing.

The grounds for the appeal address Condition #2 of the Planning Commission Final Decision and Order, the applicability of the existing private access and utility and joint maintenance agreement, and historical platting.

APPELLANT RESPONSE AND STAFF ANALYSIS

In this analysis, staff has provided the applicable provisions of the West Linn Community Development Code as identified in the Final Decision and Order for MIP-24-02/VAR-24-05. The analysis includes information gleaned from the appeal, and the record for MIP-24-02/VAR-24-05.

Appellant Issue: Condition #2 requires an executed shared access, utility and joint maintenance agreement to be signed by all owners of property using the private driveway prior to plat recordation with the Clackamas County.

The Final Decision and Order adopted the findings in the Staff Report for MIP-24-02/VAR-24-05. Finding #54 of the report read as follows:

85.070 ADMINISTRATION AND APPROVAL PROCESS

A. The application shall be filed by the record owner(s) of the property or by an authorized agent who has a letter of authorization from the property owners of record. The burden of proof will be upon the applicant to demonstrate the validity of the ownership, if challenged.

Staff Finding 54: The application for a Minor Partition and Class II Variance was filed by owner of 2830 Coeur D Alene Drive; absent the owners of Lot 22 and Lot 23 of Teresa's Vineyard Tract signatures. Staff has recommended a condition of approval requiring a revised shared access and utility easement and joint maintenance agreement between all five owners of land. As conditioned, the criteria are met.

In making a finding of noncompliance, the Planning Commission included a condition of approval in their Final Decision and Order that reads as follows:

2. Shared Access Agreement. Prior to recordation of the Plat with Clackamas County the applicant shall provide a signed access and utility easement and joint maintenance agreement between all owners of property using the private driveway as access. The access and utility easement and joint maintenance agreement shall have the signatures from all owners of land using the private access and shall acknowledge the total number of lots using the private access.

The appellant responds to this finding with the following response:

The current configuration is a result of development around the Alfson Property over the past 40 years. A topographic site map produced by Compass Land Surveyors is attached

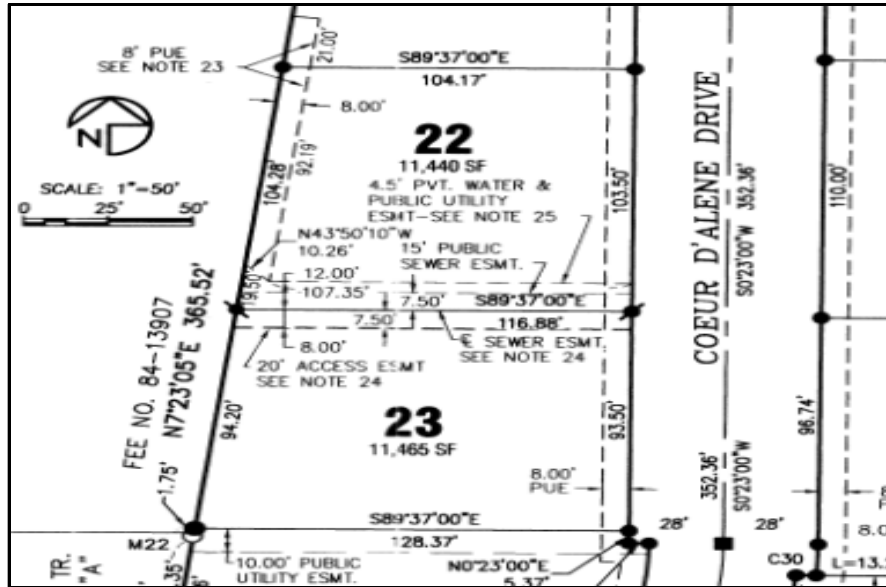
hereto as Exhibit B. If the Alfson Property is required to obtain signatures from Lot 22 and Lot 23, two lot would be required to access what is labeled as "tract C" on site map creation of this access would cause the Alfson's undue hardship, from demolition of the existing detached shop/garage, re-grading of the area, and impacts to adjacent properties and landscaping. It would also create safety concerns due to the limited site distance for neighborhood pedestrians and children playing in the street.

Despite the requirements of Condition #2, I believe an existing 2012 easement and maintenance agreement, development of staff recommendations, the Alfson letter dated September 5, 2024, final Planning Commission Conditions of approval, as well as the historical platting of the relevant properties, call for the waiving of this condition.

In 2012, the Alfsons and the then-owner of Lot 22 and Lot 23 executed an access and utility easement and joint maintenance agreement, recorded in the official records of Clackamas County as document no 2012-001415. This agreement granted the Alfson Property, Lot 22, and Lot 23 a non-exclusive, reciprocal easement over and under Lot 22 and Lot 23 to be used "for ingress, egress and private and public utility purposes..." This agreement is attached hereto as Exhibit C.

Section 4.4 of that agreement explicitly contemplates the future partition of the Alfson Property without any need for amending the agreement. Specifically, the agreement states: "For example, if the Alfson Property is subdivided into four (4) total lots, as is anticipated, then lot 22, Lot 23, and any of the four total lots created from the Alfson Property take access from the Access and Utility Easements shall be responsible for their proportionate share of the normal maintenance and repair costs for the Access and Utility Easements."

This agreement was recorded with the County and explicitly binds all future owners of Lot 22 and Lot 23. The access easement created under this agreement also appears on the plat recorded as document no. 2012-1405. I have inserted the relevant portion of the plat below:



Note #24 of the plat states:

“Lots 22 and 23 are subject to a 20-foot access easement and joint maintenance agreement per instrument no 2012-001415, Clackamas County deed records. The access easement will provide access for the adjoining parcel to the west described in fee no 84-13907, or a maximum of two lots if said adjoining parcel to the west is developed. Lots 22 and 23 are also subject to a 15-foot public sanitary sewer easement as shown hereon.”

As such, the current owners of Lot 22 and Lot 23 were on notice of the existing access easement when they purchased their respective parcels. Thus, I see no reason why these owners must consent to the use of an access easement that already binds these lots.

In light of the above analysis, please consider this a formal request for the planning commission to waive Condition #2 contained in the Commission’s final decision. If this request needs to come in the form of an appeal, I ask that you please notify me of such requirement as soon as possible, in light of the final decision’s effective date of 5 P.M. on December 4, 2024.

Please contact my office at your earliest convenience,

Sincerely, Kevin H. Harker (on behalf of Gary & Susie Alfson)

The City notes that Teresa’s Vineyard Tract Note(s) 9 & 24 discuss the subject lot (2830 Coeur D Alene Drive) and its potential division and access and read as follows:

9. Tract “C” will provide access to a maximum of two future lots in the adjoining parcel to the south described in Fee No. 84-13907.

24. Lots 22 and 23 are subject to a 20-foot access easement and joint maintenance agreement per instrument No. 2012-001415, Clackamas County Deed Records. The access easement will provide access for the adjoining parcel to the west described in Fee No. 84-13907, or a maximum of two lots if said adjoining parcel to the west is developed. Lots 22 and 23 are also subject to a 15-foot public sanitary sewer easement as shown hereon.

Upon review of the applicant's appeal request and review of the record, City legal counsel notes that the existing access easement and maintenance agreement, (1) provides an access and utility easement right and joint maintenance agreement to the benefit of the Alfson property, and (2) contemplates future division of the Alfson property and how maintenance costs would be apportioned in that context, but (3) the plat notes (9 & 24) further restrict access for future division of the Alfson property to a "maximum of two lots if said parcel...is developed." Ultimate interpretation and analysis of the access and utility easement and joint maintenance agreement would be a civil matter and not be within the purview of the City's review of the applicants/appellants Minor Partition and Class II Variance application. The City's legal guidance disagrees with the applicant's attorney's approach of declaring the condition to be met with the existing easement.

The City's legal guidance disagrees with the applicant's attorneys assessment of the Condition #2 being met by the existing agreement, however, amending of Condition #2 is recommended for more clear and objective language.

RECOMMENDATION

City legal guidance ultimately supports a recommendation to modify Planning Commission Final Decision and Order and amend Condition #2 to read as follows:

"2. 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)."

Should the Council decide to modify Condition #2, legal counsel recommends denial of application AP-24-02 and modify the Planning Commission Final Decision and Order, subject to the following conditions - including the amended Condition #2:

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

Attachment 2: Appellant Application AP-24-02

DEVELOPMENT REVIEW APPLICATION

For Office Use Only			
STAFF CONTACT	Aaron Gudelj	PROJECT NO(S)	AP-24-02
		PRE-APPLICATION NO.	
NON-REFUNDABLE FEE(S)	\$400	REFUNDABLE DEPOSIT(S)	TOTAL
		\$400	

Type of Review (Please check all that apply):

- | | | |
|---|---|--|
| <input type="checkbox"/> Annexation (ANX) | <input type="checkbox"/> Final Plat (FP) Related File# _____ | <input type="checkbox"/> Subdivision (SUB) |
| <input checked="" type="checkbox"/> Appeal (AP) | <input type="checkbox"/> Flood Management Area (FMA) | <input type="checkbox"/> Temporary Uses (MISC) |
| <input type="checkbox"/> CDC Amendment (CDC) | <input type="checkbox"/> Historic Review (HDR) | <input type="checkbox"/> Time Extension (EXT) |
| <input type="checkbox"/> Code Interpretation (MISC) | <input type="checkbox"/> Lot Line Adjustment (LLA) | <input type="checkbox"/> Right of Way Vacation (VAC) |
| <input type="checkbox"/> Conditional Use (CUP) | <input type="checkbox"/> Minor Partition (MIP) | <input type="checkbox"/> Variance (VAR) |
| <input type="checkbox"/> Design Review (DR) | <input type="checkbox"/> Modification of Approval (MOD) | <input type="checkbox"/> Water Resource Area Protection/Single Lot (WAP) |
| <input type="checkbox"/> Tree Easement Vacation (MISC) | <input type="checkbox"/> Non-Conforming Lots, Uses & Structures | <input type="checkbox"/> Water Resource Area Protection/Wetland (WAP) |
| <input type="checkbox"/> Expediated Land Division (ELD) | <input type="checkbox"/> Planned Unit Development (PUD) | <input type="checkbox"/> Willamette & Tualatin River Greenway (WRG) |
| <input type="checkbox"/> Extension of Approval (EXT) | <input type="checkbox"/> Street Vacation | <input type="checkbox"/> Zone Change (ZC) |

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

Site Location/Address: 2830 Coeur d'Alene Dr West Linn, OR 97068	Assessor's Map No.: 04400
	Tax Lot(s): 21E-35DA-4400
	Total Land Area: 39636

Brief Description of Proposal: *Appeal of Planning Commission Decision MIP 24-02/
VAR-24-05 - Satisfaction of Condition #2 - Remove requirement of
signatures of Lots 22 + 23 of Teresa's Vineyard subdivision.*

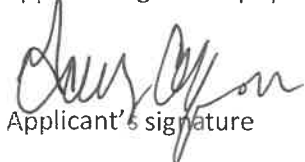
Applicant Name*: Gary + Susie Alfson	Phone: 503-656-3039
Address: 2830 Coeur d'Alene Dr.	Email: galfson2@comcast.net
City State Zip: West Linn, OR. 97068	suzalfson@aol.com

Owner Name (required): Gary + Susie Alfson	Phone: 503-656-3039
Address: 2830 Coeur d'Alene Dr.	Email: galfson2@comcast.net
City State Zip: West Linn, OR. 97068	suzalfson@aol.com

Consultant Name: Kevin V. Harker	Phone: 503-922-1939
Address: 915 NW 19th Ave., Ste H	Email: kevin@harkerlepore.com
City State Zip: Portland, OR 97209	

1. Application fees are non-refundable (excluding deposit). Applications with deposits will be billed monthly for time and materials above the initial deposit. ***The applicant is financially responsible for all permit costs.**
2. The owner/applicant or their representative should attend all public hearings related to the propose land use.
3. A decision may be reversed on appeal. The decision will become effective once the appeal period has expired.
4. Submit this form, application narrative, and all supporting documents as a single PDF through the
Submit a Land Use Application web page: <https://westlinnoregon.gov/planning/submit-land-use-application>

The undersigned property owner authorizes the application and grants city staff the **right of entry** onto the property to review the application. Applications with deposits will be billed monthly for time and materials incurred above the initial deposit. The applicant agrees to pay additional billable charges.


Applicant's signature

1/15/24
Date

Owner's signature (required)

Date



HARKER | LEPORE

Attorneys at Law

December 4, 2024

West Linn City Council
22500 Salamo Road
West Linn, OR 97068

RE: Appeal of Planning Commission Decision MIP 24-02/
VAR-24-05 - Satisfaction of Condition #2

Dear Council Members:

I represent Susie and Gary Alfson, owners of the property commonly known as 2830 Coeur D'Alene Dr., West Linn, OR 97068 ("Alfson Property"). I am writing to appeal the above referenced planning commission decision dated November 20, 2024. The decision is attached hereto as Exhibit A.

The commission's final decision approved a 3-parcel minor partition of the Alfson Property and a Class II Variance to allow access from a shared driveway to five total lots: three lots from the Alfson Property and two neighboring lots, 2934 ("Lot 22") and 2826 ("Lot 23").

In Section IV of the decision, the commission identified several conditions of approval. Condition #2 requires the Alfsons to provide an access and utility easement and joint maintenance agreement, signed by all owners of land using the private access. The owners of Lot 22 and Lot 23 have communicated to the Alfsons that they will not consent to any such agreement.

The current configuration is a result of development around the Alfson Property over the past 40 years. A topographic site map produced by

Kevin V. Harker, Partner
kevin@harkerlepore.com
503-922-1939

Portland Office:
915 NW 19th Ave., Ste H
Portland, OR 97209

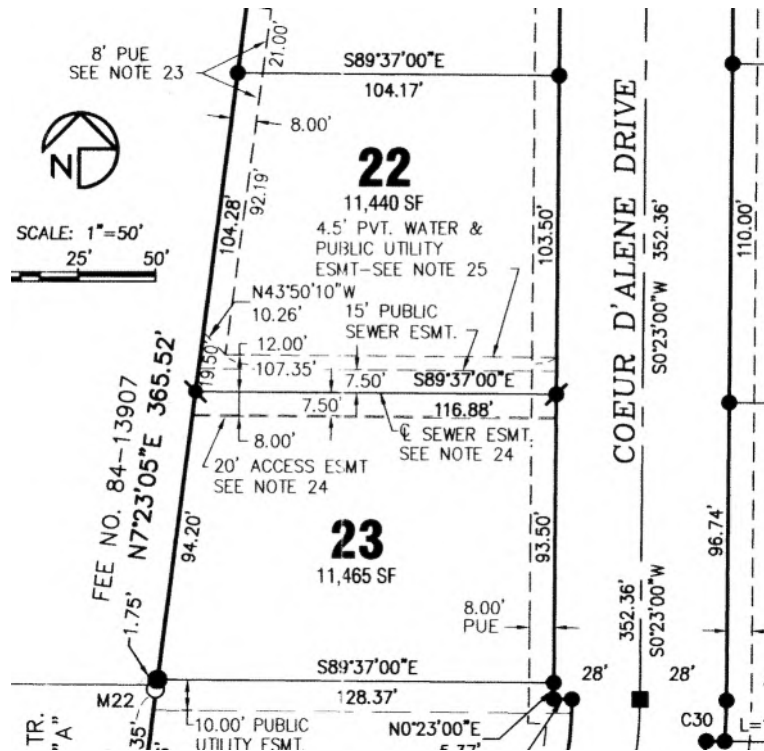
Compass Land Surveyors is attached hereto as Exhibit B. If the Alfson Property is required to obtain signatures from Lot 22 and Lot 23, and those lots refuse to cooperate, additional access would be required to reach what is labeled as Tract "C" on the site map. Creation of this access would cause the Alfsons undue hardship, from demolition of the existing detached shop/garage, re-grading of the area, and impacts to adjacent properties and landscaping. It would also create safety concerns due to the limited site distance for neighborhood pedestrians and children playing in the street.

Despite the requirements of Condition #2, I believe an existing 2012 easement and maintenance agreement, development of staff recommendations, the Alfson letter dated September 5, 2024, final Planning Commission conditions of approval, as well as the historical platting of the relevant properties, call for this Condition to be considered already satisfied.

In 2012, the Alfsons and the then-owner of Lot 22 and Lot 23 executed an access and utility easement and joint maintenance agreement, recorded in the official records of Clackamas County as document no. 2012-001415. This agreement granted the Alfson Property, Lot 22, and Lot 23 a non-exclusive, reciprocal easement over and under Lot 22 and Lot 23 to be used "for ingress, egress and private and public utility purposes . . ." This agreement is attached hereto as Exhibit C.

Section 4.4 of that agreement explicitly contemplates the future partition of the Alfson Property without any need for amending the agreement. Specifically, the agreement states: "For example, if the Alfson Property is subdivided into four (4) total lots, as is anticipated, then Lot 22, Lot 23, and any of the four lots created from the Alfson Property that take access from the Access and Utility Easements shall be responsible for their proportionate share of the normal maintenance and repair costs for the Access and Utility Easements."

This agreement was recorded with the County and explicitly binds all future owners of Lot 22 and Lot 23. The access easement created under this agreement also appears on the plat recorded as document no. 2012-1405. I have inserted the relevant portion of the plat below:



Note #24 of the plat states:

Lots 22 and 23 are subject to a 20-foot access easement and joint maintenance agreement per instrument no. 2012-001415, Clackamas County deed records. The access easement will provide access for the adjoining parcel to the west described in fee no. 84-13907, or a maximum of two lots if said adjoining parcel to the West is developed. Lots 22 and 23 are also subject to a 15-foot public sanitary sewer easement as shown hereon.

As such, the current owners of Lot 22 and Lot 23 were on notice of the existing access easement when they purchased their respective parcels. Thus, I see no reason why these owners must consent to the use of an access easement that already binds these lots.

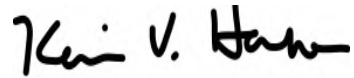
In light of the above analysis, this appeal formally requests that the City Council deem Condition #2 to be already satisfied. Please contact my office with any questions.

STATEMENT OF STANDING:

Pursuant to West Linn Community Development Code 99.140(B), Gary and Susie Alfson have standing to appeal the above referenced planning

commission decision, as they have appeared orally before the Commission and provided their name and address.

Sincerely,

A handwritten signature in black ink that reads "Kevin V. Harker". The signature is written in a cursive, slightly slanted style.

Kevin V. Harker

EXHIBIT A

WEST LINN PLANNING COMMISSION NOTICE OF FINAL DECISION AND ORDER MIP-24-02 & VAR-24-05

IN THE MATTER OF A 3-PARCEL MINOR PARTITION AT 2830 COEUR D ALENE DRIVE AND A CLASS II VARIANCE PROPOSAL FOR ALLOWING MORE THAN FOUR LOTS TO BE SERVED FROM A PRIVATE DRIVEWAY.

Planning Commission Decision: The Planning Commission has **approved** the above referenced land use application, based on the Findings and Conclusions and Conditions of Approval, stated in the staff report, except as modified herein.

Materials: The applicant submittal and Staff Report, is available at

- <https://westlinnoregon.gov/planning/2830-coeur-d-alene-drive-minor-partition-and-class-2-variance>

I. Overview

At its meeting on November 6, 2024, the West Linn Planning Commission (“Commission”) held the initial evidentiary public hearing to consider the request by Gary Alfson & Susie Alfson, applicant, to approve a 3-Parcel Minor Partition at 2830 Coeur D Alene Drive and a Class II Variance to allow access from a shared driveway to more than four lots (five total lots) at 2934, 2826, 2830, Coeur D Alene Drive and the two additional lots created by the Minor Partition. 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 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 and the recommended

conditions of approval. The motion was seconded by Chair Carr. The motion passed unanimously, 6-0 (Jones, Metien, Walvatne, Evans, Schulte-Hillen, Carr).

II. The Record

The record was finalized at the November 6, 2024 public hearing.

Findings of Fact

- 1) The Overview set forth above is true and correct.
- 2) The applicant is Gary Alfson and Susie Alfson.
- 3) The Commission finds that it has received all information necessary to make a decision based on the Staff Report and attached findings; public comment; and the evidence in the whole record.

III. Findings

The Commission makes this decision based on the findings described in the Staff Report and in addition to or as modified below, the submitted written comments, and evidence in the whole record. The Commission concludes that the record satisfies the Applicant's burden to prove compliance with all applicable criteria including the following:

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.

IV. Conditions of Approval

The Planning Commission Approves MIP 24-02/VAR-24-05 subject to the identified 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.

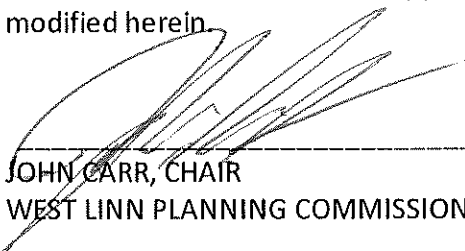
2. Shared Access Agreement. Prior to recordation of the Plat with Clackamas County the applicant shall provide a signed access and utility easement and joint maintenance agreement between all owners of property using the private driveway as access. The access and utility easement and joint maintenance agreement shall have signatures from all owners of land using the private access and shall acknowledge the total number of lots using the private access.

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.

V. Order

The Commission concludes that MIP 24-02/VAR-24-05 is approved based on the Findings and Conclusions and Conditions of Approval, stated in the staff report, except as added to or modified herein.



JOHN CARR, CHAIR
WEST LINN PLANNING COMMISSION

11/20/24

DATE

APPEAL

This decision may be appealed to the City Council pursuant to the provisions of Chapter 99 of the Community Development Code and any other applicable rules and statutes. This decision will become effective 14 days from the date of mailing of this final decision as identified below. A person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830. The decision will not become final until the period for filing a local appeal has expired.

More information about filing an appeal can be found at:

- <https://westlinnoregon.gov/planning/appeals>

Mailed this 21 day of November, 2024.

Therefore, this decision becomes effective at 5 p.m., December 4, 2024.

Contact: If you have any questions about this project, please contact Aaron Gudelj, Associate Planner, at agudelj@westlinnoregon.gov or (503) 742-6057.

EXHIBIT B



TREE LIST

3025	22"	PINE	-49'-6L
3026	18"	PINE	-45'-6L
3030	26"	CEDAR	-45'-6L
3032	10"	CEDAR	-42'-6L
3053	22"	CEDAR	13' DL
3067	42"	CONIFER	21' DL
3068	40"	CONIFER	21' DL
5013	5 1/2"	FR CEDAR	-45'-6L
5014	11"	HAWTHORN	-44'-6L
5015	10 1/2"	FR	-42'-6L
5016	7"	CEDAR	5' DL
5017	6"	CEDAR	6' DL
5018	6"	CEDAR	4' DL
5019	6"	CEDAR	6' DL
5041	40"	CONIFER	22' DL
5075	19"	FR	12' DL
5076	21"	FR	15' DL
5077	37"	CONIFER	18' DL
5078	16"	FR	12' DL
5079	14"	FR	10' DL
5118	12"	CEDAR	10' DL
5165	13"	FR	10' DL
5166	16 1/2"	CONIFER	17' DL
5167	12"	CONIFER	15' DL
5168	31"	CONIFER	20' DL
5169	30"	CONIFER	21' DL
5199	20"	CEDAR	15' DL
5209	10"	FR	12' DL
5210	16"	FR	20' DL
5211	22"	FR	20' DL
5212	10'	DECID.	12' DL
5213	12'	FR	10' DL
5214	11'	DECID.	12' DL
5215	6'	DECID.	-40'-6L
5234	14'	DECID.	6' DL
5235	5'	DECID.	6' DL
5247	8"	HAWTHORN	-45'-6L
5248	8"	HAWTHORN	-45'-6L
5249	10"	HAWTHORN	-45'-6L
5250	8 1/2"	HAWTHORN	-45'-6L
5251	10"	HAWTHORN	-45'-6L
5252	10"	HAWTHORN	-45'-6L
5255	12'	DECID.	-40'-6L
5256	14'	FR	-45'-6L
5257	16'	FR	-45'-6L
5258	14'	FR	-45'-6L
5259	14"	FR	-45'-6L
5260	14"	FR	-45'-6L
5261	14"	FR	-45'-6L
5262	16"	CONIFER	14' DL
5269	20"	CEDAR	-45'-6L
5300	22"	FR	-45'-6L
5301	16"	CEDAR	-45'-6L
5302	22"	CEDAR	-45'-6L
5303	10 1/2"	FR	-45'-6L
5304	24"	CEDAR	-45'-6L
5305	17 1/2"	CEDAR	-45'-6L
5306	30"	CEDAR	-45'-6L
5498	6"	DAK	8' DL
5499	6"	DAK	8' DL
5500	11"	MAPLE	15' DL
5501	8"	CEDAR	8' DL
5502	6"	DAK	12' DL
5503	6"	DAK	9' DL

VICINITY MAP

LEGEND

- CURB
- EDGE OF PAVEMENT
- GAS
- EXISTING SANITARY SEWER
- PROPOSED SANITARY SEWER
- STORM SEWER
- UNDERGROUND COMMUNICATIONS
- UNDERGROUND POWER
- UNDERGROUND TV
- EXISTING WATER
- PROPOSED WATER
- DRP LINE RADIUS

NOTES

- UTILITY INFORMATION SHOWN ON THIS MAP IS BASED UPON OBSERVED FEATURES AS WELL AS TIE MARKS PROVIDED BY UTILITY LOCATORS AS A RESULT OF OUR REQUESTS FOR MARKINGS TO THE DUNE. NO WARRANTIES ARE MADE REGARDING THE ACCURACY OR COMPLETENESS OF THE UTILITY INFORMATION SHOWN. ADDITIONAL UTILITIES MAY EXIST. INTERESTED PARTIES ARE HEREBY ADVISED THAT UTILITY LOCATIONS SHOULD BE VERIFIED PRIOR TO DESIGN OR CONSTRUCTION OF ANY CRITICAL ITEMS.
- VERTICAL DATUM: VERTICAL DATUM: NAD 83 UNLINOING GPS POSITIONING TIED TO THE ORGN WITH REAL TIME CORRECTORS REFERENCED TO DATUM NAD 83 (2011) EPOCH 2010.00.
- HORIZONTAL DATUM: OREGON STATE PLANE COORDINATE REFERENCE SYSTEM OF 1983, NORTH ZONE BASED UPON GPS OBSERVATIONS TIED TO THE OREGON REAL TIME GNSS NETWORK (ORGN) NAD 83 (2011) EPOCH 2010.00.
- CONTOUR INTERVAL IS ONE-FOOT.
- PUBLIC UTILITIES NOTIFIED BY OREGON UTILITY NOTIFICATION CENTER TICKET NUMBERS 24125006 AND 24125630:
CITY OF WEST LINN 503-803-1106
COMCAST 800-776-9140
NW NATURAL 503-220-2415
PORTLAND GENERAL ELECTRIC 503-255-4634
CENTURYLINK 800-776-9140
- TOPOGRAPHIC FEATURES SHOWN ON THIS MAP WERE LOCATED USING STANDARD PRECISION TOPOGRAPHIC MAPPING PROCEDURES. THIRD PARTY USERS OF DATA FROM THIS MAP PROVIDED VIA AUTOCAD DRAWING FILES OR DATA EXCHANGE FILES SHOULD NOT RELY ON ANY AUTOCAD GENERATED INFORMATION WHICH IS BEYOND THE LIMITS OF PRECISION OF THIS MAP. THIRD PARTIES USING DATA FROM THIS MAP IN AN AUTOCAD FORMAT SHOULD VERIFY ANY ELEMENTS REGARDING PRECISE LOCATIONS PRIOR TO COMMENCEMENT OF ANY CRITICAL DESIGN OR CONSTRUCTION. CONTACT COMPASS LAND SURVEYORS FOR FURTHER INFORMATION. FURTHERMORE, COMPASS LAND SURVEYORS WILL NOT BE RESPONSIBLE NOR HELD LIABLE FOR ANY DESIGN OR CONSTRUCTION RELATED PROBLEMS THAT ARISE OUT OF THIRD PARTY USAGE OF THIS MAP (IN AUTOCAD OR OTHER FORMAT) FOR ANY PURPOSE OTHER THAN SPECIFICALLY STATED HEREIN. THIS STATEMENT IS AN OFFICIAL PART OF THIS MAP.

TOPOGRAPHIC SITE MAP

DATE	NO.	REVISION

DRAWN	MUM	CHECK	JCM
SCALE	1" = 20'	DATE	05/20/2024
PLAN	8784 Existing Cond.dwg		

COMPASS Land Surveyors
4107 SE International Way, Suite 705
Milwaukie, Oregon 97222 503-653-9093

GARY ALFSON
2830 COEUR D'ALENE DRIVE
WEST LINN, OREGON 97068

FOR A PROPOSED PARTITION PLAT
TAX LOT 1400, IN THE NE 1/4 SE 1/4 SECTION 35, T.2S., R.1E., W.M.
CITY OF WEST LINN, CLACKAMAS COUNTY, OREGON

1/17
m

Grantor/ Grantee:
TV 29, LLC
5285 Meadows Road, Suite 171
Lake Oswego, OR 97035

Gary A. Alfson and Carolyn Sue Alfson *Grantee*
3401 S. Haskins Lane
West Linn, OR 97068

Clackamas County Official Records 2012-001415
Sherry Hall, County Clerk



\$82.00

01550058201200014150070070

01/12/2012 03:26:35 PM

AFTER RECORDING RETURN TO:

Charles Harrell
Buckley Law P.C.
Three Centerpointe Drive, Suite 250
Lake Oswego, OR 97035

D-E Cnt=2 Stn=11 TINAJAR
\$35.00 \$5.00 \$16.00 \$16.00 \$10.00

**ACCESS AND UTILITY EASEMENT
AND JOINT MAINTENANCE AGREEMENT**

This ACCESS AND UTILITY EASEMENT AND JOINT MAINTENANCE AGREEMENT (this "AGREEMENT") is made this 12 day of December 2011, by and among TV 29, LLC, an Oregon limited liability company, ("TV 29") and Gary A. Alfson and Carolyn Sue Alfson, Husband and Wife ("Alfson").

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RECITALS

A. WHEREAS, TV 29 owns certain real property located in the County of Clackamas, State of Oregon and more particularly described as Lot 22, TERESA'S VINEYARD, in the City of West Linn, County of Clackamas, State of Oregon ("Lot 22").

B. WHEREAS, TV 29 owns certain real property located in the County of Clackamas, State of Oregon and more particularly described as Lot 23, TERESA'S VINEYARD, in the City of West Linn, County of Clackamas, State of Oregon ("Lot 23").

C. WHEREAS, Alfson owns certain real property located at 3401 S. Haskins Lane, West Linn, in the County of Clackamas, State of Oregon and more particularly and legally described as follows:

Beginning at a point 401.30 feet East of the Northwest corner of Tract No. 16, BLAND ACRES, according to the map and pat thereof on file in the office of the County Clerk for Clackamas County, State of Oregon, on the North boundary thereof; thence South 0°23' West 302.76 feet to a point; thence South 89°37' East 122.80 feet; thence North 7°23'15" East 305.05 feet to a point on the North line of said Tract 16, BLAND ACRES; thence West 150 feet along said line to the place of beginning, as identified in Fee No. 84-13907 / tax lot number 21E35A-02600 (the "Alfson Property").

D. WHEREAS, TV 29 and Alfson have determined that there is, or will be, a need for non-exclusive and reciprocal easements on Lot 22 and Lot 23, for ingress, egress and placement of private and public utilities for the benefit of each of Lot 22, Lot 23 and the Alfson Property.

E. WHEREAS, TV 29 and Alfson desires to create the non-exclusive and reciprocal easements described herein for the purpose of ingress, egress and placement of private and public utilities over and under Lot 22 and Lot 23 for the benefit of each of Lot 22, Lot 23 and the Alfson Property.

ACCESS AND UTILITY EASEMENT

NOW, THEREFORE, in consideration of the covenants contained herein and the consideration described herein, the parties agree as follows:

1. **INCORPORATION OF RECITALS.** The Recitals set forth above are true and accurate and are incorporated herein as though set forth in full.

2. **GRANT OF EASEMENT.** TV 29 hereby creates and grants to the present and future owners of Lot 22, Lot 23 and the Alfson Property a non-exclusive, reciprocal easement over and under Lot 22 and Lot 23 to be used for ingress, egress and private and public utility purposes as more specifically described on the Plat of Teresa's Vineyard recorded in Book 142, Page 021, as Document No. 2012- and by this reference incorporated herein (the "ACCESS AND UTILITY EASEMENTS"). 001405

3. **USE OF EASEMENT.** TV 29 grants the ACCESS AND UTILITY EASEMENTS for use by the present and future owners of Lot 22, Lot 23 and the Alfson Property and any future development thereof for the non-exclusive purpose of normal residential vehicular ingress and egress to and from Lot 22, Lot 23 and the Alfson Property and for the placement of private and public utilities, including, but not limited to, water, sewer, electricity, gas, cable television, internet access and telephone service for the benefit of Lot 22, Lot 23 and/or the Alfson Property.

4. **MAINTENANCE.** The costs of any and all normal maintenance and repair of the ACCESS AND UTILITY EASEMENTS shall be apportioned among the affected owner(s) of Lot 22, Lot 23 and the Alfson Property on the following basis and criteria regardless of frontage, location, or improvements:

4.1 A one-thirds share (1/3 share) of the normal maintenance and repairs costs for the ACCESS AND UTILITY EASEMENTS shall be apportioned to the owner(s) of Lot 22;

4.2 A one-thirds share (1/3 share) of the normal maintenance and repair costs for the ACCESS AND UTILITY EASEMENTS shall be apportioned to the owner(s) of Lot 23; and

4.3 A one-thirds share (1/3 share) of the normal maintenance and repair costs for the ACCESS AND UTILITY EASEMENTS shall be apportioned to the owner(s) of the Alfson Property.

4.4 In the event that the Alfson Property is partitioned or subdivided, the maintenance costs

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for the ACCESS AND UTILITY EASEMENTS shall be apportioned equally between all lots or parcels benefitted and/or burdened by the ACCESS AND UTILITY EASEMENTS. For example, if the Alfson Property is subdivided into four (4) total lots, as is anticipated, then Lot 22, Lot 23 and any of the four lots created from the Alfson Property that take access from the ACCESS AND UTILITY EASEMENTS shall be responsible for their proportionate share of the normal maintenance and repair costs for the ACCESS AND UTILITY EASEMENTS.

5. CONSIDERATION. The true and actual consideration for this grant of ACCESS AND UTILITY EASEMENTS is no money, but consists of other valuable consideration. As this AGREEMENT does not convey or contract to convey fee title, compliance with ORS 93.030 is not required.

6. INDEMNITY OF OWNER OF LOT 22. The owners of Lot 23 and the Alfson Property hereby agree to indemnify, and save the owner of Lot 22 and hold the owner of Lot 22 harmless from and against any and all claims of third persons for damages suffered, and any other loss, cost, or other expense incurred by the owner of Lot 22, or any claim, demand or action asserted against the owner of Lot 22, arising out of the use of the ACCESS AND UTILITY EASEMENTS, this AGREEMENT and/or the owners of Lot 23's and the Alfson Property's exercise of the rights granted herein.

7. INDEMNITY OF OWNER OF LOT 23. The owners of Lot 22 and the Alfson Property hereby agree to indemnify, and save the owner of Lot 23 and hold the owner of Lot 23 harmless from and against any and all claims of third persons for damages suffered, and any other loss, cost, or other expense incurred by the owner of Lot 23, or any claim, demand or action asserted against the owner of Lot 23, arising out of the use of the ACCESS AND UTILITY EASEMENTS, this AGREEMENT and/or the owner of Lot 22's and the Alfson Property's exercise of the rights granted herein.

8. INDEMNITY OF OWNER OF THE ALFSON PROPERTY. The owners of Lot 22 and Lot 23 hereby agree to indemnify, and save the owner of the Alfson Property and hold the owner of the Alfson Property harmless from and against any and all claims of third persons for damages suffered, and any other loss, cost, or other expense incurred by the owner of the Alfson Property, or any claim, demand or action asserted against the owner of the Alfson Property, arising out of the use of the ACCESS AND UTILITY EASEMENTS, this AGREEMENT and/or the owner of Lot 22's and Lot 23's exercise of the rights granted herein.

9. EXCEPTIONS OF RECORD. The ACCESS AND UTILITY EASEMENTS are granted subject to all prior easements or encumbrances of record.

10. TERMS AND CONDITIONS.

10.1 General. The owners of each of Lot 22, Lot 23 and the Alfson Property, their heirs, successors and assigns, shall exercise their rights under this AGREEMENT with regard to the ACCESS AND UTILITY EASEMENTS in a manner that: (i) minimizes, to the extent reasonably practicable, any material interference with the use and occupancy of each lot by each respective lot owner; and (ii) is in compliance with all applicable federal, state and local laws rules and regulations. Neither the Teresa's Vineyard Homeowners Association, lot owner nor any other

permitted user of the EASEMENT shall park any vehicle or otherwise place an obstruction on or in the EASEMENT area except as necessary in connection with such user's maintenance and repair obligations as agent hereunder.

10.2 Access. The owners of Lot 22 and Lot 23 shall provide reasonable access to the portion of the ACCESS AND UTILITY EASEMENT located on such owner's lot to the owners of the other affected lots, for purposes granted herein and for the maintenance and repair of said ACCESS AND UTILITY EASEMENTS as needed.

10.3 Maintenance. The owners of Lot 22, Lot 23 and the Alfson Property shall have the obligation to maintain the ACCESS AND UTILITY EASEMENTS in good condition and repair in compliance with ORS 105.170 through 105.185, except as otherwise provided in this agreement.

10.4 Costs. The cost of any installation, removal or replacement of any improvements on an individual lot necessary for access to and use of the ACCESS AND UTILITY EASEMENTS, including, but not limited to, the installation of private or public utilities, will be borne by the owner of the affected lot.

10.5 No encroachment. No party may install landscaping or improvements that will impair the use of the ACCESS AND UTILITY EASEMENTS for the other lot owners.

10.6 Emergency Action. The owners of Lot 22, Lot 23 and the Alfson Property shall have the right to act to correct an emergency situation and shall have access to the ACCESS AND UTILITY EASEMENT in the absence of the consent of the other lot owners in such emergency situation.

10.7 Perpetual Term. The term of this AGREEMENT shall be perpetual, except as otherwise herein limited.

10.8 Binding Effect. The benefits and burdens of this AGREEMENT shall constitute a covenant running with Lot 22, Lot 23 and the Alfson Property herein described and shall be binding upon the heirs, successors in title and assigns of the parties hereto.

10.9 Injunctive Relief Available Except as otherwise provided herein, in the event that any owner herein bound shall fail to perform its obligations under this AGREEMENT, the other owner(s) shall be entitled to require such performance or, where appropriate, through injunctive relief. Such remedies shall be in addition to any other remedies afforded under Oregon law. The prevailing party in any litigation under this AGREEMENT shall be entitled to recover attorney fees and all costs and expenses associated therewith.

10.10 No Merger. If any one or more of the lot(s) benefited by the EASEMENT granted herein is at anytime owned by the same person or entity then owning another lot burdened by the EASEMENT, the EASEMENT granted herein shall not be deemed to terminate by merger of the dominant and servient estates.

10.11 Modification and Termination. This AGREEMENT may only be amended, modified or terminated only by unanimous consent of the current owners of Lot 22, Lot 23 and

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the Alfson Property and any future development thereof in writing, or by an Order of a court of competent jurisdiction. If any provision herein shall be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions shall not be affected.

10.12 Governing Law. This AGREEMENT and the terms of the ACCESS AND UTILITY EASEMENTS shall be construed in accordance with the laws of the State of Oregon.

10.13 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received five (5) days after deposit in the United States mail.

If to TV 29: TV 29, LLC
5285 Meadows Road, Suite 171
Lake Oswego, OR 97035
Attn: Jeff Smith

with a copy to: Charles E. Harrell
BUCKLEY LAW P.C.
Three Centerpointe Drive, Suite 250
Lake Oswego, OR 97035

If to Alfson: Gary A. and Carolyn Sue Alfson
3401 Haskins Lane
West Linn, OR 97068

10.14 Further Assurances. The parties each agree, at the request of the other party, at any time and from time to time after the date hereof, to execute and deliver all such further documents as may be reasonably necessary or appropriate in order to confirm, record or carry out the provisions of this AGREEMENT.

10.15 Resolution by Arbitration. Any disagreements associated with this said AGREEMENT or the ACCESS AND UTILITY EASEMENTS are to be resolved via binding arbitration pursuant to the Clackamas County Circuit Court arbitration rules, with the presiding judge of the Clackamas County Circuit Court appointing one arbitrator whose decision will be binding and final. The non-prevailing party is to pay the cost of the arbitration.

10.16 Other Remedies Available. The owners of Lot 22, Lot 23 and the Alfson Property are also entitled to all remedies at law and equity associated with any breach of any term or condition of this AGREEMENT or the ACCESS AND UTILITY EASEMENTS by any other property owner or person.

10.17 Attorney's Fees. If any suit or action arising out of or related to this AGREEMENT or the ACCESS AND UTILITY EASEMENTS is brought by any party, the prevailing

party or parties shall be entitled to recover the costs and fees (including reasonable attorneys' fees, the fees and costs of experts and consultants, copying, courier and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such party or parties in such suit or action, including any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action.

IN WITNESS WHEREOF, TV 29, LLC and Alfson have caused this instrument to be executed the day and year first written above.

TV-29, LLC

By:  Oakridge Estates Development Corporation

Its: Member

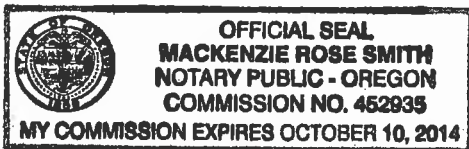
By: Jeffrey Smith

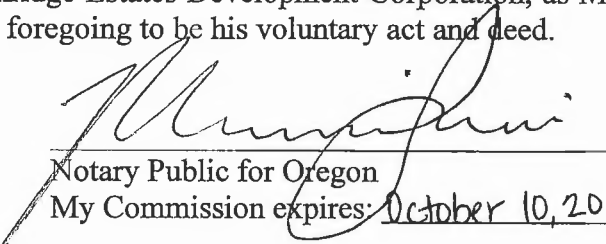
Its: President

State of Oregon)

County of Clackamas)

The foregoing instrument was acknowledged before me on this 12th day of December, 2011, by Jeffrey Smith, President of Oakridge Estates Development Corporation, as Member of TV 29, LLC, and who acknowledged the foregoing to be his voluntary act and deed.




Notary Public for Oregon
My Commission expires: October 10, 2014

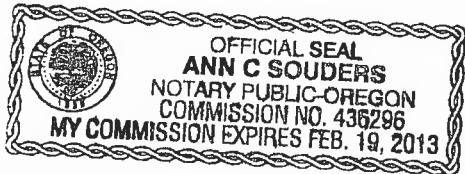
6

Gary A. Alfson
Gary A. Alfson

Carolyn Sue Alfson
Carolyn Sue Alfson

State of Oregon)
)
County of Multnomah)

The foregoing instrument was acknowledged before me on this ___ day of December, 2011, by Gary A. Alfson and Carolyn Sue Alfson, and who acknowledged the foregoing to be their voluntary act and deed.



Ann C. Souders
Notary Public for Oregon
My Commission expires: February 19, 2013

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Attachment 3: MIP-24-02/VAR-24-05 PC Final Decision and Order

**WEST LINN PLANNING COMMISSION
NOTICE OF FINAL DECISION AND ORDER
MIP-24-02 & VAR-24-05**

**IN THE MATTER OF A 3-PARCEL MINOR PARTITION AT 2830 COEUR D ALENE
DRIVE AND A CLASS II VARIANCE PROPOSAL FOR ALLOWING MORE THAN FOUR
LOTS TO BE SERVED FROM A PRIVATE DRIVEWAY.**

Planning Commission Decision: The Planning Commission has **approved** the above referenced land use application, based on the Findings and Conclusions and Conditions of Approval, stated in the staff report, except as modified herein.

Materials: The applicant submittal and Staff Report, is available at

- <https://westlinnoregon.gov/planning/2830-coeur-d-alene-drive-minor-partition-and-class-2-variance>

I. Overview

At its meeting on November 6, 2024, the West Linn Planning Commission (“Commission”) held the initial evidentiary public hearing to consider the request by Gary Alfson & Susie Alfson, applicant, to approve a 3-Parcel Minor Partition at 2830 Coeur D Alene Drive and a Class II Variance to allow access from a shared driveway to more than four lots (five total lots) at 2934, 2826, 2830, Coeur D Alene Drive and the two additional lots created by the Minor Partition. 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 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 and the recommended

conditions of approval. The motion was seconded by Chair Carr. The motion passed unanimously, 6-0 (Jones, Metien, Walvatne, Evans, Schulte-Hillen, Carr).

II. The Record

The record was finalized at the November 6, 2024 public hearing.

Findings of Fact

- 1) The Overview set forth above is true and correct.
- 2) The applicant is Gary Alfson and Susie Alfson.
- 3) The Commission finds that it has received all information necessary to make a decision based on the Staff Report and attached findings; public comment; and the evidence in the whole record.

III. Findings

The Commission makes this decision based on the findings described in the Staff Report and in addition to or as modified below, the submitted written comments, and evidence in the whole record. The Commission concludes that the record satisfies the Applicant's burden to prove compliance with all applicable criteria including the following:

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.

IV. Conditions of Approval

The Planning Commission Approves MIP 24-02/VAR-24-05 subject to the identified 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. Shared Access Agreement. Prior to recordation of the Plat with Clackamas County the applicant shall provide a signed access and utility easement and joint maintenance agreement between all owners of property using the private driveway as access. The access and utility easement and joint maintenance agreement shall have signatures from all owners of land using the private access and shall acknowledge the total number of lots using the private access.

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.

V. Order

The Commission concludes that MIP 24-02/VAR-24-05 is approved based on the Findings and Conclusions and Conditions of Approval, stated in the staff report, except as added to or modified herein.



JOHN CARR, CHAIR
WEST LINN PLANNING COMMISSION

11/20/24

DATE

APPEAL

This decision may be appealed to the City Council pursuant to the provisions of Chapter 99 of the Community Development Code and any other applicable rules and statutes. This decision will become effective 14 days from the date of mailing of this final decision as identified below. A person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830. The decision will not become final until the period for filing a local appeal has expired.

More information about filing an appeal can be found at:

- <https://westlinnoregon.gov/planning/appeals>

Mailed this 21 day of November, 2024.

Therefore, this decision becomes effective at 5 p.m., December 4, 2024.

Contact: If you have any questions about this project, please contact Aaron Gudelj, Associate Planner, at agudelj@westlinnoregon.gov or (503) 742-6057.

Attachment 4: PC Meeting Notes 11.06.2024



PLANNING COMMISSION
Meeting Notes of November 6, 2024

Commissioners present: John Carr, Joel Metlen, Gary Walvatne, David D. Jones, Kathryn Schulte-Hillen, and Jason Evans
Commissioners Absent Tom Watton
Staff present: Planning Manager Darren Wyss, Associate Planner Aaron Gudelj, Management Analyst Lynn Schroder, and City Attorney Ashley Wigod

The meeting video is available on the [City website](#).

Pre-Meeting Work session

Chair Carr reviewed the order of business for the hearing for MIP-24-02/VAR-24-05. Commissioners asked procedural questions.

1. Call To Order and Roll Call

Chair Carr called the meeting to order. Planning Manager Wyss called the roll.

2. Public Comment related to Items not on the Agenda

None.

3. Public Hearing: MIP-24-02/VAR-24-05 (Quasi-Judicial): [Three-Parcel Minor Partition and Class II Variance to allow five single-family homes to take access from a shared private drive at 2830 Coeur D Alene Drive](#)

Chair Carr introduced application MIP-24-02/VAR-24-05, a three-Parcel Minor Partition and Class II Variance to allow five single-family homes to take access from a shared private drive at 2830 Coeur D Alene Drive. Carr provided an overview of the hearing process and opened the public hearing.

City Attorney Wigod addressed legal standards and appeal rights. The substantive criteria for the application are Community Development Code (CDC) Chapters 12, 48, 75, 85, 92, and 99.

City Attorney Wigod addressed the Planning Commissioners' conflicts of interest, bias, ex-parte contacts, and site visits. None of the Planning Commissioners disclosed conflicts of interest, bias, or ex-parte contact. Commissioner Schulte acknowledged her familiarity with the property because of its proximity to family members. She affirmed that she could remain impartial in evaluating and deciding on the application. Chair Carr acknowledged his familiarity with the property, noting that he walks his dog in the area. He affirmed that he could remain impartial in evaluating and deciding on the application. Wigod then invited audience members to raise any objections regarding the Planning Commission's jurisdiction or any potential biases or ex-parte disclosures by the Commissioners. There was none.

Associate Planner Aaron Gudelj delivered the staff report. The applicants currently own the subject property, which includes an existing single-family home with a detached garage on a 39,636-square-foot lot located at 2830 Coeur D'Alene Drive. Access to the lot is provided via a 20-foot-wide shared private driveway that connects to Coeur D'Alene Drive through a shared access easement on Lots 22 and 23 of the Teresa's Vineyard Tract.

No physical development is being proposed for the properties. The applicant proposes to divide the existing 39,636-square-foot lot into three parcels:

- Parcel 1: 19,336 sq. ft.
- Parcel 2: 10,000 sq. ft.
- Parcel 3: 10,000 sq. ft.

Access to the new parcels would utilize the existing 20-foot shared private driveway, currently serving Lots 22 and 23 of Teresa's Vineyard Tract, along with the subject property. The proposed minor partition would increase the number of lots from one to three, with the shared driveway providing access to all newly created parcels as well as the existing single-family home.

Pursuant to the West Linn Community Development Code (CDC) Chapter 48.030(D), a residential access serving five or more lots is required to be a public street unless waived through a variance. To address this requirement, the applicant has applied for a Class II Variance requesting an exemption from the public street standards of CDC 48.030(D), allowing the shared private driveway to serve all five lots. There are no environmental overlays on the property. Tualatin Valley Fire and Rescue and has reviewed the proposed design and had no conditions to add. Gudelj recommended approval of application with four conditions of approval including a condition that the property owner obtain an access easement agreement from the affected properties owners.

Commissioners asked questions about the plat notes, the existing septic system, easement requirements, potential access via Tract C, historic development patterns and original property access, and homeowner association affiliation.

Gary Alfson, a homeowner, presented the application request. He and his wife have owned the property for 40 years. He explained that the variance to add additional lots with private driveway access is necessary due to the property's physical constraints, which make dividing it into smaller lots impossible without a variance. He emphasized that the burden was not created by them but resulted from surrounding development over time. Susie Alfson, the co-applicant, testified that they have lived in their home since 1997 and have witnessed significant development around their property. Their driveway and address were relocated to Coeur D Alene Drive with the private easement access when the Teresa's Vineyard tract was developed.

Written testimony was submitted by Rich Faith, Cynthia Lacro, Rufus Timberlake, Julia Timberlake, Carlos Ugalde, Amy Ugalde, and David Baker. Oral testimony opposing the application was presented at the hearing by Carlos Ugalde, Julia Timberlake, and David Baker. The primary concerns raised during testimony included:

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

Thomas Laun, a resident of the neighborhood, expressed his support for the application. He testified that approximately 46 homes have been constructed near the applicant's property since 1997. He highlighted that access to the applicant's property had been constrained by the surrounding developments and that this issue had already been a concern during the development of the adjacent properties.

Gary Alfson rebutted stating that the driveway easement was designed for vehicle access, not as a play area for children. He also emphasized that he is not required to maintain trees on his property for the purpose of preserving someone else's view. Additionally, he mentioned that he had discussed his variance request with all neighboring property owners and noted that most did not express any concerns.

There was a discussion about a continuance to receive written comments from the neighborhood association. It was determined that the neighborhood association had opportunity to submit comments and did not, itself, request a continuance to submit testimony.

Commissioners asked questions of staff about the criteria for a variance approval and recommended conditions. Associate Planner Gudelj provided responses.

Chair Carr closed the public hearing and open deliberations. Commissioners deliberated whether the request meets the minimum necessary standards of CDC Chapter 75.

Commissioner Evans moved to approve MIP-24-01/VAR-24-05 as presented with four conditions of approval and directed staff to prepare a Final Decision and Order based on the findings in the staff report and the record. Chair Carr seconded. **Ayes: Jones, Metlen, Evans, Schulte-Hillen, Walvatne, and Carr. Nays: Watton and Walvatne. Abstentions: None. The motion passed 6-0-0.**

4. Planning Commission Announcements

Commissioner Walvatne acknowledged the community's concerns regarding the possible closure of Bolton Primary School and suggested that it would be beneficial for the school district to offer a courtesy presentation to the Planning Commission and City Council.

Commissioner Jones provided a brief update on the VISION43 project and working group.

5. Staff Announcements

Planning Manager Wyss noted that the November 20, 2024 Planning Commission meeting is canceled. Instead, the PC will meet with the City Council in a joint meeting on November 18, 2024.

6. Adjourn

Chair Carr adjourned the meeting at 8:55pm.

Attachment 5: AP-24-02 CC PH Affidavit and Notice Packet

before the hearing, per Section 99.040 of the CDC.

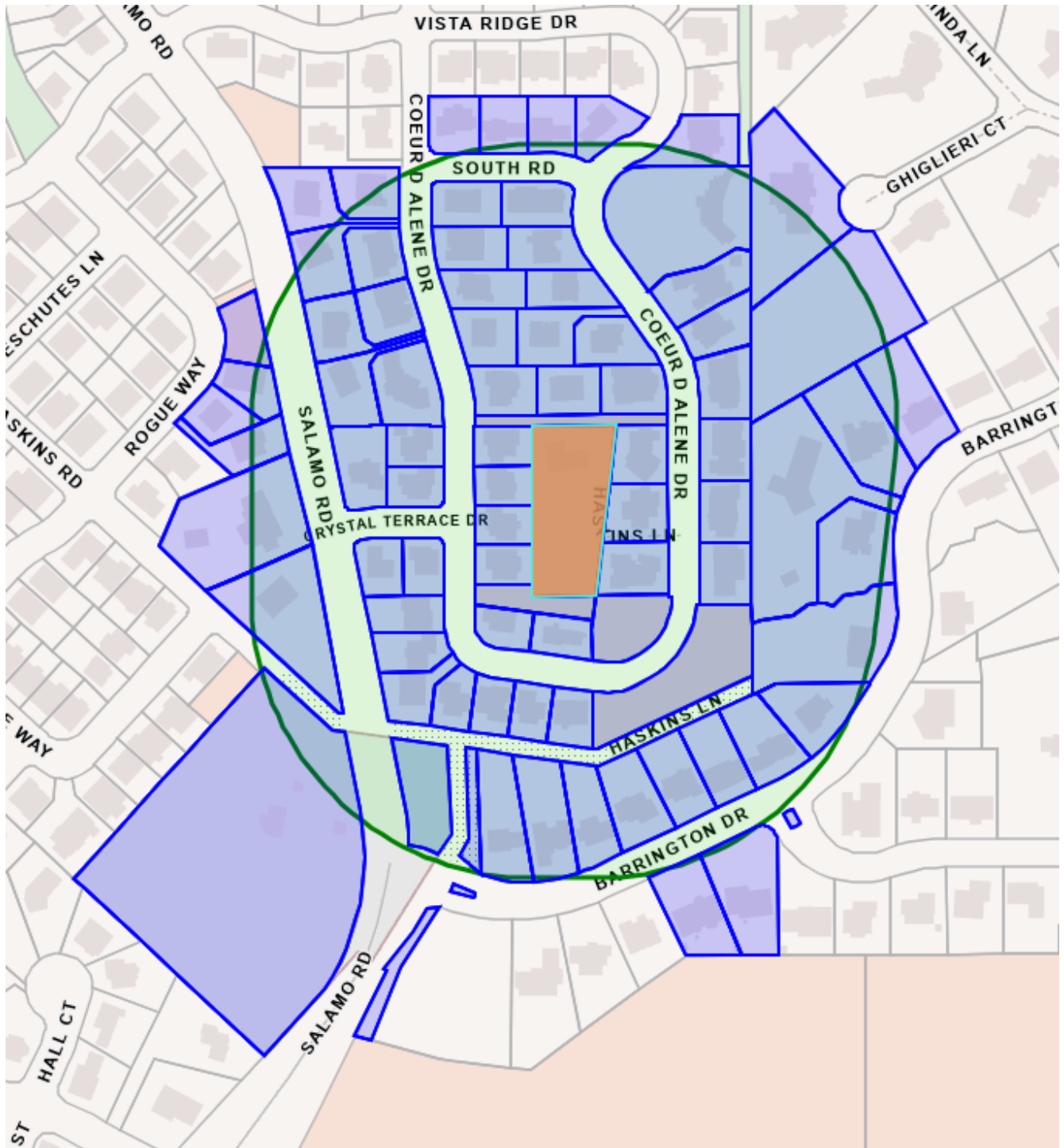
12/26/2024	<i>Lynn Schroder</i>
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FINAL DECISION

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

	<i>Lynn Schroder</i>
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AP-24-02 – Notified Properties within 500 feet of 2830 Coeur d Alene Drive





**NOTICE OF UPCOMING
CITY COUNCIL PUBLIC HEARING**

**PROJECT # AP-24-02
MAIL: 12/17/2024 TIDINGS: 12/17/2024**

CITIZEN CONTACT INFORMATION

To lessen the bulk of agenda packets and land use application notice, and to address the concerns of some City residents about testimony contact information and online application packets containing their names and addresses as a reflection of the mailing notice area, this sheet substitutes for the photocopy of the testimony forms and/or mailing labels. A copy is available upon request.

**CITY OF WEST LINN CITY COUNCIL
PUBLIC HEARING NOTICE
FILE NO. AP-24-02**

The West Linn City Council will hold a hybrid public hearing on **Monday, January 6, 2025 at 6:00 pm** in the Council Chambers of City Hall, 22500 Salamo Road, West Linn, to consider an appeal by Gary and Susie Alfson of MIP 24-02/VAR-24-05, a Planning Commission decision for a Minor Partition requesting approval for a 3-lot Minor Partition and a Class II Variance for an exception to the minimum width required for a private access road for 5 residential units at 2830 Coeur D Alene Drive.

The appellant stated grounds for appeal pertain to Condition of Approval #2 of the Planning Commission Final Decision and Order requiring signatures of Lots 22 and 23 of the Teresa's Vineyard Subdivision for use of the shared-driveway by the newly created lots of the Minor Partition

The City Council will make decide the appeal based on applicable criteria in Community Development Code (CDC) Chapters 12, 48, 75, 85, 92, and 99. The CDC approval criteria are available for review on the City website <http://www.westlinnoregon.gov/cdc> or at City Hall and the City Library.

The appeal is a de novo hearing and not limited to the stated grounds for the appeal. City Council may consider all relevant issues. All evidence presented to the lower authority shall be considered and given equal weight as evidence presented on appeal. City Council may affirm, reverse, or modify the decision which is the subject of the appeal.

You have been notified of this appeal as required by CDC Chapter 99.140 and 99.260.

The appeal is posted on the City's website, <https://westlinnoregon.gov/projects>. The appeal application and record are available for inspection at City Hall at no cost. Copies may be obtained at a reasonable cost. The staff report will be posted on the website and available for inspection at no cost, or copies may be obtained at a reasonable cost, at least ten days before the hearing.

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

Anyone wishing to present written testimony for consideration shall submit all material before 12:00 pm on January 6, 2025. Written comments may be submitted to agudelj@westlinnoregon.gov or mailed to City Hall.

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

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

For additional information, please contact Aaron Gudelj, Associate Planner, City Hall, 22500 Salamo Rd., West Linn, OR 97068, 503-742-6057 or agudelj@westlinnoregon.gov.

Scan this QR Code to go to Project Web Page: