

**CITY OF WEST LINN
PLANNING COMMISSION PUBLIC HEARING
DATE: MAY 20, 2009**

FILE NO.: VAR 09-07

REQUEST: Class II variance requests to permit seven foot structural encroachment into side street setbacks at 4410 Grant Street

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**City of West Linn
PLANNING & DEVELOPMENT
STAFF REPORT**

TO: West Linn Planning Commission (for May 20, 2009 meeting)
FROM: West Linn Planning Staff (Peter Spir, Associate Planner)
DATE: Report completed April 27, 2009
FILE NO: VAR 09-07
SUBJECT: Class II variance request to permit seven foot structural encroachment into side street setbacks at 4410 Grant Street

Planning Director's Initials _____



SPECIFIC DATA

OWNERS: Helen Pevzner and Raymond Austin
4410 Grant Street
West Linn, OR

APPLICANT: “

SITE LOCATION: 4410 Grant Street

**COMP PLAN
DESIGNATION:** Medium Density Residential

ZONING: R-5

**APPROVAL
CRITERIA:** CDC Chapter 75 Variance

120-DAY RULE: The applications were deemed complete on April 22, 2009. Therefore, the City must exhaust all local review by August 20, 2009 per the 120-day rule.

PUBLIC NOTICE: Mailed public notice to property owners within 500 feet on April 23, 2009. The property was posted with a sign on April 30, 2009. The notice was also posted on the city's website. Notice was published in the West Linn Tidings on May 7, 2009. Therefore, the public

notice requirements of Chapter 99 of the Community Development Code have been satisfied.

SUMMARY

A large Douglas fir tree fell on the applicant's property this past winter severely damaging the house. Faced with the need to undertake substantial reconstruction, the applicant hopes to use this opportunity to expand the home's footprint towards the undeveloped Leonard Street right of way (ROW) so as to provide a more functional home. The zoning is R-5. R-5 requires a side street setback of 15 feet. The home's west side which faces the ROW is already 15 feet from the ROW. The applicant proposes to encroach seven feet towards the ROW. That would leave an eight foot setback remaining.

The variance approval criterion requires that an exceptional circumstance exist at this site. Certainly the tree falling on the house is exceptional. Also, as a site visit will demonstrate, a street will never be built in this ROW meaning that the *raison d'être* for the setback is invalid. The City Engineer has confirmed the fact that a road will never be built here.

Often when there is no need for a ROW the applicant is encouraged to apply for a street ROW vacation. But in this case the applicant stated that they cannot wait the six or more months needed for a street vacation given the fact that they have not been able to move back into their house and continuing pressure from their insurance company, so they went ahead and applied for the variance instead.

The applicant is also proposing to add a five foot wide addition on the north side of the house. The applicant states that there is ten feet from the property line to the house. Assuming that is true, this addition should work since only a five foot interior setback is required on this side. This application does not address this addition.

ISSUES

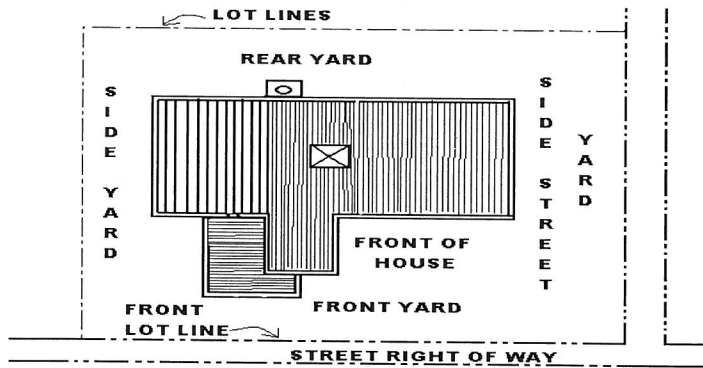
Defining a side street setback

The only rationale for the 15 foot street side setback is simple: to provide separation between a developed street and associated traffic in the ROW and the homes along that street. Contemporary subdivisions are designed in response to the topography of a site and maximum street grades per code. That was not the case in 1889 when the "Weslynn" plat was created. As was so often the case, the grid pattern of the plat had no correlation to the topography at the site. That's hardly a surprise. Many plats were drawn up and recorded around this period without the east coast developer/owners even visiting the site. Consequently, Leonard Street ROW has a steep slope adjacent to Grant Street in excess of 25%. That is far in excess of allowable street grades per West Linn's Construction Code and Tualatin Valley Fire and Rescue.

A site visit will make clear, and the City Engineer concurs, that the steep terrain means that no street will ever be built on the Leonard Street ROW.

Basic facts: the R-5 zone requires a side street setback of 15 feet. CDC Chapter 2 defines a side street as:

Yard, side street. For dwellings or homes on corner lots, this is the yard on the side of the house that faces a street right-of-way and does not include the front of the house or front yard. (See Figure A).



Does the side street setback only apply when there is a street in that ROW?

Argument in favor: In many cases where properties abut ROWs deemed unbuildable due to steep grades or other environmental constraints, this interpretation would expand the adjacent owner's options to better utilize their property. Instead of a 15 foot setback, they would be able to have just a 5-7.5 foot setback. Additions to the homes, sundecks, accessory structures which hitherto have been significantly restricted, could be better accommodated. Best of all, the City and neighborhood would in no way be adversely impacted by this position.

Argument against: Certainly there are many ROWs in West Linn that are undeveloped at the present time, but they could be developed in the future for either roads, driveways, bicycle and pedestrian paths or corridors for utilities. By making this interpretation, the City would not be giving up those options, but it would mean that the adjacent property owner would have activities (e.g.: vehicular and foot traffic) closer to their homes with attendant losses of quietude and privacy.

RECOMMENDATION

Based upon the findings prepared by the applicant and supplemented by staff in this report, staff recommends approval of the application with the following conditions:

1. The tree damaged fence may be rebuilt but only on the applicant's property and shall not encroach onto the City owned ROW.
2. Storm water treatment shall be provided if over 500 sq ft of new impervious surface is created.

PUBLIC COMMENTS

The applicant's neighbors, Mr. and Mrs. Roy Erickson at 4426 Grant Street e-mailed staff on 4-26-09 to inquire about the R-5 zone's setbacks but did not take a position on this application.

ADDENDUM

APPROVAL CRITERIA AND FINDINGS

VAR 09-04 / VAR 09-05 / VAR 09-06

Staff recommends adoption of the findings for approval contained within the applicant's submittal, augmented with the following additions:

75.060 THE APPROVAL CRITERIA

The appropriate approval authority shall approve a variance request if all the following criteria are met and corresponding findings of fact prepared. The approval authority may impose appropriate conditions to ensure compliance with the criteria. The approval authority shall deny the variance if any of the criteria are not met.

75.060.1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this ordinance, topography, or other circumstances over which the applicant has no control.

FINDING NO. 1:

Having a tree fall on your house is extraordinary enough but staff finds that the 15 foot setback from the ROW justifies a variance. The only rationale for the 15 foot setback is to provide separation between a street that was expected on Leonard Street ROW and the house. In that context, the 15 feet is reasonable. But as a site visit will make clear, the steep terrain means that no street will ever be built there. Lacking any rationale for the setback, staff finds that the hardship is exceptional. Therefore staff finds the criterion is met.

75.060.2. The variance is necessary for the preservation of a property right of the applicant, which is substantially the same as a right possessed by owners of other property in the same zone or vicinity.

FINDING NO. 2:

The property right is to utilize the maximum building envelope on the lot as allowed by code. All lots in the R-5 zone have a five foot side setback except homes on corner lots. These lots are encumbered by a CDC side street setback of 15 feet. That 15 foot setback is based on the theory that the ROW has a street in it. As was stated earlier, there is no chance that the Leonard Street ROW will ever have a street built in it. Granting the variance would give the homeowner reasonable use of their property at no detriment to the city. It would grant them the right to setbacks substantially the same as their next door neighbors at 4426 Grant St.

75.060.3. The authorization of the variance will not be materially detrimental to the purposes and standards of this Code, will not be inconsistent with all other regulatory

requirements, and will not conflict with the goals and policies of the West Linn Comprehensive Plan.

FINDING NO. 3:

By granting the variance, the City would not conflict with the purposes and standards of this code. The reason why each zone has building setbacks is so that a measure of privacy can be assured everyone in that zone. In the R-5 zone houses must be at least 10 feet apart (five foot setback on each side of property line). In this application, the reduced setback would not result in loss of privacy for any adjacent neighbor. The nearest potentially affected neighbor is 70 feet away across the ROW. Staff considers that more than adequate separation.

Regarding compliance with the Comprehensive Plan, Goal 10 (Housing), Policy 5 states: *“Allow for flexibility in lot design, size, and building placement to promote housing variety and protect natural resources.”* Staff finds that by retaining an 8 to 11.5 foot setback from the house addition to the ROW responds to the interests of flexibility in house placement.

Goal 10 (housing) goal 1 states: *“Preserve the character and identity of established neighborhoods.”* Staff finds that most homes in this area average 1800 square feet and cover most of the lot width less the 5 foot setbacks. By adding 315 square feet on the west side of the 1250 square foot house plus garage and 235 square feet on the north side, the applicant will be making the house more consistent and in keeping with the character of the neighborhood which have a modal average.

Goal 2: Land Use Planning policy 5 states: *“New construction and remodeling shall be designed to be compatible with the existing neighborhood through appropriate design and scale.”* Compatibility is not an issue with the proposed addition since it would be on the south side of the lot, away from single family home neighbors to the north and no closer to the home to the west than the current home. To the south, compatibility is assured by a 70 foot separation between the edge of the addition and the apartment block. The scale of the house and design will maintain the 1950-1960’s vernacular architecture common throughout the existing neighborhood.

75.060.4. The variance request is the minimum variance, which would alleviate the exceptional and extraordinary circumstance.

FINDING NO. 4:

The requested variance seeks a modest 7 foot encroachment into the ROW which will still leave 8-11.5 feet to the undeveloped ROW. The house is only 1,250 square feet plus the garage so adding 315 square feet on the west side and 235 square feet on the north side represents a reasonable expansion that could not be considered excessive in a community where the average home size is well over 2,000 square feet.

75.060.5. The exceptional and extraordinary circumstance does not arise from the violation of this ordinance.

FINDING NO. 5:

There have been no violations of the Community Development Code. Therefore the criterion is met.

75.060.6 The variance will not impose physical limitations on other properties or uses in the area, and will not impose physical limitations on future use of neighboring vacant or underdeveloped properties as authorized by the underlying zoning classification.

FINDING NO. 6:

The variance will not have a negative impact on neighboring properties or other properties off site. As was stated earlier the 7 foot addition to the house will be 70 feet to the apartment block to the south. Other surrounding homes will be similarly undisturbed. No neighbor will be compromised in their future development plans if this variance is granted. At some point in the future a footpath may be built on the ROW but the 50 foot ROW is ample to accommodate that. Therefore the criterion is met.

EXHIBITS

PC-1	NOTICE.....	8
PC-2	SITE PLAN.....	9
PC-3	ERIKSON CORRESPONDENCE.....	10-11
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CITY OF WEST LINN
 PLANNING COMMISSION MEETING
 PUBLIC HEARING NOTICE
FILE NO. VAR-09-07

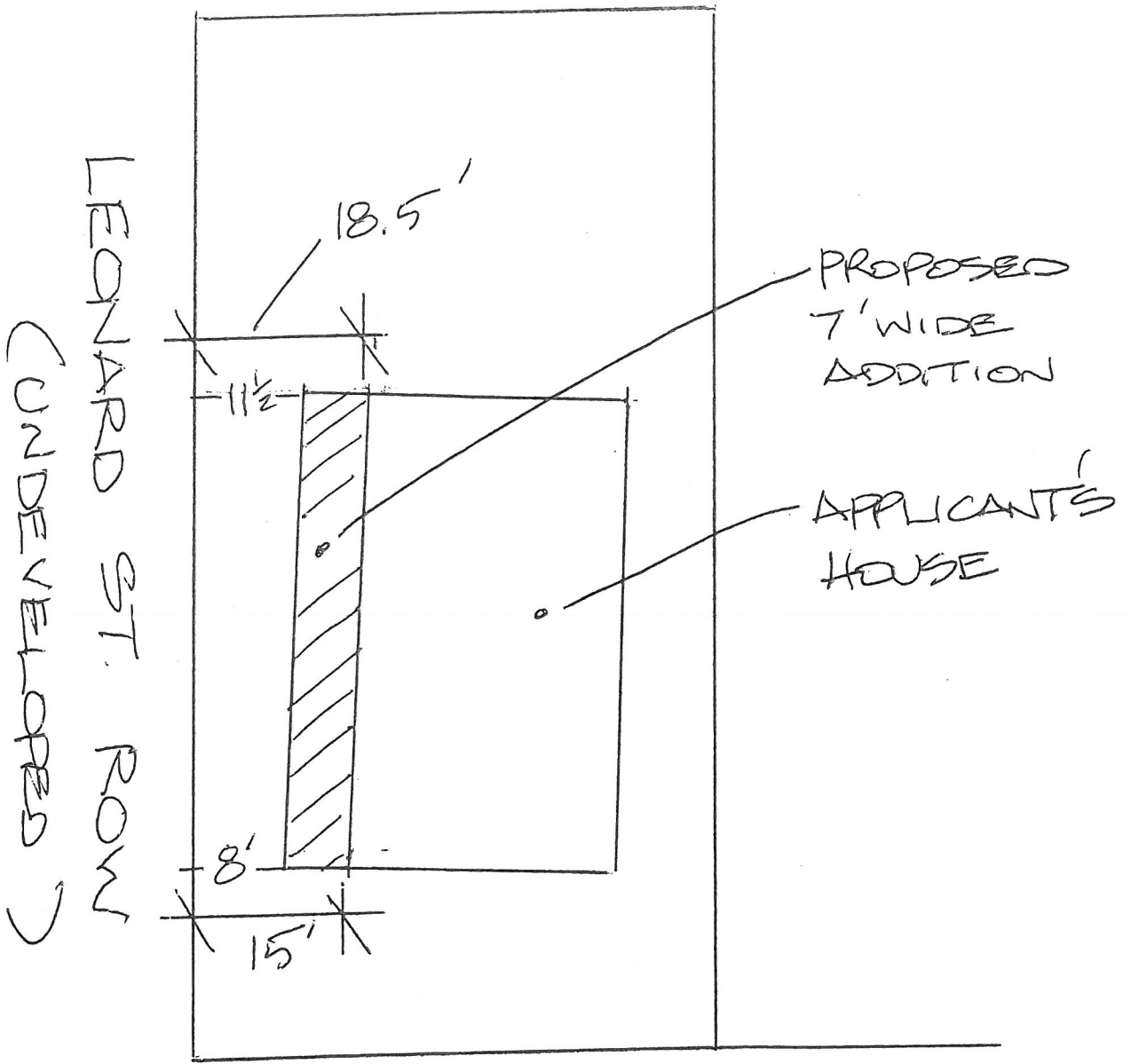
The West Linn Planning Commission, at a regular meeting on **Wednesday May 20, 2009 starting at 7:00 p.m.** in the Council Chambers of City Hall (located at 22500 Salamo Road, West Linn, OR), will hold a public hearing at the request of Helen Pevzner at 4410 Grant Street for a Class II Variance to allow an eight foot sidestreet setback. The Community Development Code (CDC) requires a 15 foot sidestreet setback. A large Douglas fir tree fell on their house and they are trying to rebuild it with some functional living space. The "sidestreet" is the undeveloped Leonard Street right of way (ROW) that will never be developed as a public street. CDC Chapter 75 (Variance) applies. Approval or disapproval of the request by the Planning Commission will be based upon Chapter 75 criteria only. At the hearing, it is important that comments relate specifically to the applicable criteria (available for viewing at City Hall or on our website).

All documents and applicable criteria in the above-noted file are available for inspection at no cost, or copies can be obtained for a minimal charge per page. At least 10 days prior to the hearing, a copy of the staff report will be available for inspection. Information related to the application is also on the City's web site. For further information, please contact Peter Spir, Associate Planner, at City Hall, 22500 Salamo Road, #1000, West Linn, OR 97068 (for fastest response e-mail at pspir@westlinnoregon.gov ; alternately you may phone 503-723-2539).

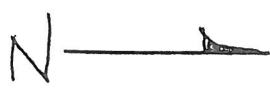
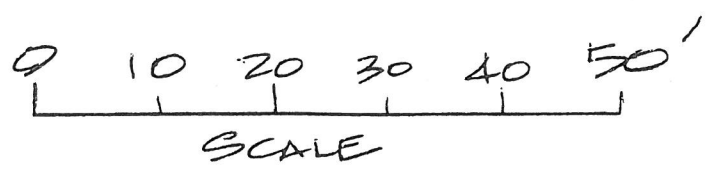
The hearing will be conducted in accordance with the rules of Section 99.170 of the Community Development Code, adopted December 14, 1987, Ordinance 1129. Anyone wishing to present written testimony on this proposed action may do so in writing prior to, or at the public hearing. Oral testimony may be presented at the public hearing. At the public hearing, the Planning Commission will receive a staff report presentation from the City Planner; and invite both oral and written testimony. The Planning Commission may continue the public hearing to another meeting to obtain additional information, or close the public hearing and take action on the application. If a person submits evidence in support of the application, any party is entitled to request a continuance of the hearing. If there is no continuance granted at the hearing, any participant in the hearing may request that the record remain open for at least seven days after the hearing. Failure to raise an issue in person or by letter at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals based on that issue.

TERESA ZAK
 Planning Commission
 Administrative Assistant

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 (publish west tidings 5/7/09)



GRANT ST



PC-3

Spir, Peter

From: Roy Erikson [royerikson@live.com]
Sent: Thursday, April 30, 2009 6:46 AM
To: Spir, Peter
Subject: RE: VAR-09-07 @ 4410 Grant Street

Peter,

I just went down to take a look. It appears the property line "ditch" is only about 6" shy of the required 5'. Can we, as homeowners "look the other way" on this? Although we're not ecstatic about the addition, it would be a shame to squabble over 6".

Thanks very much,

Linda

From: royerikson@live.com
To: pspir@westlinnoregon.gov
Subject: RE: VAR-09-07 @ 4410 Grant Street
Date: Thu, 30 Apr 2009 06:11:02 -0700

Peter,

We share your concern regarding the addition on the interior side not meeting the 5' setback. Helen's drawing indicates the property line is 10 feet 3 inches at the front of the house. The property line is not perpendicular to their house, the narrowest part is at the back, and 10 feet 3 inches in the front is the widest.

The company that she hired to mark the corners dug a small ditch to indicate the property line in the area in question. We agree with their measurements.

Thanks much,

Roy and Linda

Subject: RE: VAR-09-07 @ 4410 Grant Street
Date: Tue, 28 Apr 2009 06:42:34 -0700
From: PSpir@westlinnoregon.gov
To: royerikson@live.com

Yes, in the R-5 zone, the interior side setback is 5 feet regardless of lot width

Peter

From: Roy Erikson [mailto:royerikson@live.com]
Sent: Monday, April 27, 2009 6:54 PM
To: Spir, Peter
Subject: RE: VAR-09-07 @ 4410 Grant Street

Thank you, Peter.

The document we inquired about indicates the 15' interior side setback does not apply to lots that are 50' or less in width, and we also saw your noted concern that the 5' be observed in the Pre-Application Summary. We know that is part of your job, but want to express our appreciation nonetheless. Our curiosity surrounded the setback for properties over 50' in width. Does the 5' interior setback apply to those as well?

Subject: RE: VAR-09-07 @ 4410 Grant Street
Date: Mon, 27 Apr 2009 06:34:09 -0700
From: PSpir@westlinnoregon.gov
To: royerikson@live.com

Mr. and Mrs. Erikson:

Your zoning is R-5.

The correct setbacks are 20 feet front and rear...5 feet on the side (not 15 feet as shown on table you referenced) and 15 feet for sidestreet.

The applicant will be required to keep 5 feet from your property line for all additions on that side.

Unenclosed front porches may encroach five feet into front setback provided there is no overhead living space.

The height limit is 35 feet to top of roof ridgeline/peak from grade

Peter Spir
Associate Planner

From: Roy Erikson [mailto:royerikson@live.com]
Sent: Sunday, April 26, 2009 8:01 AM
To: Spir, Peter
Subject: VAR-09-07 @ 4410 Grant Street

Greetings Peter,

With regard to the application for setback variance at 4410 Grant Street, my wife and I (owners of 4426 Grant Street) would like to know if the attached zoning setback and height requirements are still in effect. We found it on your website this morning. If a newer version is applicable, please forward for our review.

Thanks much,
Roy and Linda Erikson

Windows Live™ Hotmail®: ...more than just e-mail. [Check it out.](#)

Windows Live™ SkyDrive™: Get 25 GB of free online storage. [Check it out.](#)

Rediscover Hotmail®: Get quick friend updates right in your inbox. [Check it out.](#)

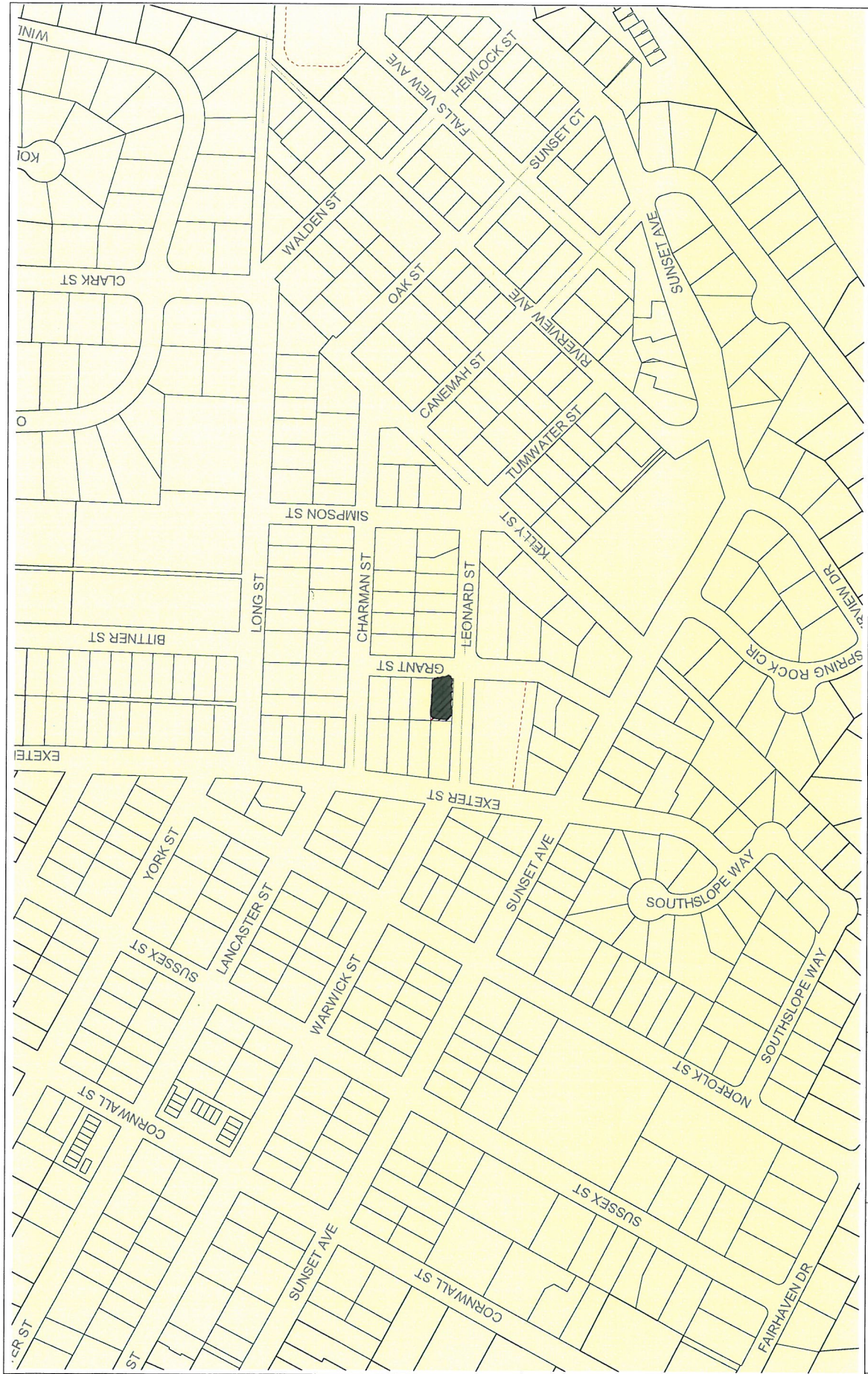
Rediscover Hotmail®: Now available on your iPhone or BlackBerry [Check it out.](#)











Scale: 400 Feet

City of West Linn GIS (Geographic Information System), SnapMap Date: 4/28/2009

MAP DISCLAIMER:
 This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

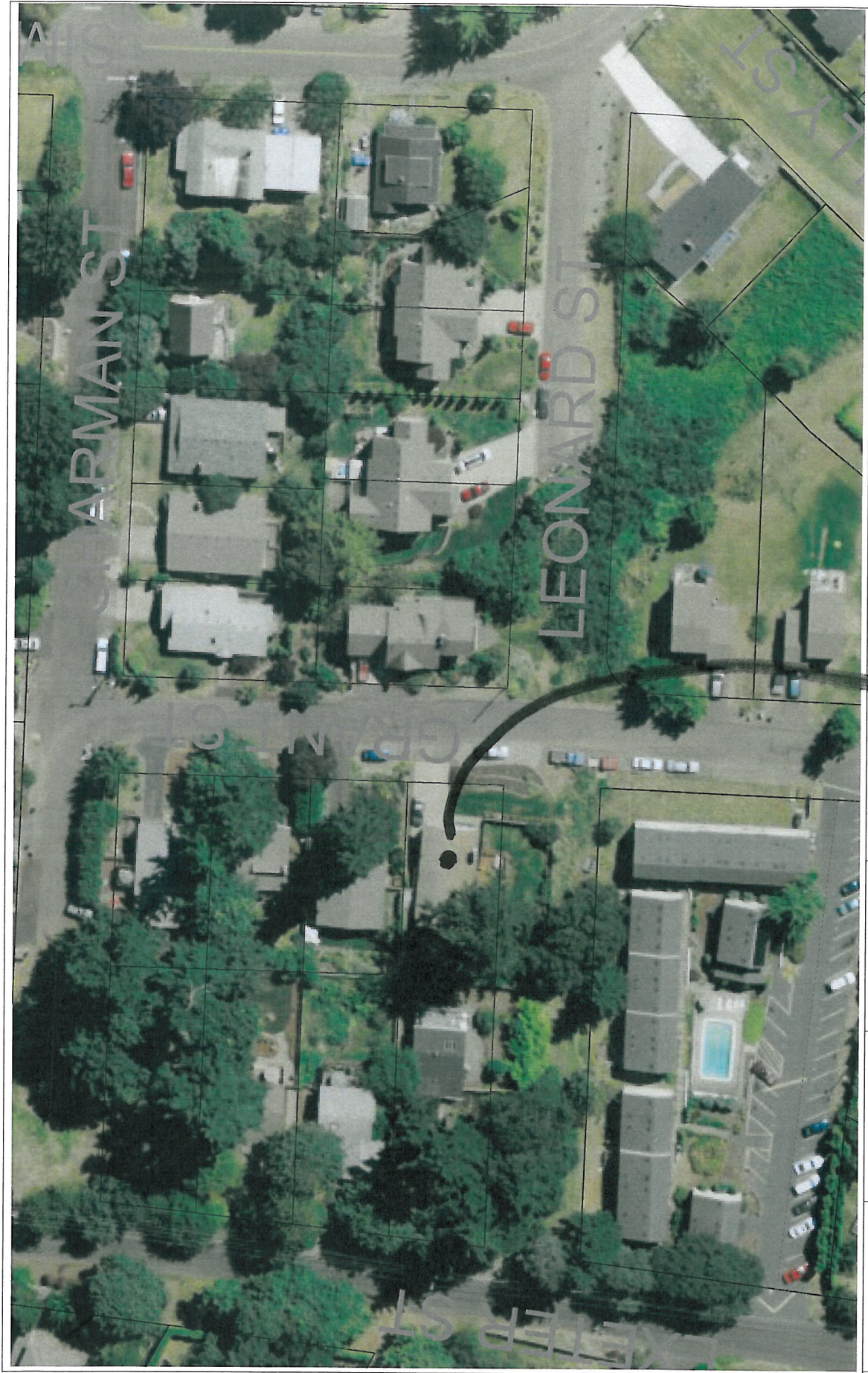
LOCATION / 4410 GRANT



Scale: 039 Feet

City of West Linn GIS (Geographic Information System), SnapMap Date: 4/28/2009

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Scale: 088 Feet

City of West Linn GIS (Geographic Information System), SnapMap Date: 4/28/2009

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SITE

EXHIBIT PC-7

APPLICANT'S SUBMITTAL