



## Mandatory Adjustment Exemption Request Application

City Name: Lake Oswego

Date Submitted: 3/18/2025

Section 38 Citation	Design or Development Adjustment	Requested
(4)(a)	Side or rear setbacks	Yes
(4)(b)	For an individual development project, common area, open space or area that must be landscaped on the same lot or parcel as proposed housing	Yes
(4)(c)	Parking minimums	N/A
(4)(d)	Minimum lot sizes	Yes
(4)(e)	Maximum lot sizes	N/A
(4)(f)	Building lot coverage	Yes
(4)(g)(A)(i)*	Bicycle parking (minimum spaces)	Yes
(4)(g)(A)(ii)*	Bicycle parking (location)	Yes
(4)(g)(B)*	Building height maximums (excluding cottage clusters)	Yes
(4)(g)(C)*	Unit density maximums	Yes
(4)(g)(D)(i)*	Prohibitions on ground floors of mixed use buildings against residential uses (except for one face of the building facing the street & within 20 ft of the street)	Yes
(4)(g)(D)(ii)*	Prohibitions on ground floors of mixed use buildings against nonresidential active uses that support the residential uses of the building	Yes
(5)(a)	Facade materials, color or pattern	Yes
(5)(b)	Facade articulation	Yes
(5)(c)	Roof forms and materials	Yes
(5)(d)	Entry and garage door materials	Yes
(5)(e)	Garage door orientation unless adjacent to or across from school/public park	Yes
(5)(f)	Window materials except bird-safe glazing requirements	Yes
(5)(g)	Total window area	Yes
(5)(h)(A)*	Building orientation requirements, not including transit street orientation requirements	Yes
(5)(h)(B)*	Building height transition requirements	Yes
(5)(h)(C)*	Requirements for balconies and porches	Yes
(5)(h)(D)*	Requirements for recesses and offsets	Yes

*\*This adjustment is only available to manufactured dwelling parks, middle housing, multifamily, and mixed use residential.*





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**City Description of Local Adjustment Process:****PART A: SB 1537 EXEMPTION REQUEST – ADJUSTMENT PROCEDURE**

The City of Lake Oswego Community Development Code (LOC Chapter 50) provides clear and objective zoning and design regulations for the development of housing in all designated zones and Overlays/Districts.

Please use this link to access the entire online LOC Chapter 50 referenced below:

<https://ecode360.com/43075586#43075586>.

Adjustments are processed as either a standalone land use application or as a component of a broader application, and are classified as a Minor Development Decisions (LOC 50.07.003.14). A Minor Development Decision is subject to the following procedure:

- Pre-Application Conference (LOC 50.07.003.1.e - <https://ecode360.com/43144036>)
- Neighborhood Meeting (all Land Divisions or if required for other land use applications) (LOC 50.07.003.1.f - <https://ecode360.com/43144045>)
- Land Use Submittal (LOC 50.07.003.1.a-d - <https://ecode360.com/43144003>)
- Completeness Review (LOC 50.07.003.1.g - <https://ecode360.com/43144085>)
- Public Notice with 14-day Comment Period (LOC 50.07.003.3.a-c - <https://ecode360.com/43144106>)
- Public Hearing if applicable by code, referred, or appealed (LOC 50.07.003.14.d.i - <https://ecode360.com/43168882>)
- Notice of Decision with 15-day Appeal Period [(LOC 50.07.003.4.h - <https://ecode360.com/43168649>); (LOC 50.07.003.7 - <https://ecode360.com/43144247>); and, (LOC 50.07.003.14.d.iii(2) - <https://ecode360.com/43144497>)]

The City offers a variety of paths to adjust applicable zone and design standards, which, as described in Part B, include the standards eligible for adjustment in SB 1537:

- Exceptions – Land Divisions (LOC 50.04.003.2.a - <https://ecode360.com/43166104>)
- Sensitive Lands Overlay District Exceptions (LOC 50.05.010.4.b - <https://ecode360.com/43142347>)
- Planned Development Overlay (LOC 50.07.007.4 - <https://ecode360.com/43145068>) and Planned Development Modifications (LOC 50.07.003.11 - <https://ecode360.com/43144351>).<sup>1</sup>
- Modification of an Approved Development Permit (LOC 50.07.003.11 - <https://ecode360.com/43144351>)
- Minor Variances (LOC 50.08.002 - <https://ecode360.com/43145148>)
- Design Variances (LOC 50.08.003 - <https://ecode360.com/43169429>)
- Residential Infill Design (RID) Review Design Variances (LOC 50.08.003 - <https://ecode360.com/43145262>)
- Major Variances (LOC 50.08.004 - <https://ecode360.com/43169502>)

While “floor area” is not specifically listed as one of SB 1537’s Mandatory Adjustments, this standard controls massing, which is the 3-dimensional product of height and footprint (both of which *are* listed). The City’s code either does not regulate floor area for housing or limits maximum floor area based on a number of variables

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<sup>1</sup> Per LOC 50.07.007.4.c.iii (<https://ecode360.com/43145077>), following approval of a Planned Development PD) subdivision that included modifications (adjustments) to the underlying zone dimensional standards, a request for a further adjustment must be processed as either a PD modification, a RID Review design variance, or as a Major Variance depending of the regulation.





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Land Conservation  
& Development

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such as the subject zone, Overlay, Flag Lot standard, and/or housing type. Taking those variables into consideration, a variance (adjustment) to maximum allowed floor area could be processed under one of the paths listed above, including a Major Variance which covers all possible situations.



# CITY OF LAKE OSWEGO

## PART A: SB 1537 EXEMPTION REQUEST – ADJUSTMENT PROCEDURE

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The City offers a variety of paths to adjust applicable zone and design standards, which, as described in Part B, include the standards eligible for adjustment in SB 1537:

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- Residential Infill Design (RID) Review Design Variances (LOC 50.08.003 - <https://ecode360.com/43145262>)
- Major Variances (LOC 50.08.004 - <https://ecode360.com/43169502>)

While “floor area” is not specifically listed as one of SB 1537’s Mandatory Adjustments, this standard controls massing, which is the 3-dimensional product of height and footprint (both of which *are* listed). The City’s code either does not regulate floor area for housing or limits maximum floor area based on a number of

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<sup>1</sup> Per LOC 50.07.007.4.c.iii (<https://ecode360.com/43145077>), following approval of a Planned Development PD) subdivision that included modifications (adjustments) to the underlying zone dimensional standards, a request for a further adjustment must be processed as either a PD modification, a RID Review design variance, or as a Major Variance depending of the regulation.



## **CITY OF LAKE OSWEGO**

variables such as the subject zone, Overlay, Flag Lot standard, and/or housing type. Taking those variables into consideration, a variance (adjustment) to maximum allowed floor area could be processed under one of the paths listed above, including a Major Variance which covers all possible situations.



# Appendix A. Application Submittal: City of Lake Oswego

Submittal Date: [Date]

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Page 2: Part A: Process for Requesting Adjustments

## Q1

City Name:

City of Lake Oswego

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## Q2

Please describe the local process for reviewing requests to adjust development and design standards for applications for the development of housing. Include links or references to code sections of application review procedures. If procedures for requesting adjustments vary between development and design standards under Section 38 (4) & (5), please indicate so and explain which procedures apply for different standards.

See attached City of Lake Oswego response to Part A.

## Q3

As an alternative to providing a response in the comment box, this information may be provided in a PDF attachment. Additionally, the PDF attachment may (but is not required to) include a cover letter.

See attached City of Lake Oswego response to Part A.

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## Page 3: Part B: Design and Development Adjustments – Section 38 (4)(a)

Side or rear setbacks: Must allow an adjustment up to 10% of required setback distance.

**Q4**

Do existing land use regulations apply this development or design standard to housing?

YES

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**Q5**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

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**Q6**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

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**Q7**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

Side and rear yard setbacks are applicable to residential development (allowed in both residential and most commercial zones), and subject to a number of variables including, but not limited to: the zone (subject and sometimes abutting), Design Districts, Overlays, use (subject and sometimes abutting), Flag Lot standards, Planned Development Overlay, height of structure, etc. The list, below, includes code links to applicable side and rear yard setbacks (possibly subject to footnotes and additional code sections):

- Low Density Residential (R-15, R-10, & R-7.5): Table 50.04.001-1 (<https://ecode360.com/43165959>).
  - Medium Density Residential (R-6, R-5, & R-DD): Table 50.04.001-3 (<https://ecode360.com/43165986>).
  - High Density Residential (R-3, R-2, R-0, & R-W): LOC 50.04.001.3.a (<https://ecode360.com/43166047>).
  - Commercial (NC, GC, HC, OC, EC, CR&D): LOC 50.04.001.4.a (<https://ecode360.com/43166082>).
  - WLG R-2.5, WLG RMU, & WLG OC: LOC 50.04.001.4.b (<https://ecode360.com/43166083>).
  - Evergreen R-7.5 Overlay: LOC 50.05.002.4.a (<https://ecode360.com/43140986>).
  - Lake Grove R-7.5/R-10 Overlay: LOC 50.05.003.4.a (<https://ecode360.com/43166212>).
  - LGVC Overlay (GC, OC, R-0, R-3, R-5, OC/R-3): LOC 50.05.007.4.d (<https://ecode360.com/43141907>).
  - Uplands R-10 Overlay: LOC 50.05.012 (<https://ecode360.com/43142887>).
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Side and rear yard setbacks may be adjusted as follows:

- **Exceptions, Projections, and Enhancements – Land Divisions (LOC 50.04.003)**

- Subsection 2.a (<https://ecode360.com/43166104>)
- 15% reduction
- The adjustment is processed as a part of a minor development land use application for a partition/subdivision (<https://ecode360.com/43144440>).
- Provided that the applicable Exception criteria per LOC 50.04.003.2.a (<https://ecode360.com/43140839>) are met, a proposed partition or subdivision that would result in any existing structure becoming noncompliant with a required yard setback, and the structure was constructed three plus years prior to the filing of the land use application, a 15% adjustment from any yard setback for the existing structure may be allowed.
- **The Exceptions side and rear yard setback reductions exceed the 10% Mandatory Adjustment.**

- **Planned Development Overlay for Subdivisions (LOC 50.07.007.4)**

- A subdivision application that includes a Planned Development (PD) Overlay is processed as a minor development land use application (<https://ecode360.com/43144440>).
- Per the PD Overlay Applicability subsection (Subsection 4.b - <https://ecode360.com/43169327>), use of the overlay is allowed in any zone for subdivision proposals, except that when the property is located in the R-7.5, R-10, or R-15 zone, at least one of the following circumstances must exist:
  - The property is greater than 75,000 sq. ft. in size;
  - An RP district or HBA overlay is located on the property; or,
  - A tree grove greater than 15,000 sq. ft. in size exists on the property.
- If the proposal demonstrates compliance with the applicable PD Overlay criteria per LOC 50.07.007.4.d.ii(2) (<https://ecode360.com/43169350>), the applicant may request adjustments to side and rear yard setbacks, as follows:

Side Yard Setback Reductions

- Subsection 4.d.ii(3) (<https://ecode360.com/43145112>)
- Adjustment ranges from 20-100%. The extent of the side yard setback adjustment under this standard varies by zone, but are available if: 1) any or all of the proposed lot sizes are less than the minimum size required by the underlying zone; or, 2) if the applicant demonstrates that tree preservation or protection of abutting natural areas is the goal of the reduced side setback(s).
- Where a zone's underlying side yard setback is less than 8 feet, a side yard setback reduction is allowed with no stated limitation under the substandard lot or tree/natural area preservation scenarios.
- Where a zone's underlying side yard setback is greater than 8 feet, that setback may be reduced, but only under certain provisions. Up to a 20% reduction is allowed to the combined side yard setbacks as measured between two abutting dwellings, as long as the structures' separation remains at 16 feet for portions  $\leq$  18 feet in height and 20 feet for portions  $>$  18 feet in height. At no point can a side yard setback be less than 6 feet on an individual lot. This applies to both the substandard lot and tree/natural area preservation scenarios.
- **The PD Overlay side yard setback reductions meet or exceed the 10% Mandatory Adjustment.**

Rear Yard Setback Reductions

- Subsection 4.d.ii(4) (<https://ecode360.com/43145112>)
- Adjustment ranges from 20-100%



- The extent of the rear yard setback adjustment under this standard varies by zone.
- In high to medium density residential zones (R-W, R-O, R-2, R-3, R-5, R-DD, and R-6): a rear yard setback reduction is allowed with no stated limitation.
- For PD subdivisions located in low density residential zones (R-7.5, R-10, and R-15) and with a development site size > 75,000 sq. ft., a rear yard setback reduction is allowed with no stated limitation.
- For PD subdivisions located in low density residential zones (R-7.5, R-10, and R-15) and with a development site size ≤ 75,000 sq. ft., if a proposed lot abuts open space, the rear yard setback may be reduced by 50%. For other lots that don't abut open space, the rear yard setback may only be reduced by 20%.
- **The PD Overlay rear yard setback reductions meet or exceed the 10% Mandatory Adjustment.**

- **Minor Variances (LOC 50.08.002)**

- A Minor Variance application is processed as a minor development land use application (<https://ecode360.com/43144440>).
- If the Minor Variance criteria per LOC 50.08.002.3 (<https://ecode360.com/43169379>) are met, the following side and rear yard setback reductions are allowed:
- Subsection 2.a.i / General Setback Reduction (<https://ecode360.com/43169380>)  
A 20% reduction is allowed to any yard setback (including the 25-foot Oswego Lake setback). This variance classification is for single-family, Middle Housing, and their accessory structures. It is also allowed for ADUs per Subsection 2.q. The only caveat is that a side yard setback cannot be reduced via this Minor Variance to less than 5 feet. [Note: in the R-6 zone, the minimum 20-foot front yard setback is limited to a 10% or 2-foot reduction; staff notes this even though this Mandatory Adjustment only applies to side and rear yard setbacks, and no Exemption or code amendment is required.]
- Subsection 2.a.ii / Tree Preservation (<https://ecode360.com/43169383>)  
A 50% reduction is allowed to any yard setback (including the 25-foot Oswego Lake setback) if the request is necessary to preserve a tree. This variance classification is for single-family, Middle Housing, and their accessory structures. This setback reduction is also allowed for ADUs per Subsection 2.q. The only caveat is that a side yard setback cannot be reduced via this Minor Variance to less than 5 feet. [Note: in the R-6 zone, the 20-foot front yard setback is limited to a 10% or 2-foot reduction; staff notes this even though this Mandatory Adjustment only applies to side and rear yard setbacks and no Exemption or code amendment is required.]
- Subsection 2.k / Nonconforming Walls (<https://ecode360.com/43169402>)  
A 50% reduction to a side or rear yard setback of nonconforming wall(s) is allowed provided that:
  - The new sq. footage of the addition does not exceed the existing sq. footage of the dwelling;
  - Compliance with floor area, lot coverage, and other setbacks are maintained;
  - No previous variances have been granted for the nonconforming wall(s); and,
  - The expansion area is defined by two or more existing exterior walls.
 The only caveat is that a side yard setback cannot be reduced via this Minor Variance to less than 5 feet. [Note: in the R-6 zone, the 20-foot front yard setback is limited to a 10% or 2-foot reduction; staff notes this even though this Mandatory Adjustment only applies to side and rear yard setbacks and no Exemption or code amendment is required.]
- Subsection 2.p.i / LGVC Overlay – Non-VTA sites (<https://ecode360.com/43169413>)  
A 20% reduction to a side or rear yard setback or four feet (whichever is less) is allowed on sites in the LGVC Overlay. The only caveat is that this Minor Variance option is not available for LGVC VTA-designated



sites where a property line is adjacent to residential zones or uses; please see the Major Variance option for an adjustment to this standard for LGVC VTA-designated sites.

- Subsection 2.q / Accessory Dwelling Units (<https://ecode360.com/43169418>)  
Required yard setbacks for ADUs are dependent on the zone in which the development is located. A 20% reduction to any yard setback is allowed. The only caveat is that this Minor Variance option cannot reduce a side yard setback to less than 5 feet; please see the Design Variances and Major Variance options for other adjustments to this standard.
- For reductions to a side yard setback below 5 feet or for zones with an underlying 5-foot side yard setback that cannot be reduced by a Minor Variance, see Design Variance and Major Variance options, below.
- **All allowed Minor Variances to side and rear yard setbacks meet or exceed the 10% Mandatory Adjustment.**

- **Design Variances (LOC 50.08.003.1-6)**

- Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
- Design variances are allowed to reduce side and rear yard setbacks, as discussed for specific design variance classifications, below. The quantity of the underlying setback and which set of design variance criteria are applicable (General or specific or both) depends on the proposal, zone, and/or Overlay.
- Subsection 2.a / R-DD zone for SFR & MH Additions (<https://ecode360.com/43145206>)  
In the R-DD zone [LOC 50.04.001.2.e.iii(1)], single-family and MH structures are subject to 10-foot setbacks on all property lines. [Note: there is an exception for Durham Street.] Additions to existing single-family and MH structures in the R-DD zone are allowed a 20-50% reduction to a side or rear yard setback as a design variance if the structure was built before 1960, at least 50% of the exterior walls (measured by sq. ft.) are maintained, and height is increased by no more than 100%. The R-DD design variance is subject to the General Design Variance per LOC 50.08.003.3 (<https://ecode360.com/43145227>). [Note: Per LOC 50.04.003.3.c, if the requested addition setback reduction is less than 20%, it is processed as an outright permitted R-DD exception through the ministerial building permit process, rather than a design variance.]
- Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>)  
Zoning for properties located in the DRDD includes East End Commercial (EC), EC/R-0, R-2, Public Functions (PF), and Parks & Natural Area (PNA). Setbacks are determined by the zone in which the site is located. For all development, up to 100% reduction to any yard setback is allowed, provided that the request complies with the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>), not to the DRDD-specific design variance criteria.
- Subsection 2.d / LGVC Overlay (<https://ecode360.com/43145209>)  
Zoning for properties located in the LGVC includes Office Commercial (OC), General Commercial (GC), PF, PNA, OC/R-3, R-0, R-3, and R-5. Setbacks are determined by zone and any additional Overlay designations (see Figure 50.05.007-J: Village Yard Setbacks Map). For lots located in the LGVC Overlay and not designated as a VTA, side and rear yard setbacks that do not abut an R-7.5 or R-10 zone may be reduced up to 100% if the request complies with both the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>) and LGVC-specific Design Variance criteria per LOC 50.08.003.5 (<https://ecode360.com/43145255>).
- Subsection 6 / RID Review (<https://ecode360.com/43145262>)  
RID Review design variances are allowed for single-family (primary and accessory structures) and MH proposed on a residentially zoned lot (R-0 through R-15, except R-DD or those lots located in a design district). The variances are also allowed on split-zoned lots if the proposed use is solely a single-family or



MH residential use. Provided that the request complies with both the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>) and RID Review-specific Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145262>), an applicant can request up to 100% reduction to a side or rear yard setback, or to the Oswego Lake 25-foot setback (commonly located at the rear property line of a lot).

- Where a side or rear yard setback cannot be reduced with one of the above design variances, see Major Variance option, below.
- **All allowed Design Variances to side and rear yard setbacks meet or exceed the 10% Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a minor development land use application (<https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- **Subsection 2 / All zones** (<https://ecode360.com/43145292>)  
For all other side or rear yard setbacks that are not allowed to be adjusted by any of the above variances, the applicant may apply for a Major Variance, which allows up to 100% reduction. The applicant must demonstrate compliance with the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>).
- **A Major Variance to a side and/or rear yard setback meets or exceeds the 10% Mandatory Adjustment.**

- **Special Street Setback (LOC 50.04.002)**

- The only setback that cannot be adjusted by any variance under current code is the city's Special Street Setback (SSS) (<https://ecode360.com/43166103>). The table that describes where the SSS is applied on a street-by-street basis and the preliminary extent of each SSS can be accessed here: <https://ecode360.com/43140834>.
- The purpose of the SSS is to "assure an adequate front yard setback is available in the event of possible future right-of-way (ROW) improvements, such as additional lanes, pedestrian and bicycle facilities, transit facilities, drainage management improvements, lighting, and street landscaping" (Subsection 1). While the majority of SSS align with front yards (which are not included the SB 1537 Mandatory Adjustment list), in some cases the SSS applies to a street *side* yard (which is on the list). Per SB 1537 Section 38(1), a city is not required to provide an adjustment when a regulation implements requirements related to:
  - Accessibility (including ADA-compliant accessible public pathways and public sidewalks);
  - Safety (including intersection sight distance, emergency access, lane width, separation between transit modes, etc.); and,
  - Water quality or ground and stormwater regulations (standard water quality and stormwater runoff public infrastructure in ROW).

The bullet point list, above, with the city-augmented information in "()", aligns the stated intent of the SB 1537 language with the SSS purpose statement. The SSS is applicable on particular streets to limit future development conflicts where additional ROW dedication may be required by the City Engineer to install public improvements per LOC 50.06.008 Utilities; Streets/Sidewalks (Pathways) and Other Public Infrastructure - <https://ecode360.com/43143684>). Therefore, the city finds that the SSS is exempt from SB 1537 mandatory adjustments. [Note that required yard setbacks are applied in addition to an SSS; as discussed above, those required yard setbacks may be adjusted.]



## Page 4: Part B: Design and Development Adjustments – Section 38 (4)(b)

For an individual development project, common area, open space or area that must be landscaped on the same lot or parcel as proposed housing: Must allow a reduction up to 25%

**Q8**

Do existing land use regulations apply this development or design standard to housing?

YES

**Q9**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

**Q10**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

**Q11**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

Under the Landscaping Standard (LOC 50.06.004.1: <https://ecode360.com/43143375>) and Open Space Contributions Standard (LOC 50.06.005: <https://ecode360.com/43168148>), set aside requirements do not apply to the development of single-family or MH residential projects on existing lots of record or where a land division is not proposed.

For all other types of residential development, the Open Space and/or Landscaping set asides may be adjusted as follows:

- **Design Variances (LOC 50.08.003.1-5)**
  - A Design Variance is processed as a part of a minor development land use application, typically as part of a Development Review Permit (<https://ecode360.com/43144440>).
  - Design variances are allowed to decrease the allowed set aside(s), as discussed for specific design variance classifications, below. The quantity of the set aside(s) and which set of design variance criteria are applicable (General or specific or both) depends on the proposal, zone, and/or Overlay.
  - Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>)  
For residential and mixed-use development in the DRDD Overlay, up to 15% of the site must be set aside as combined landscaping/open space per LOC 50.05.004.8.b.i (<https://ecode360.com/43141083>). Up to 100% reduction to the set aside requirement is allowed, provided that the reduction request complies



with the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>), not to the DRDD-specific Design Variance criteria.

- Subsection 2.d / LGVC Overlay (<https://ecode360.com/43145209>)  
For residential and mixed-use development in the LGVC Overlay, a combined total of 35% of the site must be set aside as follows: 15% landscaping per LOC 50.05.007.6.e.i (<https://ecode360.com/43142099>) and 20% open space per LOC 50.06.005.3.a.i (<https://ecode360.com/43168162>). Up to 100% reduction to the set aside requirements is allowed, provided that the reduction complies with both the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>) and LGVC-Specific Design Variance criteria per LOC 50.08.003.5 (<https://ecode360.com/43145255>).
- Where a required landscaping and/or open space set asides cannot be adjusted with a Design Variance, see the Major Variance option, below.
- **The Design Variance options for landscaping/open space set aside reductions meets or exceeds the 25% Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application (<https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All residential zones (<https://ecode360.com/43145292>)
  - Land Divisions (Subdivision Only). For a subdivision application on a development site that exceeds 75,000 sq. ft. in net developable area, a 20% open space set aside is required per LOC 50.06.005.3.a.iii (<https://ecode360.com/43143559>). Under the PD Overlay standards, this set aside cannot be reduced, only increased. For PD subdivisions, and any other residential development with required landscaping and/or open space set asides not allowed to be adjusted by Design Variances, the applicant may apply for a Major Variance, which allows up to 100% reduction, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
  - Cottage Clusters. A cottage cluster must include a courtyard with specific dimensional standards per LOC 50.03.0031.d.ii(1) (<https://ecode360.com/43165614>). An applicant may apply for a Major Variance, which allows up to a 100% reduction to the courtyard requirements, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
- **A Major Variance for landscaping/open space set aside reductions meets or exceeds the 25% Mandatory Adjustment.**



Page 5: Part B: Design and Development Adjustments – Section 38 (4)(c)

Parking minimums: Must be eligible for a full adjustment

**Q12**

Do existing land use regulations apply this development or design standard to housing?

NO

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**Q13**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

N/A

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**Q14**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

N/A

**Q15**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

Beginning on January 16, 2025, Ordinance 2949 was effective, which eliminates mandatory parking minimums city-wide per the State's Climate Friendly and Equitable Communities initiative (OAR 660-012-0420).



## Page 6: Part B: Design and Development Adjustments – Section 38 (4)(d)

Minimum lot sizes: Must allow an adjustment up to 10%, and including up to a 10% adjustment to lot widths or depths

**Q16**

Do existing land use regulations apply this development or design standard to housing?

YES

**Q17**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

**Q18**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

**Q19**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

Residential zones have a variety of minimum lot dimensional standards; the dimensions depend on the zone and proposed housing type.

Nonconforming Legal Lots of Record.

For an existing legal lot of record, nonconformance with an underlying zone's lot dimensional standards does not prohibit its outright development with a single-family dwelling or a duplex (along with their accessory structures) per LOC 50.01.006.5.a (<https://ecode360.com/43075755>); no variance to lot dimensional standards is required to do so.

SFR & Duplex Residential Development.

The only applicable lot depth requirement applies to Flag Lots per LOC 50.10.002.2, Definitions: Lot Depth (<https://ecode360.com/43145349>); the minimum lot depth must equal the applicable underlying zone's minimum lot width. See the table, below, for minimum lot sizes and lot widths applicable to a land division for single-family detached and duplex residential development. Additional information regarding minimum lot sizes for all Middle Housing types are discussed later.

Minimum Lot Sizes in Residential Zones for SFR & Duplexes				
Zone	Lot Size	Lot Width	Code Citation	Code Link
R-15	15,000 sq. ft.	80 ft.	Table 50.04.001-1	<a href="https://ecode360.com/43165959">https://ecode360.com/43165959</a>
R-10	10,000 sq. ft.	65 ft.	Table 50.04.001-1	<a href="https://ecode360.com/43165959">https://ecode360.com/43165959</a>
R-7.5	7,500 sq. ft.	50 ft.	Table 50.04.001-1	<a href="https://ecode360.com/43165959">https://ecode360.com/43165959</a>
R-6	6,000 sq. ft.	50 ft.	Table 50.04.001-3	<a href="https://ecode360.com/43165986">https://ecode360.com/43165986</a>
R-5	5,000 sq. ft.	N/A	Table 50.04.001-3	<a href="https://ecode360.com/43165986">https://ecode360.com/43165986</a>



R-DD	5,000 sq. ft.	N/A	Table 50.04.001-3	<a href="https://ecode360.com/43165986">https://ecode360.com/43165986</a>
R-W	3,375 sq. ft.	N/A	LOC 50.04.001.3.a	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a>
R-3	3,375 sq. ft.	N/A	LOC 50.04.001.3.a	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a>
R-2	N/A	N/A	LOC 50.04.001.3.a	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a>
R-0	N/A	N/A	LOC 50.04.001.3.a	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a>

#### Manufactured Home Parks & Subdivisions.

Manufactured Home Parks and Subdivisions are outright permitted uses in the R-0, R-3, and R-5 zones per LOC Table 50.03.002.2 ( <https://ecode360.com/43075928>, subject to the Use-Specific Standards per LOC 50.03.003.1.c (<https://ecode360.com/43075969>).

- As called out in the use-specific standards, a Manufactured Home Park must have a minimum *project* size of ½ acre and a maximum *project* size of 10 acres per LOC 50.03.003.1.c (<https://ecode360.com/43165607>). A *project* size is not synonymous with *lot* size. A *project* may include multiple legal lots of record that may or may not conform to the minimum lot sizes of the underlying zones (if any). The city does not read the project size as a *zone* dimensional requirement because it is listed in the use-specific standards.
- A Manufactured Home Subdivision is a land division that must comply with the minimum lot dimensions (if an) applicable to the underlying zone, and are subject to the same exceptions and variance options as a land division for single-family and/or Middle Housing. See the table, below, for the applicable lot dimensions:

Manufactured Home Subdivision Lot Dimensional Standards					
Zone	Lot Size	Lot Width	Lot Depth	Code Citation	Code Link
R-0	N/A	N/A	N/A	LOC Table 50.04.001-11	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a>
R-3	3,375 sq. ft.	N/A	N/A	LOC Table 50.04.001-11	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a>
R-5	5,000 sq. ft.	N/A	N/A	LOC Table 50.04.001-3	<a href="https://ecode360.com/43165986">https://ecode360.com/43165986</a>

#### Middle Housing.

Some Middle Housing types (duplexes, triplexes, quadplexes, cottage clusters, & townhouses) must meeting specific minimum lot sizes and/or lot widths, as applicable by the zone:

Middle Housing Lot Dimensional Standards			
Zone	Standard	Code Citation	Code Link
R-15, R-10, R-7.5	Same as SFR for du-, tri-, quad-, cottage cluster, & Townhouse Project	Table 50.04.001-1	<a href="https://ecode360.com/43165959">https://ecode360.com/43165959</a>
	Townhouse (all zones): 1,500 sq. ft., 15-foot lot width	Table 50.04.001-1	<a href="https://ecode360.com/43165959">https://ecode360.com/43165959</a>
R-6, R-5, and R-DD	Same as SFR for du-, tri- & Townhouse Projects	Table 50.04.001-3	<a href="https://ecode360.com/43165986">https://ecode360.com/43165986</a>
	Cottage cluster & quad-: R-6: 6,000 sq. ft. R-5 & R-DD: 7,000 sq. ft.	Table 50.04.001-3	<a href="https://ecode360.com/43165986">https://ecode360.com/43165986</a>
	Townhouses (all zones): 1,500 sq. ft., 15-foot lot width	Table 50.04.001-3	<a href="https://ecode360.com/43165986">https://ecode360.com/43165986</a>
R-W, R-3, R-2, & R-0	Varies with zone & MH type, no lot width	LOC 50.04.001.3.a	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a>



Minimum lot dimensional standards may be adjusted as follows:

- **Exceptions, Projections, and Enhancements – Any Land Division (LOC 50.04.003)**
  - Subsection 2.a (<https://ecode360.com/43166104>)
  - 10% reduction
  - The adjustment is processed as a part of a minor development land use application for a partition/subdivision (<https://ecode360.com/43144440>).
  - If a proposed partition or subdivision would result in any existing structure becoming noncompliant with lot dimensions, and the structure was constructed three plus years prior to the filing of the land use application, a 10% reduction to the minimum lot size, lot width, and/or lot depth (if applicable) may be allowed provided that the Exception criteria per LOC 50.04.003.2.a (<https://ecode360.com/43140839>) are met.
  - Where a lot dimension cannot be reduced with the Exceptions, see PD Overlay, Minor Variance, and Major Variance options, below.
  - **As applicable, the Exceptions reductions to minimum lot dimensions meets the 10% Mandatory Adjustment.**
- **Planned Development Overlay – Subdivision (LOC 50.07.007.4.d.ii(4)(b))**
  - The PD Overlay request for lot dimensional adjustments is processed as a minor development land use application in conjunction with a subdivision application (<https://ecode360.com/43144440>).
  - Dimensional Exceptions Allowed (Subsection 4.d.i - <https://ecode360.com/43145094>):
    - (1) The reviewing authority may grant exceptions to **zone requirements** (emphasis added) (except for the zone requirements and limitations listed below), if the applicant demonstrates that the proposed PD provides the same or a better sense of privacy, appropriate scale and open space as a PD designed in compliance with the standard or standards to which an exception is sought. The reviewing authority shall consider the factors listed in Subsection 4.d.ii(2) in determining whether to approve the exceptions.
      - (a) No exceptions shall be approved for the following zone requirements:
        - (i) The special setback requirements for steeply sloped lots in the R-5 zone [LOC 50.04.001.2.e.i(2)] and R-0, R-2, and R-3 zones [LOC 50.04.001.3.e.iv];
        - (ii) Height of building;
        - (iii) Use;
        - (iv) Open space; and,
        - (v) Density.
  - Lot Width and Lot Depth (only applicable to Flag Lots). These are zone dimensional requirements, which may be adjusted (with no stated limit to the reduction) through the use of a PD Overlay per Subsection 4.d.ii(1).
  - Lot Size. This is a zone dimensional requirement, which may be adjusted, as described below, through the use of a PD Overlay per Subsection 4.d.ii(4)(b) – Dimensional Exceptions (<https://ecode360.com/43145123>). A 20-25% reduction to the lot size or a reduction based on the percentage of Open Space set aside (whichever is greater) is allowed to the minimum lot size. The percentage of lot size reduction is based on the subject site's zone.
    - On perimeter PD subdivision lots only, the percentage of reduction is limited to 20% if the directly abutting properties are of the same or a lower density zone AND are developed with single-family dwellings per LOC 50.07.007.4.d.iii (<https://ecode360.com/43145123>). If perimeter lots are as above, they may also only be developed with SFR, zero lot line dwellings, or duplexes with minor exceptions (LOC 50.07.007.2.d.ii(1)(c)).
    - Internal lot dimensions may be reduced by any amount and those lots may be developed with any housing type allowed in the zone.
  - Where a lot dimension (lot size, width, and/or depth if a Flag Lot) cannot be reduced with the PD Overlay, see Minor Variance and Major Variance options, below.



- As applicable, the PD Overlay reductions to minimum lot dimensions meets or exceeds the 10% Mandatory Adjustment.

- **Minor Variances (LOC 50.08.002)**

- A Minor Variance is processed as a minor development land use application (<https://ecode360.com/43144440>).
- If the Minor Variance criteria per LOC 50.08.002.3 (<https://ecode360.com/43145189>) are met, the following lot dimensional adjustments are allowed:
- Subsection 2.c / Lot Width (<https://ecode360.com/43169394>)  
Up to a 5-foot reduction to the minimum lot width is allowed, with no limitations based on housing type or zone described in the classification. The lot width minimums depend on the residential zone in which the site is located (non-residential zones are not subject to minimum lot width requirements). Please see the table, below, which illustrates zones with either no minimum lot width or a minimum lot width that can be adjusted by 10% with a 5-foot reduction (see code citations/links above for full zone dimensional standards). For zones that are ***bold italics*** in the table, below, the 5-foot reduction does not equal 10%; please see the Major Variance option.

Table Analyzing 5-Foot Setback Reductions for Each Zone			
Zone	Required Lot Width	Reduced Lot Width	Percentage Reduction
<b><i>R-15</i></b>	<b><i>80 feet</i></b>	<b><i>75 feet</i></b>	<b><i>6.25% reduction</i></b>
<b><i>R-10</i></b>	<b><i>65 feet</i></b>	<b><i>60 feet</i></b>	<b><i>6.8% reduction</i></b>
R-7.5	50 feet	45 Feet	10% reduction
R-6	50 feet	45 feet	10% reduction
R-5	n/a	n/a	n/a
R-DD	n/a	n/a	n/a
R-W	n/a	n/a	n/a
R-3	n/a	n/a	n/a
R-2	n/a	n/a	n/a
R-0	n/a	n/a	n/a

- Subsection 2.l / Survey Error on Any Lot Dimension (<https://ecode360.com/43169408>)  
The amount of the adjustment is as necessary to deal with prior surveying errors. The minimum lot size, lot width, and lot depth (as applicable to Flag Lots), and the associated adjustment necessary to deal with the survey error, depending on the residential zone in which the site is located. [Note: non-residential zones are not subject to any minimum lot dimension requirements for lot size, lot width, or lot depth.]
- For zones with lot dimensional standards that cannot be reduced with any of the Minor Variances listed above (either by any amount or by the 10% required), see the Major Variance option, below.
- **All applicable Minor Variances to lot dimensional standards meet or exceed the 10% Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application (<https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>)  
For applicable land divisions and/or any other residential development subject to compliance with minimum lot dimensions (but which are *not* allowed to be adjusted by the Exceptions, PD Overlay, or Minor Variances described above), the applicant may apply for a Major Variance, which has no limitation on the reduction to lot size, lot width, and/or lot depth (as applicable), provided that the Major Variance



criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met and as proposed to be amended per this process.

- A HAPO comment was received that noted an existing prohibition on variances to maximum density (LOC 50.08.001.2.b). The city is proposing to amend this code language to allow a Major Variance to applicable density caps (see Section 38(4)(g)(C): Density Maximum, below). If a minimum lot dimension is reduced with a Major Variance and that negatively impacts proposed density, the applicant could request an additional Major Variance on that issue, subject to compliance with criteria per LOC 50.08.004.3.a.
- For Manufactured Home Parks or Subdivisions, this includes the ½ acre minimum *project* size (which could include multiple underlying legal lots of record) (LOC 50.03.003.1.c - <https://ecode360.com/43075969>).
- For the Middle Housing that is required to meet minimum lot sizes, as described in the table, above, this variance option is also available. This includes triplexes, quadplexes, cottage clusters, or townhouses/Townhouse Projects in various residential zones.
- **A Major Variance to lot dimension standards meets or exceeds the 10% Mandatory Adjustment.**



Page 7: Part B: Design and Development Adjustments – Section 38 (4)(e)

Maximum lot sizes: Must allow an adjustment up to 10%, including up to a 10% adjustment to lot widths or depths, if the adjustment results in more dwelling units than would be allowed without adjustment, and the adjustment does not result in reduction of density below the minimum applicable density

**Q20**

Do existing land use regulations apply this development or design standard to housing?

NO

**Q21**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

N/A

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**Q22**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

N/A

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**Q23**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

N/A



## Page 8: Part B: Design and Development Adjustments – Section 38 (4)(f)

Building lot coverage: Must allow an adjustment up to 10%

**Q24**

Do existing land use regulations apply this development or design standard to housing?

YES

**Q25**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

**Q26**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

**Q27**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

For zones (and Overlays) that allow residential development of any type, the following lot coverage maximums apply as described in the table, below. As furthered described for subdivisions with a Planned Development Overlay, lot coverage is set at the time of subdivision approval and subject to the applicable zone dimensional standards at the time of application submittal (LOC 50.07.007.5.; for lot coverage adjustments to PD lots, see RID Review Design Variances and PD Modifications, below.

Lot Coverage Maximums Based on Zones			
Zone	Lot Coverage Maximum	Code Citation	Code Link
R-15	25-100% (based on height & use)	LOC 50.04.001.1.f	<a href="https://ecode360.com/43076454">https://ecode360.com/43076454</a>
R-10	25-100% (based on height & use)	LOC 50.04.001.1.f	<a href="https://ecode360.com/43076454">https://ecode360.com/43076454</a>
R-7.5	25-100% (based on height & use)	LOC 50.04.001.1.f	<a href="https://ecode360.com/43076454">https://ecode360.com/43076454</a>
R-6	35-100% (based on height & use)	LOC 50.04.001.2.f.ii	<a href="https://ecode360.com/43140712">https://ecode360.com/43140712</a>
R-5	35-100% (based on height & use)	LOC 50.04.001.2.f.i	<a href="https://ecode360.com/43140698">https://ecode360.com/43140698</a>
R-DD	35-100% (based on height & use)	LOC 50.04.001.2.f.iii	<a href="https://ecode360.com/43140720">https://ecode360.com/43140720</a>
R-3	50-100% (based on use)	LOC 50.04.001.3.a	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a>
R-2	35-100% (based on use)	Table 50.01.004-12	<a href="https://ecode360.com/43140757">https://ecode360.com/43140757</a>
R-0	55-100% (based on use)	LOC 50.04.001.3.a	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a>
R-W	100%	LOC 50.04.001.3.a	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a>
NC	100%	Table 50.04.001.4-14	<a href="https://ecode360.com/43166082">https://ecode360.com/43166082</a>
GC	50%	Table 50.04.001.4-14	<a href="https://ecode360.com/43166082">https://ecode360.com/43166082</a>
OC	25%	Table 50.04.001.4-14	<a href="https://ecode360.com/43166082">https://ecode360.com/43166082</a>



EC	100%	Table 50.04.001.4-14	<a href="https://ecode360.com/43166082">https://ecode360.com/43166082</a>
CR&D	55%	Table 50.04.001.4-14	<a href="https://ecode360.com/43166082">https://ecode360.com/43166082</a>
MC	N/A (residential not allowed)	N/A	N/A
WLG R-2.5	100%	LOC 50.04.001.4.b.i(1)	<a href="https://ecode360.com/43166084">https://ecode360.com/43166084</a>
WLG RMU	100%	LOC 50.04.001.4.b.ii(1)	<a href="https://ecode360.com/43166085">https://ecode360.com/43166085</a>
WLG OC	100%	LOC 50.04.001.4.b.iii(1)	<a href="https://ecode360.com/43166089">https://ecode360.com/43166089</a>
LGVC Overlay	Supersedes: GC, NC, OC, R-0, R-3 & R-5 30-70% (based on zone, VTA, and uses)	LOC 50.05.007.4.c.ii	<a href="https://ecode360.com/43141893">https://ecode360.com/43141893</a>
DRDD Overlay	See discussion below	See below	See below

Maximum building lot coverage may be adjusted as follows:

- **Exceptions, Projections, and Enhancements – Land Division (LOC 50.04.003)**
  - The adjustment is processed as a part of a minor development land use application for a partition/subdivision (<https://ecode360.com/43144440>).
  - Subsection 2.a (<https://ecode360.com/43166104>)
  - 15% increase
  - Provided that the applicable Exception criteria per LOC 50.04.003.2.a (<https://ecode360.com/43166104>) are met, a proposed partition or subdivision that would result in any existing structure becoming noncompliant with the maximum allowed lot coverage, and the structure was constructed three plus years prior to the filing of the land use application, a 15% increase to the existing structure's maximum lot coverage may be allowed.
  - Where lot coverage cannot be increased with an Exception, see the PD modification, Design Variance, and Major Variance options, below.
  - **As allowed, the Exceptions lot coverage increase exceeds the 10% Mandatory Adjustment.**
- **Planned Development Subdivision Lots – RID or PD Modifications (LOC 50.07.007.4)**
  - A PD Overlay, with which an applicant may request adjustments to an underlying zone dimensional standard such as lot coverage, is processed as a minor development land use application in conjunction with a subdivision application (<https://ecode360.com/43144440>).
  - PD Subdivisions are subject to the zone dimensional standards in place at the time of application submittal and as adjusted with the PD approval.
  - After approval of a PD Subdivision, with which at least one zone dimensional requirement was allowed, a further adjustment a lot or subdivision's maximum lot coverage may be processed as either a:
    - A RID Review Design Variance for a specific lot and house design per LOC 50.08.003.6 (<https://ecode360.com/43145214>), where there is no stated limitation to the allowed lot coverage variance; or,
    - A PD Modification for either a lot or the entire PD Subdivision per LOC 50.07.007.4.c.iii(1)(a) (<https://ecode360.com/43145079>), subject to the re-review and compliance with the PD Overlay criteria per LOC 50.07.007.4.d.ii (<https://ecode360.com/43145094>).
  - Where lot coverage cannot be increased with either the PD modification or a RID Review Design Variance, below, see Major Variance option.
  - **As allowed, increases to the maximum lot coverage for a PD lot exceed the 10% Mandatory Adjustment.**



- **Design Variances (LOC 50.08.003.1-6)**

- Design variances are processed as part of a minor development land use application, commonly as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
- Design variances are allowed to increase the maximum allowed lot coverage, as discussed for specific design variance classifications, below. The lot coverage maximum and which set of design variance criteria are applicable (General or specific or both) depends on the proposal, zone, and/or Overlay.
- Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>)  
Zoning for properties located in the DRDD includes East End Commercial (EC), EC/R-0, R-2, Public Functions (PF), and Parks & Natural Area (PNA). [Note: Housing is not an allowed use in the PF and PNA zones.] Maximum lot coverage is determined by the zone in which the site is located:

DRDD Lot Coverage Maximums			
Zone	Lot Coverage	Code Citation	Code Link
EC	100%	Table 50.04.001-14	<a href="https://ecode360.com/43166082">https://ecode360.com/43166082</a>
EC/R-0	EC: 100%; R-0: 55%	LOC 50.04.001.3.a	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a>
R-2	SFR: 35% Townhouse Project: 55% Du-, tri-, & quadplex: 55% Other: 50%	Table 50.04.001-12	<a href="https://ecode360.com/43140757">https://ecode360.com/43140757</a>

For all development, up to 100% lot coverage may be allowed, provided that the request complies with the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>), not to the DRDD-specific design variance criteria.

- Subsection 2.e / RID Review Design Variance (<https://ecode360.com/43145214>)  
RID Review design variances are allowed for single-family (primary and accessory structures), MH proposed on a residentially zoned lot (R-0 through R-15, with the exceptions of R-DD or those lots located in a design district), and on lots that are part of an approved PD Subdivision. The variances are also allowed on split-zoned lots if the proposed use is solely a single-family or MH residential use. Provided that the request complies with both the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>) and RID Review-specific Design Variance criteria per LOC 50.08.003.6 (<https://ecode360.com/43145262>), an applicant may request up to 100% lot coverage.
- Where lot coverage cannot be increased with either the PD modification or one of the above design variances, see Major Variance option, below.
- **All allowed Design Variances to lot coverage meet or exceed the 10% Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a minor development land use application. (<https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>)  
For all residential development with any other lot coverage maximum that is not allowed to be adjusted by the above variances, the applicant may apply for a Major Variance, which may allow up to 100% lot coverage if the applicant demonstrates compliance with the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>).
- **A Major Variance to maximum lot coverage meets or exceeds the 10% Mandatory Adjustment.**



## Page 9: Part B: Design and Development Adjustments – Section 38 (4)(g)(A)(i)\*

\* Only applicable to manufactured dwelling parks, middle housing, multifamily, and mixed use residential

Bicycle Parking: Must allow an adjustment to the minimum number of spaces for use by residents, provided the application includes at least one-half space per residential unit

**Q28**

Do existing land use regulations apply this development or design standard to housing?

YES

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**Q29**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

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**Q30**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

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**Q31**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

As it applies to housing, bicycle parking spaces are required for new multi-family residential development of 4 units or more or if a mixed-use project includes MFR at that density per LOC 50.06.002.2.b.i(1) (<https://ecode360.com/43167842>). For Middle Housing, this only applies to Townhouse Projects of four units (same code citation/link). The minimum number of spaces is 1 space per dwelling unit per Table 50.06.002-6 (<https://ecode360.com/43167846>).

The required minimum spaces may be adjusted as follows:

- **Design Variances (LOC 50.08.003.1-5)**
  - A Design Variance is processed as a part of a minor development land use application, typically as part of a Development Review Permit (<https://ecode360.com/43144440>).
  - Design variances are allowed to decrease the minimum bicycle parking spaces, are discussed under specific design variance classifications, below. The allowed reduction and which set of design variance criteria are applicable (General or specific or both) depends on the proposal, zone, and/or Overlay.
  - Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>)  
For residential and mixed-use development in the DRDD Overlay, an unlimited reduction to the bicycle parking requirements may be allowed, provided that the reduction request complies with the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>), not to the DRDD-specific Design Variance criteria.
  - Subsection 2.d / LGVC Overlay (<https://ecode360.com/43145209>)



For residential and mixed-use development in the LGVC Overlay, up to 100% reduction to the bicycle parking requirements is allowed, provided that the reduction complies with both the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>) and LGVC-Specific Design Variance criteria per LOC 50.08.003.5 (<https://ecode360.com/43145255>).

- Where the minimum bicycle parking requirements cannot be adjusted with a Design Variance, see the Major Variance option, below.
- **The Design Variance options for bicycle parking requirements meet or exceed the 10% Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application (<https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>)  
For all applicable multi-family residential or mixed-use development subject to compliance with minimum bicycle parking requirements, but which are not allowed to be adjusted by the Design Variances described above, the applicant may apply for a Major Variance, which has no limitation on the reduction, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
- **A Major Variance to bicycle parking requirements meets or exceeds the 10% Mandatory Adjustment.**



Page 10: Part B: Design and Development Adjustments – Section 38 (4)(g)(A)(ii)\*

\* Only applicable to manufactured dwelling parks, middle housing, multifamily, and mixed use residential

Bicycle Parking: Must allow an adjustment to the location of bike parking spaces, provided lockable, covered bike parking spaces are within or adjacent to the residential development

### Q32

Do existing land use regulations apply this development or design standard to housing?

YES

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### Q33

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

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### Q34

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

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### Q35

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

As it applies to housing, bicycle parking spaces are required for new multi-family residential development of 4 units or more or if a mixed-use project includes MFR at that density per LOC 50.06.002.2.b.i(1) (<https://ecode360.com/43167842>). For Middle Housing, this only applies to Townhouse Projects of four units (same code citation/link as previous). The location of bicycle parking is subject to compliance with the standards under LOC 50.06.002.2.b.iv-x (<https://ecode360.com/43167842>).

The location of the bicycle parking spaces may be adjusted as follows:

- **Design Variances (LOC 50.08.003.1-5)**
  - A Design Variance is processed as a part of a minor development land use application, typically as part of a Development Review Permit (<https://ecode360.com/43144440>).
  - Design variances are allowed to locate required bicycle parking spaces other than as required, are discussed under specific design variance classifications, below. The allowed reduction and which set of design variance criteria are applicable (General or specific or both) depends on the proposal, zone, and/or Overlay.
  - Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>)  
For residential and mixed-use development in the DRDD Overlay, there is no limitation on adjustment to bicycle parking location requirements, provided that the relocation request complies with the General



Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>), not to the DRDD-specific Design Variance criteria.

- Subsection 2.d / LGVC Overlay (<https://ecode360.com/43145209>)

For residential and mixed-use development in the LGVC Overlay, there is no limitation on adjustment to the bicycle parking location requirements is allowed, provided that the relocation complies with both the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>) and LGVC-Specific Design Variance criteria per LOC 50.08.003.5 (<https://ecode360.com/43145255>).

- Where the locational bicycle parking requirements cannot be adjusted with a Design Variance, see the Major Variance option, below.
- **The Design Variance options for bicycle parking location requirements meet or exceed the Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application <https://ecode360.com/43144440>. As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>)  
For all applicable multi-family residential or mixed-use development subject to compliance with bicycle parking location requirements, but which are not allowed to be adjusted by the Design Variances described above, the applicant may apply for a Major Variance, which has no limitation on the reduction, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
- **A Major Variance to bicycle parking location requirements meets or exceeds the Mandatory Adjustment.**



## Page 11: Part B: Design and Development Adjustments – Section 38 (4)(g)(B)\*

\* Only applicable to manufactured dwelling parks, middle housing, multifamily, and mixed use residential

Building height maximums (excluding cottage clusters): Must allow an adjustment in addition to any existing applicable height bonuses. Must allow an adjustment up to the greater of "one story" or 20% of the base zone height

**Q36**

Do existing land use regulations apply this development or design standard to housing?

YES

**Q37**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

**Q38**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

**Q39**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

Residential development in residential zones includes Middle Housing, MFR, and mixed-use (Residential Use Table 50.03.002-1 - <https://ecode360.com/43075928>). Residential development in applicable commercial zones includes MFR and mixed-use (Commercial Use Table 50.03.002-2 - <https://ecode360.com/43075929>). In all zones, structures are subject to a range of maximum building heights which depend on a number of variable such as: the underlying zone, proximity to other zones, size of site, whether it is a Flag Lot or not, Overlay/design district designations, slope of site, and/or proposed housing type. For Middle Housing in residential zones, the applicable height maximum is the same as for SFR. The table, below, is a high-level summary of numerous code sections as they regulate the maximum base height.

Building Heights for All Zones that Allow Residential Development			
Zone	Base Height Range	Code Citation	Code Link
R-15	35 feet (plus)	Table 50.04.001-1 LOC 50.04.001.1.g	<a href="https://ecode360.com/43165959">https://ecode360.com/43165959</a> <a href="https://ecode360.com/43165982">https://ecode360.com/43165982</a>
R-10	30-35 feet (plus)	Table 50.04.001-1 LOC 50.04.001.1.g	<a href="https://ecode360.com/43165959">https://ecode360.com/43165959</a> <a href="https://ecode360.com/43165982">https://ecode360.com/43165982</a>
R-7.5	28-35 feet (plus)	Table 50.04.001-1 LOC 50.04.001.1.g	<a href="https://ecode360.com/43165959">https://ecode360.com/43165959</a> <a href="https://ecode360.com/43165982">https://ecode360.com/43165982</a>
R-6	28-32 feet	Table 50.04.001-3	<a href="https://ecode360.com/43165986">https://ecode360.com/43165986</a>



R-5	28-35 feet (plus)	Table 50.04.001-3 LOC 50.04.001.2.g.i(4)	<a href="https://ecode360.com/43165986">https://ecode360.com/43165986</a> <a href="https://ecode360.com/43140733">https://ecode360.com/43140733</a>
R-DD	28-40 feet (plus)	Table 50.04.001-3 LOC 50.04.001.2.g.iv	<a href="https://ecode360.com/43165986">https://ecode360.com/43165986</a> <a href="https://ecode360.com/43140740">https://ecode360.com/43140740</a>
R-3	28-50 feet	LOC 50.04.001.3.a LOC 50.04.001.3.f.i(1)	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a> <a href="https://ecode360.com/43166071">https://ecode360.com/43166071</a>
R-2	28-35 feet	LOC 50.04.001.3.a	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a>
R-W	25 or 27 feet from Oswego Lake Surface Level	LOC 50.04.001.3.a	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a>
R-0	28-50 feet	LOC 50.04.001.3.a LOC 50.04.001.3.f.i(1)	<a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a> <a href="https://ecode360.com/43166071">https://ecode360.com/43166071</a>
NC	35 feet	Table 50.04.001-14	<a href="https://ecode360.com/43166082">https://ecode360.com/43166082</a>
GC	45 feet	Table 50.04.001.14	<a href="https://ecode360.com/43166082">https://ecode360.com/43166082</a>
HC	60 feet	Table 50.04.001.14	<a href="https://ecode360.com/43166082">https://ecode360.com/43166082</a>
OC	28-45 feet	Table 50.04.001.14	<a href="https://ecode360.com/43166082">https://ecode360.com/43166082</a>
EC	40-60 feet	LOC 50.04.001.4.c.i	<a href="https://ecode360.com/43140813">https://ecode360.com/43140813</a>
WLG (all zones)	35-40 feet	LOC 50.04.001.4.b.i(2) LOC 50.04.001.4.b.ii(1)(c) LOC 50.04.001.4.b.iii(1)(b)	<a href="https://ecode360.com/43166083">https://ecode360.com/43166083</a>
CR&D	78 feet (average) with exceptions	LOC 50.04.001.4.c.	<a href="https://ecode360.com/43140814">https://ecode360.com/43140814</a>
DRDD District	See R-0, R-2, and EC zones, above	LOC 50.05.004.5.e	<a href="https://ecode360.com/43141039">https://ecode360.com/43141039</a>
LGVC Overlay	28-45 feet	LOC 50.05.007.4.b	<a href="https://ecode360.com/43141880">https://ecode360.com/43141880</a>
Uplands Overlay	30 feet	LOC 50.05.012.7.a	<a href="https://ecode360.com/43142904">https://ecode360.com/43142904</a>
Flag Lots (Residential Zones)	The taller of 22 feet or average of abutting dwellings	LOC 50.07.007.2.e.ii	<a href="https://ecode360.com/43145000">https://ecode360.com/43145000</a>

[Note: The table, above, does not include outright permitted base height exceptions in a particular zone or with a particular housing type. This includes, but is not limited to, a roof form height exception generally available to Middle Housing development in all residential zones (Low Density Residential zone cited as an example per LOC 50.04.001.1.g.ii – <https://ecode360.com/43076469>); compliance with this roof form height exception is reviewed at the time of ministerial building permit submittal.]

Maximum height may be adjusted as follows:

- **Exceptions, Projections, and Enhancements – Land Division (LOC 50.04.003)**
  - Subsection 2.a (<https://ecode360.com/43166104>)
  - 15% increase
  - The adjustment is processed as a part of a minor development land use application for a partition/subdivision (<https://ecode360.com/43144440>).
  - If a proposed partition or subdivision would result in any existing SFR or Middle Housing structure becoming noncompliant with lot dimensions, and the structure was constructed three plus years prior to the filing of the land use application, a 15% increase to the maximum building height may be allowed provided that the Exception criteria per LOC 50.04.003.2.a (<https://ecode360.com/43140839>) are met.
  - Where building height cannot be increased with this Exception, see Design Variance and Major Variance options, below.



- **As applicable, the Exceptions increase to maximum base height does not fully meet the 20% or 1-story Mandatory Adjustment.**

- **Design Variances (LOC 50.08.003.1-6)**

- Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
- Design variances are allowed to increase the maximum height, as discussed for specific design variance classifications, below. The maximum height increase, and which set of design variance criteria are applicable (General or specific or both), depends on the proposal, zone, and/or Overlay.
- Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>)  
Zoning for properties located in the DRDD that allow MFR and/or mixed-use development includes EC and EC/R-O. Maximum building height is determined by the zone in which the site is located, and for EC zoned the site's proximity to other zones (LOC Table 50.04.001-18 - <https://ecode360.com/43140813>). An EC/R-O split-zoned property must comply with the EC zone height standards (LOC 50.02.002.e - <https://ecode360.com/43075867>). For all development, a variance is allowed to increase the maximum building height without specified limit, provided that the request complies with the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>), not to the DRDD-specific design variance criteria.
- Subsection 6 / RID Review (<https://ecode360.com/43145262>)  
RID Review design variances are allowed for SFR and Middle Housing proposed on a residentially-zoned lot (R-O through R-15, except R-DD or those lots located in a design district). The variances are also allowed on split-zoned lots if the proposed use is solely a single-family or Middle Housing residential use. Provided that the request complies with both the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>) and RID Review-specific Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145262>), an applicant can request an increase to the maximum building height without a specified limit. [Note: Per City Charter, Chapter X, Section 46A (<https://ecode360.com/43036773>), the maximum height in residential zones is 50 feet.]
- Where building height cannot be increased with one of the above design variances, see Major Variance option, below.
- **All allowed Design Variances to building height meet or exceed the 20% or 1-story Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application (<https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>)  
For Middle Housing (all types), MFR, and mixed-use development subject to compliance with a maximum building height, but which are not allowed to be adjusted by the Exceptions or Design Variance options described above, the applicant may apply for a Major Variance without a specified limit, provided that:
  - The Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met; and,
  - Provided that the 50-foot height limit for all structures in residential zones per City Charter Chapter X, Section 46A is not exceeded (<https://ecode360.com/43036767#43036774>); the City does not have a project-specific minor development adjustment process to this charter height limitation.
- **A Major Variance to building height meets or exceeds the 20% or 1-story Mandatory Adjustment.**



## Page 12: Part B: Design and Development Adjustments – Section 38 (4)(g)(C)\*

\* Only applicable to manufactured dwelling parks, middle housing, multifamily, and mixed use residential

Unit density maximums: Must allow an amount necessary to account for other adjustments under this section

**Q40**

Do existing land use regulations apply this development or design standard to housing?

YES

**Q41**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

**Q42**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

PARTIALLY, CODE AMENDMENT PROPOSED

**Q43**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

Manufactured Dwelling Parks/Subdivision – Residential Zones Only.

For manufactured dwelling parks, maximum density is not addressed in the residential use table (LOC Table 50.03.002-1 - <https://ecode360.com/43075928>) or in the applicable use-specific standards (LOC 50.03.003.1.c - <https://ecode360.com/43075943>). There is a minimum (1/2 acre) / maximum (10 acres) *project* size, but no maximum *units* per acre. No exemption is necessary.

Commercial Zones - MH, MFR, & Mixed Use.

In commercial zones, Middle Housing is not allowed an allowed use (LOC 50.10.003.2 Definitions "Middle Housing" - <https://ecode360.com/43145349>). For MFR and mixed-use projects, which are allowed in the NC, GC, HC, OC, EC, CR&D, and all WLG zones, the city regulates the minimum density for residential development, calculated using the R-5 minimum lot size (Use Table 50.03.002-2 - <https://ecode360.com/43075929>). The city does not regulate a maximum density in those same zones; below is the stated language from the Zone Dimensional Table 50.04.001-14 (<https://ecode360.com/43166082>):

*If a dimension or requirement is not shown it means there is no minimum or maximum, but that a requirement may be established at the time of Development Review Commission review (Table 50.03.002-2).*

As regulated by current code, MFR and mixed-use projects are allowed as many residential units on a project site as comply with all applicable design and development standards. A lack of parking minimums, along with variances/adjustments (if approved) to setbacks, height, floor area, lot coverage, and Open Space/Landscaping set asides,



could potentially be used to increase the number of individual residential units within a structure(s). A developer could also later modify (either by addition or removal of previously approved structures) to change the number of units on the site without triggering maximum density requirements.

#### Residential Zones – MFR & Mixed Use.

Mixed-use projects are not allowed in any residential zones and MFR projects are only allowed in four residential zones: R-0, R-3, R-DD, and R-5 (Residential Use Table 50.03.002-1 - <https://ecode360.com/43075928>). The table, below, outlines applicability and calculation of maximum density for each of those zones:

Zone	Maximum Density
R-0	MFR projects are not subject to a minimum lot size or to a maximum density (LOC 50.04.001-3.a - <a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a> ). That means that MFR projects may propose as many residential units on a site as comply with development standards (same code citation/link), similar to the commercial zone discussion, above.
R-3	MFR projects must provide a minimum area of 3,375 sq. ft. per dwelling or a maximum density of 12.9 units per acre (LOC 50.04.001.3.a, Footnote [3] - <a href="https://ecode360.com/43166047">https://ecode360.com/43166047</a> ).
R-DD	MFR projects have a maximum density that is found by dividing a project's net developable area by a 2,000 sq. ft. minimum area per unit (Table 50.04.001-3, Footnotes [2] and [3] - <a href="https://ecode360.com/43165986">https://ecode360.com/43165986</a> ).
R-5	MFR is not subject to a minimum lot size in this zone and may propose as many residential units on a site as comply with development standards (Table 50.01.004-3, Footnote [2] - <a href="https://ecode360.com/43165986">https://ecode360.com/43165986</a> ), similar to the commercial zone discussion, above.

Variances to the maximum residential density on a site cannot be adjusted with a variance (LOC 50.08.001.2.b (<https://ecode360.com/43169372>); **the R-3 and R-DD zones do not comply with this Mandatory Adjustments.**

#### Residential Zones – Middle Housing.

Middle Housing in residential zones, except Townhouse Projects, is exempt from maximum density standards. When Middle Housing was adopted by the city (LU 22-0007), in compliance with OAR 660-046-0205(4)(c), maximum density for Townhouse Projects was set at four times the maximum density allowed for detached single-family dwellings in the same zone or 25 dwelling units per acre, whichever is less. Variances to the maximum residential density on a site cannot be adjusted with a variance (LOC 50.08.001.2.b (<https://ecode360.com/43169372>); **for Townhouse Projects in all residential zones, the code does not comply with this Mandatory Adjustments.**

#### Conclusion:

**To comply with parameters of the SB 1537 Exemption, staff proposes to amend LOC 50.08.001.2.b to allow a variance to the maximum residential density for Townhouse Projects (applicable to all residential zones in which this use is allowed), and MFR projects in the R-3 and R-DD zones.**



Section 38(4)(g)(D)(i): Prohibiting Residential Uses on Ground Floors (Except Street-Facing Facades w/in 20 feet of Street)

\* Only applicable to manufactured dwelling parks, middle housing, multifamily, and mixed use residential

Prohibitions on ground floors of mixed use buildings against residential uses (except for one face of the building facing the street & within 20 ft of the street): Must be eligible for a full adjustment

**Question 44:**

**Do existing land use regulations apply this development or design standard to housing?**

YES

**Question 45:**

**Is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?**

YES

**Question 46:**

**Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?**

YES

**Question 47:**

**Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provide an adjustment to this standard. Include links or references to applicable code sections. For no adjustment/partial adjustments, indicate precisely how the standard does or does not conform to SB 1537.**

[Note: The variance prohibition per LOC 50.08.001.2.a (<https://ecode360.com/43169371>) regulates the list of outright permitted uses in each zone; an applicant cannot request a variance to *add* a use (unless that variance is required by state or federal law, e.g., based on a special right of the occupant). This variance prohibition does not include a use-location regulation such as the one outlined in Section 38(4)(g)(D)(i). If the use is allowed in a zone, either as a primary or incidental use, its location may be adjusted as discussed below.]

The issue is only regulated in commercial zones. Middle Housing and manufactured dwelling parks are not allowed uses in commercial zones (LOC 50.10.003-2 Definitions “Middle Housing - <https://ecode360.com/43145349>).

Use-Specific Standard.

- GC and NC zones. Except as specifically controlled, below, a residential use may only occupy the ground floor if it is located behind a street-front commercial use per LOC 50.03.003.2.a (<https://ecode360.com/43076033>). On corner lots, this regulation is only enforced on the higher classification street. There are no dimensional requirements on the depth of the commercial use. Alleys are not “streets” for the purpose of this regulation.
- EC zone. See DRDD Overlay, below.
- HC, OC, and CR&D zones. Ground floor residential is not regulated for MFR or mixed-use development.
- MC zone. Residential use is not allowed.

DRDD Overlay & EC Zone.

In the EC zone, but only in an area within the DRDD Overlay depicted by Figure 50.03.003-A, ground floor residential uses are completely prohibited (<https://ecode360.com/43076036>). For EC zoned sites outside of this area, ground floor residential use is not regulated. This may be adjusted as follows:



- **Design Variance (LOC 50.08.003.1-5)**

- Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
- Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>)  
For MFR and mixed-use development, a design variance is allowed to locate a residential use on the ground floor without specified limits, provided that the request complies with the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>), not to the DRDD-specific design variance criteria.
- **This Design Variance to allow ground floor residential exceeds the Mandatory Adjustment.**

LGVC Overlay & GC, NC, and OC Zones.

This overlay includes GC, NC, and OC zones (<https://ecode360.com/43166851>). For OC zoned sites, ground floor residential is not regulated. For GC and NC zoned sites, ground floor residential is regulated with the use-specific standard (LOC 50.03.003.2.a.i - <https://ecode360.com/43165656>). There is an exception for GC zoned sites with street frontage designated in the overlay as Park Lane, Crossroads Gateway, or Campus Woods per LGVC Figure 50.05.007-D (<https://ecode360.com/43166854>). This may be adjusted as follows:

- **Design Variance (LOC 50.08.003.1-5)**

- Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
- Ground floor residential uses could be allowed, provided that the proposal complies with both the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>) and LGVC-Specific Design Variance criteria per LOC 50.08.003.5 (<https://ecode360.com/43145255>).
- **This Design Variance to allow ground floor residential exceeds the Mandatory Adjustment.**

WLG Overlay & WLG OC Zone.

In the West Lake Grove Office Commercial (WLG OC) Overlay zone, except for the area specifically depicted in Figure 50.03.003-A.1, residential uses are not allowed on the ground floor (Table 50.03.002-2, Footnote [11] - <https://ecode360.com/43075929>). For other WLG zones, this use is not regulated. The WLG OC regulation may be adjusted as follows:

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application (<https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>)  
For MFR and mixed-use development, the applicant may apply for a Major Variance to allow residential uses on the ground floor, without a specified limit, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
- **A Major Variance to allow ground floor residential exceeds the Mandatory Adjustment.**

GC & NC Zones not in DRDD, LGVC, or WLG OC Overlays.

In GC and NC zones, other than as described, above, the use-specific standard for ground floor residential uses applies and may be adjusted as follows:

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application (<https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.



- Subsection 2 / All zones (<https://ecode360.com/43145292>)  
For MFR and mixed-use development, the applicant may apply for a Major Variance to allow residential uses on the ground floor, without a specified limit, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
- **A Major Variance to allow ground floor residential exceeds the Mandatory Adjustment.**



Page 14: Part B: Design and Development Adjustments – Section 38 (4)(g)(D)(ii)\*

\* Only applicable to manufactured dwelling parks, middle housing, multifamily, and mixed use residential

Prohibitions on ground floors of mixed use buildings against nonresidential active uses that support the residential uses of the building: Must be eligible for a full adjustment

#### Q48

Do existing land use regulations apply this development or design standard to housing?

YES

#### Q49

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

#### Q50

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

#### Q51

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

[Note: The variance prohibition per LOC 50.08.001.2.a (<https://ecode360.com/43169371>) regulates the list of outright permitted uses in each zone; an applicant cannot request a variance to *add* a use (unless that variance is required by state or federal law, e.g., based on a special right of the occupant). This variance prohibition does not include a use-location regulation such as the one outlined in Section 38(4)(g)(D)(ii). If the use is allowed in a zone, either as a primary or incidental use, its location may be adjusted as discussed below.]

The issue is only regulated in commercial zones. Middle Housing and manufactured dwelling parks are not allowed uses in commercial zones (LOC 50.10.003-2 Definitions "Middle Housing - <https://ecode360.com/43145349>). For the zones and/or Overlays that regulated ground floor residential uses [see Section 38(4)(g)(D)(i), above], the requirement extends to supportive (incidental) activities/uses that are connected to the primary residential use with the exception of a leasing office and/or a lobby. For example, a gym solely for use of the site's residents would not be allowed to front on the street-facing ground floor.

#### Use-Specific Standard.

- GC and NC zones. Except as specifically controlled, below, an incidental residential use (other than lobby or leasing office) may only occupy the ground floor if it is located behind a street-front commercial use per LOC 50.03.003.2.a (<https://ecode360.com/43076033>). On corner lots, this regulation is only enforced on the higher classification street. There are no dimensional requirements on the depth of the commercial use. Alleys are not "streets" for the purpose of this regulation.
- EC zone. See DRDD Overlay, below.



- HC, OC, and CR&D zones. Incidental ground floor residential is not regulated for MFR or mixed-use development.
- MC zone. Residential use, primary or incidental, is not allowed.

#### DRDD Overlay & EC Zone.

In the EC zone, but only in an area within the DRDD Overlay depicted by Figure 50.03.003-A, incidental ground floor residential uses (except a lobby or leasing office) are completely prohibited (<https://ecode360.com/43076036>). For EC zoned sites outside of this area, incidental ground floor residential uses are not regulated. This may be adjusted as follows:

- **Design Variance (LOC 50.08.003.1-5)**
  - Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
  - Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>)  
For MFR and mixed-use development, an incidental residential use on the ground floor beyond a lobby or leasing office could be allowed without specified limits, provided that the request complies with the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>), not to the DRDD-specific design variance criteria.
  - **This Design Variance to allow incidental ground floor residential beyond a lobby or leasing office exceeds the Mandatory Adjustment.**

#### LGVC Overlay & GC, NC, and OC Zones.

This overlay includes GC, NC, and OC zones (<https://ecode360.com/43166851>). For OC zoned sites, incidental ground floor residential uses are not regulated. For GC and NC zoned sites, incidental ground floor residential uses beyond a lobby and leasing office is regulated with the use-specific standard (LOC 50.03.003.2.a.i - <https://ecode360.com/43165656>). There is an exception for GC zoned sites with street frontage designated in the overlay as Park Lane, Crossroads Gateway, or Campus Woods per LGVC Figure 50.05.007-D (<https://ecode360.com/43166854>). This may be adjusted as follows:

- **Design Variance (LOC 50.08.003.1-5)**
  - Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
  - Incidental ground floor residential uses beyond a lobby or leasing office could be allowed, provided that the proposal complies with both the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>) and LGVC-Specific Design Variance criteria per LOC 50.08.003.5 (<https://ecode360.com/43145255>).
  - **This Design Variance to allow incidental ground floor residential beyond a lobby or leasing office exceeds the Mandatory Adjustment.**

#### WLG Overlay & WLG OC Zone.

In the West Lake Grove Office Commercial (WLG OC) zone, except for the area specifically depicted in Figure 50.03.003-A.1, incidental ground floor residential uses are not allowed (Table 50.03.002-2, Footnote [11] - <https://ecode360.com/43075929>). For other WLG zones, this use is not regulated. The WLG OC regulation may be adjusted as follows:

- **Major Variance (LOC 50.08.004)**
  - A Major Variance is processed as a part of a minor development land use application (<https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
  - Subsection 2 / All zones (<https://ecode360.com/43145292>)  
For MFR and mixed-use development, the applicant may apply for a Major Variance to allow incidental ground residential uses beyond a lobby or leasing office on the ground floor, without a specified limit, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.



- **A Major Variance to allow incidental ground floor residential uses beyond a lobby or leasing office exceeds the Mandatory Adjustment.**

GC & NC Zones not in DRDD, LGVC, or WLG OC Overlays.

In GC and NC zones, other than as described, above, the use-specific standard for incidental ground floor residential uses beyond a lobby or leasing office applies and may be adjusted as follows:

- **Major Variance (LOC 50.08.004)**
  - A Major Variance is processed as a part of a minor development land use application (<https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
  - Subsection 2 / All zones (<https://ecode360.com/43145292>)  
For MFR and mixed-use development, the applicant may apply for a Major Variance to allow incidental ground floor residential uses beyond a lobby or leasing office, without a specified limit, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
  - **A Major Variance to allow incidental ground floor residential uses beyond a lobby or leasing office exceeds the Mandatory Adjustment.**



## Page 15: Part B: Design and Development Adjustments – Section 38 (5)(a)

Facade materials, color or pattern: Must be eligible for a full adjustment

**Q52**

Do existing land use regulations apply this development or design standard to housing?

YES

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**Q53**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

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**Q54**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

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**Q55**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

For residential projects classified as Ministerial Development [see LOC 50.07.003.13.a.ii(1), (2), and (3) - (<https://ecode360.com/43144372>)], there are no specific façade materials, colors, or patterns required in the Building Design standards per LOC 50.06.001.1-4 (<https://ecode360.com/43142915>). [Note: The Clear & Objective Building Design standards per LOC 50.06.001.7 do not apply to ministerial residential development (LOC 50.06.001.7.b.ii - <https://ecode360.com/43167757>).] No exemption is necessary.

For residential projects classified as Minor Development [see LOC 50.07.003.14.a.ii(1), (2), (5), (14), (15), (18), (21), (23), and (25) - (<https://ecode360.com/43144441>)], specific façade materials, colors, and patterns may be regulated based on design characteristics of set architectural styles, building design standards, and prohibited materials/colors lists. How façade requirements/prohibitions are required and may be adjusted depend on the zone and Overlay/Design District, as outlined below. [Note: Where the Clear and Objective (C&O) Building Design standards per LOC 50.06.001.7 apply to the façade materials, colors, and patterns of a minor development residential project, the applicant can choose either 1) outright compliance with C&O standards or 2) compliance with discretionary standards and any variances that may be allowed.]

- **Design Variances (LOC 50.08.003.1-5)**

- Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
- Design variances to modify required façade materials, colors, and patterns, are discussed for specific design variance classifications, below. Which set of design variance criteria are applicable (General or specific or both), depends on the proposal, zone, and/or Overlay.



- Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>): no limitation
  - For all residential development in the DRDD (for projects not using the C&O path), façade materials, colors, and patterns are regulated under a number of subsections including: Fourth Story [Subsection 5.d.i(4)], LO Style Required [Subsection 6.a/LOC 50.11.001], Storefront Appearance [Subsection 6.b], Materials [Subsection 6.c], Ground Floor Design [Subsection 6.d], Molding [Subsection 6.e], Corner Buildings [Subsection 6.j], and Parking Structures [Subsection 11]. Use this link to access the listed DRDD subsections: <https://ecode360.com/43166215>.
  - For design variances to anything listed in DRDD Subsections 5 and 6, the DRDD-specific Design Variance criteria apply per LOC 50.08.003.4 (<https://ecode360.com/43145238>).
  - For design variances to anything listed in DRDD Subsection 11, the General Design Variance criteria apply per LOC 50.08.003.3 (<https://ecode360.com/43145227>).
- Subsection 2.d / LGVC Overlay (<https://ecode360.com/43145209>): no limitation
  - For all residential development in the LGVC, façade materials, colors, and patterns are regulated under a number of subsections including: Design Diversity [Subsection 5.b.i], Permitted Architectural Styles [Subsection 5.b.ii], Prohibited Exterior Materials [Subsection 6.g], and Base/Middle/Top [Subsection 5.j.ii]. Use this link to access the LGVC subsections: <https://ecode360.com/43166841>.
  - For LGVC design variances, the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the LGVC-specific Design Variance criteria (LOC 50.08.003.5 - <https://ecode360.com/43145255>) both apply.
- Subsection 2.e / RID Review (<https://ecode360.com/43145214>): no limitation
  - In residential zones, an applicant may use a RID Review design variance with specific façade materials, colors, and patterns that demonstrate a proposed design is better than allowed by the applicable residential building design standards. Both of the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the RID Review-specific Design Variance criteria (LOC 50.08.003.6 - <https://ecode360.com/43145262>) apply.
- Where façade materials, colors, and patterns cannot be adjusted with one of the above design variances, see Major Variance option, below.
- **The allowed Design Variances for façade materials, colors, and patterns meet the Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application <https://ecode360.com/43144440>. As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>)  
When a façade material, color, or pattern is required in a zone, Design District, or Overlay, and a Design Variance is not an option, an applicant may apply for a Major Variance to adjust those requirements. There is no specified limit to the scope of the variance, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
- **A Major Variance to allow other façade materials, colors, and patterns meets the Mandatory Adjustment.**



## Page 16: Part B: Design and Development Adjustments – Section 38 (5)(b)

Façade articulation: Must be eligible for a full adjustment

**Q56**

Do existing land use regulations apply this development or design standard to housing?

YES

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**Q57**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

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**Q58**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

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**Q59**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

For residential projects classified as Ministerial Development [see LOC 50.07.003.13.a.ii(1), (2), and (3) (<https://ecode360.com/43144372>)], there are specific façade articulation requirements in the Building Design standards per LOC 50.06.001.1-4 (<https://ecode360.com/43142915>) as well as certain Overlays (Evergreen R-7.5 Overlay and Uplands Overlay). [Note: The Clear & Objective Building Design standards per LOC 50.06.001.7 do not apply to ministerial residential development (LOC 50.06.001.7.b.ii - <https://ecode360.com/43167757>).]

For residential projects classified as Minor Development [see LOC 50.07.003.14.a.ii(1), (2), (5), (14), (15), (18), (21), (23), and (25) (<https://ecode360.com/43144441>)], façade articulation requirements may be regulated based on design characteristics of set architectural styles, massing standards, and building design standards. How façade articulation standards are required and may be adjusted depends on the zone and Overlay/Design District, as outlined below. [Note: Where the Clear and Objective (C&O) Building Design standards per LOC 50.06.001.7 apply to the façade articulation of a minor development residential project, the applicant can choose either 1) outright compliance with C&O standards or 2) compliance with discretionary standards and any variances that may be allowed.]

- **Minor Variances (LOC 50.08.003.2)**

- A Minor Variance is processed as a minor development land use application (<https://ecode360.com/43144440>).
- If the Minor Variance criteria per LOC 50.08.002.3 (<https://ecode360.com/43145189>) are met, the following façade articulation adjustments are allowed:



- Subsection 2.p / LGVC (<https://ecode360.com/43169412>): no limitation  
An applicant may request a Minor Variance to several of the LGVC façade articulation requirements including yard setbacks, Build-to Line, and Minimum street frontage. See the Design Variance – LGVC section below for links to code.
- If a façade articulation requirement cannot be adjusted with a Minor Variance, see the Design and Major Variance options, below.
- **The applicable Minor Variance to façade articulation standards meets the Mandatory Adjustment.**

- **Design Variances (LOC 50.08.003.1-6)**

- Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
- Design variances to modify façade articulation requirements, are discussed for specific design variance classifications, below. Which set of design variance criteria are applicable (General or specific or both), depends on the proposal, zone, and/or Overlay.
- Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>): no limitation
  - For all residential development in the DRDD (that are not using the C&O path), façade articulation is regulated under a number of subsections including: Complex Massing [Subsection 5.a], Number of Stories [Subsection 5.d], Street Corners [Subsection 5.g], LO Style [Subsection 6.a], Storefront Appearance [Subsection 6.b], Mixed Use Residential [Subsection 6.i], and Corner Buildings [Subsection 6.j]. Use this link to access the listed DRDD subsections: <https://ecode360.com/43166215>.
  - For design variances to anything listed in DRDD Subsections 5 and 6, the DRDD-specific Design Variance criteria apply per LOC 50.08.003.4 (<https://ecode360.com/43145238>).
- Subsection 2.d / LGVC Overlay (<https://ecode360.com/43145209>): no limitation
  - For all residential development in the LGVC, façade articulation is regulated under a number of subsections including: Maximum Height Limits [Subsection 4.b.i], Standards for Buildings > 35' or 2.5 Stories [Subsection 4.b.ii], Yard Setbacks [Subsection 4.d], Build-To Line [Subsection 4.e.i], Minimum Building Width at Frontage [Subsection 4.e.ii], Minimum Height at Streetfront [Subsection 4.e.iii], Permitted Architectural Styles [Subsection 5.b.ii], Special Design Standards for VTAs [Subsection 5.h], Urban Village Design Area: Side & Rear Wall Planes [Subsection 5.i.i], Storefront Window [Subsection 5.i.iv(2)], and Village Campus Design Area [Subsection 5.j]. Use this link to access the LGVC subsections: <https://ecode360.com/43166841>.
  - For LGVC design variances, both the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the LGVC-specific Design Variance criteria (LOC 50.08.003.5 - <https://ecode360.com/43145255>) apply.
- Subsection 2.e / RID Review (<https://ecode360.com/43145214>): no limitation
  - Evergreen Overlay. For residential development in the Evergreen R-7.5 Overlay District, façade articulation is regulated under the following subsection: Front Setback Plane [Subsection 4.c]. See LOC 50.05.002 ((<https://ecode360.com/43140985>)).
  - Uplands Overlay. For residential development in the Uplands R-10 Overlay District, façade articulation is regulated under the following subsection: Structure Design – Side Yard Setback Plane [Subsection 7.c]. See LOC 50.05.012 (<https://ecode360.com/43167599>).
  - In residential zones (not including properties in the R-DD or a design district), façade articulation is regulated under a number of subsections including: Street Front Setback Planes w/ Exceptions [Subsections 2.b, 2.c, and 2.d], Side Yard Setback Planes w/ Exceptions [Subsection 2.e], Side Yard Appearance & Screening [Subsections 2.f and 2.g], Long Wall Planes [Subsection 2.h], Garage Wall Facing Street [Subsection 4.a.ii], Garage Appearance Standards [Subsection 4.a.iv(3)], Multiple Garage Openings [Subsection 4.a.v], R-6 Garage Wall Facing Street [Subsection 4.b.ii], and R-6 Garage Location & Appearance [Subsection 4.b.iv]. Both of the General Design Variance criteria



(LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the RID Review-specific Design Variance criteria (LOC 50.08.003.6 - <https://ecode360.com/43145262>) apply.

- Where façade articulation requirements cannot be adjusted with a Design Variance option, above, see the Major Variance option, below.
- **The allowed Design Variances for façade articulation meet the Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application <https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>): no limitation  
When façade articulation is required in a zone, Design District, or Overlay, and a Minor or Design Variance is not an option, an applicant may apply for a Major Variance to adjust those requirements. There is no specified limit, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
- **A Major Variance to allow other façade articulation meets the Mandatory Adjustment.**



## Page 17: Part B: Design and Development Adjustments – Section 38 (5)(c)

Roof forms and materials: Must be eligible for a full adjustment

**Q60**

Do existing land use regulations apply this development or design standard to housing?

YES

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**Q61**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

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**Q62**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

**Q63**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

For residential projects classified as Ministerial Development [see LOC 50.07.003.13.a.ii(1), (2), and (3) (<https://ecode360.com/43144372>)], there are roof form (but not material) requirements in the Building Design standards per LOC 50.06.001.1-4 (<https://ecode360.com/43142915>) as well as certain Overlays (Evergreen R-7.5 Overlay and Uplands Overlay). [Note: The Clear & Objective Building Design standards per LOC 50.06.001.7 do not apply to ministerial residential development (LOC 50.06.001.7.b.ii - <https://ecode360.com/43167757>).]

For residential projects classified as Minor Development [see LOC 50.07.003.14.a.ii(1), (2), (5), (14), (15), (18), (21), (23), and (25) (<https://ecode360.com/43144441>)], roof form and material requirements may be regulated based on design characteristics of set architectural styles, massing standards, and building design standards. How roof form and material standards are required and may be adjusted depends on the zone and Overlay/Design District, as outlined below. [Note: Where the Clear and Objective (C&O) Building Design standards per LOC 50.06.001.7 apply to roof form and/or material requirements of a minor development residential project, the applicant can choose either 1) outright compliance with C&O standards or 2) compliance with discretionary standards and any variances that may be allowed.]

- **Minor Variances (LOC 50.08.003.2)**
    - A Minor Variance is processed as a minor development land use application (<https://ecode360.com/43144440>).
-



- If the Minor Variance criteria per LOC 50.08.002.3 (<https://ecode360.com/43145189>) are met, the following roof form or materials adjustments are allowed:
- Subsection 2.g / Dormers (<https://ecode360.com/43169398>): cannot exceed primary roof height  
An applicant may request a Minor Variance to construct a dormer that does not exceed the height of the roof ridge on an existing single-family or middle housing dwelling that is nonconforming to lot coverage or setbacks.
- When required roof form or material standards that cannot be adjusted using a Minor Variance, see the Design and Major Variance options, below.
- **The Minor Variance to roof forms meets the Mandatory Adjustment.**

- **Design Variances (LOC 50.08.003.1-6)**

- Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
- Design variances to modify roof form and/or material requirements, are discussed for specific design variance classifications, below. Which set of design variance criteria are applicable (General or specific or both), depends on the proposal, zone, and/or Overlay.
- Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>): no limitation
  - For all residential development in the DRDD (that is not using the C&O path), roof forms and materials are regulated under a number of subsections including: Complex Massing [Subsection 5.a], Roof Forms [Subsection 5.c], Number of Stories [Subsection 5.d], Height Limit [Subsection 5.e], Street Corners [Subsection 5.g], LO Style [Subsection 6.a], Materials – Roof [Subsection 6.c.iii], Enclosure/Screening Mech Equipment [Subsection 6.f], Mixed Use Residential [Subsection 6.i], and Corner Buildings [Subsection 6.j]. Use this link to access the listed DRDD subsections: <https://ecode360.com/43166215>.
  - For design variances anything listed in DRDD Subsections 5 and 6, the DRDD-specific Design Variance criteria apply per LOC 50.08.003.4 (<https://ecode360.com/43145238>).
- Subsection 2.d / LGVC Overlay (<https://ecode360.com/43145209>): no limitation
  - For all residential development in the LGVC, roof forms and materials are regulated under a number of subsections including: Maximum Height Limits [Subsection 4.b.i], Standards for Buildings > 35' or 2.5 Stories [Subsection 4.b.ii], Yard Setbacks [Subsection 4.d], Minimum Height at Streetfront [Subsection 4.e.iii], Permitted Architectural Styles [Subsection 5.b.ii], Roofs [Subsection 5.e], Materials [Subsection 5.g], Special Design Standards for VTAs [Subsection 5.h], Urban Village Design Area: Roof Pitch [Subsection 5.i.iii(1)(a)], , and Village Campus Design Area [Subsection 5.j]. Use this link to access the LGVC subsections: <https://ecode360.com/43166841>.
  - For LGVC Design variances, both the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the LGVC-specific Design Variance criteria (LOC 50.08.003.5 - <https://ecode360.com/43145255>) apply.
- Subsection 2.e / RID Review (<https://ecode360.com/43145214>): no limitation
  - Evergreen Overlay. For residential development in the Evergreen R-7.5 Overlay District, roof forms are regulated under the following subsections: Accessory Structure Roof Pitch [Subsection 4.a], Front Setback Plane [Subsection 4.c], and Height - Additional Standards [Subsection 4.d]. See LOC 50.05.002 (<https://ecode360.com/43140985>).
  - Uplands Overlay. For residential development in the Uplands R-10 Overlay District, roof form is regulated under the following subsections: Flag Lots [Subsection 5.d.i] and Structure Design [Subsection 7]. See LOC 50.05.012 (<https://ecode360.com/43167599>).
  - In other residential zones not included in the R-DD zone or a design district, roof forms (but not material) are regulated under a number of subsections including: Street Front Setback Planes w/



Exceptions [Subsections 2.b, 2.c, and 2.d], Side Yard Setback Planes w/ Exceptions [Subsection 2.e], Side Yard Appearance & Screening [Subsections 2.f and 2.g], Long Wall Planes [Subsection 2.h], and R-6 Roof Design [Subsection 3.a]. Both of the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the RID Review-specific Design Variance criteria (LOC 50.08.003.6 - <https://ecode360.com/43145262>) apply.

- Where roof form and/or material requirements cannot be adjusted with one of the above design variances, see Major Variance option, below.
- **The allowed Design Variances for roof form/materials meets the Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application <https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>)  
When roof form and/or materials are subject to requirements in a zone, Design District, or Overlay, and a Minor or Design Variance is not an option, an applicant may apply for a Major Variance. There is no specified limit, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
- **A Major Variance to allow roof form/material adjustments, meets the Mandatory Adjustment.**



## Page 18: Part B: Design and Development Adjustments – Section 38 (5)(d)

Entry and garage door materials: Must be eligible for a full adjustment

**Q64**

Do existing land use regulations apply this development or design standard to housing?

YES

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**Q65**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

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**Q66**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

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**Q67**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

Entry door materials are not regulated by any of the Building Design, Overlay, or Design District standards. Garage door materials (required fenestration in certain conditions) are regulated in residential zones only and are applicable to single-family, Middle Housing, and/or MFR development as allowed by zone. Garage door materials may be adjusted as follows:

- **Design Variances (LOC 50.08.003.1-6)**

- Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
- Subsection 2.e / RID Review (<https://ecode360.com/43145214>): no limitation  
In residential zones (not including sites located in the R-DD zone or in a design district), the area of garage door windows is regulated under the Building Design standards per LOC 50.06.001.1-4, in a number of subsections including: Garage Wall Facing Street [Subsection 4.a.ii], Garage Appearance Standards [Subsection 4.a.iv(3)], R-6 Garage Wall Facing Street [Subsection 4.b.ii], and R-6 Garage Appearance Standards [Subsection 4.b.iv(2)]. Both of the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the RID Review-specific Design Variance criteria (LOC 50.08.003.6 - <https://ecode360.com/43145262>) apply.
- Where garage door material requirements cannot be adjusted with a RID Review Design Variance, see Major Variance option, below.
- **The allowed Design Variance to the garage door material requirements meets the Mandatory Adjustment.**



- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application <https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>)  
When garage door materials are subject to requirements in a zone, Design District, or Overlay, and a Design Variance is not an option, an applicant may apply for a Major Variance. There is no specified limit, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
- **A Major Variance to garage door material requirements meets the Mandatory Adjustment.**



## Page 19: Part B: Design and Development Adjustments – Section 38 (5)(e)

Garage door orientation unless adjacent to or across from school/public park: Must be eligible for a full adjustment

**Q68**

Do existing land use regulations apply this development or design standard to housing?

YES

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**Q69**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

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**Q70**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

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**Q71**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

Garage door orientation requirements apply to residential development in residential zones as outlined in Building Design Standard [see LOC 50.06.001, Subsection 4 - Garage Appearance and Location (<https://ecode360.com/43142970>)]. In the R-6 through R-15 zones, these standards apply to all housing (Subsection 4.a). In the R-0 through R-5 zones, these standards apply only to detached single-family and Middle Housing (Subsection 4.a.i). Applicability includes the above housing types developed in residential zones located in designated Overlays and Design Districts (for example, Middle Housing on a R-2 zoned property located in the DRDD per LOC 50.05.004). For residential development in commercial zones (even for those within an Overlay or Design District), there are no garage door orientation standards. [Note: the city does not require different or waive regulations for garages for sites abutting or adjacent to a school or public park.]

Garage door orientation requirements may be adjusted as follows:

- **Design Variances (LOC 50.08.003.1-6)**
  - Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
  - Design variances to modify garage door orientation requirements, are discussed for specific design variance classifications, below. Which set of design variance criteria are applicable (General or specific or both), depends on the proposal, zone, and/or Overlay.
  - Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>): no limitation
    - For single-family or Middle Housing residential development on an R-0 or R-2 zoned property within the DRDD Overlay, garage door orientation is regulated by the Building Design standards per LOC 50.06.001.4. [See Applicability in Subsections 4.a and 4.a.i (<https://ecode360.com/43142970>).]



- In the DRDD, an applicant can request a variance to any standard in the code (LOC 50.08.002.2.b - <https://ecode360.com/43145207>). Only the General Design Variance criteria apply per LOC 50.08.003.3 (<https://ecode360.com/43145227>).
- Subsection 2.d / LGVC Overlay (<https://ecode360.com/43145209>): no limitation
  - For single-family or Middle Housing on an R-0, R-3, or R-5 zoned property within the LGVC Overlay, garage door orientation is regulated by the Building Design standards per LOC 50.06.001.4. [See Applicability in Subsections 4.a and 4.a.i (<https://ecode360.com/43142970>).]
  - For LGVC Design variances, both the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the LGVC-specific Design Variance criteria (LOC 50.08.003.5 - <https://ecode360.com/43145255>) apply.
- Subsection 2.e / RID Review (<https://ecode360.com/43145214>): no limitation
  - For all applicable housing types in residential zones (not including the R-DD), garage door orientation is regulated by the Building Design standards per LOC 50.06.001.4. [See Applicability in Subsections 4.a and 4.a.i (<https://ecode360.com/43142970>).]
  - Both of the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the RID Review-specific Design Variance criteria (LOC 50.08.003.6 - <https://ecode360.com/43145262>) apply.
- Where garage door orientation requirements cannot be adjusted with one or more of the above design variances, see the Major Variance option, below.
- **The allowed Design Variances for garage door orientation requirements meet the Mandatory Adjustment.**
- **Major Variance (LOC 50.08.004)**
  - A Major Variance is processed as a part of a minor development land use application (<https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
  - Subsection 2 / All zones (<https://ecode360.com/43145292>)  
When garage door orientation is subject to requirements in a zone, Design District, or Overlay, and a Minor or Design Variance is not an option, an applicant may apply for a Major Variance. There is no specified limit, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
  - **A Major Variance to allow garage orientation adjustments meets the Mandatory Adjustment.**



Page 20: Part B: Design and Development Adjustments – Section 38 (5)(f)

Window materials except bird-safe glazing requirements: Must be eligible for a full adjustment

**Q72**

Do existing land use regulations apply this development or design standard to housing?

YES

**Q73**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

**Q74**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

**Q75**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

Window material is not regulated on a city-wide basis. There are certain Overlays that do include window material requirements:

- In the DRDD Overlay, mirrored or tinted glass is prohibited (LOC 50.05.004.6.c.iv(3) - <https://ecode360.com/43166253>).
- In the WLG Overlay, the same prohibition exists (LOC 50.05.005.4.k.ii.(2)(b)(vi) - <https://ecode360.com/43166558>).
- In the LGVC Overlay, the same prohibition exists (LOC 50.05.007.5.g(4) - <https://ecode360.com/43166949>).

These prohibitions may be adjusted as follows:

- **Design Variances (LOC 50.08.003.1-6)**
  - Design variances are processed as part of a minor development land use application, typically as a component in as broader Development Review permit (<https://ecode360.com/43144440>).
  - Design variances to modify window material requirements, are discussed for specific design variance classifications, below. Which set of design variance criteria are applicable (General or specific or both), depends on the proposal, zone, and/or Overlay.
  - Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>): no limitation
    - In the DRDD Overlay, window materials are regulated and prohibit mirrored or tinted glass [Subsection 6.c.iv(3). See code citation, above.
    - In the DRDD, an applicant can request a variance to a DRDD prohibited material listed in Subsection 5.g(4), subject to compliance with the DRDD-specific Design Variance criteria per LOC 50.08.003.4 (<https://ecode360.com/43145227>).



- Subsection 2.d / LGVC Overlay (<https://ecode360.com/43145209>): no limitation
    - In the LGVC Overlay, window materials are regulation and prohibit mirrored or tinted glass [Subsection 5.g(4)]
    - For LGVC Design variances, both the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the LGVC-specific Design Variance criteria (LOC 50.08.003.5 - <https://ecode360.com/43145255>) apply.
  - Where window material requirements cannot be adjusted with one of the above Design Variances, see the Major Variance option, below.
  - **The allowed Design Variances for window material requirements meet the Mandatory Adjustment.**
- **Major Variance (LOC 50.08.004)**
    - A Major Variance is processed as a part of a minor development land use application <https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
    - Subsection 2 / All zones (<https://ecode360.com/43145292>)  
When window material is subject to requirements in a zone, Design District, or Overlay, and a Design Variance is not an option, an applicant may apply for a Major Variance. There is no specified limit, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
    - **A Major Variance to allow window material requirements meets the Mandatory Adjustment.**



## Page 21: Part B: Design and Development Adjustments – Section 38 (5)(g)

Total window area: Must allow up to 30% adjustment if application includes at least 12% of total façade as window area

**Q76**

Do existing land use regulations apply this development or design standard to housing?

YES

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**Q77**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

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**Q78**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

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**Q79**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

For residential projects classified as Ministerial Development [see LOC 50.07.003.13.a.ii(1), (2), and (3) (<https://ecode360.com/43144372>)], there are no specific façade fenestration sq. footage and/or orientation requirements in the Building Design standards per LOC 50.06.001.1 (<https://ecode360.com/43142915>). [Note: The Clear & Objective Building Design standards per LOC 50.06.001.7 do not apply to ministerial residential development (LOC 50.06.001.7.b.ii - <https://ecode360.com/43167757>).]

For residential projects classified as Minor Development [see LOC 50.07.003.14.a.ii(1), (2), (5), (14), (15), (18), (21), (23), and (25) (<https://ecode360.com/43144441>)], façade window area and/or orientation requirements may be regulated based on design characteristics of set architectural styles, massing standards, and building design standards. How window standards are required and may be adjusted depends on the zone and Overlay/Design District, as outlined below. [Note: Where the Clear and Objective (C&O) Building Design standards per LOC 50.06.001.7 apply to the window area and/or orientation requirements of a minor development residential project, the applicant can choose either 1) outright compliance with C&O standards or 2) compliance with discretionary standards and any variances that may be allowed.]

Total window area and/or orientation requirements may be adjusted as follows:

- **Design Variances (LOC 50.08.003.1-6)**
  - Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
  - Design variances to modify window area and/or orientation requirements, are discussed for specific design variance classifications, below. Which set of design variance criteria are applicable (General or specific or both), depends on the proposal, zone, and/or Overlay.



- Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>): no limitation
  - Windows are regulated under a number of subsections including: Number of Stories [Subsection 5.d], LO Style [Subsection 6.a], Storefront Appearance [Subsection 6.b], Materials [Subsection 6.c], Ground Floor Design [Subsection 6.d], Molding Design [Subsection 6.e], and Corner Buildings [Subsection 6.j]. Use this link to access the listed DRDD subsections: <https://ecode360.com/43166215>.
  - For design variances anything listed in DRDD Subsections 5 and 6, the DRDD-specific Design Variance criteria apply per LOC 50.08.003.4 (<https://ecode360.com/43145238>).
- Subsection 2.d / LGVC Overlay (<https://ecode360.com/43145209>): no limitation
  - Windows are regulated under a number of subsections including: Permitted Architectural Styles [Subsection 5.b.ii], Windows on Upper Stories [Subsection 5.d.iii], Special Design Standards for VTAs – Façade Design [Subsection 5.h.ii(3)], Urban Village Design Area: Windows [Subsection 5..i.iii(1)(b)], Storefront Window [Subsection 5.i.iv], and Village Campus Design Area [Subsection 5.j]. Use this link to access the LGVC subsections: <https://ecode360.com/43166841>.
  - For LGVC Design variances, both the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the LGVC-specific Design Variance criteria (LOC 50.08.003.5 - <https://ecode360.com/43145255>) apply.
- Subsection 2.e / RID Review (<https://ecode360.com/43145214>): no limitation
  - In other residential zones not included in the R-DD zone or a design district, window area and/or orientation is regulated under the Building Design standards per LOC 50.06.001.1-4, in a number of subsections including: Side Yard Appearance & Screening [Subsection 2.f.iii], Garage Wall Facing Street [Subsection 4.a.ii], Garage Appearance Standards [Subsection 4.a.iv(3)], R-6 Garage Wall Facing Street [Subsection 4.b.ii], and R-6 Garage Appearance Standards [Subsection 4.b.iv(2)]. Both of the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the RID Review-specific Design Variance criteria (LOC 50.08.003.6 - <https://ecode360.com/43145262>) apply.
- Where window requirements cannot be adjusted with one of the above design variances, see Major Variance option, below.
- **The allowed Design Variances to window area and/or orientation requirements meets the Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application <https://ecode360.com/43144440>. As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>)  
When window area and/or orientation is subject to requirements in a zone, Design District, or Overlay, and a Design Variance is not an option, an applicant may apply for a Major Variance. There is no specified limit, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
- **A Major Variance to allow to window area and/or orientation requirements meets the Mandatory Adjustment.**



## Page 22: Part B: Design and Development Adjustments – Section 38 (5)(h)(A)\*

\* Only applicable to manufactured dwelling parks, middle housing, multifamily, and mixed use residential

Building orientation requirements, not including transit street orientation requirements: Must be eligible for a full adjustment

**Q80**

Do existing land use regulations apply this development or design standard to housing?

YES

**Q81**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

**Q82**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

**Q83**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

Building orientation requirements apply in various iterations across the city and to many different housing development types. For example, there are single-family and duplex housing development on Flag Lots must be oriented towards a designated front yard determined at the time of land division (LOC 50.07.007.2.e.i - <https://ecode360.com/43144996>). In the WLG and LGVC Overlays, there are Build-To lines ranging in depth, which requires massing to be located within a certain proximity of a frontage (LOC 50.05.004.4.d - <https://ecode360.com/43166500> and (LOC 50.05.007.4.e.i - <https://ecode360.com/43141909>, respectively). Finally, there are general Building Design proximity requirements that apply to MFR and mixed-use projects outside of the various Overlays (LOC 50.06.001.5.g - <https://ecode360.com/43167737>).

All building orientation requirements may be adjusted by one or more of the following:

- **Minor Variances (LOC 50.08.003.2)**

- A Minor Variance is processed as a minor development land use application (<https://ecode360.com/43144440>).
- If the Minor Variance criteria per LOC 50.08.002.3 (<https://ecode360.com/43145189>) are met, the following lot dimensional adjustments are allowed:
- Subsection 2.m / Flag Lots (<https://ecode360.com/43169409>): no limitation  
An applicant may request a Minor Variance to the determination of a Flag Lot front yard (LOC 50.07.007.2.d.i - <https://ecode360.com/43144992>) and/or orientation of a Flag Lot front yard (LOC 50.07.007.2.e.i - <https://ecode360.com/43144997>).



- Subsection 2.p / LGVC (<https://ecode360.com/43169412>)  
An applicant may request a Minor Variance to the LGVC orientation requirements under the Build-to Line and Minimum Street Frontage. See the Design Variance – LGVC section below for links to code sections.
- If a building orientation requirement cannot be adjusted with a Minor Variance, see the Design and Major Variance options, below.
- **The applicable Minor Variances to building orientation standards meet the Mandatory Adjustment.**

- **Design Variances (LOC 50.08.003.1-5)**

- Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
- Design variances to building orientation requirements, are discussed for specific design variance classifications, below. Which set of design variance criteria are applicable (General or specific or both), depends on the proposal, zone, and/or Overlay.
- Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>): no limitation
  - For all residential development in the DRDD (not using the C&O path), building orientation is regulated under a number of subsections including: Pedestrian Oriented Siting [Subsection 5.b], Entrances [Subsection 5.f], and Street Corners [Subsection 5.g]. Use this link to access the listed DRDD subsections: <https://ecode360.com/43166215>.
  - For design variances to anything listed in DRDD Subsection 5, the DRDD-specific Design Variance criteria apply per LOC 50.08.003.4 (<https://ecode360.com/43145238>).
- Subsection 2.d / LGVC Overlay (<https://ecode360.com/43145209>): no limitation
  - For all residential development in the LGVC, building orientation is regulated under a number of subsections including: Build-To Line [Subsection 4.e.i], Minimum Building Width at Frontage [Subsection 4.e.ii], Minimum Height at Streetfront [Subsection 4.e.iii], Pedestrian Features [Subsection 5.d.i] [Subsection 5.b.ii], and On-site Parking on Urban Streetfronts [Subsection 6.c.vii]. Use this link to access the LGVC subsections: <https://ecode360.com/43166841>.
  - For LGVC design variances, both the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the LGVC-specific Design Variance criteria (LOC 50.08.003.5 - <https://ecode360.com/43145255>) apply.
- Where building orientation requirements cannot be adjusted with a Design Variance option, above, see the Major Variance option, below.
- **The allowed Design Variances for building orientation meet the Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application (<https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>)  
When building orientation standards are required in a zone, Design District, or Overlay, and a Minor or Design Variance is not an option, an applicant may apply for a Major Variance to adjust those requirements. There is no specified limit, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
- **A Major Variance to allow adjustments to building orientation requirements meets the Mandatory Adjustment.**



## Page 23: Part B: Design and Development Adjustments – Section 38 (5)(h)(B)\*

\* Only applicable to manufactured dwelling parks, middle housing, multifamily, and mixed use residential

Building height transition requirements: Must be eligible for a full adjustment

**Q84**

Do existing land use regulations apply this development or design standard to housing?

YES

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**Q85**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

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**Q86**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

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**Q87**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

For Middle Housing development in residential zones, there is no height transition maximum. Height is regulated by the subject site's zone (LOC 50.04.001 - <https://ecode360.com/43076428>) and one Neighborhood Overlay (Uplands R-10 Overlay - <https://ecode360.com/43167612>). See Section 38(4)(g)(B), above, for how height is regulated in residential zones and all available adjustments.

On EC-zoned properties within the DRDD Overlay, Middle Housing, MFR, and mixed-use development height transitions are based on proximity of on-site development to adjacent residential zones (<https://ecode360.com/43140813>).

Within the LGVC Overlay, Middle Housing (residential zones only), MFR, and mixed-use development height transitions are regulated when a subject site abuts R-7.5 or R-10 residential zones. The height transition maximums are based on proximity of on-site development with that shared property line (<https://ecode360.com/43141881>).

Height transition requirements may be adjusted as follows:

- **Design Variances (LOC 50.08.003.1-4)**
  - Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
  - Design variances to modify building height transition requirements, are discussed for specific design variance classifications, below. Which set of design variance criteria are applicable (General or specific or both), depends on the proposal, zone, and/or Overlay.



- Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>): no limitation
  - For Middle Housing residential development on an R-0 or R-2 zoned property within the DRDD Overlay, building height is regulated by the underlying zone per LOC 50.04.001.3.a (<https://ecode360.com/43166047>).
  - For MFR or mixed-use residential development in the EC zoned property within the DRDD Overlay, building height is regulated by that zone per LOC 50.04.001.4.c.i (<https://ecode360.com/43140813>).
  - In the DRDD, an applicant can request a variance to any standard in the code (LOC 50.08.002.2.b - <https://ecode360.com/43145207>). Only the General Design Variance criteria apply per LOC 50.08.003.3 (<https://ecode360.com/43145227>).
- Where building height transitional requirements cannot be adjusted with one or more of the above design variances, see the Major Variance option, below.
- **The allowed Design Variances for building height requirements meet the Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application (<https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>)  
When building height is subject to requirements in a zone, Design District, or Overlay, and a Design Variance is not an option, an applicant may apply for a Major Variance. There is no specified limit, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
- **A Major Variance to allow building height transition adjustments meets the Mandatory Adjustment.**



## Page 24: Part B: Design and Development Adjustments – Section 38 (5)(h)(C)\*

\* Only applicable to manufactured dwelling parks, middle housing, multifamily, and mixed use residential

Requirements for balconies and porches: Must be eligible for a full adjustment

**Q88**

Do existing land use regulations apply this development or design standard to housing?

YES

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**Q89**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

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**Q90**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

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**Q91**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

Balconies and porches are either required or are one of several characteristic design elements that can be used to break up massing, achieve a required architectural style, or create human-scale development. They are regulated or encouraged as follows:

Cottage Cluster Orientation: LOC 50.03.003.1.d.iii(2)(b) (<https://ecode360.com/43165626>). The 10-foot required proximity to courtyard requirement can be measured from a front porch.

R-6 Zone – Front Yard Setback Modifications: LOC 50.04.001.2.e.ii (<https://ecode360.com/43166005>). A projecting front porch may extend into the front yard setback by up to 6 ft. under specific dimensions. This also applies to all forms of Middle Housing.

General Front Porch Projection: LOC 50.04.003.3.b (<https://ecode360.com/43140855>). A front porch may project up to five ft. into the front yard setback required by the zone provided that it is no more than ten ft. in width and, if covered, the roof peak is no greater than 16 ft. in height.

Decorative Metal Balconies Projection: LOC 50.04.003.8.a (<https://ecode360.com/43140880>). Decorative metal balconies not more than 6 ft. in width may project into a required yard setback by up to 2 ft.

Balconies in the West Lake Grove Design District: LOC 50.05.005.4.k.ii(3) (<https://ecode360.com/43166561>). For buildings that abut OC and NC zones, architectural features such as projecting balconies shall be required in the building design to foster a comfortable and interesting pedestrian experience.



Porches in the West Lake Grove Design District: LOC 50.05.005.5.b (<https://ecode360.com/43166575>). Porches are one design element that can be used to break up large facades and building planes.

Street Front Setback Plane Extensions: LOC 50.06.001.2.c.ii (<https://ecode360.com/43142929>). A front porch may project into a required front yard setback if it fits below the extension plane illustrated in Figure 50.06.001-C.

Corner Lots: LOC 50.06.001.2.g (<https://ecode360.com/43142951>). Under the residential Building Design standards applicable to single-family and Middle Housing, balconies and covered porches may be used to minimize side yard appearance on corner lots.

R-6 Residential Building Design for Secondary Roof Forms: LOC 50.06.001.3 (<https://ecode360.com/43142956>). Secondary roof forms in the R-6 zone includes covered balconies and those may be flat or shed roof types.

Mixed Use Residential Development in DRDD: LOC 50.05.004.6.i (<https://ecode360.com/43141070>). Mixed use buildings with a residential component shall design the residential portion of the structure through the use of architectural features such as balconies.

R-DD / Old Town Neighborhood Design Overlay: LOC 50.05.006.4 (<https://ecode360.com/43141706>). Under the three architectural styles (Early 1900 Vernacular, Cape Code, and Craftsman), porches are listed as one of the characteristic design elements that should be included in the design proposal.

VTAs in the LGVC Overlay: LOC 50.05.007.5.h (<https://ecode360.com/43141986>). To foster visual interest and compatibility, balconies and/or porches are one of the allowed design elements and façade treatments.

R-6 Building Design – Required Porch: LOC 50.06.001.3.b (<https://ecode360.com/43142960>). All new primary structures (including Middle Housing) shall include a covered front porch at entry.

Lake Oswego Styles Description: LOC 50.11.001 Appendix A (<https://ecode360.com/43145968>). In the DRDD Overlay, one of the permitted architectural styles is Arts & Crafts, and porches are listed as one of the characteristic design elements that should be included in the design proposal.

Old Town Styles Description: LOC 50.11.003 Appendix C (<https://ecode360.com/43145980>). In the R-DD zone (Old Town Neighborhood Overlay), full length porches are acceptable to create visual links in MFR development. They can also be used under architectural massing guidelines.

These balcony and porch requirements or options, and any zoning or design regulation that may impact how these elements are designed or incorporated can be adjusted, as follows:

- **Minor Variances (LOC 50.08.002)**

- A Minor Variance application is processed as a minor development land use application (<https://ecode360.com/43144440>).
- If the Minor Variance criteria per LOC 50.08.002.3 (<https://ecode360.com/43169379>) are met, the following are allowed setback reductions an applicant may request in order to incorporate a balcony or front porch that is either required or otherwise might not be possible as an optional design element.
- Subsection 2.a.i / General Setback Reduction (<https://ecode360.com/43169380>): 20%  
A 20% reduction is allowed to any yard setback (including the 25-foot Oswego Lake setback). This setback reduction is also allowed for ADUs per Subsection 2.q. The only caveat is that a side yard setback cannot be reduced via a Minor Variance to less than 5 feet. In the R-6 zone, the minimum 20-foot front yard setback is limited to a 10% or 2-foot reduction.
- Subsection 2.a.ii / Tree Preservation (<https://ecode360.com/43169383>): 50%  
A 50% reduction is allowed to any yard setback (including the 25-foot Oswego Lake setback) if the request is necessary to preserve a tree. This setback reduction is also allowed for ADUs per Subsection 2.q. The only caveat is that a side yard setback cannot be reduced via a Minor Variance to less than 5 feet. In the R-6 zone, the 20-foot front yard setback is limited to a 10% or 2-foot reduction.



- Subsection 2.p.i / LGVC Overlay – Non-VTA sites (<https://ecode360.com/43169413>): 20%  
A 20% reduction to a side or rear yard setback or four feet (whichever is less) is allowed on sites in the LGVC Overlay. The only caveat is that LGVC sites designated with VTAs cannot reduce setbacks where a property line is adjacent to residential zones or uses.
- Subsection 2.q / Accessory Dwelling Units (<https://ecode360.com/43169418>): 20%  
Required yard setbacks for ADUs are dependent on the zone in which the development is located. A 20% reduction to any yard setback is allowed. The only caveat is that a side yard setback cannot be reduced via a Minor Variance to less than 5 feet.
- For zones where a yard setback cannot be reduced by a Minor Variance to construct a balcony or a porch, see Design Variance and Major Variance options, below.
- **All allowed Minor Variances to yard setbacks for a balcony or a porch could meet the Mandatory Adjustment.**

- **Design Variances (LOC 50.08.003.1-6)**

- Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
- Design variances can be used to incorporate porches and balconies that might not otherwise comply, request a waiver to a balcony or porch requirement, or to vary any applicable dimensional or design regulations, as discussed for specific design variance classifications, below. The zone or design restriction and which set of design variance criteria are applicable (General or specific or both) depends on the proposal, zone, and/or Overlay.
- Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>): no limitation  
For all development that either requires or allows the use of a balcony or a porch, an applicant may request a design variance to adjust the applicable dimensional and/or design requirement, provided that the request complies with either:
  - 1) The General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>) if the variance is to an underlying zone dimensional requirement or any of the DRDD regulations in Subsections 8-12; or,
  - 2) To the DRDD-specific design variance criteria per LOC 50.08.003.4 (<https://ecode360.com/43145238>), if the variance is to one of the DRDD regulations in Subsections 5-7.
- Subsection 2.d / LGVC Overlay (<https://ecode360.com/43145209>): no limitation  
For all development that either requires or allows the use of a balcony or a porch, an applicant may request a design variance to adjust the applicable dimensional and/or design requirement, provided that the request complies with both the General Design Variance criteria per LOC 50.08.003.3 (<https://ecode360.com/43145227>) and LGVC-specific Design Variance criteria per LOC 50.08.003.5 (<https://ecode360.com/43145255>).
- Subsection 2.e / RID Review (<https://ecode360.com/43145214>): no limitation  
In residential zones (not including properties in the R-DD or a design district), development that either requires or allows the use of a balcony or porch (see below), the applicant may request a design variance to adjust the applicable dimensional and/or design requirement, provided that both of the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the RID Review-specific Design Variance criteria (LOC 50.08.003.6 - <https://ecode360.com/43145262>) are met.
  - Front Porches: In the R-6 zone, front porches are required with the new construction of all allowed housing types (LOC 50.06.001.3.b - <https://ecode360.com/43142960>). If a project cannot incorporate an outright compliant front porch element, an applicant may obtain more flexibility by applying for a RID Review Design Variance to one of the potentially constraining zone or design standards (LOC 50.08.003.2.e - <https://ecode360.com/43145214>).
  - Covered Side Porches/Balconies: For corner lots located in residential zones, two additional Side Yard Appearance and Screening options are available that would require incorporation of a



covered side porch on the street side elevation or a 2<sup>nd</sup> floor balcony on that elevation (LOC 50.06.001.2.g - <https://ecode360.com/43142951>). Side Yard Appearance and Screening requirements are one of the standards allowed to be adjusted with through a RID Review Design Variance per LOC 50.08.003.2.e.vii (<https://ecode360.com/43169440>).

- Where a standard that impacts a required balcony or porch cannot be adjusted with one of the above design variances, see Major Variance option, below.
- **The allowed Design Variances for regulations that impact a balcony or porch standard meet the Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application <https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>): no limitation  
When an applicant must, wishes to, or cannot incorporate a porch or balcony as required in a zone, Design District, or Overlay, and a Minor or Design Variance is not an option, an applicant may apply for a Major Variance to adjust any applicable zone dimensional or design requirements. There is no specified limit, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
- **A Major Variance to any regulation that impacts a balcony or porch standard meets the Mandatory Adjustment.**



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Page 25: Part B: Design and Development Adjustments – Section 38 (5)(h)(D)\*

\* Only applicable to manufactured dwelling parks, middle housing, multifamily, and mixed use residential

Requirements for recesses and offsets: Must be eligible for a full adjustment

**Q92**

Do existing land use regulations apply this development or design standard to housing?

YES

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**Q93**

If 'yes' to the above, is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

YES

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**Q94**

Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

YES

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**Q95**

Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537. If the applicant has selected "not applicable" to any of the questions above, write "N/A" in the text box below.

For residential projects classified as Ministerial Development [see LOC 50.07.003.13.a.ii(1), (2), and (3) (<https://ecode360.com/43144372>)], there are specific recess and offset requirements in the Building Design standards per LOC 50.06.001.1-4 (<https://ecode360.com/43142915>) as well as certain Overlays (Evergreen R-7.5 Overlay and Uplands Overlay). [Note: The Clear & Objective Building Design standards per LOC 50.06.001.7 do not apply to ministerial residential development (LOC 50.06.001.7.b.ii - <https://ecode360.com/43167757>).]

For residential projects classified as Minor Development [see LOC 50.07.003.14.a.ii(1), (2), (5), (14), (15), (18), (21), (23), and (25) (<https://ecode360.com/43144441>)], recess and offset requirements may be regulated based on design characteristics of set architectural styles, massing standards, and building design standards. How the recess and offset standards are required and may be adjusted depends on the zone and Overlay/Design District, as outlined below. [Note: Where the Clear and Objective (C&O) Building Design standards per LOC 50.06.001.7 apply to the façade articulation of a minor development residential project, the applicant can choose either 1) outright compliance with C&O standards or 2) compliance with discretionary standards and any variances that may be allowed.]

The city regulates offsets and recesses, with allowed variances, in the same manner as façade articulation per Section 38(5)(b), above.

- **Minor Variances (LOC 50.08.003.2)**

- A Minor Variance is processed as a minor development land use application (<https://ecode360.com/43144440>).



- If the Minor Variance criteria per LOC 50.08.002.3 (<https://ecode360.com/43145189>) are met, the following offset and recess variance is allowed:
- Subsection 2.p / LGVC (<https://ecode360.com/43169412>)  
An applicant may request a Minor Variance to several of the LGVC façade offset and recess requirements including Build-to Line, and Minimum Street Frontage. See the Design Variance – LGVC section, below, for links to code.
- If a façade offset or recess requirements cannot be adjusted with a Minor Variance, see the Design and Major Variance options, below.
- **The applicable Minor Variance to façade offset and recess standards meets the Mandatory Adjustment.**

- **Design Variances (LOC 50.08.003.1-6)**

- Design variances are processed as part of a minor development land use application, typically as a component in a broader Development Review permit (<https://ecode360.com/43144440>).
- Design variances to modify façade offset and recess requirements, are discussed for specific design variance classifications, below. Which set of design variance criteria are applicable (General or specific or both), depends on the proposal, zone, and/or Overlay.
- Subsection 2.b / DRDD Overlay (<https://ecode360.com/43145207>): no limitation
  - For all residential development in the DRDD (that is not using the C&O path), façade offset and recess requirements are regulated under a number of subsections including: Complex Massing [Subsection 5.a], Number of Stories [Subsection 5.d], Street Corners [Subsection 5.g], LO Style [Subsection 6.a], Storefront Appearance [Subsection 6.b], Mixed Use Residential [Subsection 6.i], and Corner Buildings [Subsection 6.j]. Use this link to access the listed DRDD subsections: <https://ecode360.com/43166215>.
  - For design variances to anything listed in DRDD Subsections 5 and 6, the DRDD-specific Design Variance criteria apply per LOC 50.08.003.4 (<https://ecode360.com/43145238>).
- Subsection 2.d / LGVC Overlay (<https://ecode360.com/43145209>): no limitation
  - For all residential development in the LGVC, façade offset and recess requirements are regulated under a number of subsections including: Maximum Height Limits [Subsection 4.b.i], Standards for Buildings > 35' or 2.5 Stories [Subsection 4.b.ii], Yard Setbacks [Subsection 4.d], Build-To Line [Subsection 4.e.i], Minimum Building Width at Frontage [Subsection 4.e.ii], Minimum Height at Streetfront [Subsection 4.e.iii], Permitted Architectural Styles [Subsection 5.b.ii], Special Design Standards for VTAs [Subsection 5.h], Urban Village Design Area: Side & Rear Wall Planes [Subsection 5.i.i], Storefront Window [Subsection 5.i.iv(2)], and Village Campus Design Area [Subsection 5.j]. Use this link to access the LGVC subsections: <https://ecode360.com/43166841>.
  - For LGVC design variances, both the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the LGVC-specific Design Variance criteria (LOC 50.08.003.5 - <https://ecode360.com/43145255>) apply.
- Subsection 2.e / RID Review (<https://ecode360.com/43145214>): no limitation
  - Evergreen Overlay. For residential development in the Evergreen R-7.5 Overlay District, façade offset and recess requirements are regulated under the following subsection: Front Setback Plane [Subsection 4.c]. See LOC 50.05.002 (<https://ecode360.com/43140985>).
  - Uplands Overlay. For residential development in the Uplands R-10 Overlay District, façade offset and recess requirements are regulated under the following subsections: Structure Design – Side Yard Setback Plane [Subsection 7.c]. See LOC 50.05.012 (<https://ecode360.com/43167599>).
  - General. In residential zones (not including properties in the R-DD or a design district), façade offset and recess requirements are regulated under a number of subsections including: Street Front Setback Planes w/ Exceptions [Subsections 2.b, 2.c, and 2.d], Side Yard Setback Planes w/ Exceptions [Subsection 2.e], Side Yard Appearance & Screening [Subsections 2.f and 2.g], Long Wall Planes [Subsection 2.h], Garage Wall Facing Street [Subsection 4.a.ii], Garage Appearance Standards [Subsection 4.a.iv(3)], Multiple Garage Openings [Subsection 4.a.v], R-6 Garage Wall



Facing Street [Subsection 4.b.ii], and R-6 Garage Location & Appearance [Subsection 4.b.iv]. Both of the General Design Variance criteria (LOC 50.08.003.3 - <https://ecode360.com/43145227>) and the RID Review-specific Design Variance criteria (LOC 50.08.003.6 - <https://ecode360.com/43145262>) apply.

- Where façade offset and recess requirements cannot be adjusted with a Design Variance option, above, see the Major Variance option, below.
- **The allowed Design Variances for façade offset and recess requirements meet the Mandatory Adjustment.**

- **Major Variance (LOC 50.08.004)**

- A Major Variance is processed as a part of a minor development land use application <https://ecode360.com/43144440>). As outlined in Part A, the city is proposing to amend the Community Development Code to allow staff to issue the initial decision on a Major Variance.
- Subsection 2 / All zones (<https://ecode360.com/43145292>)  
When façade offset and recess requirements are required in a zone, Design District, or Overlay, and a Minor or Design Variance is not an option, an applicant may apply for a Major Variance to adjust those requirements. There is no specified limit, provided that the Major Variance criteria per LOC 50.08.004.3.a (<https://ecode360.com/43145293>) are met.
- **A Major Variance to allow other façade recess and offset requirements meets the Mandatory Adjustment.**



Page 26: Part C: Previous 5 years of Adjustments - Option 1 (90% Approval) & Option 2 (Testimonial)

**Q96**

**Please submit either 5-year permit history using the HAPO-provided spreadsheet (reminder: the Excel spreadsheet needs to be exported to PDF) or collated developer testimonials.**

The City of Lake Oswego selected Option 1 to demonstrate 90% approval of received adjustment requests over the previous five years. Please see the pdf and excel attachments documenting the 5-year permit history.

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# **NARRATIVE - LAND USE APPLICATION**

## **2 PARCEL MINOR PARTITION / MINOR VARIANCE**

### **18179 SW Pilkington Road**

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Submitted to:  
**City of Lake Oswego, Oregon**

June 20, 2021  
Updated: Jan. 10, 2022  
Revised: March 30, 2022

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#### **SITE ADDRESS**

18179 SW Pilkington Road  
City of Lake Oswego  
Clackamas County, Oregon

#### **LOCATION**

Located on the west side of Pilkington Road  
across from Tree Street, in the Rosewood  
Neighborhood Association

#### **ASSESSOR'S INFO**

Tax Map 2-1E-18CA, Tax Lot 801  
City of Lake Oswego  
Clackamas County, Oregon

#### **ZONING**

City of Lake Oswego R-7.5  
Residential Low-Density Zone

#### **PROPERTY OWNER / APPLICANT**

DKNW Properties LLC  
5921 NE 80<sup>th</sup> Avenue  
Portland, Oregon 97218

#### **PLANNING CONSULTANT**

NW Land Planning, Trisha Clark  
PO Box 1073  
Goldendale, WA 98620  
phone: 503.330.2019  
trisha\_clark@hotmail.com

#### **SURVEYOR**

Andy Paris & Associates, Brian Leggs  
16507 Boones Ferry Road  
Lake Oswego, OR 97035  
503.636.3341 / bleggs@andyparis.com



## **SITE DESCRIPTION & PROPOSED ACTION**

The subject site is located on the west side of Pilkington Road, north of Kenny Street. The subject site contains one parcel of land, Tax Lot 801 of Clackamas County Assessor's Map 2 1E 18CA and is addressed at 18179 Pilkington Road in the city of Lake Oswego, Oregon. The site contains 0.35 acres gross and is within the Rosewood Neighborhood. The parcel has access onto Pilkington Road.

This request is for a 2 Parcel Minor Partition of Parcel 2 of Partition Plat 2003-061.



There is an existing house on the site that will be removed. It is an old and interesting home, having a stone veneer that is unusual, but unfortunately, it is in poor condition, and it would be very costly to try to repair and update.

There is a large Douglas fir tree adjacent to Pilkington Road that will need to be removed to meet Sight Distance, an analysis is included with the Preliminary Plans with this request. No other trees are proposed to be removed with this request. Section 55.02.080 is addressed later within this narrative.

The subject site was partitioned in 2003, this parcel was Parcel 2 of Partition Plat 2003-061. It has been determined by the applicants Professional Land Surveyor (and Clackamas County Surveyor) that these parcels should be labeled "Parcel 3" and "Parcel 4", with the more westerly parcel being Parcel 3 and the east parcel adjacent to Pilkington Road being Parcel 4.

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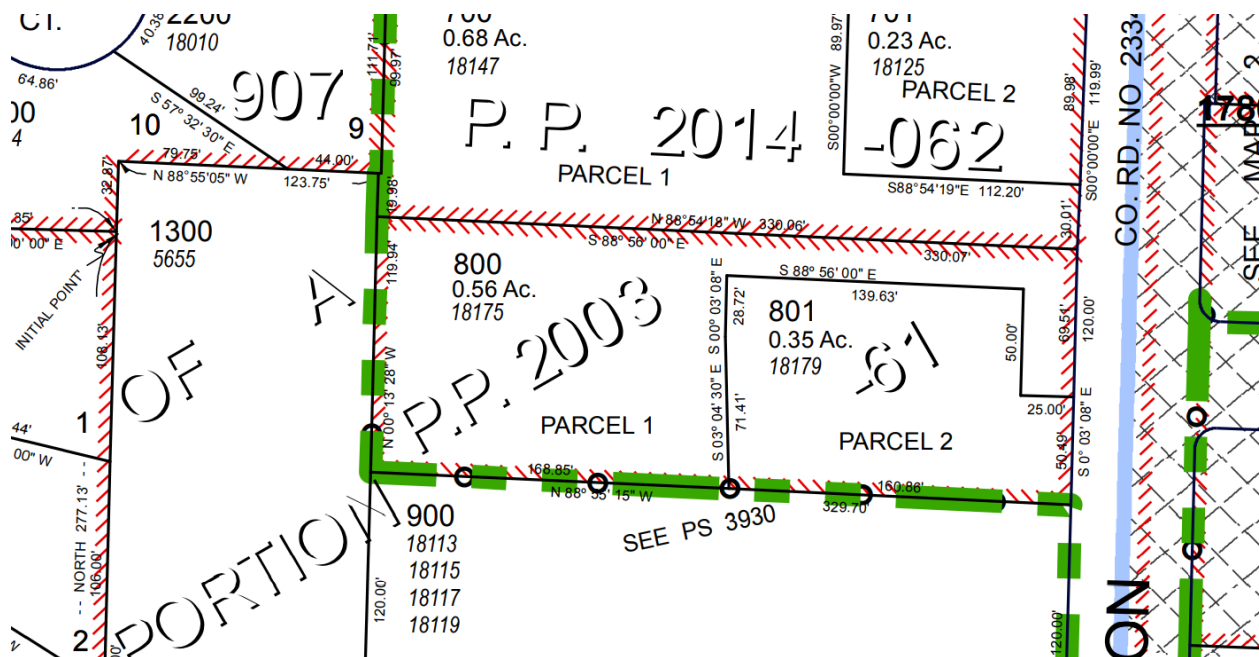
**TWO PARCEL MINOR PARTITION / MINOR VARIANCE – 18179 Pilkington Road, Lake Oswego, Oregon**



I will try to maintain consistency within this narrative to reference of the parcels with these labels (Parcel 3 – west lot / Parcel 4 – east lot adjacent to Pilkington Road).

The subject parcel is unusually shaped, with the adjacent parcel (that was platted at the same time as the subject site) having an “elephant foot” in front of a portion of the lot, next to Pilkington Road; the subject site has 50.49 feet of frontage along Pilkington Road. I expect this is due to how the development code was written at the time, and the “elephant foot” was a loop hole to meet frontage requirements that were in place at the time in 2003. It appears that the intention of the partition in 2003 was to further divide both parcels in the future through “serial partitions”. Regardless, it has created a unique situation for the current owner of Parcel 2 of Partition Plat 2003-061 – Tax Lot 801 – the subject site.

The existing elephant foot of Tax Lot 800 makes the parcel irregular and a unique site for development.



As proposed, the non-flag lot (Parcel 4) will front toward Pilkington Road and the rear property line will be the west line, the sides will be the north and south lines. The flag lot, (Parcel 3) will face toward the access lane, to the south, with the rear being the north line and the sides being the west and east property lines.



**SURVEYOR'S CERTIFICATE**

I, HAROLD P. SALO, HEREBY CERTIFY THAT I HAVE CAREFULLY SURVEYED AND MARKED WITH IRON RODS THE LAND REPRESENTED ON THE ATTACHED PARTITION PLAT SITUATED IN THE SOUTH-WEST-QUARTER OF SECTION 18, TOWNSHIP 2 SOUTH, RANGE 1, EAST OF THE MERIDIAN, CLACKAMAS COUNTY, OREGON. THAT AT THE INITIAL POINT I FOUND A 5/8" IRON PIPE AT THE NORTHWEST CORNER OF LOT 20, "REPLAT OF A PORTION OF ROSEWOOD," THENCE N 00°13'28" W ALONG THE WESTERLY LINE OF SAID LOT 20 A DISTANCE OF 19.84 FEET TO A CORNER 1" IRON PIPE AT THE NORTHWEST CORNER OF SAID LOT 20, THENCE S 89°56'00" E ALONG THE NORTH LINE OF SAID LOT 20 A DISTANCE OF 330.07 FEET TO A CORNER 1" IRON PIPE AT THE NORTHEAST CORNER THEREOF, SAID IRON PIPE BEING ON THE WESTERLY RIGHT OF WAY LINE OF PLANKTON ROAD (COUNTY ROAD NO. 2334), THENCE S 00°33'08" E ALONG SAID WESTERLY RIGHT OF WAY LINE A DISTANCE OF 150.00 FEET TO A SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "PARIS & ASSOC. PLS 2284" AT THE SOUTHEAST CORNER OF SAID LOT 20, THENCE LEAVING SAID WESTERLY RIGHT OF WAY LINE, N 89°56'00" E ALONG THE SOUTHERLY LINE OF SAID LOT 20 A DISTANCE OF 329.71 FEET TO THE INITIAL POINT.

CONTAINING 38,588 SQUARE FEET.

**REGISTERED PROFESSIONAL LAND SURVEYOR**  
**OREGON**  
 JUNE 15, 1981  
 HAROLD P. SALO  
 EXPIRES: JUNE 30, 2004

I, HAROLD P. SALO, CERTIFY THIS IS A COPY OF THE ORIGINAL PARTITION PLAT.

**NOTES:**

- NOTICE OF DEVELOPMENT RESTRICTIONS (POLAR ACCESS) HAS BEEN EXECUTED AND RECORDED AS FILE NO. 2003-061.
- A ROAD USE AND MAINTENANCE AGREEMENT HAS BEEN EXECUTED AND RECORDED AS FILE NO. 2003-061.

**NARRATIVE:**

THE PURPOSE OF THIS SURVEY WAS TO PARTITION LOT 20, "REPLAT OF A PORTION OF ROSEWOOD," CLACKAMAS COUNTY PLAT RECORDS, PER CITY OF LAKE OSWEGO DEPARTMENT OF PLANNING & DEVELOPMENT FILE NO. LU 03-008.

THE FOUND 1" IRON PIPES AT THE NORTHEAST AND NORTHWEST CORNERS OF LOT 20, "REPLAT OF A PORTION OF ROSEWOOD," WERE HELD FOR LOCATION AND USED FOR THE BASIS OF BEARINGS AS S 89°56'00" E, PLS 2284.

THE FOUND 3/4" IRON PIPES AT THE SOUTHEAST AND SOUTHWEST CORNERS OF SAID LOT 20 WERE HELD FOR LOCATION. THE FOUND 3/4" IRON PIPES AT THE SOUTHEAST CORNER OF LOT 20 WERE HELD FOR LOCATION. THE FOUND 3/4" IRON PIPES AT THE SOUTHEAST CORNER OF LOT 20 WERE HELD FOR LOCATION. THE FOUND 3/4" IRON PIPES AT THE SOUTHEAST CORNER OF LOT 20 WERE HELD FOR LOCATION.

CONTROLLING ELEMENTS OF RECORD: PLAT "REPLAT OF A PORTION OF ROSEWOOD," (PLAT NO. 502); SURVEY NO. 9072.

**DECLARATION**

KNOW ALL PEOPLE BY THESE PRESENTS THAT MICHAEL J. & LESLIE J. C. MINERWIN ARE THE OWNERS OF THE LAND REPRESENTED ON THE ANNECTED MAP AND HAVE PARTICULARLY DESCRIBED IN THE ACCOMPANYING SURVEYOR'S CERTIFICATE AND HAVE CAUSED THE SAME TO BE SURVEYED AND PARTITIONED INTO PARCELS WITH EASEMENTS SUBJECT TO RESTRICTIONS AS SHOWN OR NOTED HEREON. DECLARANT NOTED NAMES NO CLAIM OF OWNERSHIP BEYOND THE SURVEYED AND MONUMENTED BOUNDARIES OF THIS PLAT. THIS PLAT CONFORMS TO THE PROVISIONS OF CHAPTER 92 OF THE OREGON REVISED STATUTES.

**ACKNOWLEDGEMENT**

STATE OF OREGON } S.S.  
 COUNTY OF CLACKAMAS } S.S.

KNOW ALL PEOPLE BY THESE PRESENTS, ON THIS 28th DAY of APRIL, 2003, 2003, PERSONALLY APPEARED MICHAEL J. & LESLIE J. C. MINERWIN WHO BEING DULY SWORN AND SAY THEY ARE THE SEVERAL PERSONS NAMED IN THE FOREGOING INSTRUMENT AND THAT THEY EXECUTED SAID INSTRUMENT FREELY AND VOLUNTARILY.

**APPROVALS**

APPROVED THIS 11th DAY of July, 2003  
 BY: *Shirley R. Jones*  
 CITY OF LAKE OSWEGO COMMUNITY DEVELOPMENT  
 DEPARTMENT PLANNING DIVISION

APPROVED THIS 14th DAY of July, 2003  
 BY: *Paul R. Jones*  
 CLACKAMAS COUNTY SURVEYOR

ALL TAXES, FEES, ASSESSMENTS AND OTHER CHARGES AS PROVIDED BY O.R.S. 92.095 HAVE BEEN PAID THROUGH June 30, 2004.

CERTIFIED June 15, 2003  
 CLACKAMAS COUNTY TREASURER & TAX COLLECTOR

BY: *Craig Jones*  
 DEPUTY

BY: *Shirley R. Jones*  
 DEPUTY

STATE OF OREGON } S.S.  
 COUNTY OF CLACKAMAS } S.S.

I DO HEREBY CERTIFY THAT THE ATTACHED PARTITION PLAT WAS RECEIVED FOR RECORD ON THE 22nd DAY of July, 2003.

AT 11:00 O'CLOCK AM  
*Shirley R. Jones*  
 CLACKAMAS COUNTY CLERK

DEPUTY  
*Shirley R. Jones*

SURVEYED BY:  
**ANDY PARIS AND ASSOCIATES, INC.**  
 16057 BOONES FERRY ROAD  
 LAKE OSWEGO, OREGON 97035  
 PH: 503-636-3341 PROJECT: 02128  
 DRAWING: 02128PPL.DWG  
 DATE: 06/03/03

**"REPLAT OF A PORTION OF ROSEWOOD"**  
 (PLAT NO. 502)

I, HAROLD P. SALO, CERTIFY THAT THIS PLAT WAS PREPARED USING HEWLETT-PACKARD PRODUCT #51640A ON CONTINENTAL IMAGING AFRICANA POLYESTER FILM.

HAROLD P. SALO APRIL 28, 2003

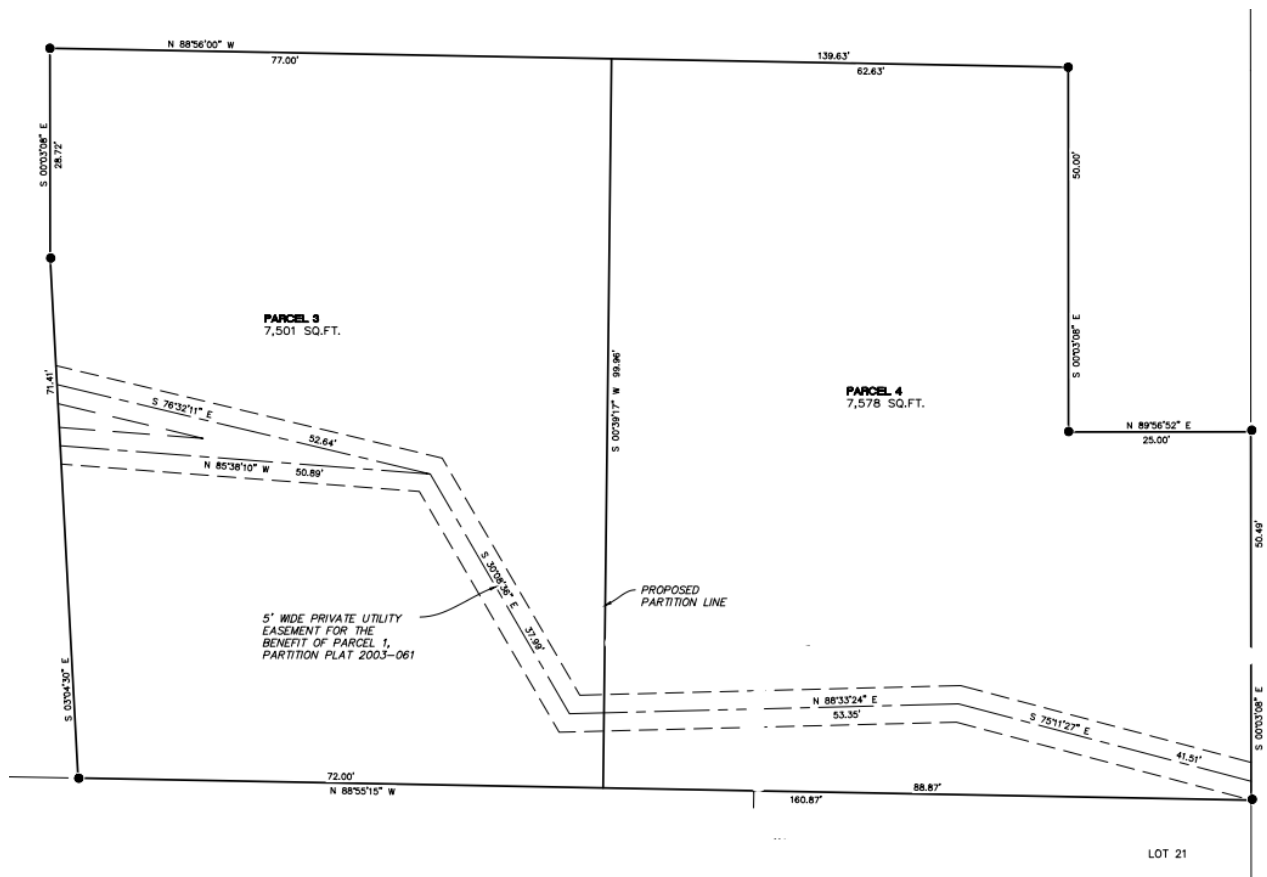
The existing home will be removed as a part of the development of the site. The new parcels will be for the placement of detached single-family dwelling units upon each lot. Access to each new home will be from a shared driveway off of Pilkington Road.

**TWO PARCEL MINOR PARTITION / MINOR VARIANCE – 18179 Pilkington Road, Lake Oswego, Oregon**

03.30.2022

4





There is an existing easement for the purpose of providing electricity to Tax Lot 800 to the west (Parcel 1 of Partition Plat 2003-061 in the above figure). The easement courses through the south portion of the subject site (Parcel 2 above). The easement is a bit awkwardly located, but can be worked around. As shown on Sheet C1.0 of the Preliminary Plans, there is adequate room for a home with a footprint of approximately 1,750 square feet for Parcel 3 and 1,680 square feet for Parcel 4 with a Minor Variance for the rear yard setback. If in the future the new flag lot wants to place an ADU, the location of the easement then becomes the perfect place for it, as it allows room for an ADU to the south of the easement if so desired in the future (no ADUs are requested with this application).

Access from a new flagpole, separate from Tax Lot 800, to just serve the new flag lot that is requested with this application is requested.

If the new flag lot of this request were required to use the flagpole to the north that is a part of Tax Lot 800, the potential to further divide that parcel in the future (TL 800, Parcel 1 as shown in Partition Plat 2003-061) will be precluded, as the addition of the home to the access lane would be too many homes accessing the flagpole.



Per 50.07.007.2.c.iii, “A driveway shall be used to serve a single lot. An access lane shall serve no more than three lots total, up to two of which may be flag lots”. If the proposed new flag lot accesses from the flagpole of Tax Lot 800, the maximum of two would be met, without the consideration of the future develop-ability of Tax Lot 800. Tax Lot 800 would have to request and adjustment or variance to be able to divide in the future.

In regard to Density for Tax Lot 800 and the existing flagpole: Tax Lot 800 contains 0.56 acres or 24,489 square feet per Partition Plat 2003-061. The flagpole contains approximately 3,290 square feet leaving approximately 21,199 square feet or area excluding the flagpole. In the R7.5 zone, Tax Lot 800 has the potential density of two homes (21,199 sf / 7500 sf = 2.83 or two homes). A Parcelization Plan is included with this request.

If the flag lot proposed by this request accesses from the existing flagpole of Tax Lot 800 on the north side of the subject site, not only do would it exceed the requirement set forth in 50.07.007.2, but if Tax Lot 800 wanted to divide in the future, there would be a total of three homes technically accessing the flag. The maximum allowed for a flagpole is three parcels, with two accessing by way of the common lane. It would be impossible for Tax Lot 800 to divide in the future without some kind of road block due to access restrictions.

If the proposed non-flag lot (closest to Pilkington) of this proposal has a driveway accessing to Pilkington Road, having the driveway shared by two homes will have a very minimal impact, practically the same as if one home is accessing from the driveway. The proposed driveway will be within a 25 foot wide easement with the proper paving and shoulder widths, on flag parking, landscaping buffer, and there will only be forward movement into Pilkington Road from the driveway. This is further discussed in in this narrative under 50.07.007.A-Flag Lots on page 32.

If Tax Lot 800 is allowed to have the exclusive right to the flagpole, they or their heirs can reserve the ability to divide the parcel in the future and meet the requirements of 50.07.007 for the number of homes accessing the shared lane, which is two (2). Additionally, if the subject parcel or Tax Lot 800 want to add an ADU or granny flat to their property there will be capacity for additional access and residency for both parcels. Future housing availability needs to be considered, especially to accommodate aging family members.

Therefore, access for this development is requested in the location shown on the included plans. The access will be within an easement with the required landscaping and parking.

Public services will be provided to each new parcel as follows:

**Sanitary Sewer:** There is an existing 8” sanitary sewer line within the right of way of Pilkington Road. Each parcel will be connected directly to this line by a 4” lateral with a two-way clean out at the property line. The west parcel will have an easement over the proposed driveway for the placement of the sanitary sewer lateral to serve the future home on that parcel.



**Storm Drainage:** Parcel 3 will have an on-site trench storm disposal system per the Lake Oswego Stormwater Manual, and will be sized appropriately to accommodate any surface water from the new home. Parcel 4 and the water from the driveway will be collected and directed to a rain garden for treatment. WDY Engineers will provide Final Drainage Reports for each new parcel. Proposed storm water systems are shown on the Preliminary Utility Plan that is included with this request. An Infiltration test was performed by Rapid Soil Solutions and the infiltration rates were exceptional for the site.

No alteration to the drainage patterns is proposed, the storm drainage systems will be designed to mimic the natural drainage patterns of the site. All water from impervious areas and roof drains of the future new homes will be collected and directed to the on-site system upon each parcel. Water from the driveway will be collected and treated as shown on the Preliminary Utility Plan on Sheet C1.0.

**Public Water:** There is a public water line within the right of way of Pilkington Road. There is an existing water meter but no easement across the elephant foot of TL 800 can be located, therefore this meter will be retained and relocated to the frontage of the subject site for the use of the new home on Parcel 4.

**Site Frontage:** At the Pre-Application meeting, the frontage of the site was discussed. The conclusion was that it is not practical to build public improvements along the site's frontage because there is a future improvement for Pilkington Road planned. Engineering requires a Waiver of Remonstrance against the formation of an LID, which the applicant or his assigns will provide for review with the Final Plat application and will sign and record with the final platting documents.



# APPLICABLE CITY DEVELOPMENT CODE CRITERIA

## 50.02.001 RESIDENTIAL DISTRICTS

### 1. RESIDENTIAL-LOW DENSITY ZONES

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#### a. Districts

The residential-low density zone districts are R-15, R-10, and R-7.5.

#### b. Purpose

To provide lands for single-family residential development with densities ranging from two to five dwelling units per gross acre. (Ord. 2579, Repealed and Replaced, 03/20/2012)

***Response: The site is located within the R-7.5 zone district. The maximum density for the site is 2 units; two parcels are proposed.***

The following dimensional regulations apply to the base zones as identified in each table. These dimensions may have exceptions or modifications as identified in LOC [50.04.003.1](#), Additional Dimensional Exceptions.

### 1. RESIDENTIAL LOW DENSITY ZONES

#### a. Dimensional Standards

Development in the R-7.5, R-10, and R-15 zones shall conform to the dimensional standards in Table [50.04.001-1](#).

***Response: The applicant is proposing to develop the site with a two parcel partition with parcel dimensions that meet the requirements for the R7.5 zone district in Table 50.04.001-1.***

- ***The minimum lot size for the R-7.5 zone is 7,500 square feet, the proposed parcels each exceed 7,500 square feet, meeting the requirements for lot size.***
- ***The minimum lot width in the R-7.5 zone is 50.00 feet, the new parcels will be approximately 63 and 77 feet wide.***
- ***There is not a minimum lot depth in the R-7.5 zone, regardless the lots are approximately 100 feet deep.***



*Setbacks for the building envelopes of the future homes will be as follows:*

***Parcel 3 (West lot – Flag lot)***

- *Side Yards Setbacks: 20 feet to the east line, 10 feet to the west line*
- *Front Yard Setbacks: 25.00 feet and actually 44 feet from the south line to accommodate the power easement that serves Tax Lot 800.*
- *Rear Yard Setback: 15 feet – combined with the side yards totals 45 feet as required by 50.07.007.2.*

***Parcel 4 (East lot)***

- *Side Yard Setbacks: 5 feet on the north side and 40 feet on the south side; this is to accommodate the access easement for the flag pole and a 15 foot setback from the access lane.*
- *Front Yard Setback: 28 feet from Pilkington Road; 3 feet will be maintained from the property line adjacent to the elephant foot. The line adjacent to Pilkington Road is considered to front lot line.*
- *Rear Yard Setback: A Minor Variance is requested to reduce the rear yard setback from 30 feet as required for the R7.5 zone to 24.00 feet, to allow for a larger building footprint for Parcel 4.*

**b. Density – Additional Standards**

There are no additional standards for density in this section.

**c. Lot Dimensions – Additional Standards**

There are no additional standards for lot dimensions in this section.

**d. Floor Area – Additional Standards**

**i. Floor Area of Garages and Accessory Structures**

**(1) Garage and Accessory Structures Included in Calculation**

For purposes of calculating maximum floor area for dwellings in the R-7.5, R-10, and R-15 zones, the floor area of garages and accessory structures shall be included in the total that is subject to the maximum floor area standard of this section.



## **(2) Exceptions**

Habitable areas of detached accessory structures that would normally be counted as floor area shall be exempt from floor area calculations:

- (a)** For lots less than or equal to 10,000 sq. ft. in area – up to 200 sq. ft.
- (b)** For lots greater than 10,000 sq. ft. in area – up to 400 sq. ft.

***Response: The applicant or assigns will comply with the Floor Area Standards of this section with the future homes. No Accessory structures are proposed with this development.***

### **ii. Maximum Floor Area of Accessory Structures**

An accessory structure ≤ 18 ft. in height shall not exceed a total 800 sq. ft. in size, or the square footage of the footprint of the primary structure, whichever is less. An accessory structure > 18 ft. in height shall not exceed a total 600 sq. ft. in size or the square footage of the footprint of the primary structure, whichever is less.

### **iii. Maximum Floor Area of Nonresidential Structures**

Maximum floor area for uses other than residential structures and their accessory structures shall be as follows:

- (1)** Conditional uses: Established as part of the conditional use process.
- (2)** Other nonresidential uses: No greater than 1:1.

***Response: No Accessory or Non-Residential structures are proposed with this request.***

## **e. Yard Setback – Additional Standards**

### **i. Zero Lot Line Units**

Two lots that have zero lot line units are considered a unified site for the purposes of meeting all required setbacks.

***Response: No Zero Lot Line Units are proposed with this request.***



**ii. Planned Development**

Setbacks for a planned development will be determined at the time of review. The maximum setback that can be required is 35 ft.

***Response: This request is for a Partition; no Planned Developments are proposed.***

**iii. Special Setbacks for Steeply Sloped Lots**

On steeply sloped lots the minimum required front yard setback for detached dwellings shall be 18 ft.

***Response: The site is not considered “Steeply Sloped”, this standard does not apply to this request.***

**iv. Corner Lots**

Front lot lines on corner lots may face either street. The City Manager shall determine the front lot line after taking into consideration the orientation of structures on the site and nearby lots, the ability to meet setbacks without variances, and physical site or solar access limitations. Street access should be to local streets.

***Response: No corner lots are proposed.***

**v. Measurement of Side Yard Setback**

For purposes of this section, the width of the side yard setback shall be measured from that portion of the side property line that is nearest to any portion of the structure to that portion of the structure.

***Response: The applicant or assigns will comply with the side-yard measurement standard of this section with the future homes.***

**vi. Common Party Walls Prohibited – Accessory Structures**

Except for boathouses within the Oswego Lake setback, accessory structures on abutting lots may not be built with common party walls.

***Response: No structures with a Common Party Wall, nor any Accessory structures are proposed with this request.***

**f. Lot Coverage – Standards**



**i. Maximum Lot Coverage**

***Response: Lot coverage for the new parcels will be determined by the building height of the future new homes – both the new homes have not been determined at this time but are anticipated to be around 30 feet in height. The applicant or his assigns will comply with this requirement at the time of the Building Permit for each parcel when the building high has been determined for each home, anticipated to be 25% per Table 50.04001.-2.***

**g. Height – Additional Standards**

A greater height than otherwise permitted is allowed for:

**i. Single-Family Dwellings**

Base building height may be increased by one ft. for every five additional ft. in yard setback on all sides, beyond the minimum code standards provided in Table [50.04.001-1](#) above.

**ii. Any Structure**

Roof forms or architectural features (such as cupolas or dormers) of any structure provided that these roof forms or features:

- (1)** Do not extend more than six ft. above the maximum specified base height;
- (2)** Do not, in total, exceed one-third of the width of the building or buildings as measured on any elevation drawing for an individual roof form or projection or do not exceed one-half of the width of the building for two or more separate roof forms or projections; and
- (3)** Do not, in total, cover more than 20% of the roof area on which they are located as viewed from directly above for an individual roof form or projection or 30% for multiple roof forms or projections. Examples of permitted exceptions are illustrated in Figure [50.04.001-B: Height Exceptions](#).

***Response: The applicant or his assigns will comply with the building height requirements with the future homes for the site.***



## 50.04.002 SPECIAL STREET SETBACKS

### 5. SPECIAL STREET SETBACK LIST

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The special street setbacks set forth in Table [50.04.002-1](#) shall not be reduced.

*Per Table 50.04.002-1 special street setbacks for Pilkington Road are 25 feet*

***Response: The site is subject to the Special Street Setback. The setback in this case is determined by the location of the “east line of the Rosewood plat”. This line is shown on the Topography Plan and Preliminary Plans and is actually on the east side of Pilkington Road. The lot adjacent to Pilkington Road has a front setback of 28 feet, well exceeding the requirement of 25 feet.***

## 50.06.001 BUILDING DESIGN

### 2. STRUCTURE DESIGN – RESIDENTIAL ZONES

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#### a. Applicability

i. In the R-0, R-2, R-3, and R-5 zones, this subsection applies only to the following types of development:

- (1) Detached single-family dwellings;
- (2) Zero lot line dwellings;
- (3) Duplexes; and
- (4) Structures that are accessory to these development types listed above.

ii. This subsection is applicable to all structures in any other base residential districts, except R-W and R-DD.

***Response: The applicant is proposing to develop the site by partitioning it into two (2) parcels, each for the placement of a single family dwelling.***



**b. Street Front Setback Plane**

Except as set forth in LOC [50.06.001.2.d](#) and for flag lots, the profile of a structure that fronts on a street shall fit behind a plane that starts at the setback line (front yard or side yard abutting a street) and extends upward to 20 ft. in height, then slopes toward the center of the lot up to the maximum base height of the zone, as illustrated below in Figure [50.06.001-A](#): Street Front and Street Side Setback Plane:

The slope of the street front setback plane is dependent upon whether it applies to a front yard or side yard abutting a street, as follows:

- i. Front yard – 6:12 slope, or
- ii. Side yard abutting a street – 12:12 slope.

***Response: The subject site has very little slope. The new homes have not been determined for the future lots at this time, but the applicant or his assigns will comply with the requirements for the street front setback plane.***

**c. Street Front Setback Plane Exceptions**

**i. Roof Form**

Any individual roof form may penetrate the street front setback plane if it is less than one-third of the structure width, as illustrated in Figure [50.06.001-B](#): Exceptions to Street Front Setback Plane. Two or more separate and distinct roof forms, such as dormers, may project into the street front setback plane if they are less than one-half of the structure width.

**ii. Projections**

Any eaves, bay windows, chimneys and other decorative features, front porch, cornices, eaves, gutters, belt courses, leaders, sills, pilasters, lintels, ornamental features, and other architectural features, canopies, sunshades, chimneys, and flues that are allowed to project into the front yard setback shall fit below the extension of the street front setback plane, as illustrated in Figure [50.06.001-C](#).



Except as set forth in subsection 2.e.ii of this section, the side profile of a structure shall fit behind a plane that starts at the side property line and extends upward to 12 ft. and slopes toward the center of the lot at a slope of 12:12 up to the maximum allowed height at the peak as illustrated in Figure [50.06.001-G](#): Side Yard Setback Plane, below.

i. Roof forms may penetrate into the side yard setback plane required under (e), above, as follows:

(1) Any individual roof form may penetrate the side setback plane if it is less than one-third of the structure length at 12 ft. in height. Two or more separate and distinct roof forms such as dormers or gables may project into the side setback plane if they are less than one-half of the structure length at 12 ft. in height.

(2) Building projections allowed under LOC [50.04.003.8](#), General Exceptions for Building Projections, Decks, and Walkways and Pathways to Setbacks, may project up to two ft. into the side yard setback plane. Chimneys are exempt from the setback plane requirement.

ii. On steeply sloped lots that are upslope from the abutting street, no side yard plane is required.

***Response: The future homes will be designed to meet the requirements of the Street Front Setback Plane, except as allowed by this section. It is anticipated the future homes will have decorative features such as eaves, bay windows, front porches and other architectural features.***

**f. Side Yard Appearance and Screening**

At least one of the following design treatments shall be applied along side yards or side elevations. This section is applicable to both interior side yards and side yards that abut streets.

**i. Treatment 1 – Maximum Side Yard Plane**

(1) When the side elevation of a primary structure is more than 500 sq. ft. in area in an R-0, R-2, R-3, R-5, or R-6 zone ("Group 1") or more than 750 sq. ft. in area in an R-7.5, R-10, or R-15 zone ("Group 2"), the elevation must be divided into distinct planes of 500 sq. ft. or less for Group 1 or 750 sq. ft. or less for Group 2. For the purpose of this standard, areas of side yard wall planes that are entirely separated from other wall planes are those that result in a change in plane, such as a recessed or projecting section of the structure that projects or recedes at least two ft. from the adjacent plane, for a length of at least six ft.



- (2) Except in the R-0, R-2, R-3, and R-5 zones, the maximum side yard plane may be increased by 10% on a side for every additional five ft. of side yard setback provided beyond the minimum required by the zone, on the side property line.

## **ii. Treatment 2 – Side Yard Features**

- (1) The side elevation of a structure shall consist of two or more planes that are offset by a minimum of 16 in. The wall planes shall be a minimum of four ft. in width, and shall result in a change in a wall plane for one full story.

Exception: Window bays may be utilized to satisfy the requirement for offsets. Such windows shall extend a minimum of 12 in. outward from the main wall of a building and shall form a functional bay or alcove in an interior room. Bay windows used to meet this requirement shall not be exempt from setback requirements.

- (2) Walls shall include a roof eave overhang of 16 in. or greater, and
- (3) Windows and/or doors shall occupy a minimum of 15% of the side elevation facing the street, and all windows shall have a window trim that is a minimum of four in. in width.

## **iii. Treatment 3 – Screening**

The applicant shall provide screening and buffering of the wall plane with a minimum of one standard plant unit for every 50 linear ft. of side property line or fraction thereof. Planting shall occur within an area that is defined by the length of the side elevation plus 20 ft. beyond the width of the building at either end, and outward 20 ft. from the side elevation of the building, towards the side lot line, as shown in Figure [50.06.001-H: Screening and Buffering](#).

- (1) To use the screening option, the following standards must exist or be provided:
  - (a) A minimum distance of 15 ft. between dwellings,
  - (b) Columnar tree species shall be used when the setback is less than ten ft., and
  - (c) Root barrier techniques shall be used to avoid root growth damage to foundations.

## **g. Corner Lots – Side Yards That Abut Streets**



As an alternative to the treatments set forth in this subsection 2.f, Side Yard Appearance and Screening, on a corner lot, either of the following treatments can be used for the side elevation that abuts a street:

**(1) Corner Treatment 1 – Covered Side Porch**

The side yard elevation shall include a covered porch. The porch shall be a minimum of 80 sq. ft. in area, a minimum of five ft. deep, and shall extend along a minimum of 25% of the side elevation that faces the street. The porch must meet setbacks.

**(2) Corner Treatment 2 – Balcony**

The side yard elevation shall include a second floor balcony. The balcony shall be a minimum 30 sq. ft. in area, and a minimum of three ft. deep. The balcony may encroach four ft. into the setback.

***Response: No corner lots will be created with this partition, this section is not applicable to this request.***

**h. Long Wall Planes**

To break up building mass and provide greater privacy on narrow lots, on a lot that has greater than 2.5:1 ratio of lot depth to the average of the lengths of the front and rear setback lines, no portion of a residential structure shall exceed 18 ft. high for a cumulative length greater than 60 ft., unless the excess portion of the residential structure more than 18 ft. high beyond the 60 ft. cumulative length is set back not less than 20 ft. from the side lot lines. This is illustrated in Figure [50.06.001-l](#): Changes to Wall Planes, below.

***Response: Both of the new parcels exceed 63 feet by 100 feet, therefor this standard is not applicable.***

**i. Rooftop Decks**

Rooftop decks are prohibited on the pitched portion of any roof exceeding 2% slope. Decks on flat roofs shall not extend above the coping of the roof.

***Response: Rooftop decks are not anticipated for the future building designs, but if they are proposed by the future owners of the lots, they will be compelled to comply with the requirements of i., above.***



#### **4. GARAGE APPEARANCE AND LOCATION**

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##### **a. R-0, R-2, R-3, R-5, R-7.5, R-10, and R-15 Residential Zones**

The following standards for garage appearance and location shall be applicable:

##### **i. Applicability Limited to Dwelling Type in the R-0, R-2, R-3 and R-5 Zones.**

The garage appearance and location standards of this section shall apply to the following types of development:

- (1) Detached single-family dwellings;
- (2) Zero lot line dwellings; and
- (3) Duplexes.

***Response: The proposed future building for the new parcels will be single family detached dwellings, therefor this section is applicable.***

##### **ii. Garage Wall Facing Street**

When a garage has wall(s) facing a street, these wall(s) shall have more than one plane or shall include fenestration equal to at least 10% of the garage wall.

***Response: Both parcels will have a garage. Parcel 3 will face toward the access easement on the south side of the site and Parcel 4 will likely be side loaded from the accessway but still “front” toward Pilkington Road.***

##### **iii. Garage Design Requirements Due to Location**

The standards in subsection 4.a.iv of this section shall not apply in any one of the following circumstances:

- (1) The garage is 20 ft. or more back from:
  - (a) The point of the dwelling closest to the front lot line, and
  - (b) If applicable, the point of the dwelling closest to the street side yard line;
- (2) The garage is side-loading;
- (3) The garage is rear-loading;
- (4) The lot is a steeply sloped lot;
- (5) The width of a parcel is less than 50 ft.; or
- (6) The garage is proposed to be set back at least 60 ft. from the public right-of-way.

***Response: Per 4.a.iii., above, this standard apply to a side loaded garage. If the garage for Parcel 4 is side loaded these design standards will be followed.***



#### iv. Garage Location Standards

The garage shall comply with subsections 4.a.iv(1) through (3) of this section:

- (1) Dwelling Shall Be Closer to the Street
- (2) Garage Width
- (3) Garage Appearance

***Response: The standards of this section will be applied if the builder for Parcel 4 decides to have a side loaded garage.***

#### v. Multiple Garage Opening Setbacks

In any instance where a garage or a set of adjacent garages is designed to park three or more vehicles, only the garage openings for the first two vehicles may occupy the same building plane. Each additional building plane with a garage opening shall be set back by a minimum of two ft. from the previous garage building plane.

##### **Exceptions:**

- (1) The lot is a steeply sloped lot;
- (2) The width of a parcel is less than 50 ft.; or
- (3) The garage is proposed to be set back at least 60 ft. from the public right-of-way.

***Response: The garages for the future homes are planned to be at least two car garages. If the garages exceed two cars, the building planes of the garages will be designed to meet this standard.***

## **50.06.002 PARKING**

### **1. APPLICABILITY**

The provisions of this section shall apply to all development which generates a parking need. This shall include the construction of new structures, the remodeling of existing structures and a change of use which increases on-site parking or loading requirements or which changes access requirements.

[Cross-Reference: LOC [50.06.002.3.b](#) – Parking Standards in R-6 Zone.]

(Ord. 2599, Amended, 12/18/2012; Ord. 2579, Repealed and Replaced, 03/20/2012)



## 2. STANDARDS FOR APPROVAL

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### a. Vehicle Parking

i. Required parking spaces shall be available for the parking of operable passenger vehicles of residents, customers, patrons and employees and shall not be used for the storage of vehicles or materials or for the loading and unloading or parking of vehicles used in conducting the business or use.

### ii. Number of Required Parking Spaces

The number of required parking spaces under this Article shall be determined by either the Numerical Method (subsection 2.a.ii(1) of this section) or the Parking Study Method (subsection 2.a.ii(2) of this section).

TABLE 50.06.002-3: MINIMUM OFF-STREET PARKING SPACE REQUIREMENT	
A) RESIDENTIAL	
1. Single-family dwelling and duplex	1 space per dwelling unit

*Response: Both of the new parcels exceed the minimum requirement per Table 50.06.002-1 of one parking space per dwelling unit. Each new home will have at least a two car garage associated parking in the adjacent driveway and the parking space on the access lane, exceeding one space per dwelling unit.*

## 50.06.003 CIRCULATION AND CONNECTIVITY

### 1. ACCESS/ACCESS LANES (FLAG LOTS)

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#### a. Definition of Access

For the purposes of this section, access shall be defined as: "area within public right-of-way directly affected by the traffic generated by the particular development and necessary to provide safe and efficient ingress and egress to the property."



b. Applicability

This section is applicable to all major developments and to the following minor developments:

- i. Construction or alteration of multi-family dwelling;
- ii. Construction or alteration of major public facilities;
- iii. Construction or alteration of commercial development;
- iv. Construction or alteration of institutional development;
- v. Construction or alteration of industrial development; and
- vi. Land divisions (partitions and subdivisions).

c. Standards for Approval

- i. Every residentially zoned lot shall abut a street for the following minimum length:

TABLE 50.06.003-1: MINIMUM STREET FRONTAGE	
Residentially Zoned Lot	Minimum Street Frontage
Rowhouse	17 ft.
Flag Lot	LOC <a href="#">50.07.007.2.c</a>
All Other	25 ft.

- ii. Access design shall be based on the following five criteria:
  - (1) Topography;
  - (2) Traffic volume to be generated by the development;
  - (3) Classification of the public street from which the access is taken (local, collector or arterial);
  - (4) Traffic volume presently carried by such street; and
  - (5) Projected traffic volumes.
- iii. Direct permanent access from a development to an arterial street is prohibited where an alternate access is either available or is expected to be available. A temporary access may be allowed only where approved by the City Engineer under LOC Chapter [42](#).
- iv. Direct access from a development or a structure to a local street is required unless such access is not available.
- v. The City may require shared access with a neighboring site or an extension of residential streets across adjacent properties to provide access to the development if necessary to prevent adverse impacts on traffic flow.



vi. If no satisfactory access from a public street to a development is available, the City shall require postponement of the development until such time as a satisfactory access becomes available.

***Response: The applicant wants to provide access for these two parcels independently of the existing flagpole to the north of the subject site, which is part of Tax Lot 800 as shown on the Preliminary Plans; this is discussed in detail within this narrative.***

***The primary concern is the number of homes that will be accessing that flag pole if this partition were to have combined access will cause the exceed the number of allowed dwelling units allowed to use an access way if Tax Lot 800 wants to develop in the future.***

***Tax Lot 800 contains 21,199 square feet after the flagpole and “elephant foot” area are removed, which would allow for a total of two (2) units for Tax Lot 800. If this partition is included on that flagpole now, the maximum number of lots accessing the lane will be exceeded and Tax Lot 800 will have no way to partition in the future without a Variance. Development of this site should not be made to preclude development on adjacent lands.***

***Additionally, the intensity of the implementation of HB 2001 is still unknown for the city of Lake Oswego and the code is still being crafted and developed to address this “middle-housing” requirement. When adopted, this may have a bearing on the number of units that will need access from the areas of Tax Lots 800 and 801 into the future. With the proposed configuration, future needs are better addressed and accommodated.***

***The proposed access location meets the needs of the project without precluding the future needs of the neighboring property. The applicant’s engineer has provided a Sight Distance Plan that shows how the driveway can be placed. If needed, the driveway can be moved even more to the north, to abut the common line to the “elephant foot” of TL 800, if needed this can be worked out further during the review and final engineering phases.***

***Each parcel will have at least 25 feet of frontage onto a public street, either by way of the flagpole /easement access to Pilkington Road or by lot frontage.***



## 2. ON-SITE CIRCULATION – DRIVEWAYS AND FIRE ACCESS ROADS

### b. Standards for Approval

#### i. Driveway Approaches – Locational Limitations and Restrictions

- (4) All driveway approaches shall be located and designed so that the driver entering or exiting the driveway can see approaching traffic for a sufficient distance to make a safe entrance and exit. American Association of State Highway and Transportation Officials (AASHTO) standards shall be used in determining compliance with this standard.

***Response: Pilkington Road is a flat and straight road in the area of the subject site. In addition, there is a stop sign at the intersection of Pilkington Road and Kenny Street and at Pilkington and Tree Street, allowing drivers entering or existing the road to see approaching traffic easily.***

#### v. Turnarounds

- (1) If a dead-end driveway exceeds 150 ft. in length, it shall provide a fire department turnaround in compliance with the City's Standard Details. Exception: The Fire Marshal may approve driveways greater than 150 ft. in length if the structures greater than 150 ft. from the public road are provided with alternative methods of fire suppression, i.e., sprinklering.

***Response: The end of the flag pole is less than 150 feet from Pilkington Road (approximately 89 feet).***

## 50.06.004 SITE DESIGN

### 1. LANDSCAPING, SCREENING, AND BUFFERING

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#### a. Applicability

- i. Except as provided in subsection 1.a.ii of this section, this section is applicable to:

- (9) Partitions;



ii. The above developments located within:

(1) The Downtown Redevelopment Design District shall comply with LOC [50.05.004](#) rather than the provisions of this section.

(2) The FMU zone shall comply with the Foothills Building and Site Design Standards, LOC [50.11.007](#), Appendix G.

***Response: The applicant requests a Partition, the site is not within the Downtown Redevelopment District or the FMU zone.***

b. Standards for Approval

i. Commercial, institutional, and industrial development, other than in the Office Campus zone, shall provide a minimum of 15% of the net developable area in landscaping and/or open space visible from off site, including courtyards, planters, raised beds, espaliers, etc. Developments involving office campus and major public facilities shall provide a minimum of 20%.

Exception: the area of public park land, if transfer of the land from the development site is accepted by the governmental agency, may be deducted from the landscaping area requirement.

ii. Multi-family and manufactured home park development must provide 20% of the net developable area in landscaping in addition to the park and open space requirements.

Exception: the area of public park land, if transfer of the land from the development site is accepted by the governmental agency, may be deducted from the landscaping area requirement.

iii. Public and semi-public use must meet subsection 1.b.i or 1.b.ii of this section, depending on use.

iv. All development abutting streets shall provide street trees at the proper spacing for the species.

v. Parking lot plantings shall be designed to allow surveillance of the lot from the street at several points.

vi. For commercial, institutional, industrial, multi-family dwelling, manufactured home parks, office campus, and major public facilities:

(1) Screening and buffering shall be required:



- (a) To mitigate noise, lighting or other impacts from dissimilar uses.
- (b) To screen public or private utility and storage areas and parking lots.
- (c) As a separation between dissimilar uses.

(2) Landscaping visible from the street or other public right-of-way shall be complementary to the landscaping in the surrounding area.

vii. Rare and endangered species as identified below shall be preserved:

- (1) Marsh or Sessile Trillium: "Trillium chloropetalum."
- (2) Fawn Lily: "Erythronium oregonum."
- (3) White Larkspur: "Delphinium leucophaeum."

(viii). Landscaping that is required to be provided under LOC Article [38.25](#) Stormwater Management Code is counted towards meeting the landscaping required under this article/section.

***Response: The applicant will provide Street Trees as required by the above section.***

c. Standards for Installation and Construction

- i. All plant materials shall conform in size and quality grade to the American Standard for Nursery Stock, current edition.
- ii. All plant material shall be installed according to Sunset Western Garden Book, current edition.
- iii. Except for single-family residential developments that require street trees, all planting shall have an irrigation system installed to meet standards of Turf Irrigation Manual, current edition, unless the applicant can demonstrate to the satisfaction of the reviewing authority that such system is not necessary.
- iv. Existing vegetation may be used in a landscaping plan. Construction shall not be allowed within the drip lines of trees which are to remain. Finish grade shall be at the original grade or a well or planter constructed equal in size or greater than the drip line.
- v. Topsoil removed during construction shall be replaced with topsoil.
- vi. Plant materials for use in parking lots and streets shall have a mature height of less than 25 ft. in areas where overhead utilities are present.
- vii. Plant materials listed as "Prohibited Street Trees" in the Lake Oswego Master Plant List, LOC [50.11.004](#), Appendix D, shall be prohibited as street trees, except those cultivars that do not have the characteristics identified by its species.



- viii. Plant materials listed as nuisance or invasive in LOC [50.11.004](#), Appendix D, and the [Invasive Tree Species List](#) on file at the Planning Department shall be prohibited as required landscaping.
- ix. When a tree is located within a sidewalk, the tree base shall be protected from damage by pedestrians and other causes in a manner that complies with the City Engineer's specifications and applicable federal and state law, i.e., Americans with Disabilities Act.
- x. Plant material used for screening and buffering shall:
  - (1) Be of a size to provide an effective screen within two to five years of the planting date.
  - (2) Be planted in a single row on centers equal to one-half mature width of the plant material or in staggered multiple rows.
  - (3) Be a minimum of six ft. high at maturity; or as determined by the City Manager to buffer or screen a specific situation except as prohibited by LOC [42.03.130](#), Sight Distance at Roadway Intersections, Private Streets and Driveways.

***Response: All trees and planting materials will be professionally selected and installed per the requirements of this section.***

## **2. FENCES**

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### **a. Applicability**

No person shall construct a fence, wall, or retaining wall in violation of this section.

### **b. Location and Height**

FMU Standards Note: If the below provisions address the same subject as provided in the Foothills Building and Site Design Standards, LOC [50.11.007](#), Appendix G, those standards shall supersede the below provisions.

- i. Fences and walls in residential zones shall not exceed six ft. in height unless otherwise provided below:
  - (1) Four ft. in height when located within ten ft. of a property line abutting a public or private street or an access easement which serves more than two lots. This restriction shall not apply to properties which abut an access easement but which do not have a legal right to use the easement. For purposes of determining fence height under this subsection, alleys are not considered as public streets.



- (2) Four ft. in height when located within the front yard setback of the Old Town Neighborhood.

***Response: Any new fences that are built on the site with the new homes will comply with the height standards prescribed in this section. No fences over 6 feet in height are proposed.***

### **3. LIGHTING STANDARDS** Revised 11/16

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#### **a. Applicability**

- i. This section is applicable to all minor or major development which results in increased use of public and private streets, public pathways and accessways, or parking lots, and lots in the PF and PNA zones.
- ii. Temporary lighting for theatrical, television, and performance areas, and lights associated with special events are not subject to this section if no "development" occurs.

#### **v. Street Lighting**

***Response: Per the city engineer no additional lighting is needed.***

## **50.06.006 GEOLOGIC HAZARDS AND STORMWATER MANAGEMENT**

### **1. WEAK FOUNDATION SOILS**

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#### **a. Applicability**

This section applies in all areas identified as "Potential Weak Foundation Soils" to all:

- i. Minor and major development which will involve proposed structures, or
- ii. Ministerial construction of structures where the requirements of this article have not been previously applied to the development site.

#### **b. Weak Foundation Soils Maps**

- i. Weak foundation soils are identified in the "Engineering Geology" report supplement and accompanying map of the Lake Oswego Physical Resources Inventory, March 1976.



ii. These soils are also identified and described in the report entitled "Soil Survey Interpretations for Land Use Planning and Community Development, Lake Oswego Area, Oregon," USDA Soil Conservation Service, December 1975.

The SCS map units which correspond to the Engineering Geology units above are listed in Table II: Characteristics and Limitations of Earth Materials, in the Engineering Geology Report of L.O.P.R.I.

c. Development Review

The review procedures for a determination of weak foundation soils are located in LOC [50.07.004.10](#), Weak Foundation Soils Determination Procedures.

d. Standards for Approval

The actual presence of weak foundation soil is not a cause for denying development, but may cause structural modifications to be required, or structures to be relocated.

***Response: The applicant will provide a Preliminary Drainage Report for each of the new parcels as a part of this application packet.***

### **3. STORMWATER MANAGEMENT STANDARDS**

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**a. Applicability**

Stormwater management requirements are applicable to all development where:

- i. Greater than 1,000 sq. ft. of impervious surface is created; or
- ii. The sum of impervious surface created and/or replaced is greater than 3,000 sq. ft.; or
- iii. Maintenance is performed on greater than or equal to 3,000 sq. ft. of existing impervious surface that results in an additional offsite hydrological impact.



## **b. Standards for Approval**

The applicant must demonstrate that, based upon LOC Article [38.25](#), Stormwater Management Code, the capacity, type, location, feasibility and land area required of the proposed stormwater management system and stormwater disposal facilities as well as any connection to off-site facilities can be provided.

Stormwater management measures and requirements are detailed in LOC [38.25.001](#) through [38.25.190](#) and in the current version of the Lake Oswego Stormwater Management Manual.

***Response: The applicant has included a Preliminary Drainage Report for each of the new parcels as a part of this application packet.***

***Each of the new homes will be provided with an on-site storm water management system. The applicant's engineer calculated the storm drainage needs for the site based on the larges building envelop, ensuring that there will be enough capacity for the new homes, since they have not yet been determined. An on-site infiltration test was performed and the results are a part of this application packet.***

## **50.06.008 UTILITIES**

### **3. STANDARDS FOR APPROVAL**

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#### **a. Utilities Required**

The following utilities, whether on or off site, shall be provided to all development in the City of Lake Oswego, in accordance with City Engineering Division's policies, design standards, technical specifications and standard details:

- i. Sanitary sewer systems;
- ii. Water distribution systems;
- iii. Sidewalks and any special pedestrian ways and bicycle paths;
- iv. Street name signs;
- v. Traffic control signs and devices;
- vi. Street lights, which shall be served from an underground source of power;
- vii. Underground utility and service facilities, as required;
- viii. Streets;
- ix. Provision for underground T.V. cable.



The City Manager may require that utility designs be prepared by a registered engineer.

***Response: No additional design for the frontage of Pilkington Road is needed and the applicant will provide a Waiver of Remonstrance against the formation of an LID with the final plat application to city planning.***

***The applicant or his assign will comply with the requirements of this section with the construction of the driveway for the site. Preliminary Plans will be prepared by a registered professional engineer including Preliminary Utility Plans include the provisions for sanitary sewer, water distribution, underground utilities and services.***

***New services will be undergrounded as required by engineering.***

**b.** Easements or right-of-way for utilities and associated and related facilities shall be provided by the property owner. Easements for anticipated future utilities or extensions may be required by the City Manager.

***Response: Easements will be provided for the utilities and shown on the final partition plat.***

**c.** Sanitary sewers shall be installed to serve the development and to connect the development to existing mains.

***Response: Each parcel will be served by an individual sanitary sewer lateral.***

**d.** Design shall take into account the capacity and grade to allow for desirable future extension beyond the development, and where required by the City Manager, extended to the upstream property line to allow for such future extension.

**e.** All sanitary sewers and appurtenant structures shall be designed and constructed in conformance with City Engineering Division's policies, design standards, technical specifications and standard details, and shall include, but not be limited to, such items as:

- i.** Pipe size and materials;
- ii.** Manholes;
- iii.** Cleanouts;
- iv.** Backfill requirements;
- v.** Service laterals.

***Response: All public services are proposed at the city's design standards. The sanitary sewer laterals will be constructed to the city's design standards.***



f. All development shall be served by service lines, main water lines and fire hydrants which are connected to City mains or the water mains of water districts which provide service within the City.

***Response: All needed services are available to the site, including water lines although some upgrades may be needed to the existing waterline, the client's engineer will be working with Rivergrove water on this item.***

g. Design of water system improvements shall take into account provision for extension beyond the development to adequately grid or loop the City system.

***Response: No public water systems are proposed.***

h. One water service line shall be provided to each lot in a development, or if the development does not include lots, to each building in the development. Each structure with plumbing shall connect to the water system. The system shall be designed to supply fire flow requirements of LOC Chapter [45](#).

***Response: Each new parcel will have an individual water meter. The existing meter on Pilkington Road will be retained and relocated to the site's frontage if it is found to be adequate, or if not will be replaced and sized per the city's standards.***

***The applicant will connect the future new homes the necessary utilities. Utilities are available to the site as follows:***

***Sanitary Sewer: There is a public sewer line within Pilkington Road. Each home will have a 4" lateral within the right of way with a two way clean-out located at the right of way line, connected to this new public line in Pilkington Road.***

***Water and Hydrants: The site is within the Rivergrove Water District. There is an existing 6" water main along the sides frontage within Pilkington Road. An email from Kyle Pettybone is included within the Appendices of this request. There is an existing water meter that will be retained and relocated to the site's frontage (if it is adequate) or it will be replaced if necessary.***

***Storm Drainage: Storm water will be collected and directed to on- site gravel trench on Parcel 3 and a rain garden for Parcel 4 per the Lake Oswego Stormwater Manual.***

***Streets and sidewalks: As described in the notes from the city engineer, the applicant will need to provide a Waiver of Remonstrance for future improvements to Pilkington Road. The required document will be provided with the Final Plat Application for the proposed partition.***

***Other Utilities: Any other necessary dry utilities such as cable, telephone, gas and electric will be placed underground and brought into the site.***



#### **4. STANDARDS FOR CONSTRUCTION**

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- a.** Utility easement widths shall be the minimum width possible to facilitate utility installation and maintenance, and shall be a minimum of ten ft. (five ft. on each side) in width on easements not adjacent to a street right-of-way.
- b.** Utility construction within easements shall minimize disturbance to existing conditions, especially trees and other vegetation.
- c.** Any disturbed areas within easements shall be restored to a condition similar to the condition prior to construction, including the replacement of plants of similar species as those removed or damaged. Replacement trees shall be of similar species and be a minimum of one and one-half in. caliper.
- d.** Utilities shall be installed underground (unless exempted by the City Manager).
  - i.** Specific exemptions are as follows:
    - (1)** Developments which need multi-phase voltages or high kilo volt amperes (kVA) demands may develop with pad transformers where underground transformers are not feasible. Pad mounted transformers shall be buffered from sight by landscaping or other suitable methods.
    - (2)** Pad mounted transformers are allowed in major single-family developments, but shall be buffered from sight by landscaping or other suitable methods.
    - (3)** Above ground telephone and cable television junction boxes are allowed.
- e.** Sanitary Sewers. Capacity, grade and materials shall be as approved by the City Manager. Minimum size shall be eight in. diameter with six in. diameter allowed at the terminus of a sewer line.
- f.** All sanitary sewers and appurtenant structures shall be designed and constructed in conformance with City Engineering Division's policies, design standards, technical specifications and standard details, and shall include, but not be limited to, such items as:
  - i.** Pipe size and materials;
  - ii.** Manholes;
  - iii.** Cleanouts;
  - iv.** Backfill requirements;
  - v.** Service laterals.



g. Service Laterals. One service lateral shall be provided to each lot in a development, or if the development does not include lots, to each occupied building in the development.

h. Design, including materials, size and location of water mains, service lines, valves and hydrants, shall be in accordance with City Engineering Division's policies, design standards, technical specifications and standard details and be approved by the City Manager. Hydrants shall be located at intersections and at intervals of no more than 500 ft. from intersections in major developments with the exception that multi-family units shall locate a hydrant within 500 ft. of residential buildings. For major or minor partitions which create a new lot or lots, a hydrant shall be no farther than 1,000 ft. from any of the lots.

i. All facilities as described in this section shall be constructed in compliance with the rules and regulations of the City Manager, and the rules and regulations of the Public Utility Commissioner of the state relating to the installation and safety of underground lines, plant, system, equipment and apparatus.

***Response: The applicant will provide full final engineering and design documents for the permits for the construction of the public and private utility services to the site, including the water meters, storm water facilities and sanitary laterals before any on-site construction activities will occur.***

## **5. STANDARDS FOR MAINTENANCE**

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None.

(Ord. 2579, Repealed and Replaced, 03/20/2012)

## **6. COST OF IMPROVEMENTS**

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The cost of all utility improvements shall be borne by the developer.

***Response: The applicant will bear all costs for the utilities for this partition. Financial assurances will be provided as necessary as a part of the final permitting process.***

## **11. UTILITIES**

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For all applicable development or construction, the applicant shall submit:

a. A scaled utility plan of existing and proposed utilities shall be furnished to the City as part of any major development plan application and shall include at least the following at 1" = 100' scale.

b. Easements shall be recorded in the final plat or plan to serve the development and each lot therein.

***Response: The final plat will show easements as required.***



## 50.07.007 LAND DIVISIONS

### 1. REQUIREMENTS FOR LAND DIVISIONS

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All land divisions shall meet the requirements of this Code including all zone district standards and dimensions except as modified in this section. (Ord. 2579, Repealed and Replaced, 03/20/2012)

### 2. FLAG LOTS

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a. Purpose; Applicability

i. The purpose of the flag lot section is to:

- (1) Enable the efficient use of residential land and public facilities and services;
- (2) Provide standards for site, building, and design compatibility of the new development with the existing neighborhood character;
- (3) Reduce the area of impervious surface resulting from redundant access paving, and improve the appearance where pavement is necessary; and
- (4) Minimize the disturbance of natural resources.

ii. The provisions of this section shall apply to all land divisions and lot line adjustments creating flag lots in residential zones after September 6, 1998, and to any development occurring on a flag lot in a residential zone created after September 6, 1998.

Exception: These provisions do not apply to existing flag lots that are reconfigured through a lot line adjustment; the standards in effect at the time of the existing flag lot's creation remain applicable.

***Response: The request is for a land division with a flag lot, this section applies to this request.***

iii. Compliance with Zone Standards

Flag lots shall comply with the requirements of the underlying zone except where noted in this article. A land division or lot line adjustment creating a flag lot shall also comply with any specific residential design criteria contained within an applicable adopted neighborhood plan.

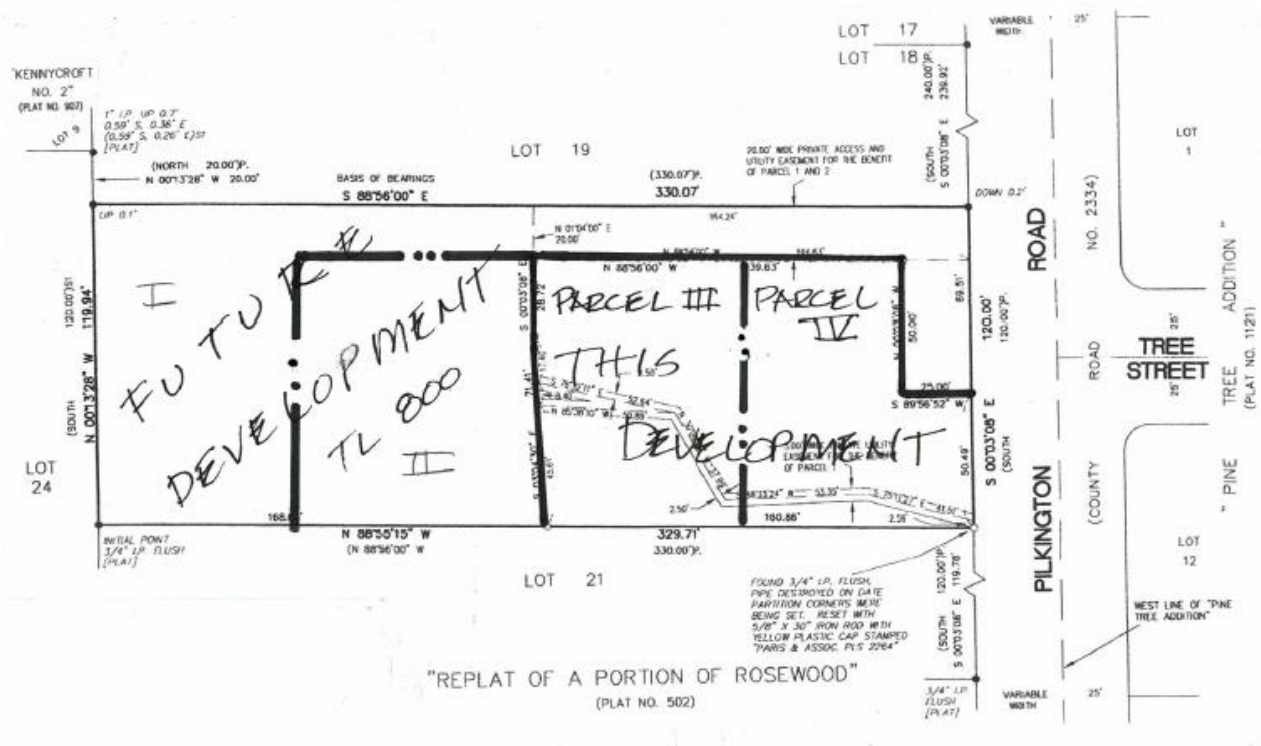
***Response: The proposed lots meet the requirements of the zone as described in this narrative under 50.02.001 and 50.07.007.2.***



iv. Parcelization Plan

In addition to the general application requirements for land divisions or lot line adjustments, an application to create a flag lot shall include a conceptual plan of complete parcelization of the subject property illustrating the maximum potential density, and shall include a site plan illustrating the location of existing structures on adjacent parcels. The reviewing authority may impose conditions in order to ensure that parcelization of the subject property will not preclude the development of surrounding properties. Such conditions may be related (but not limited) to access, circulation, building location, utility availability, and natural resource protection.

***Response: A Parcelization Plan is included with this request, below and as a separate Exhibit.***



b. Exceptions



The reviewing authority may allow exceptions to this section without the need to obtain a formal variance pursuant to LOC Article [50.08](#), Variances, in one or more of the following circumstances:

- i. Landscaping required by LOC [50.07.007.2.f.i](#) as separation between driveways, which would not result in screening or buffering as intended due to topography, lot configuration, or existing natural resources which would be preserved, may be modified or may not be required;
- ii. Setback adjustments of up to two ft. which are necessary to site a dwelling in compliance with this article, or will result in additional separation from existing dwellings on surrounding lots, may be permitted;
- iii. If an existing structure(s) would be located on a proposed flag lot created by partition and the structure(s) would become noncomplying with any regulation of this Code, the proposed partition may be approved if the standard causing the noncompliance can be adjusted under LOC [50.04.003.2](#), General Exception to Lot Area and Dimension Requirements;
- iv. Minimum driveway widths of 12 ft. required by LOC [50.07.007.2.c.iii](#) may be reduced, when approved by the City of Lake Oswego Fire Marshal.

***Response: No exceptions are requested.***

c. Access

- i. When creating flag lots, the reviewing authority shall require that access to the flag lots is consolidated into a single shared access lane with the non-flag lot(s) or off site. If not practicable, then new lots may have individual access points.
- ii. Flag lots shall have access to a public or private street; however, actual street frontage shall not be required.
- iii. A driveway shall be used to serve a single lot. An access lane shall serve no more than three lots total, up to two of which may be flag lots.
  - (1) Driveway widths shall be a minimum of 12 ft. Driveway length, construction standards, and turnaround requirements shall be determined by LOC [50.06.003.2](#), On-Site Circulation – Driveways and Fire Access Roads.



(2) See LOC [50.06.003.1.d](#), Standards for Access Lanes, for width of access lanes.

***Response: The proposal is for a total of two parcels, one being a Flag Lot. Access for the flag lot (Parcel 3) and the non-flag lot (Parcel 4) are to be combined as required by i., above.***

***The flag has access to the public street by way of an easement.***

***The access way will serve two lots total, one of which is a flag lot.***

***The applicant requests a separate flag access for these parcels, separated from the flagpole for Tax Lot 800.***

***Per C.3., above, “an access lane shall serve no more than three lots total, up to two of which may be flag lots”. If the new flag lot of this proposal is accessed from the flagpole to the north, it will preclude the ability for Tax Lot 800 to be divided in the future because that would total two flag lots using the accessway. If the new proposed flag lot takes access from the north flagpole, the maximum number of “flag lots” will be achieved with this development, even though Tax Lot 800 has the net area to be divided into two (2) in the future. If the applicant is forced to have access from the north flagpole of Tax Lot 800, then Tax Lot 800 will not be able to divide in the future without some kind of adjustment or variance for the number of lots that can be accessed by a flag.***

***The proposed width of the driveway is to be 12 feet paved area, with 4 feet of gravel shoulder on each side and a 5 foot wide landscaping buffer along the south side.***

***The required landscaping will be provided, installed and maintained by the owner.***

iv. No more than two driveways (whether to flag lot or non-flag lots) or access lanes shall be permitted within a distance equal to the minimum lot width of the underlying zone, or within 50 ft. of each other if no minimum exists, as measured from the closest edge of each driveway or access lane.

v. All dwellings on flag lots must post an address at the beginning of the driveway or access lane.



The address shall be no less than six in. tall, must be on contrasting background, plainly visible, and must indicate the direction to the dwelling.<sup>11</sup>

***Response: The minimum lot width in the R7.5 zone is 50 feet, as shown on the Preliminary Plans, the “elephant foot” is a width of 50 feet, and the driveways are to the north and south of the proposed new accessway.***

***Addresses will be clearly posted at the beginning of the driveway adjacent to Pilkington Road.***

d. Lot Configuration Requirements

i. Determination of Front Yard

The front yard shall be determined as follows:

(1) Except as provided below, the front yard(s) of a flag lot shall be measured from the access lane (see LOC [50.07.007.2.e.iv](#) for setback requirements).

Exception: For a flag lot at the farthest end of the access lane or a flag lot served by a driveway, the zone front yard setback shall apply and is measured from either the property line most parallel to the public street or the property line most parallel to the orientation of the projected access lane or driveway (see Figure [50.07.007-B](#)).

***Response: As evidenced by the included plans, the “elephant foot” creates a unique parcel configuration. The “front” for the flag lot will be facing toward the south toward the access lane as required by d.i.(1) above.***

ii. Lot Width

Lot width shall be measured by a line connecting two points on opposite side yard property lines, that will result in a line parallel to the front yard.

iii. Lot Size

Area of access easement or flagpole shall be deducted from the gross square footage of the flag lot. The "flag" portion of the lot shall be equal to or exceed the square footage of the underlying zone.

***Response: The area of the access easement has been deducted from the gross square footage of the parcels.***



e. Building and Site Design Standards

i. Building Orientation

The reviewing authority shall require the following:

- (1) Except for dwellings on flag lots at the farthest end of the access lane or flag lots served by a driveway, new dwellings on flag lots shall have the front of the house oriented towards the access lane.
- (2) Buildings shall be oriented to provide the maximum separation and privacy from existing dwellings on abutting lots outside of the partition site. The reviewing authority may require conditions of approval to include measures such as specific building locations, increased setbacks, additional height restrictions, location and orientation of windows and other openings.

ii. Maximum Structure Height

The height of a single-family residential structure and any accessory structures on a flag lot shall not exceed:

- (1) For flag lots created after August 14, 2003, the taller of:
  - (a) Twenty-two ft.; or
  - (b) The average height of all dwellings on properties abutting the development site, as determined prior to the time of creation of the flag lot. Where there is no dwelling on the abutting property or where a dwelling is located more than 100 ft. away from the development site:
    - (i) The maximum height permitted in the underlying zone shall be used for calculating the average, except:
      1. In cases where the abutting property is zoned to permit a height greater than that allowed on the subject site, then the maximum height for the zone in which the subject site is located shall be substituted and used to calculate the average.



(2) For flag lots created before August 14, 2003, the taller of:

(a) The maximum building height limitation established at the time of creation of the flag lot. The methodology used to calculate the maximum building height permitted by this subsection shall be the same methodology used at the time of lot creation to establish the maximum building height; or

(b) Twenty-two ft. (see LOC [50.10.003.2](#), Height of Building, for methodology).

The City Manager may execute and record amendments to previously recorded development restrictions, upon the owner's or adjacent property owner's request, or at the City's discretion, if necessary to reflect a taller building height limitation than previously approved.

***Response: The flag is created after August 14, 2003, therefore (1), above, applies. The house on Tax Lot 800 is 26 feet in height. The new home for Parcel 3 will be no more than 26 feet tall.***

(3) Modification of Approved Building Height

The maximum building height of single-family residential structures and accessory structures on a flag lot (whether created prior to or after August 14, 2003) may be modified from that previously determined at the time of creation of the flag lot to the average height of all dwellings on properties abutting the development site. Where there is no dwelling on the abutting property or where a dwelling is located more than 100 ft. away from the development site, then the maximum height permitted in the underlying zone shall be used for calculating the average. In cases where the abutting property is zoned to permit a height greater than that allowed on the subject site, then the maximum height for the zone in which the subject site is located shall be substituted and used to calculate the average. Where an existing structure on an abutting lot exceeds the maximum height allowed by the underlying zone, then the maximum height permitted by the underlying zone shall be used for purposes of calculating the average.

An application for modification of maximum building height for a flag lot shall be processed pursuant to LOC [50.07.003.11](#), Modification of Development Permits, as a new application. The City Manager may execute and record amendments to previously recorded development restrictions.

***Response: No Modification is requested.***



(4) Exceptions to Maximum Structure Height

A greater height than otherwise permitted for roof forms or architectural features, such as cupolas or dormers, may be allowed pursuant to LOC [50.04.001.1.g.ii](#), [50.04.001.2.g.ii](#), or [50.04.001.3.f.iv\(2\)](#).

iii. Access Lane Siting

The access lane shall be located no closer than five ft. to any existing dwellings.

***Response: There are no existing dwellings closer than 98.9 feet from the subject site.***

iv. Setback Requirements

(1) The standard front yard setback of the zone shall be superseded by the following front yard requirement: A minimum 15-ft. front yard setback is required from the access lane, except that a 20-ft. setback is required from the access lane to the front of a garage or carport when the garage or carport opening faces the access lane. For flag lot partitions or subdivisions that receive a minor variance to the determination of the front yard, per LOC [50.08.002.2.m](#), the setbacks from the access lane described above shall apply. For purposes of this standard, the access lane shall include the projected extension of the access lane through the property as illustrated in Figure [50.07.007-B: Access Lane](#).

Exception: This provision does not apply to the flag lot(s) at the farthest end of the access lane. In such case, the zone front yard shall apply and be measured from either the property line most parallel to the public street or the property line most parallel to the orientation of the projection of the access lane.

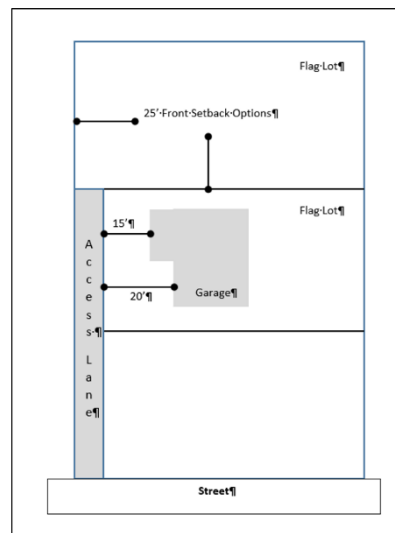


Figure 50.07.007-B: Access Lane



***Response: The homes will be 20 feet from the access lane to the garage opening. The applicant or assigns will comply with all setback requirements for both parcels.***

(2) Where a flag lot abuts a lot in a residential district of lower density, the greater setback requirements of the more restrictive district shall apply for those yards that have abutting property lines.

***Response: Abutting properties are the same zoning as the subject site.***

(3) The side and rear yard setbacks shall be established at the time of flag lot creation, subject to the following requirements:

(a) The sum of the side and rear yard setbacks on flag lots shall be not less than:

(i) Fifty ft. in R-10 and R-15 zones; and

(ii) Forty-five ft. in the R-7.5 zone; and

(iii) Thirty-five ft. in the R-5, R-3 and R-0 zones.

(b) In applying the flexible standard, provide yard dimensions that are similar to the yard dimensions of primary structures on abutting properties that are not part of the partition site and that abut the rear or side yards of the flag lots, but in no event shall the rear or side yard established under this section be less than:

(i) Ten ft. in R-15, R-10 and R-7.5 zones; and

(ii) Seven and one-half ft. in the R-5, R-3 and R-0 zones.

***Response: The sum of the rear and side yard setbacks equal 45 feet – 20 feet on the west side, 15 feet on the north side and 10 feet on the east side.***

v. Lot Width Requirements

The lot width dimension of a flag lot shall not be less than the minimum lot width requirements of the underlying zone.

***Response: The minimum lot width is 50 feet in the underlying zone, the proposed flag lot is at least 72 feet wide.***

vi. Lot Coverage and Floor Area



For the purposes of calculating lot coverage and floor area on flag lots, the area of access easement or flagpole shall be deducted from the gross square footage of the flag lot.

***Response: The area of the access easement will be removed for the calculation of floor coverage.***

f. Screening, Buffering and Landscape Installation

i. A minimum five-ft. landscape strip shall be provided between the access lane and the perimeter of the development site when the shared access lane is located along the perimeter of the development site. Where land area is not sufficient to accommodate the five-ft.-wide landscape strip, the reviewing authority may impose conditions of approval to include measures that will provide effective buffering and screening. These measures may include landscaped islands, fencing, and meandering access lane.

Exception: If a new lot is provided on both sides of an access lane, the landscape strip is not required.

The reviewing authority shall require the landscape strip to be planted with trees and shrubs in order to mitigate the visual impact of wide expanses of pavement, and to provide a visual buffer between the access lane and the affected dwelling(s) located on abutting parcels. Plant materials used for screening and buffering shall be of a size to provide an effective screen within two years of planting. Trees shall be a minimum two-in. caliper, and shrubs shall be a minimum of five-gallon at time of planting. Maintenance of the buffer is an ongoing obligation of the property owner.

Exception: Trees are not required when the trees would conflict with utilities.

ii. Existing mature vegetation and trees shall be integrated as screening where practicable. The reviewing authority may require dwelling and garage placement or orientation in a manner that will minimize the removal of specific trees, hedges, or other vegetation that would serve to screen the proposed structures from existing and potential surrounding homes.

iii. The perimeter of the flag lot(s) shall be screened from abutting lots outside of the development site with a six-ft.-tall fence, except:

- (1) Where a four-ft. fence is required by LOC [50.06.004.2.b.i](#), Fences, or where such screening would conflict with standards for Sensitive Lands Overlay Districts; or



- (2) Where the fence would be located within a wetland or stream channel.

***Response: A Landscape Plan has been included that shows the proposed 5 foot wide landscaping along the south side of the access lane. The applicant or assigns will comply with all of the requirements for landscaping and buffering for the access easement. The perimeter will include a 6 foot high fence.***

- iv. A landscaped buffer within the deepest side or rear yard provided in compliance with the flexible setback standard of LOC [50.07.007.2.e.iv\(3\)](#), a minimum of six ft. in width, shall be created along the property line and planted with a deciduous or evergreen hedge, a minimum four ft. in height at planting, which shall grow to a height of six ft. within two years and shall be maintained at a minimum of that height. This requirement is not applicable where the deepest yard abuts Oswego Lake or railroad rights-of-way.

***Response: Landscaping will be included along the rear yard of the flag lot within an area at least 6 feet in width, including trees, shrubs and groundcover.***

- v. Tree Removal Mitigation

A minimum of one evergreen or deciduous tree shall be planted at a 1:1 ratio where practicable in order to mitigate the removal of existing trees necessary for site development as a part of the creation of the lot or for the first dwelling constructed on the lot. The mitigation trees shall be of a species which will attain a minimum of 30 ft. in height. Deciduous trees at planting shall be a minimum of two-in. caliper and evergreen trees shall be a minimum of eight ft. tall.

***Response: The only tree to be removed is a Douglas Fir at the southwest corner of the site. This tree will be mitigated for at a 1:1 ratio.***



### 3. PLATTING

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#### a. Preparation and Submittal of Final Plan or Plat

i. The final plan or plat shall be submitted within one year of the date of the order setting forth the final decision. Upon written application, prior to expiration of the one-year period, the City Manager shall, in writing, grant a one-year extension. Additional extensions may be requested in writing and will be submitted to the approving authority which approved the final decision for review of the project for conformance with the current law, development standards and compatibility with development which may have occurred in the surrounding area. The extension may be granted or denied and if granted may be conditioned to require modifications to bring the project into compliance with then current law and compatibility with surrounding development.

***Response: The applicant anticipates filing the Final Plat as soon as possible for the two parcel partition.***

ii. A final plan or plat shall include all information required by the final decision on the plan.

***Response: The applicant's surveyor, will provide the final partition plat, the information as required by the final decision will be included on the said plat; inclusion of this information will be ensured by the final plat review through the city Planning Department.***

iii. A final plan or plat for a subdivision shall accurately reflect the preliminary approval granted by the hearing body, with all conditions satisfied and shall also contain the following information:

(1) The proposed name of the subdivision. The name shall not duplicate or resemble the name of another subdivision in the Urban Service Area.

(2) Location of the subdivision by section, township and range.

(3) Reference points of the existing surveys identified, related to the plat by distance and bearings, and reference to a field book or map as follows:

(a) Stakes, measurements or other evidence found on the ground and used to determine the boundaries of the subdivision.

(b) Adjoining corners of adjoining subdivisions.

(c) Other monuments found or established in making the survey of the subdivision or required to be installed by provisions of this article.



- (4) The location and width of streets and easements intercepting the boundary of the tract.
- (5) Tract, block and lot or parcel boundary lines and street rights-of-way and centerlines, with dimensions, bearings and deflection angles, radii, arcs, points of curvature and points of tangency. Floodplain or high water line for major water bodies. Plat accuracy shall be determined by the County Surveyor.
- (6) The width of the portion of streets being dedicated and the width of existing rights-of-way. For streets on curvature, curve data shall be based on the road centerline. In addition to the centerline dimensions, the radius and central angle shall be indicated on each right-of-way line. Also, arc and chord data shall be shown on each line for all lots as applicable.
- (7) Easements, clearly identified and, if already of record, their recorded reference. If an easement is not definitely located of record, a statement of the easement shall be given. The width of the easement, its length and bearing, and sufficient ties to locate the easement with respect to the subdivision lines shall be shown. If the easement is being dedicated by the plat, it shall be properly referenced in the owner's certificates of dedication.
- (8) Lot number beginning with the number "1" and numbered consecutively in each block in the subdivision.
- (9) Block numbers beginning with the number "1" and continuing consecutively without omission or duplication throughout a subdivision. The numbers shall be solid, of sufficient size and thickness to stand out and so placed as not to obliterate any figure. Block numbers in an addition to a subdivision of the same name shall be a continuation of the numbering in the original subdivision.
- (10) Identification of land to be dedicated to the public and a specific statement of the purpose of the dedication.
- (11) The following certificates may be combined where appropriate:
- (a) Certificate signed and acknowledged by all parties having any recorded title interest in the land (excluding lien holders), consenting to the preparation and recording of the plat.
  - (b) Certificate signed and acknowledged as above, dedicating all land intended for public use except land which is intended for the exclusive use of the lot owners in the subdivision or their lessees, tenants, employees and visitors.
  - (c) Certificate with the seal of and signed by the engineer or the surveyor responsible for the survey and final map.
  - (d) Certificate for execution by the City Manager.



- (e) Certificate for execution by the County Surveyor.
- (f) Certificate for execution by the County Tax Collector.
- (g) Certificate for execution by the County Assessor.
- (h) Other certifications now or hereafter required by law.

(12) Other information as required by ORS Chapter [92](#).

(13) Deed restrictions and covenants shall be submitted as a separate document at the time as the final plat is submitted.

***Response: The applicant's surveyor will provide the final partition plat, which will include all the information as required by (1) – (12), above, and as required and to the standards of the Clackamas County Surveyor's Office.***

***Any required Waivers, Restrictions, and Maintenance Agreements will be by separate deed and instrument. The applicant will provide copies of these documents to the city as a part of the final partition plat application.***

## **50.08.002 MINOR VARIANCES**

### **1. PURPOSE**

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The purpose of a minor variance is to allow small adjustments to certain standards of this Code that generally have little or no impact on surrounding properties or users or on the streetscape.

***Response: The applicant is requesting a minor variance to the rear yard setbacks for Parcel 4. The request is for a 20% reduction from 30.00 feet to 24.00 feet for the rear yard, which is the determined to be the west lot line. The reason for this request is:***

- ***To provide a larger building envelope for the new home on Parcel 4. The shape of the parent parcel is irregular due to the elephant foot created in 2003 with Partition Plat 2003-061. This creates a situation where proposed Parcel 4 will front toward Pilkington Road for 50.49 feet, but the building plane is approximately 28 feet to the east of that due to the unusual elephant foot.***
- ***The applicant did not create this lot configuration and needs some relief to the standard to accommodate the unusual lot configuration.***



## 2.MINOR VARIANCE CLASSIFICATIONS

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a. A variance of 20% or less from yard setbacks or the Oswego Lake setback for a single-family dwelling, zero lot line dwelling, or an associated accessory structure that does not comply with LOC [50.03.004.2.b](#), Reduction of Side or Rear Yard Setbacks for Accessory Structures, provided:

- i. The resulting side yard setback is not less than five ft.; and

***Response: The requested variance is for a 20% reduction – from 30.00 feet to 24.00 feet the rear yard setback for proposed Parcel 4. No reduction to side yards is requested.***

- ii. If located in the R-6 zone, a minor variance to front yard setbacks shall be limited to two ft. or less; or

***Response: The subject site is located within the city's R7.5 zone and the request is for the rear yard setback, ii. is not applicable to this request.***

- iii. If the request is necessary to preserve a tree:

- (1) The request is the minimum necessary to preserve the tree; and
- (2) The resulting yard setback is not less than 50% of the required standard; and
- (3) Side yards are not reduced to less than five ft., and if located in the R-6 zone, the required front yard setback is not reduced by more than two ft.

***Response: This variance is not requested to preserve a tree.***

***This request is the minimum necessary to maximize the building footprint. If approved, the Minor Variance will allow for approximately an additional 299 square feet of foot print for building area.***

***The resulting variance will be for 20% for the resulting rear yard setback – from 30 feet to 24 feet.***

***This request is for one rear yard setback only, within the city's R7.5 zone.***

b. A variance from yard setbacks for a structure other than a single-family dwelling, zero lot line dwelling, or associated accessory structures up to:

- i. Side or front yards: two ft.;
- ii. Rear yards: five ft.; or
- iii. Fifty percent or less of the required setback if necessary to preserve a tree provided:



- (1) The request is the minimum necessary to preserve the tree; and
- (2) The resulting yard setback is not less than 50% of the required standard; and
- (3) Side yards are not reduced to less than five ft., and if located in the R-6 zone, the required front yard setback is not reduced by more than two ft.

***Response: The requested variance is for a setback to a single family dwelling, b.i. - iii, above, are not applicable to this request.***

### 3.MINOR VARIANCE CRITERIA

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#### a. General

Except as provided in subsection 3.b of this section, the reviewing authority may grant a minor variance from the requirements of this Code if the following criteria are met:

- i. The granting of the variance will not be detrimental to the public health or safety;

***Response: The variance will not cause any detriment to the public health or safety, the variance for a reduction of 6 feet to 24 feet from 30 feet will not affect public health and there will be no change to the level of public safety is the variance is approved.***

- ii. The granting of the variance will not be materially injurious to properties or improvements within 300 ft. of the property;

***Response: The variance will not have a large effect on neighboring properties, particularly as far as 300 feet of the property. Tax Lot 800 contains an existing home that is located to the west of the subject parcels; this request creates a new lot between the lot that is the subject of the variance and therefore will not be directly impacted by this rear yard setback. As configured, the side yard will be adjacent to the flagpole and driveway for Tax Lot 800.***

***No adjacent parcels will be directly affected by this variance if granted.***

- iii. The granting of the variance will have little or no negative impact on the streetscape (e.g., pedestrian environment or other aspects of the public realm that contribute to the neighborhood character); and

***Response: Due to the odd shape and configuration of the subject site and the adjacent tax lot, with an “elephant foot” adjacent to Pilkington Road, the variance, if granted, will not be visible to the streetscape as it is the rear yard – directly parallel to Pilkington Road, and not visible to the street.***



- iv. The proposed development will not adversely affect existing physical and natural systems such as traffic, drainage, Oswego Lake, hillsides, designated Sensitive Lands, historic resources, or parks, and the potential for abutting properties to use solar energy devices any more than would occur if the development were located as specified by the requirements of the zone.

***Response: The requested variance is in response to the location of the elephant foot. There are no drainage, lake, hillside, sensitive lands, resources or abutting solar energy devises that would be affected by the granting of the variance. Because the subject lot (Parcel 4) has a north/south orientation with a long axis of greater than 90 feet, solar access for both parcels will not be affected by the reduction of the rear yard setback on Parcel 4.***

b. Compliance with State or Federal Law

If the applicant asserts that a variance is necessary to comply with a state or federal law based on the rights of the occupant, and the reviewing authority determines that the request may be related to a state or federal legal right, the reviewing authority may grant a minor variance from the requirements of this Code if:

- i. The applicant and proposed use meet the qualifications for applicability under a state or federal law that may require the City to waive, adjust, or reasonably accommodate land use regulations; and
- ii. The requested variance is necessary to comply with state or federal law requirements for adjustment, waiver, or reasonable accommodation of land use regulations, e.g., federal Fair Housing Act, Americans with Disabilities Act, Rehabilitation Act, Religious Land Use and Institutionalized Persons Act; and
- iii. The variance is the minimum necessary to comply with the applicable state or federal law.

(Ord. 2687, Amended, 12/15/2015; Ord. 2644, Amended, 04/07/2015; Ord. 2579, Repealed and Replaced, 03/20/2012)

***Response: The applicant does not assert the variance necessary to comply with state or federal law, b.i.-iii., above are not applicable to his request.***



#### 4. RECORDATION AND TERMINATION OF MINOR VARIANCE

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a. If a minor variance pursuant to LOC [50.08.002.2.o](#) (a variance based on a specific state or federal legal right of the occupant) is approved, notice of the conditions or events that will terminate the variance shall be recorded in the county deed records as follows:

i. Variances that allow use of a lot not otherwise permitted by this Code but required under state or federal law shall expire upon termination of the occupancy of the lot by the activity, use, or individual/entity qualifying for the use variance under state or federal law.

ii. Variances relating to the placement of the structure, the dimensional standards of the lot, or other variances relating to the structure (other than to the use of the structure) shall expire when the portion of the structure that received the variance is damaged or destroyed and occupancy of the lot by the activity, use, or individual/entity qualifying for the variance under state or federal law has ceased.

(Ord. 2644, Amended, 04/07/2015; Ord. 2579, Repealed and Replaced, 03/20/2012)

***Response: As stated above, the applicant does not assert the variance necessary to comply with state or federal law, 4.a.i.-ii., above are not applicable to his request.***

#### OTHER ORDINANCES

##### Chapter 38 UTILITY CODE

(SEWER, WATER AND SURFACE WATER MANAGEMENT)

***Response: The applicant will apply for and obtain all of the required permits before any placement of utilities on the site.***

##### Chapter 39 SYSTEM DEVELOPMENT CHARGES

***Response: All System Development Charges will be calculated at the building permit review process and are due upon issuance of Building Permits. The applicant will pay the SDC charges at that time.***



Chapter 42  
STREETS AND SIDEWALKS

**42.03.130 Sight Distance at Roadway Intersections, Private Streets and Driveways.**

*Response: Pilkington Road is an un-curbed road and is designed as a Major Collector level street in the City's street classification system and is under the permit authority of the City of Lake Oswego. The existing right of way width along the site frontage varies from 55 to 60 feet.*

*There is an existing asphalt shoulder pathway located along the west side of Pilkington Road from Jean Road to McEwan Road that was constructed as part of the Safe Routes to School program. There is also an existing path across the street from the site that was constructed with newer development.*

*Per the Pre-Application notes provided by Engineering, included with this request, in view of site-specific factors and after reviewing the existing street frontage conditions, the Engineering Staff has determined that no street improvements or dedication will be required for this project. The existing asphalt path that was constructed with the Safe Routes to School program across the site frontage will remain. Any new driveway approach will be constructed to city standards.*

*"In reviewing the existing established right-of-way location and paved street location between Jean Road north of the site and Kenny Street south of the site, the west right-of-way line of this site aligns with the development pattern of other properties along the west side of Pilkington Road. The existing road transitions over to the west portion of the existing right-of-way in this segment of roadway. Ultimately, a bike lane should be added to the west side of Pilkington Road; however, trying to widen a small section of roadway across this site frontage will require additional right-of-way along the west side of the street, which would be inconsistent with the west right-of-way line of other recent developments and existing properties along the west side of Pilkington Road in the vicinity of the site. To be properly done, such a project would require a more extensive design analysis that would include adjoining properties, drainage conveyance facilities and possible realignment of the road. Instead of constructing a new bike lane across the site frontage at this time, the applicant/owner will be required to sign a non-remonstrance agreement for participating in a future Local Improvement District (LID) for street improvements that will include a bike lane and possible alignment adjustments to Pilkington Road."*



## Chapter 55 TREE CODE

### **55.02.080 Criteria for Issuance of Type II Tree Cutting Permits.**

An applicant for a Type II tree cutting permit shall demonstrate that the following criteria are satisfied. The City Manager may require an arborist's report to address the criteria for a permit.

1. The tree is proposed for removal because it has outgrown its landscape area or the removal is part of a landscape plan, or in order to construct development approved or allowed pursuant to the Lake Oswego Code or other applicable development regulations. The City Manager may require the building footprint of the development to be staked to allow for accurate verification of the permit application;

a. For the purposes of this section, a tree that has outgrown its landscape area may include, but is not limited to, a tree that has grown such that damage to a structure or facility cannot be avoided by pruning or other maintenance, a tree that has grown too large within a constrained space such as a deck or other built feature that was constructed around the tree, or thinning to improve the health of other trees.

b. For purposes of this section, a "landscape plan" shall consist of plantings but may also include walkways, patios and other landscape features; the plan must include more than removing the tree for which the Type II permit is requested and planting required mitigation trees;

***Response: There is one tree that is requested for removal. This is to allow for development upon the subject site. An Arborist Report is included with this application. A Landscape Plan is included showing the location of landscape trees, including the Mitigation for the removal of the tree within the area for Sight Distance.***

***The subject tree is listed as Tree #1 as a 37" Douglas Fir in the Arborist Report and is reported to be in "fair" condition with signs of internal decay and multiple conks along the trunk and the fungus Porodaedalea pini.***

2. Removal of the tree, considering proposed mitigation measures, will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks; and

***Response: Removal of Tree # 1 will not have a negative impact on erosion or soil stability because the area of its location is quite flat. Adjacent trees are not dependent on the subject tree for support or survival. Tree #2 is the nearest tree, and it is in good shape and is located on the property line with the parcel to the south.***



*Prior to the issuance of construction permits, the Engineering, Planning, and Building staff will review the site plans to ensure compliance with stormwater management standards, erosion control, and tree protection. Compliance with those standards will ensure mitigation of negative impacts on erosion, soil stability, or flow of surface waters.*

*The tree is not a part of an existing windbreak of trees and adjacent and on-site trees are all located to the north and west of the subject tree and do not provide a windbreak from winds from the southwest or for neighboring trees. Because the tree proposed for removal is not located in close proximity to any trees proposed to remain, nor is it located to provide a windbreak against storm winds from the southwest for any trees proposed to remain, removal of the one tree will not have a significant negative impact on adjacent trees or existing windbreaks.*

3. Removal of the tree will not have a significant negative impact on the character or aesthetics of the neighborhood. This standard is met when removal of the tree(s) does not involve:

- a. A significant tree;

*Response: A Significant tree is defined as a healthy, noninvasive tree over 15" DBH that is considered significant to the neighborhood due to size, species, or distinctive character, or the only remaining tree on the property. The tree proposed for removal is a 37-inch Douglas Fir tree.*

*Element #1 – Healthy: The applicant's arborist report states that the tree is in "Fair" condition with "Sig. internal decay. Multiple conks visible along stem. Assume Porodaedalea pini. Twin stems. Healthy CR [crown]", therefore not entirely healthy.*

*Element #2 – Noninvasive: The species of tree proposed for removal is an Douglas Fir, this species is not an Invasive Tree Species.*

*Element #3 – Size - Over 15" DBH: The tree is 37" DBH. The tree would potentially qualify as a "significant tree" if it meets the additional requirements of Element #4 of this subcriterion, size is addressed in context with Element #4, below.*

*Element #4 – Size & Species*

*The question for this part of Element #4 is whether any specific tree that also meets Elements # 1- 3 is significant to the neighborhood because of its size and species. This element requires examination of the neighborhood in which the specific tree is located to determine whether its removal would be significant because of the tree's size and species.*



*This part of Element #4 requires an examination of the relative size of the tree in relation to other trees in the neighborhood. For example, a 45" tree would not itself be significant to a neighborhood where there are other similar large diameter trees in the neighborhood, and where its removal would not diminish the perception of such large trees in the neighborhood. For a tree's size and species to be "significant" to the neighborhood, its absolute size must be considered in context with the size of trees in the neighborhood. The Arborist Report includes a tree inventory of the surrounding trees on site that includes six (6) Douglas-fir trees, with the three closest trees - #2 being a 41" DBH and in "good" condition, #5 (off-site on "elephant foot" of adjacent flag lot / Tax Lot 800) being a 58" DBH and in "good" condition and #9 being a 52" DBH and in "good" condition. The other three Douglas-firs (#23, #24 and #25) are on the west part of the site and are large, being 29", 33" and 36" DBH and listed as in "good" health. The Arborist Report shows that the subject 37" Douglas-fir proposed for removal (Tree #1) is not the most remarkable of the species in health, or size, in comparison to the diameter or drip line radius of other trees, particularly Douglas-firs, on the site.*

***Element #5 - Distinctive Character***

*Tree #1, proposed to be removed, does not have any particular distinctive character when compared to other comparable trees on the site or on adjacent properties that are larger, fuller, and in better health. The subject tree is located next to the overhead lines that run along the west side of Pilkington Road, which in this location has at least 9 wires, so as a result, the tree is de-limbed on the street side from years of pruning approximately 15 feet of the center on the east side of the tree, as the tree grows, the "center" moves upward so the marred up area becomes larger over time as the tree continues to be pruned on its east side. Other trees on the site and in the area are more distinctive as they are in better condition and are fuller, such as Trees #2 and #3 that are in the vicinity of the subject tree, and trees on the east side of Pilkington Road that are not subject to pruning for overhead utilities.*

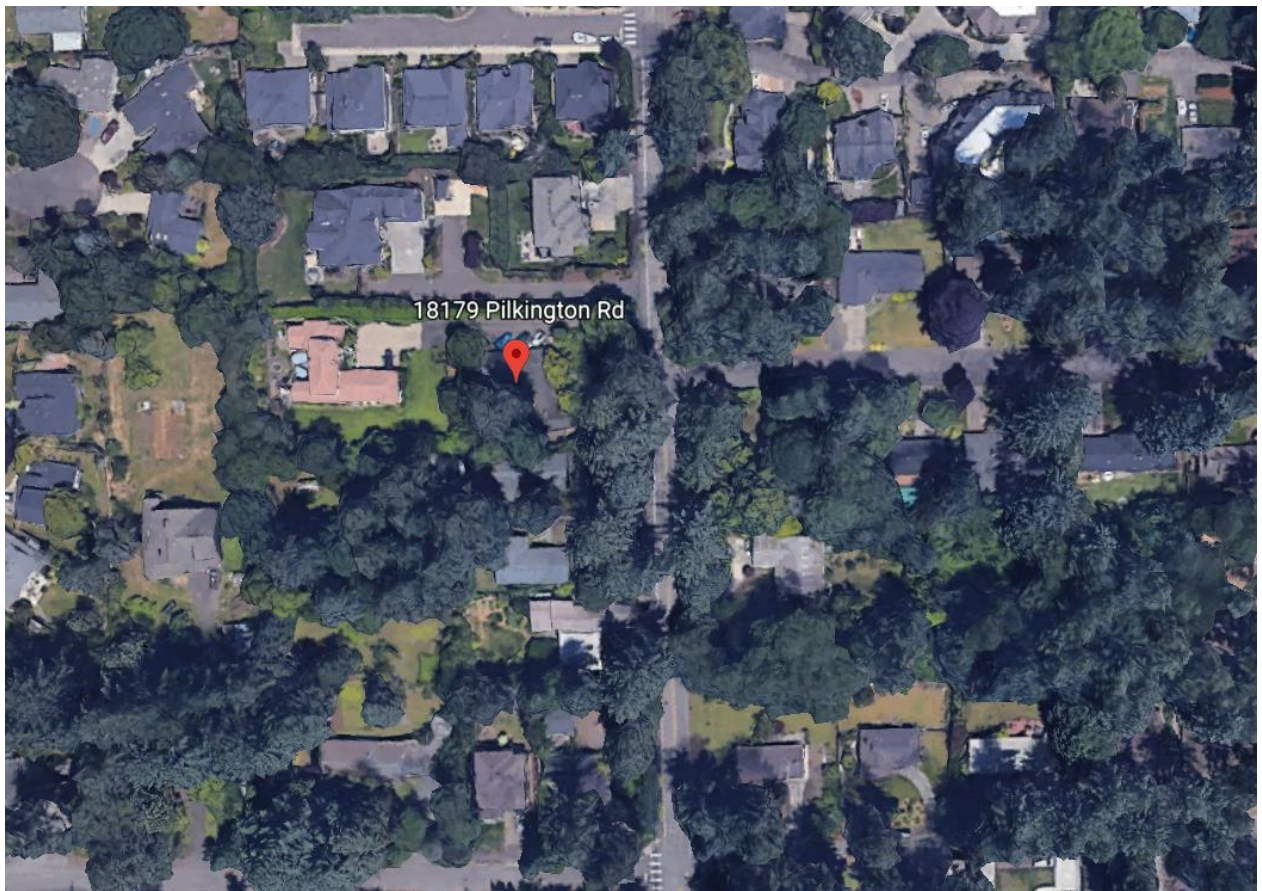
- b. Alterations to the distinctive features or continuity of the neighborhood skyline, as viewed from all public streets and properties within 300 ft. of the property;

***Response: The area within 300 feet of the subject site is generally flat, with Pilkington Road running north / south and Tree Street adjacent running east on the east side of Pilkington Road. The site is not on a hillside or on a prominent slope and therefore it does not create or frame a particular skyline and more than other properties along Pilkington or in the neighborhood.***



*The term “neighborhood skyline” is not specifically defined in the city code, but as shown on the included Preliminary Plans, most of the trees, being taller trees that are more significant and in better health, are preserved on the site. Based on the need to remove one tree for the placement of infrastructure, removal of the one tree will not alter distinctive features or the neighborhood skyline as viewed from public streets and properties within 300 feet.*

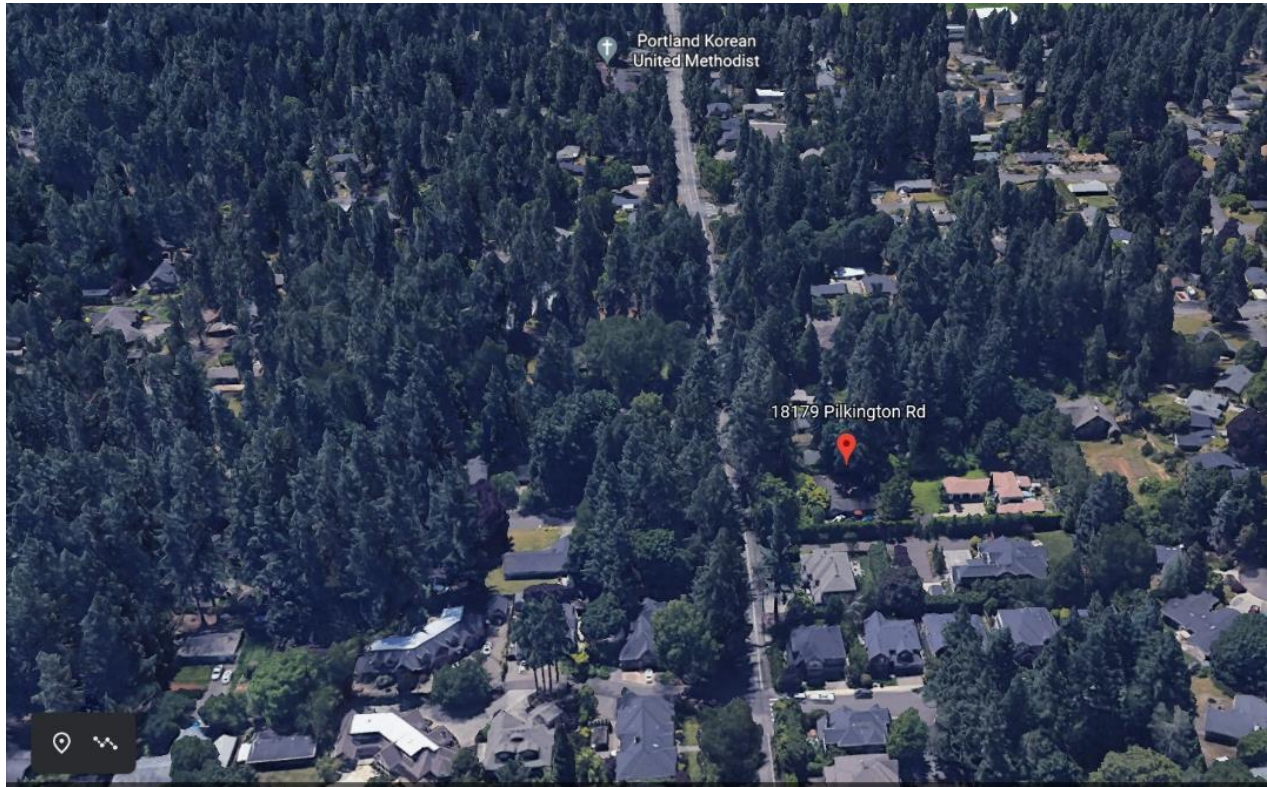
*There are approximately 26 trees on or directly adjacent to site, many of which are Douglas Firs larger than the proposed tree for removal. Along Pilkington Road, within 300 feet of the site, there are a variety of trees, including large Douglas Firs along the public street as shown in the aerial photo and street-view images below.*



AERIAL VIEW FROM GOOGLE EARTH - 300 FEET EACH DIRECTION FROM SITE



AERIAL VIEW FROM GOOGLE EARTH – LOOKING SOUTH ALONG PILKINGTON ROAD



STREET VIEW - GOOGLE MAPS - LOOKING SOUTH ALONG PILKINGTON FROM NORTH OF SUBJECT SITE

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**TWO PARCEL MINOR PARTITION / MINOR VARIANCE – 18179 Pilkington Road, Lake Oswego, Oregon**



- c. A tree that serves as a visual screen between a residential zone and an abutting non-residential zone, or between a low density residential zone and a medium or high density residential zone, or between a medium and high density residential zone;

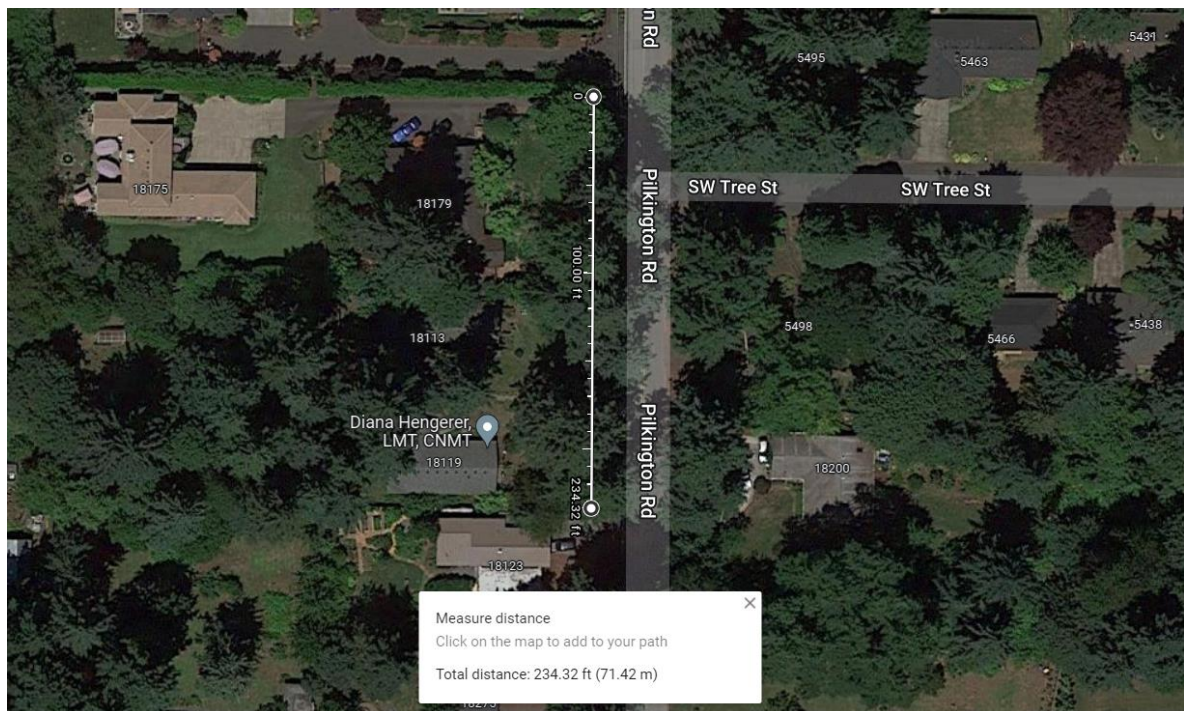
***Response: The site is not adjacent to a different zoning other than R7.5, abutting properties are zoned R7.5.***

- d. A street tree; or

***Response: The tree is not technically a street tree although it is along the right of way.***

- e. Greater than 50% of a stand of trees.

***Response: A stand of trees is defined as a group of trees (of the same species or a mixture) that form a visual and biological unit at least 15 feet in height with a contiguous crown width of at least 120 feet (LOC 55.02.020). The stand boundary is defined by the contiguous canopy, not the boundaries. As shown on the Aerial, there is a stand of trees at least 15 feet in height and with a contiguous crown cover starting from the elephant foot to the north and continuing along Pilkington to the south along the parcel adjacent to the subject site to the south, with a contiguous crown length of approximately 235 feet. There are approximately 16 trees within this canopy. The proposed removal is for one tree, which is 6.25% of the total canopy, far below the threshold of 50% as required by the standard of this section.***



AERIAL VIEW FROM GOOGLE MAPS SHOWING TREE CANOPY ALONG PILKINGTON ROAD INTO THE VICINITY OF THE SITE



Exceptions: This subsection (3) is not applicable when:

- a. A tree is likely to or will continue to cause damage to a permanent, viable existing structure, or to infrastructure, such as utilities or paved landscape features, that cannot be remedied through reasonable tree maintenance or pruning; or
- b. Alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone. In making this determination, the City may consider alternative site plans or placement of structures (development purpose) or alternate landscaping designs (outgrown landscape area; landscape plan) that would lessen the impact on trees, so long as the alternatives continue to comply with other provisions of the Lake Oswego Code.

***Response: The applicant has made findings for 55.02.080.2 - 3, above detailing how the tree should not be found to be “significant”. Additionally, the applicant explored alternatives to the placement of the driveway, which are described below.***

***The applicant’s goal is to divide the land to provide additional housing opportunities in the city of Lake Oswego. The proposed site layout and parcel configuration is influenced by the subject parcel’s irregular configuration / geometry (the “elephant foot”), the location of the existing 5.00-foot-wide power easement that serves Tax Lot 800 that traverses the property, the location of other, healthier trees on the site, zoning regulations, access considerations and access to private and public utilities.***

***Per the standards of the R7.5 zone, the site is large enough to divide into two parcels, and it seems that was the intent of the original developer who divided the parent parcel in 2003, leaving both parcels of a size that can be further divided in the future. The requirements of the R7.5 zone are for lots that are a minimum of 50 wide, therefore the only way to divide the parcel is under the city’s flag lot provisions. Flag lot standards allow for a shared access lane consisting of a paved section with gravel shoulders and landscaping, for this partition, it is 25 feet in width.***

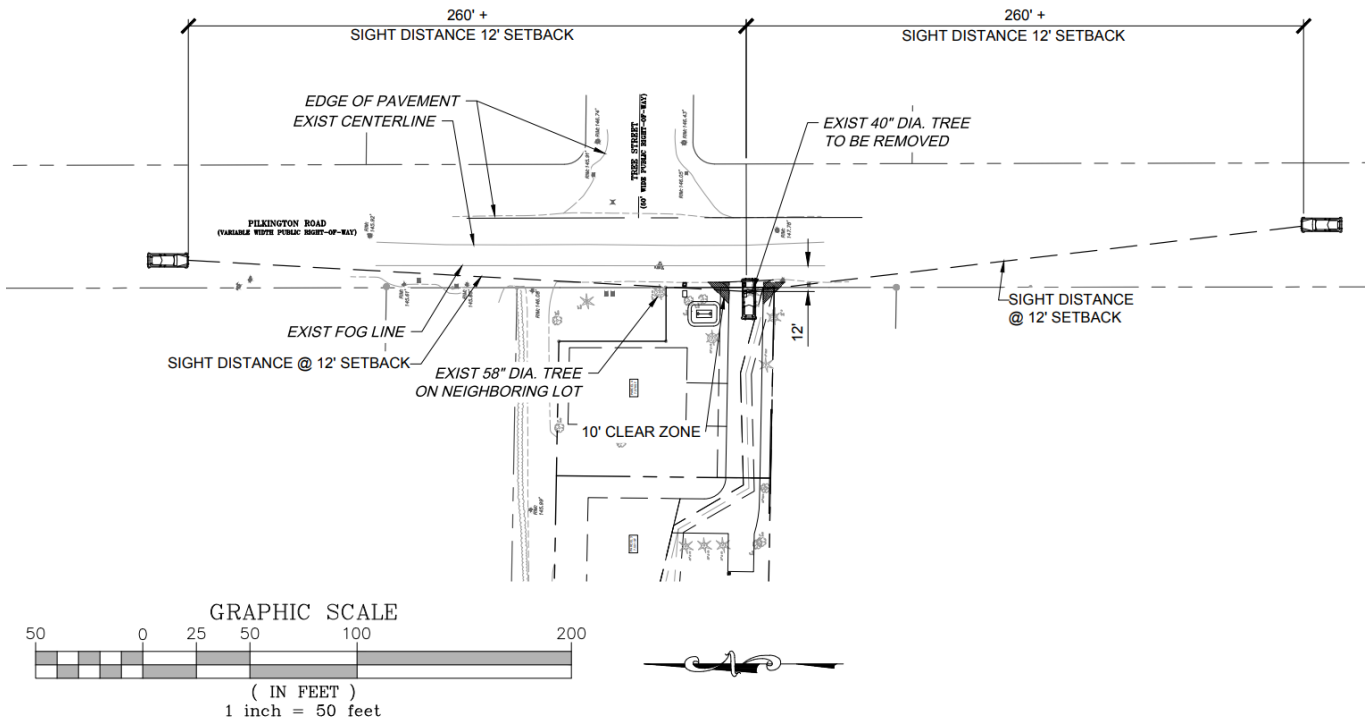
***Tree #1 is proposed to be removed to allow for the placement of the shared driveway, for stormwater management for Parcel 1, and for sight distance.***

***Alternatives to the placement of the driveway have been considered as shown in Options 1 and 2 provided by the applicant’s civil engineer and a third Option as described below.***



***Option 1:*** This option has a driveway location at the south side of the site adjacent to Pilkington Road, this location places the access lane over an existing utility easement.

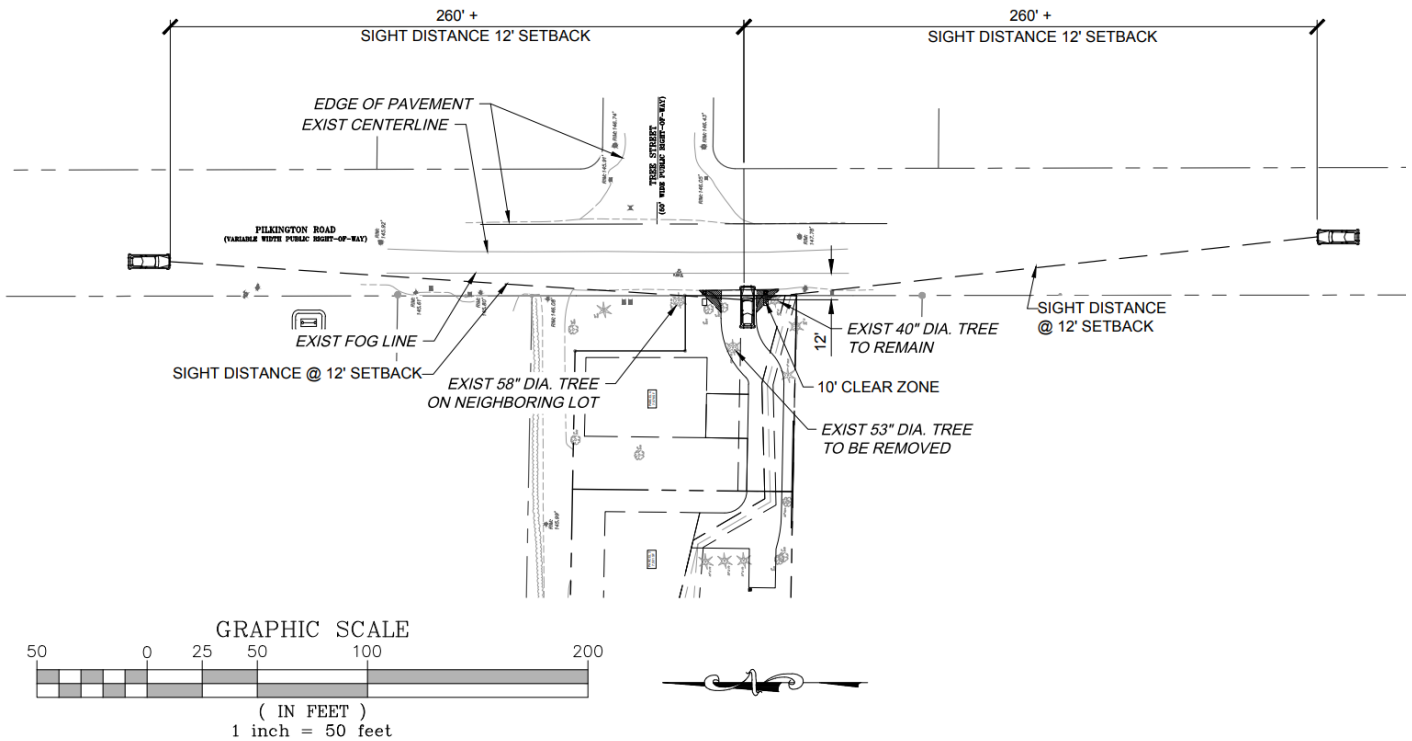
*This location is considered to be better because the sight distance can be met with the removal of only one tree, which is also smaller and in poorer condition than the tree(s) that would need to be removed with the alternative location for the driveway shown in Option 2, which is a much larger and healthy Douglas Fir along with two smaller dogwood trees.*



\*Please note Tree #1 is shown as 40", it is 37" per the Arborist Report and Tree #2 is shown at 53", it is 52" per the Arborist Report



***Option 2:*** This option moves the driveway as far to the north as possible on the site considering the “elephant foot” of Tax Lot 800. In doing so, in order to meet the requirements for sight distance and maneuvering, three trees need removed, most significantly is tree #9, a 52” Douglas Fir in “good” condition, along with two 7” Pacific Dogwoods.



#### OPTION 2 – ACCESS LOCATED TO THE NORTH – REMOVAL OF TREES #2, 3 AND 4

\*Please note Tree #1 is shown as 40", it is 37" per the Arborist Report and Tree #2 is shown at 53", it is 52" per the Arborist Report



**Option 3:** Use the driveway within the flagpole of Tax Lot 800. This may not really be considered an option because the applicant does not want to be forced to preclude the neighbor's (or future owners of Tax Lot 800) ability to divide their parcel in the future.

Per 50.07.007.2.c.iii, and as discussed on pages 5 and 6 of this narrative, "A driveway shall be used to serve a single lot. An access lane shall serve no more than three lots total, up to two of which may be flag lots". If the proposed new flag lot accesses from the flagpole of Tax Lot 800, the maximum of two "flag lots" would be met with this partition, without the consideration of the future develop-ability of Tax Lot 800. Tax Lot 800 would have to request and adjustment or variance to be able to divide in the future because they would be exceeding the total number of flag lots accessing the lane (2 flags per 50.07.007.2.c.iii) and also exceeding the total number of lots being served (three lots per 50.07.007.2.c.iii).



#### OPTION 3 – EXCERPT FROM LAKE OSWEGO COMMUNITY DEVELOPMENT CODE

4. Removal of the tree is not for the sole purpose of providing or enhancing views;

***Response: The proposed tree removal does not enhance views, the purpose for the removal is for development. Removal of the tree will have no significance to the view, which is of Pilkington Road and the home across Pilkington to the east or the access lane.***

5. The City shall require the applicant to mitigate for the removal of each tree pursuant to LOC [55.02.084](#). Such mitigation requirements shall be a condition of approval of the permit.

***Response: One tree is proposed to be removed with this request, Tree #1 in the Arborist Report. The applicant will mitigate for this tree as required by imposed conditions of approval. The Tree Mitigation is shown on the included Landscape Plan and is proposed to be a Blue Spruce on the north side of the shared driveway.***

#end#



**#end#**





## NOTICE OF MINOR DEVELOPMENT DECISION

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**File No.:** LU 21-0041

**Date of Decision:** April 18, 2022

**Property Owner/Applicant:** DKNW Properties LLC

**Applicants' Representative:** Trisha Clark, NW Land Planning

**Location of Property:** 18179 Pilkington Road (Tax ID: 21E18CA00801)

**Description of Proposal:** The applicant is requesting approval of a 2-parcel minor partition with one flag lot, a minor variance to reduce the rear yard setback of Parcel 4 from 30 feet to 24 feet, and the removal of one tree.

**Description of Decision:** Staff has tentatively approved this application subject to the conditions set forth in the staff report (decision) available as described below. This decision will become final unless appealed as described below. For more information, please contact the staff coordinator, **Ellen Davis, AICP, Associate Planner** at 503-635-0294 or [edavis@lakeoswego.city](mailto:edavis@lakeoswego.city).

**How to Obtain Further Information:** The decision (staff report) is available for review online at [www.lakeoswego.city](http://www.lakeoswego.city) (type LU 21-0041 in the search box at the top of the screen) or a copy may be reviewed at City Hall:

Planning and Building Services Department  
City of Lake Oswego  
P.O. Box 369  
380 "A" Avenue  
Lake Oswego, OR 97034  
Phone: (503) 635-0290

**Right to Appeal:** This decision may be appealed by filing a written Request for a Hearing along with the appeal fee within **fifteen** calendar days from the date of decision, above. A Request for Hearing shall:

1. List the File Number and Date of Decision.
2. Request that a hearing be held on the application.
3. Include name, address and signature of the appellant.
4. Be accompanied by payment of any filing fee.

Failure to comply with these requirements can result in rejection of the Appeal.

**(OVER)**



The Request for a Hearing must be filed by **5:00 p.m., May 3, 2022:**

City Recorder  
City of Lake Oswego  
P.O. Box 369  
380 "A" Avenue  
Lake Oswego, OR 97034  
Phone: (503) 635-0215  
[CityRecorder@lakeoswego.city](mailto:CityRecorder@lakeoswego.city)

**Decision Making Process:** If appealed, this application will be heard at a noticed public hearing held by the Development Review Commission (DRC). Any person may appear and testify. The DRC will render a final decision, which may be appealed to the City Council. If not appealed, this decision will become final and binding.

The cost to file an appeal is **\$704.**

The City Staff Report and all exhibits are available at the above address and online at [www.lakeoswego.city](http://www.lakeoswego.city) (type LU 21-0041 in the search box at the top of the screen).





# City of Lake Oswego

## Planning Division

<b>File Number</b>	LU 21-0041	<b>Report Date</b>	April 18, 2022
<b>Applicant/Owner</b>	DKNW Properties LLC	<b>Applicant's Representative</b>	Trisha Clark, NW Land Planning
<b>Site Address</b>	18179 Pilkington Rd.	<b>Tax Reference</b>	21E18CA00801
<b>Zoning</b>	R-7.5	<b>Neighborhood</b>	Rosewood
<b>120-day deadline</b>	June 17, 2022	<b>Staff</b>	Ellen Davis, AICP, Associate Planner

### I. APPLICANT'S REQUEST

The applicant is requesting approval of a 2-parcel minor partition with one flag lot, a minor variance to reduce the rear yard setback of Parcel 4 from 30 feet to 24 feet, and removal of one tree.

### II. DECISION

**Approval** of LU 21-0041, with conditions. The conditions of approval are listed below.

Conditions			Post Approval Use Only	
<b>A.</b>	<b><u>Prior to Submittal of the Final Partition Plat, the Application/Owner Shall:</u></b>			
1.	<p>Apply for and obtain a demolition permit for the existing structures on site. The applicant shall note that this may require an asbestos report from a licensed agency to the satisfaction of the Building Official and that a 14-day notice of demolition is required to be posted on the site and mailed to abutting properties pursuant to LOC 45.12.100. The demolition permit shall be accompanied by proper applications for tree protection and erosion control permits, if needed.</p> <p>The existing structures shall be removed prior to the recordation of the partition plat.</p>			
<b>B.</b>	<b><u>Prior to Approval of the Final Partition Plat, the Applicant/Owner Shall:</u></b>		<b>Notes/ Status</b>	<b>Dept.</b>
1.	<p>Per LOC 50.07.007.3.a.i, submit a final plat to City staff for review and signature of approval. The final plat must be recorded within three years of the date of this decision. <b>The deadline to record the final plat is April 18, 2025.</b> The final plat must be dimensioned as depicted in Exhibit E-005, and reference this land use application – City of Lake Oswego Planning and Building Services, Case File LU 21-0041. Upon written request, prior to expiration of the 3-year period, the City Manager shall, in writing, grant a one-year extension. Additional extensions may be requested in writing and must be submitted to the City Manager for review of the project for</p>			



		<p>conformance with current law, development standards and compatibility with development that may have occurred in the surrounding area. The extension may be granted or denied and, if granted, may be conditioned to require modification to bring the project into compliance with current law and compatibility with surrounding development. <b>Failure to record the final plat by the deadline or to obtain an extension voids the partition approval.</b></p> <p>Per LOC 50.07.007.3.b, if after timely receiving a final plat for review staff determines that it does not conform to the land use approval, the applicant shall be advised by a written notice which shall list the reasons for the decision. <b>The applicant shall then have 30 calendar days to correct the plat or to schedule a review of the final plat by the Development Review Commission.</b></p>		
	2.	Submit a design for the private utility services and new driveway approach onto Pilkington Road, to the satisfaction of the City Engineer. The drawings shall include the following:		
		a. Sanitary sewer lateral locations and taps to the public mainline. Sanitary laterals shall be minimum 4-inch diameter within the right-of-way with a two-way clean-out located at the right-of-way line.		
		b. Water service locations, to the satisfaction of the Rivergrove Water District and to the satisfaction of the City Engineer. Water meters shall be located outside of paved driveways.		
		c. Submit a design prepared by a registered engineer for the public water line replacement and trench/pavement restoration along the site frontage, to the satisfaction of the City Engineer.		
		d. Design to construct the access lane extension to the required flag lot parking space on Parcel 3 to access lane structural standards.		
	3.	Sign and record a Local Improvement District (LID) waiver of remonstrance agreement for participation in any future construction of street improvements.		
	4.	The plat shall include (but is not limited to) the following:		
		a. Private utility and access easement over the common private access driveway for the benefit of both parcels.		
		b. Public utility easements as necessary to the satisfaction of the franchise utility companies.		
	5.	Submit a preliminary title report or lot book report showing the status of title and any liens and encumbrances.		
	6.	<p>Provide a final landscape plan that illustrates:</p> <p>a. The location, size, and species of street trees along the entire street frontage demonstrating that the spacing is appropriate to the species per the American Standard for Nursery Stock, current edition and Sunset Western Garden Book, current edition, to be approved by staff. Street Trees shall be species capable of achieving a mature height of at least 35 feet. A columnar species is recommended.</p>		



		<p>b. The location, size, and species for all screening landscaping along the south side of the access lane and on the flag lot required by LOC 50.07.007.2.f.i and .iv. Oregon grape planted as screening shall be “tall” variety. The six-foot landscaped buffer for Parcel 3 must be provided in the west yard as the deepest side or rear yard provided.</p>												
	7.	<p>Submit a “Notice of Development Restriction” containing the restrictions, below, for review and approval of staff, then to be recorded with the County Clerk’s Office. The development restriction shall include the following information:</p> <p>a. Parcel 3 is a flag lot. Development of structures on this parcel shall comply with the Flag Lot standards per LOC 50.07.007.2 regarding building and site design standards, including height limitations, and landscape buffer requirements. The following site development restrictions apply:</p> <p>i. The maximum height of all structures shall be 22 feet (regardless if, at the time of building permit review, the lot meets the definition of “sloped lot” per LOC 50.10.003), measured from the ground to the ridgeline of the roof as defined by LOC 50.10.003 “Height of Building.”</p> <p>ii. The front lot line shall be the south property line for Parcel 3. The setbacks shall be as follows:</p> <table><tr><th colspan="2">REQUIRED YARD SETBACKS FOR PARCEL 3</th></tr><tr><td>Yard</td><td>Minimum Setback</td></tr><tr><td>Front (south)</td><td>25 feet</td></tr><tr><td>Sides</td><td>20 feet (west) 10 feet (east)</td></tr><tr><td>Rear (north)</td><td>15 feet</td></tr></table> <p>iii. There shall be a 6-foot fence along the rear (north) and side (west) property lines. In addition, there shall be a 6-foot landscape screen along the deepest side (west) property line.</p> <p>b. Existing and/or new street trees required pursuant to Condition A(6) shall be identified on a site plan to be recorded with the Notice and preserved for street tree purposes. They may only be removed if determined to be dead or hazardous (hazard or emergency tree permit) to people or property. If so determined, the applicant shall apply for a tree removal permit subject to approval from the City Manager and shall mitigate at a minimum of a one-to-one ratio. Deciduous trees shall have a minimum caliper of 1.5 inches. Conifer trees shall be a minimum of six feet tall.</p>	REQUIRED YARD SETBACKS FOR PARCEL 3		Yard	Minimum Setback	Front (south)	25 feet	Sides	20 feet (west) 10 feet (east)	Rear (north)	15 feet		
REQUIRED YARD SETBACKS FOR PARCEL 3														
Yard	Minimum Setback													
Front (south)	25 feet													
Sides	20 feet (west) 10 feet (east)													
Rear (north)	15 feet													
	8.	<p>Submit final plans showing the clear vision triangles for the new access lane in compliance with both the AASHTO guidelines and the City’s sight distance standards. The design drawings shall show the</p>												



		non-exempt vegetation required to be removed along the site frontage. No non-exempt vegetation, fence, or signage higher than 30 inches shall be located within the clear vision triangles.		
	9.	Submit a maintenance agreement for the shared access lane/utility easement on Parcel 4 to be recorded with the final plat.		
<b>C.</b>	<b><u>Within 90 Days of the Recordation of the Final Partition Plat, the Applicant/Owner Shall</u></b>			
	1.	Submit a final title report, or lot book report from a title company demonstrating that the plat and LID waiver required above were validly recorded and that the parcels are either free and clear of liens or encumbrances, or that the holders of the liens and encumbrances consent to the partition and, to the applicable created parcel's encumbrance holder, consent to creation and recordation of the easement.		
<b>D.</b>	<b><u>Prior to the Issuance of any Grading or Building Permits to Construct Any Dwelling on the Parcels, the Applicant/Owner Shall:</u></b>			
	1.	Demonstrate compliance with Conditions A, B and C.		
	2.	Record the final plat prior to issuance of individual building permits.		
	3.	Obtain a street opening permit(s) for the new driveway approach, utility taps and any work within the right-of-way. The design drawings and improvements shall be to the satisfaction of the City Engineer.		
	4.	Obtain a street opening permit for the replacement of the public water main along the site frontage. The design drawings and improvements shall be to the satisfaction of the City Engineer and the Rivergrove Water District.		
	5.	Submit a final drainage report, prepared by a registered engineer, that complies with the Stormwater Management Code and LOSWMM, to the satisfaction of the City Engineer. If the final design is as proposed, the final design report must: <ul style="list-style-type: none"> <li>a. Demonstrate that stormwater management facilities meet the minimum geometry and configuration requirements in LOSWMM, Section 4.6.</li> <li>b. Include facility sizing calculations, to demonstrate that the proposed stormwater management facilities have sufficient storage capacity to infiltrate the 10-year, 24-year storm event and infiltration of the water quality design event. Design infiltration rates used to size the infiltration raingarden must reflect the limiting infiltration rate of the system (whether through the amended soil media or native soil).</li> </ul>		
	6.	Submit final plans for all stormwater management facilities. If the final design plans are consistent with the preliminary plans, they must include a cross section detail of the infiltration trench and raingarden, consistent with the facility design calculations. Final facility placement must adhere to setback requirements from building foundations (10 feet) and property lines (5 feet) per LOSWMM Table 3.1. Final facility placement of facilities qualifying as UICs must be more than 500 feet away from drinking water wells per LOSWMM 4.6.3.		



	7.	If the UIC rules apply based on the point of discharge to an infiltration-based stormwater facility, then it will be required to register and obtain DEQ authorization for use of the proposed UIC system.		
	8.	Per LOC Chapter 52, submit an Erosion Control Plan for approval, and apply for and obtain an erosion prevention and sediment control permit issued through the City of Lake Oswego. Install and maintain all erosion control BMPs as indicated in the permit.		
	9.	Apply for and obtain a verification tree permit for Tree #1 (Exhibit F-006, pg. 4). Include a final landscape/tree mitigation plan showing the location, size, and species of 1 native species mitigation tree in compliance with LOC 55.02.084, capable of attaining a minimum height of 30 feet at maturity pursuant to LOC 50.07.007.2.f.v.		
<b>E.</b>	<b><u>Prior to the Final Building Inspection on any Parcel or Occupancy of any Dwelling, the Applicant/Owner Shall:</u></b>			
	1.	Provide certification from the engineer of record that the stormwater facilities were constructed per the design and are functioning properly.		
	2.	Provide proof of recorded operations and maintenance plans (OMPs) for each stormwater facility. The OMPs must describe how to properly maintain the facilities, the frequency of maintenance required and the party responsible for maintaining the facilities.		
	3.	Submit a final Sight Distance Letter from the Engineer of record documenting available sight distances from the new accesses onto Pilkington Road has been provided according to AASHTO standards.		
	4.	Construct the on-lane parking space for Parcel 3 and install the street trees, mitigation tree, landscaping and fencing as required by Conditions B(6), B(7), and D(9) above, and request an inspection by Planning Dept. staff.		

Code Requirements:

1. Expiration of Development Permit: Per LOC 50.07.003.17, the Minor Partition approved by this decision shall expire three years following the effective date of the development permit, and may be extended by the City Manager pursuant to the provisions of this section.
2. Tree Protection: Submit a tree protection plan and application as required by LOC 55.08.020 and 55.08.030 for review and approval by staff, including off-site trees that are within the construction zone. This plan shall be attached to the construction documents or printed on the construction site plans, and shall include:
  - a. The location of temporary tree protection fencing, consisting of a minimum 4-foot high cyclone fence secured by steel posts around the tree protection zone, or as recommended by the project arborist and approved by the City.
  - b. A note stating that no fill or compaction shall occur within the critical root zones of any of the trees, or that if fill or compaction is unavoidable, measures will be taken as recommended by a certified arborist to reduce or mitigate the impact of the fill or



compaction. The note shall also inform contractors that the project arborist shall be on site and oversee all construction activities within the tree protection zone.

- c. A note that clearly informs all site contractors about the necessity of preventing damage to the trees, including bark and root zone. The applicant and contractor(s) shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction.
- d. A sign shall be attached to the tree protection fencing which states that inside the fencing is a tree protection zone, not to be disturbed unless prior written approval has been obtained from the City Manager and project arborist.

Notes:

- 1. The applicant is advised to take part in a Post Land Use Approval meeting. City staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting, please contact the staff coordinator at (503) 635-0290.
- 2. The land use approval for this project does not imply approval of a particular design, product, material, size, method of work, or layout of public infrastructure except where a condition of approval has been devised to control a particular design element or material.
- 3. Development plans review, permit approval, and inspections by the City of Lake Oswego Planning and Building Services Department are limited to compliance with the Lake Oswego Community Development Code, and related code provisions. The applicants are advised to review plans for compliance with applicable state and federal laws and regulations that could relate to the development, i.e., Americans with Disabilities Act, Endangered Species Act. Staff may advise the applicants of issues regarding state and federal laws that staff member believes would be helpful to the applicants, but any such advice or comment is not a determination or interpretation of federal or state law or regulation.

**III. APPLICABLE CRITERIA AND SUMMARY OF COMPLIANCE**

<b>CODE CRITERIA APPLICABLE TO APPLICANT'S REQUEST</b>				
<b>Code Section</b>	<b>Title</b>	<b>Criteria Met</b>	<b>Condition (C), Variance (V), or Exception (E)</b>	<b>Page # in Staff Report</b>
<b>City of Lake Oswego Community Development Code [LOC Chapter 50]</b>				
50.03.002	Residential Zone Use Table	Y		8
50.04.001.1	R-7.5 Zone Dimensional Standards	Y		8-10
50.04.002	Special Street Setback	Y	C	10
50.06.002	Parking	Y		10
50.06.003.1	Access/Access Lanes (Flag Lots)	Y		10-11



50.06.003.2	On-Site Circulation – Driveways and Fire Access	Y	C	11-12
50.06.004.1	Landscaping	Y	C	12
50.06.004.3	Lighting	Y	C	12
50.06.006.3	Stormwater Management Standards	Y	C	13
50.06.008	Utilities	Y	C	13-14
50.07.003.1	Application Procedures			
50.07.003.5	Conditions on Development			
50.07.003.6	Effect of Decision			
50.07.003.7	Appeals			
50.07.003.14	Minor Development Decisions			
50.07.007.2	Flag Lots	Y	C	14-17
50.08.002	Minor Variances			17-19
<b>City of Lake Oswego Utility Code [LOC Chapter 38]</b>				
LOC 38.25	Stormwater Management Code	Y	C	19-20
<b>City of Lake Oswego Streets &amp; Sidewalks [LOC Chapter 42]</b>				
42.03.130	Sight Distance at Roadway Intersections, Private Streets and Driveways	Y	C	22
42.08.400-470	Streets and Sidewalks	Y	C	20-22
<b>City of Lake Oswego Tree Code [LOC Chapter 55]</b>				
55.02.010-55.02.084	Tree Removal and Mitigation	Y	C	23-28

Past Approvals: LU 03-0008 (2-parcel minor partition)

#### IV. **BACKGROUND AND REVIEW**

##### **A. Background/Existing Conditions:**

1. The site is approximately 15,079 square feet in area and is developed with a single-family dwelling and accessory structure proposed for demolition (Exhibit F-001, pg. 2).
2. There are 22 trees on the site (Exhibit F-006, pg. 4). One tree is requested for removal as part of this application.
3. The site is located on Pilkington Road, a Major Collector (Exhibit E-002).
4. The property is zoned R-7.5. The property to the north and west is zoned R-10 and is developed with a single-family dwelling. The properties to the south and east are currently located in Clackamas County with a Comprehensive Plan designation of R-7.5 - they would be zoned R-7.5 upon annexation. The properties to the west are developed with single-family dwellings. The property to the south appears to be developed with four residential dwelling units.



**B. Review and Approval Procedures:**

1. Neighborhood Meeting: The applicant held a neighborhood meeting on May 19, 2021. Notes from the meeting are included in this report as Exhibit F-005.
2. Public Notice to Surrounding Area: The City has provided adequate public notice and opportunity to comment on this application pursuant to LOC 50.07.003.3.a. The applicant submitted additional evidence after the original comment period, requiring a second notice of application and comment period April 1-15, 2022. Four comments were received during the comment periods (G-001, G-200, G-201, and G-202). Driveway access (G-001) and tree removal (G-200, G-201, and G-202) are discussed below in this report in detail.

Comment G-001 also:

- Discusses the private utility easement that crosses through the future building envelope of proposed parcel 3. Staff has brought up the possibility of working with the neighboring property owner to move the private utility easement, but there is no code authority in LOC Chapter 50 to require the movement of the private utility easement or to ensure a certain size of building envelope outside of private utility easements.
- States that removal of the existing dwelling is unfortunate; there is no applicable code provision cited.
- Requests that the owner maximize the number of significant trees retained with new building footprints on the future lots. Tree removal for construction on the future lots is not reviewed in this application and will be reviewed at time of building permit application.

Because the applicant submitted additional evidence on March 31, 2022, a new comment period began April 1, 2022 to April 15, 2022, including mailing of a re-notice and posting of a new notice sign on site.

3. Burden of Proof: Per LOC 50.07.003.1.b, the applicants for a development permit shall bear the burden of proof that the application complies with all applicable review criteria or can be made to comply with applicable criteria by imposition of conditions of approval. The applicant provided sufficient evidence to enable staff to evaluate the proposal. These documents are listed as exhibits at the end this report.

**VI. MINOR DEVELOPMENT – 2 PARCEL MINOR PARTITION**

**A. Classification of Application**

LOC 50.07.003.14.a.ii(7) describes partitions as minor development.

**B. Criteria for Review of Application**

Per LOC 50.07.003.14.d, for any minor development application to be approved, it shall first be established that the proposal complies with:



**1. The requirements of the zone in which it is located;**

**Residential Use of Property [LOC 50.03.002]**

The R-7.5 zone is a low-density residential zone. The uses permitted are stated in Table 50.03.002-1, and include single-family dwellings. Construction of future structures on the new lots will be subject to the use requirements that are in effect at the time of building permit application or at the time of construction or use if no building permit is required.

**R-7.5 Dimensional Standards [LOC 50.04.001.1]**

The site is zoned R-7.5 (low-density residential). The table below illustrates the lot size and dimensional standards applicable to the proposed partition. The setbacks, height, lot coverage and floor area standards that will apply to future structures on each parcel will be those in effect at the time of building permit application. The existing dwelling and accessory structure on the site are proposed for removal (Exhibit F-001, pg. 2). Because the existing structures do not appear to meet setback requirements from the new property line location, as a condition of approval a demolition permit shall be obtained prior to submittal of the plat for staff review [Condition A(1)].

Standard	Requirement	Parcel 4 (east)	Parcel 3 (west) (Flag Lot)
Lot Area	7,500 sq. ft.	7,578 sq. ft.	7,501 sq. ft.
Lot Width	50 ft.	Approx. 100 ft.	Approx. 72 ft.
Setbacks -Front -Side -Rear	25 ft. Total 15 ft., 5 ft. min. 30 ft.	Undeveloped  <b>Rear: 24 Feet (variance)</b>	Undeveloped*
Lot Coverage	25-35%, depending on height of dwelling	Undeveloped	Undeveloped**
Floor Area	[(Lot Size – 5,800) x 0.19] + 3,000 sq. ft., plus 600 sq. ft. if garage provided	Undeveloped	Undeveloped**
Base Height	28-32 ft., depending on slope	Undeveloped	Undeveloped*

\*Flag Lot standards supersede the R-7.5 zone dimensional standards, see below.

\*\*Area of access easement or flagpole is deducted from the gross square footage of the flag lot. LOC 50.07.007.2.d.vi.



As illustrated in the table above and in Exhibit E-005, both parcels comply with the dimensional standards of the R-7.5 zone, with the exception of the proposed rear yard setback for Parcel 4. Please see the discussion regarding the requested minor variance to the rear yard setback under LOC 50.08.002, below. With the minor variance discussed below, these standards are or can be met.

#### **Special Street Setbacks – [LOC 50.04.002]**

The purpose of special street setbacks is to assure an adequate front yard setback is available in the event of possible future street improvements, such as additional lanes, pedestrian and bicycle facilities, transit facilities, drainage management improvements, lighting and street landscaping.

Pilkington Road is identified as having a special street setback (SSS) of 30 feet, measured from the east line of the Rosewood Plat. See Table 50.04.002-1. In this case, unlike where the City Engineer determines the SSS Reference Line pursuant to LOC 42.03.135, the SSS is legislatively set at 30 feet from the east line of the Rosewood Plat. Yard setbacks therefore shall be measured starting from a point 30 feet from the east line of the Rosewood Plat (SSS reference line) or from the front lot line / dedicated right-of-way line, whichever is furthest away from the SSS reference line (Subsection 3). The east line of the Rosewood Plat is shown on the preliminary site plan (Exhibit E-006).

#### **Design Standards [LOC 50.06.001]**

Any future construction must comply with the applicable building design standards of LOC 50.06.001 when specific building plans are submitted.

This standard can be met and will be assured at the time of building permit application on each parcel.

### **2. The Development Standards applicable to minor developments;**

#### **Off Street Parking, Loading and Bicycle Access [LOC 50.06.002]**

This standard requires that a single-family dwelling provide one off-street parking space, which may be located in a garage. Table 50.06.002-3: Minimum Off-Street Parking Space Requirements. As shown in Exhibit E-005, the building envelopes on each parcel are large enough to accommodate one off-street parking space in compliance with the Parking standard. Compliance with this standard will be assured during the building permit review process for the future dwellings.

#### **Access/Access Lanes [Flag Lots] [LOC 50.06.003.1]**

This standard requires that every lot (unless a flag lot or townhome) abut a street for at least 25 feet (§c.i). As shown in Exhibit E-005, Parcel 4, the non-flag lot, abuts the public right-of-way of Pilkington Road for approximately 50 feet. Parcel 3 will have functional access to Pilkington Road via a proposed access lane (Exhibit E-005).



Exhibit G-001 states that using the existing access lane on the north side of the property, instead of creating a new access lane along the southern property line of the subject site, would be a better use of land. LOC 50.06.003.1 addresses access safety and impacts, but does not require the most efficient use of space.

This standard addresses site access impacts on the adjacent street. This site has access to Pilkington Road, a major collector level street. Access design is to be based on criteria relating to the topography, current and projected traffic volume and classification of the street, and traffic volume of the development (10 additional vehicle trips per day). (§c.ii). The applicant's engineer reviewed the criteria and set forth findings in Exhibit E-008 demonstrating that the access design permits safe entrance and exiting from the street. The Engineering staff concurs (see discussion in LOC 50.06.003.2, below); the Engineering staff's comments are limited to the adequacy and safety of the proposed point of access of the access lane intersection. A street opening/driveway permit will be required for any new access approach onto Pilkington Road [Condition D(3)]. This portion of the standard is met.

LOC 50.06.003.1.d.iii requires one standard "on-lane" parking space to be provided for each flag lot served by an access lane. A parking space for Parcel 3 (flag lot) is shown in an extension of the access lane on Parcel 3 (Exhibit E-005). Per an 11/2/18 staff interpretation, *on-lane* parking spaces may be located within the required setbacks without conflicting with LOC 50.06.002.2.a.iii(1) ("Parking may not be located in a required yard ... except ... for parking established by the zone or use") if the on-lane parking space is actually part of the access lane. The proposed parking space for Parcel 3 is located on-lane, extended into Parcel 3 [Condition B(2)d]. The use of the parking space is exclusively for the flag lot, Parcel 3. As conditioned [Conditions B(2)d and E(4)], this standard is met.

This criterion is met.

#### **On-Site Circulation – Driveways and Fire Access [LOC 50.06.003.2]**

This standard regulates driveways, including slopes and geometric design, particularly those related to emergency vehicle access. The maximum slope and cross slope for a driveway is 15% and 5%, respectively [Subsections 2.b.iii(1) and (5)]. Driveway approaches shall be located and designed so that drivers entering or exiting the driveway can safely see approaching traffic for a sufficient distance. The American Association of State Highway and Transportation Officials (AASHTO) guidelines for intersection sight distance shall be used in determining compliance with this standard, while achieving stopping sight distance at a minimum [Subsection 2.b.i(4)].

The applicant is proposing an access on Pilkington Road approximately 5 feet to the north of the site's southern property line. Based on the 30 mph speed limit of Pilkington Road, intersection sight distance from the proposed driveway should extend at least 335 feet in both directions. A Preliminary Sight Distance Plan has been submitted that indicates intersection sight distance requirements cannot be met due to vegetation on neighboring properties (Exhibit E-008).



Per the provided plan (Exhibit E-008), sight distances are expected to extend beyond 260 feet to the north and south of the proposed access location when measured from 12 feet from the edge of the nearest traveled way and following the removal of a Douglas Fir tree on the subject site. Sight distance measurements of 260 feet would be adequate for the access to operate safely with travel speeds on Pilkington Road of up to 36 mph. Since vehicles would be able to exit the site in a forward manner, staff takes no exception to measurements of sight distance being measured from 12 feet behind the edge of the nearest travel lane.

The Engineering staff has reviewed the analysis and concurs with the findings that a driver entering or exiting the access lane/driveway should be able to see approaching traffic for a sufficient distance to make a safe entrance or exit given the following conditions:

- a. Non-exempt vegetation and other obstructions on the subject site within the clear sight triangles shall be removed as needed to meet the sight distance requirements.
- b. Prior to occupancy, a Final Sight Distance Certification is submitted documenting available sight distances from the new access.

As conditioned [Conditions B(8) and E(3)], this standard is met.

#### **Landscaping [LOC 50.06.004.1]**

This standard requires partitions to provide street trees at the proper spacing for the species [§b.iv]. The site abuts Pilkington Road for approximately 50 feet. As shown in Exhibit E-010, two new street trees are proposed on the private property of Parcel 4. The proposed species are Cornelian cherry dogwood. The proposed tree location is on private property, away from the overhead utility lines in the Pilkington Road right-of-way. Street Trees shall be species capable of achieving a mature height of at least 35 feet. A columnar species is recommended to prevent future conflicts with the overhead utility lines in the Pilkington Road right-of-way. As a condition of approval, private street tree restrictions shall be recorded on the Notice of Development Restrictions [Condition B(7)].

As a condition of approval, street trees are required to be provided at proper spacing for the species [Conditions B(6) and E(4)]. As conditioned, this standard can be met.

#### **Lighting [LOC 50.06.004.3]**

This standard prescribes equipment and lighting standards for public and private streets, and requires street lights along major collector level streets. This development will create increased traffic, bike and pedestrian trips along Pilkington Road, thus requiring the need to mitigate for the impacts of the new development to the transportation system. There is an existing street light located on a utility pole at the southeast corner of the site; therefore, no additional street lighting will be required as a condition of this development. This standard is met.



**Stormwater Management Standards [LOC 50.06.006.3.b]**

This standard is applicable to all development where:

- c. Greater than 1,000 sq. ft. of impervious surface is created; or
  - d. The sum of impervious surface created and/or replaced is greater than 3,000 sq. ft.;  
or
  - e. Maintenance is performed on greater than or equal to 3,000 sq. ft. of existing impervious surface that results in an additional offsite hydrological impact.
- LOC 50.06.006.3.a.

Because this development would authorize outright permitted development that will exceed 1000 sq. ft. of impervious surface, the applicant must demonstrate that, based upon LOC Article 38.25, Stormwater Management Code, the capacity, type, location, feasibility and land area required of the proposed stormwater management system and stormwater disposal facilities as well as any connection to off-site facilities can be provided.

See discussion under LOC 38.25, Stormwater Management Code, below. As conditioned [Condition D(5)-(7) and E(2)], this standard is met.

**Utility Standard [LOC 50.06.008]**

Utilities are available or can be made available as follows:

- A. Sanitary Sewer: The City of Lake Oswego has an 8-inch collection system located in Pilkington Road along the site frontage. Each parcel shall have an individual sewer lateral that will be connected to the public main line. Laterals within the public right-of-way shall be minimum 4-inch diameter with a two-way clean-out positioned at the right-of-way line. The existing lateral serving the site may be used if it is determined to be in good condition. If feasible, a service lateral for one parcel shall not cross over the back yard or side yard of another parcel. It is preferred the sanitary lateral for a flag lot be located along a common private access lane.

The applicant has submitted a preliminary grading and utility plan (Exhibit E-007) indicating each parcel will have a new individual service lateral. The existing lateral to the site may be utilized for Parcel 4 if it is in good condition and an easement is retained. If that is the case, the applicant shall provide a video inspection of the existing service lateral in order to confirm the condition. If the existing service lateral is determined to be in disrepair, then the applicant shall install a new service lateral to the parcel. As conditioned [Condition A(2)a], this standard is met.

- B. Water and Hydrants: This development site is within the boundary of the Rivergrove Water District. The applicant provided a correspondence from the District (Exhibit F-007) with a general outline for requirements when the applicant is ready to move forward with the project and apply for water service. The District anticipates that a condition of development will be the replacement of the existing 10-inch asbestos cement (AC) waterline fronting the property with ductile iron (DI) pipe. The applicant's preliminary grading and utility plan (Exhibit E-007) shows the replacement of the



public water line and coordination with the District as indicated in their review correspondence. In addition, the applicant's preliminary plan shows each parcel will have an individual water service. One of the existing water services is proposed to be relocated in order to avoid crossing over 18175 Pilkington Road. Staff note that meter boxes shall be located outside of sidewalks/pathways and paved areas; therefore, the proposed meter location for Parcel 3 will need to be located next to the new driveway approach. The nearest fire hydrant is located approximately 120' north of the site along the west side of Pilkington Road. The Fire Marshal finds that existing hydrant location is approved (Exhibit F-004, pg. 2).

- C. Storm Drains and approved points of disposal: Runoff from the new roof areas and access driveways will be required to be managed on-site. Please see comments above regarding stormwater management requirements.
- D. Streets: Pilkington Road is an uncurbed road and is designated as a major collector level street in the City's street classification system. The existing right-of-way width along the site frontage varies from approximately 55 to 60 feet. See additional comments under LOC Chapter 42 below.
- E. Sidewalks: There is an existing asphalt shoulder pathway located along the west side of Pilkington Road from Jean Road to McEwan Road that was constructed as part of the Safe Routes to School program. There is also an existing pathway located across the street from the site that was constructed with newer development. Please see additional comments below under LOC Chapter 42.
- F. Other utilities: It is the applicant's responsibility to ascertain the availability of electric, gas, telecommunications and cable TV. All new utilities shall be installed underground.

Undergrounding of Utilities: Per LOC 50.06.008.4.d, utilities shall be installed underground; this applies to both new on-site utilities and existing utilities along the frontage of the development, unless exempted by the City Manager for one of the reasons listed in Subsections 4.d.i-vii. Subsection vi allows, and staff grants, an exemption from frontage utility undergrounding when the parent parcel of a land division in a residential zone is less than four times the minimum lot area for the residential zone. Accordingly, new utilities within the development site and new utilities leading to the site will be required to be installed underground; however, the existing overhead utilities located along the site frontage will not be required to be installed underground.

#### **Flag Lots [LOC 50.07.007.2]**

Parcel 3 is being created through the requirements of the Flag Lot standards. Flag lots are regulated by the applicable criteria of the underlying zone, as well as additional specific requirements of LOC 50.07.007.2. The applicant's materials address the specific requirements of this section of the Code (Exhibits E-005 and F-001).



#### Parcelization Plan [LOC 50.07.007.2.a.iv]

An application to create a flag lot shall include a conceptual plan of complete parcelization of the subject property and shall include a site plan illustrating the location of existing structures on adjacent parcels. The reviewing authority may impose conditions in order to ensure that parcelization of the subject property will not preclude the development of surrounding properties. Such conditions may be related (but not limited) to access, circulation, building location, utility availability, and natural resource protection.

Parcel 4 is 7,578 sq. ft. and Parcel 3 is 7,501 sq. ft. (Exhibit E-005). The R-7.5 zone requires a minimum lot size of 7,500 square feet. The applicant provided a conceptual parcelization plan on page 35 of Exhibit F-001. The applicant is proposing a 2-parcel partition, which is the maximum density for the existing site. The applicant states that the proposal to construct a new access lane to serve Parcels 3 and 4 would allow the abutting lot to the west to potentially divide in the future (Exhibit F-001, pg. 5-6). The reviewing authority may impose conditions in order to ensure that parcelization of the subject property will not preclude the development of surrounding properties. The proposal to add a new access lane to serve Parcels 3 and 4 will allow further development of the property to the west in the future using the existing access lane, which is a part of 18175 Pilkington Road (Exhibit F-001, pg. 4). This portion of the standard is met.

#### Access [LOC 50.07.007.2.c]

Street frontage for a flag lot is not required, but access to a public or private street is [LOC 50.06.003.1.c; 50.07.007.2.c.ii]. Access must be consolidated, including consolidation with the non-flag lot(s); if not practicable, then new lots may have individual access points. (c.i).

As shown on the applicant's preliminary plat, access from Pilkington Road to Parcels 3 and 4 will be consolidated and provided via a shared access lane located along the southern side of the site (Exhibit E-005).

LOC 50.06.003.1.d.i,ii requires that an access lane shall serve 2-3 dwellings, be located in a minimum 20-foot easement, and have a minimum of 12 feet of pavement. The applicant shall provide 4-foot shoulders or may pave the access lane to the full 20-foot width. In addition, LOC 50.07.007.2.c.iii further limits the use of access lanes to no more than two flag lots and one non-flag lot. The general minimum spacing requirement for access lanes on neighborhood collector streets is 100 feet where practicable [LOC 50.06.003.1.d, LOC Table 50.06.003-2]. In addition, no more than two driveways or access lanes are allowed within 50 feet of each other in the R-7.5 zone [LOC 50.07.007.2.c.iv]. The proposed access lane is located approximately 80 feet from the access lane to the north (Exhibit E-009, pg. 2). The applicant has not submitted any materials showing the distance to the neighboring driveway to the south; however, if the driveway to the south is less than 50 feet from the proposed access lane location, no more than two driveways or access lanes would be located within 50 feet. The Engineering staff find that safe sight distance can be achieved even if the driveway for the property to the south were located within 50 feet. All buildings on flag lots must post an address at the beginning of the access lane [LOC 50.07.007.2.c.v].



The applicant will be required to record with the partition plat a maintenance agreement for the shared access and utility easements [LOC 50.07.003.5.a.i,iii], as required with Condition B(9).

These standards are or can be met.

Lot Configuration [LOC 50.07.007.2.d]

The front yard of a flag lot at the farthest end of the access lane is measured from either the property line most parallel to the public street or the property line most parallel to the orientation of the projected access lane or driveway per Subsection 2.d.i(1). Subsections 2.d.ii and iii prescribe the lot width and lot size requirements. The front lot line of Parcel 3 is stated to be the south property line (Exhibit F-001, pg. 38). Both the lot width and lot size requirements are met as proposed per Subsections 2.d.ii, iii (Exhibits E-005 and F-001).

As conditioned, these standards are met.

Building Orientation and Height [LOC 50.07.007.2.e.i and e.ii]

Except for dwellings on flag lots at the farthest end of the access lane or flag lots served by a driveway, new dwellings on flag lots shall have the front of the house oriented towards the access lane [Subsection 2.e.i(1)]. The proposal is a 2-lot partition with one flag lot at the farthest end of the access lane; this subsection is not applicable.

Building Orientation should provide the maximum separation and privacy from existing dwellings on abutting lots [Subsection 2.e.i(2)]. Exhibits E-002 demonstrates the location and orientation of abutting dwellings. Parcel 3 abuts the front yard of 18175 Pilkington Road to the west, that lot's access is along the north and a portion of the east property line, and the side yard of the property to the south (Exhibit E-002). The applicant is providing a minimum 20-foot yard to the west, 15 feet to the north and 10 feet to the east property line (Exhibit E-006). Staff finds that the future dwelling on Parcel 2 will be oriented in a manner that will provide maximum separation and privacy to existing dwellings on the abutting lots.

Structures on flag lots shall not exceed either the average height of all dwellings on properties abutting the development site or 22 feet, whichever is taller. Where there is no dwelling on a property, or where a dwelling is located more than 100 feet away from the development site, the maximum height permitted in the underlying zone is used for the calculation (Subsection 2.e.i). The applicant provided the height of the abutting dwelling to the south (14.9 feet) in Exhibit E-003 and stated that the abutting dwelling to the west is 26 feet tall in Exhibit F-001, pg. 40. The average height of the two dwellings as reported by the applicant is 20.45 feet. Pursuant to LOC 50.07.007.2.e.ii.1, the maximum height for Parcel 3 is 22 feet, the taller of 22 feet or the average height of the abutting dwellings. As a condition of approval, the 22-foot height restriction will be included in a Notice of Development Restrictions to be recorded along with the final plat [Condition B(6)]. As conditioned, this portion of the standard is met.



### Setback Requirements

The standard front, side and rear yard setbacks for primary structures in the R-7.5 zone are superseded by the yard setbacks as outlined in LOC 50.07.007.2.e.v. Side and rear setbacks are established at the time of flag lot creation. The table, below, lists the setbacks applicable to a flag lot in the R-7.5 zone.

<b>Flag Lot Setbacks in the R-7.5 Zone [LOC 50.07.007.2.e.iv]</b>			
	<b>Numerical Requirements</b>	<b>Additional Requirements</b>	<b>Required Setbacks for Parcel 3</b>
Front Setback	25 feet	Measured parallel to street or from property line parallel to projected access lane	25 feet measured from property line parallel to projected access lane (south property line)
Sum of Side and Rear Setbacks	Not less than 45 feet; in no case shall a rear or side setback be less than 10 feet	Provide setbacks similar to those on abutting properties	West: 20 feet East: 10 feet North: 15 feet

The front setback for Parcel 3 is 25 feet from the south property line. The side and rear yard setbacks have a combined total of 45 feet in compliance with this standard (Exhibit E-006). As a condition of approval the setbacks must be recorded in the Notice of Development Restrictions [Condition B(6)]. As required by Condition A(1), the existing dwelling must be demolished. No existing dwellings will be located within five feet of the proposed access lane (Exhibit E-006). As conditioned, this portion of the standard is met.

### Landscaping and Screening [LOC 50.07.007.2.f]

Per Subsection 2.f.i and f.ii, a minimum 5-foot landscape buffer must be provided along the access lane at the perimeter of the site. As shown on Exhibit E-006, the shared access lane is located along the east property line. The applicant submitted a preliminary landscape plan that shows a landscape buffer at least 5-foot wide between the access lane and the south property line that includes three existing trees, three new trees and a hedge of Nootka rose and Oregon Grape. "Tall" Oregon grape shall be planted to achieve sufficient height [Condition B(6)]. As a condition of approval, the applicant will be required to provide a final landscape plan [Condition B(6)] and an inspection by staff is required after planting [Condition E(4)].

The applicant's landscape plan, Exhibit E-010, incorrectly shows a landscape buffer along the north property line of Parcel 3 rather than the west property line. Subsection iv requires a six-foot width landscape buffer within the deepest side or rear yard provided, which is the 20-foot west side yard as shown in Exhibit E-006. As a condition of approval, the applicant shall submit a final landscape plan demonstrating compliance with this standard [Condition B(6)].

Staff finds that, as conditioned, Parcel 3 can be made to comply with the requirements of the Flag Lot standards. This standard is met.



### **Minor Variance Standards [LOC 50.08.002.3]**

The applicant is requesting a minor variance to reduce the 30-foot rear yard setback of Parcel 4 to 24 feet (Exhibit F-001, page 2). Per LOC 50.08.002.2.a, up to a 20% variance to a required yard setback may be requested as a minor variance. Minor variances can be approved provided:

1. *The granting of the variance will not be detrimental to the public health or safety;*

The proposed reduction of the rear yard setback for Parcel 4 from 30 feet to 24 feet will not be detrimental to public health or safety as it will not impede vision clearance for vehicles entering or exiting the site and the Fire Marshal and the Building Division have determined that the reduced rear yard setback will not violate any fire or building regulations. Staff therefore finds that the proposed variance will not be detrimental to the public health or safety. This criterion is met.

2. *The granting of the variance will not be materially injurious to properties or improvements within 300 feet of the property;*

In determining whether the requested variance will be materially injurious to nearby properties or improvements, the potential impact to properties within 300 feet of the site are technically considered; the impact to neighboring properties that would be directly affected by the variance is most particularly considered. There are approximately 25 properties within 300 feet of the site's boundaries (Exhibit E-002).

The property most likely to be affected by the minor variance request on Parcel 4 is Parcel 3 (Exhibit E-006). Parcel 3 is a subject of the partition proposal and under common ownership with Parcel 4. Future dwellings on Parcels 3 and 4 can be designed to preserve privacy between the two properties. The proposed reduction of the rear yard setback will not be materially injurious to neighboring properties because the yard proposed for reduction only abuts Parcel 3.

Staff notes that there were no comments in opposition to the proposed minor variance received from the abutting neighbors, which is some evidence that the neighbors do not perceive the proposed variance to "materially injure" the use of their respective properties.

Staff finds that the proposed variance to the rear yard setback requirement of Parcel 4 has minimal potential negative impacts to the abutting properties; the proposed variance would not be materially injurious to neighboring properties. This criterion is met.

3. *The granting of the variance will have little or no negative impact on the streetscape (e.g., pedestrian environment or other aspects of the public realm that contribute to the neighborhood character); and,*



The proposed variance would allow reduction to the rear yard of Parcel 4, which is not visible from the public right-of-way. The variance requested is to the rear yard; no variance is requested to the street front setback required from Pilkington Road. Approving the minor variance for a 6-foot reduction to the rear yard setback will have no impact on the streetscape. This criterion is met.

4. *The proposed development will not adversely affect existing physical and natural systems such as traffic, drainage, Oswego Lake, hillsides, designated sensitive lands, historic resources, or parks, and the potential for abutting properties to use solar energy devices any more than would occur if the development were located as specified by the requirements of the zone.*

The proposed rear setback reduction does not increase traffic, as the allowed use remains a single-family dwelling, and is not located near drainage areas, Oswego Lake, or significant hillsides, so will have no impact. Stormwater from a future dwelling will be treated on site pursuant to the Stormwater Management Manual, which will be determined at time of building permit review. There are no designated sensitive lands on the site. The site does not contain any historic resources. As discussed, above, there will be no visual impact to the streetscape and the proposed variance does not affect the access lane location. The site is relatively flat and construction will not adversely affect any existing slopes. The proposed variance will not deter any abutting properties from the use of solar devices as a future dwelling will be required to comply with the maximum shade point height at time of building permit application and will not cast shade affecting any abutting properties. No tree removal is proposed as a result of the proposed variance, so the canopy visible from off site would not be affected by the rear yard reduction. For these reasons, no negative impacts to existing physical and natural systems are expected. This criterion is met.

Staff finds the criteria for a minor variance are met.

**City of Lake Oswego Stormwater Management Code [LOC Chapter 38.25]**

The Stormwater Management Code is applicable to development activities that meet the impervious area thresholds in LOC 38.25.120. [LOC 38.25.100(2)(a)]. All stormwater management facilities shall meet the standards for “large projects” if the new and/or redeveloped impervious area is greater than or equal to 3,000 sq. ft. For purposes of determining applicability, all applications on a given parcel or contiguous parcels under common ownership conducted within a three-year period shall be considered cumulatively. This proposal will result in development that exceeds 3,000 square feet of new impervious surface and is therefore reviewed as a “large project” (≥3,000 sq. ft. impervious area). [LOC 38.25.120(1)(d)(i)].

The applicant has submitted a preliminary stormwater report prepared by a registered engineer (Exhibit F-002), and a preliminary utility plan (Exhibit E-007). The City’s contract Stormwater Review Engineer reviewed the project and detailed the findings in Exhibit F-



008, which documents applicant information and findings related to LOC 38.25.120.1, Project Classification Procedures and Requirements. The Lake Oswego Stormwater Management Manual (LOSWMM) provides additional information including specifications and procedures for the proper implementation of the requirements of the Stormwater Management Code and is referenced as applicable [LOC 38.25.110].

As discussed in Exhibit F-008 and conditioned [Condition D(5)-(7) and E(2)], this standard is met.

#### **City of Lake Oswego Streets and Sidewalks Ordinance [LOC Chapter 42]**

"Street" Defined; New Development Street Improvements; Acceptance by City [LOC 42.03.020] (and LOC 50.07.003.5 Conditions of Approval)

This Chapter authorizes the City Engineer to make specific street and sidewalk improvement recommendations after taking a variety of policy and site-specific factors into consideration.<sup>1</sup> The City Engineer's comments are included for review of the overall understanding of the project. The City Engineer's conditions of approval are included, as they must be included in the decision, to find that the application will comply with this article.

The proposed 2-Parcel partition can be expected to contribute an additional 10 vehicle trips to the City's street system per lot per average weekday.<sup>2</sup> Additional pedestrian and bicycle trips can be expected as well. The cumulative effect of new trips (all modes), imposes an additional burden and concomitant concerns for preserving street capacity and public safety, particularly for bicycles and pedestrians.

The City has a governmental interest in assuring that new development does not contribute to a degradation of adequate, safe and efficient public transportation facilities. New development should mitigate the negative impacts (increased noise, and the degradation of aesthetics, safety, system capacity, and bicycle and pedestrian mobility) resulting from new development. The City has adopted a broad palette of policies, plans, regulations, and fees that have been designed to offset the adverse impacts of development on the natural and built environment. In this regard, the following regulations, standards and site-specific characteristics have a direct bearing on the governmental interest in preserving the functionality and safety of the public infrastructure, and are particularly relevant to this development proposal:

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<sup>1</sup>*To meet the review criteria for a minor development, the applicant must comply with "any additional ... Lake Oswego Code provisions which may be applicable to the specific minor development application, such as ... the Streets and Sidewalks Ordinance." LOC 50.07.003.14.d. The determination of whether or not the application meets the requirements of LOC Chapter 42, Streets and Sidewalks, is under the review authority of the City Manager or City Engineer; the requirements of this Chapter are not under the review authority of a hearing body, other than to find whether or not the City Engineer or City Manager has found that the application complies with LOC Chapter 42, or whether conditions of approval are required for compliance with this Chapter.*

<sup>2</sup> Trip Generation (10<sup>th</sup> edition), Institute of Transportation Engineers



- LOC Chapter 42 requires street improvements to be constructed when property is developed.
- LOC Chapter 42 directs the City Engineer to recommend to the decision making authority the appropriate width of public rights-of-way, and the width and character of the improvements contained therein.

The implementation of the City's plans, policies, and regulations will offset to some degree the negative impacts of development on the public infrastructure. LOC 50.07.003.5 allows the reviewing authority to impose conditions of approval on a development permit when the condition is reasonably related to alleviation of a need for public services or facilities created or contributed to by the proposed development. In addition, the US Supreme Court has ruled (*Dolan v. City of Tigard*) that, in order to require exactions, the local government must apply a test of "rough proportionality" between the impacts of the proposed development and the need for the mitigation.

The Engineering staff has reviewed the development proposal and field conditions in the context of the City's codes, improvement policies and Transportation System Plan (TSP) and makes the following recommendations. Factors considered in the Engineering Division's evaluation of Pilkington Road include its functional classification and the following site-specific aspects:

- Pilkington Road is designated as a "major collector" in the City's TSP and in the Clackamas County Comprehensive Plan. Pilkington Road is under the permitting authority of the City along this property.
- Typical cross sections in the City's TSP illustrate bike and pedestrian facilities on both sides of all roads bearing a functional classification of major collector.
- The existing paved surface on Pilkington Road varies in width, but the southbound lane along the site's frontage is approximately 11 feet wide.

In view of the above code requirements, plans and site-specific factors, the Engineering Division has developed a conceptual plan for Pilkington Road's ultimate cross-section. The plan will be implemented in a piecemeal fashion as development occurs, and as public funding opportunities materialize to fill in gaps or to make major improvements that are disproportionate to the scale of the adjacent development.

As a major collector, Pilkington Road should have bike lanes and pedestrian facilities on both sides. To maintain a more rural character, no curbs are planned. Street frontage improvements, landscaping and pathway improvements shall comply with the City Engineer's policy memorandum, Guidelines and Standards for New Streets and Frontage Improvements in the Urbanizing Rural Fringe and Transition Neighborhoods, effective February 1, 2005. This site is also located in an area where stormwater management will be accomplished with vegetated swales, vegetated infiltration strips, rain gardens or the like. Eventually, striped bike lanes will be delineated when the street has been widened over a sufficient length.



In reviewing the existing street frontage conditions, the Engineering staff has determined that no street improvements or right-of-way dedication will be required for this development. An asphalt shoulder pathway already exists across the site frontage that was constructed as part of the Safe Routes to School Program. Any new driveway approach shall be designed and constructed per City standards.

In reviewing the existing established right-of-way location and paved street location between Jean Road north of the site and Kenny Street south of the site, the west right-of-way line of this site aligns with the development pattern of other properties along the west side of Pilkington Road. The existing road transitions over to the west portion of the existing right-of-way in this segment of roadway. Ultimately, a bike lane should be added to the west side of Pilkington Road; however, trying to widen a small section of roadway across this site frontage will require additional right-of-way along the west side of the street, which would be inconsistent with the west right-of-way line of other recent developments and existing properties along the west side of Pilkington Road in the vicinity of the site. To be properly done, such a project would require a more extensive design analysis that would include adjoining properties, drainage conveyance facilities and possible realignment of the road. Instead of constructing a new bike lane across the site frontage at this time, the applicant/owner will be required to sign a non-remonstrance agreement for participating in a future Local Improvement District (LID) for street improvements that will include a bike lane and possible alignment adjustments to Pilkington Road [Condition B(3)].

Although no right-of-way dedication or street improvements will be required, the applicant will be required to sign and record a Local Improvement District (LID) waiver of remonstrance agreement for participation in any future construction of street improvements as a condition of approval [Condition B(3)].

Sight Distance at Roadway Intersections, Private Streets and Driveway Standards [LOC 42.03.130]

This standard requires that no vegetation, fence, or signage be located higher than 30 inches within a “clear sight triangle.” The clear sight triangle is that area enclosed by the lines formed by the intersection approach legs of roadways, private streets and driveways and a straight line drawn diagonally across the corner, connecting those lines at the various distances per AASHTO guidelines. As explained above, minimum sight distance can be achieved for the new driveway approach onto Pilkington Road, with the following condition:

Non-exempt vegetation and other obstructions on the subject site within the clear sight triangles shall be removed as needed to meet the sight distance requirements.

As conditioned [Conditions B(8) and E(3)], this standard is met.



## City of Lake Oswego Tree Code [LOC Chapter 55]

The Tree Code is intended to preserve trees. Only those trees that must be removed in order to site proposed improvements will be granted tree cutting permits under LOC 55.02.080. The site has approximately 22 trees that are six inches in diameter or greater (Exhibit F-006, pg. 4). The applicant is requesting approval to remove one 37-inch Douglas fir tree, Tree 1, for the construction of the shared access lane (Exhibits F-001, page 53).

### Tree Removal

Trees proposed for removal in conjunction with a minor development can be granted tree removal permits if the following criteria are met:

1. *The tree is proposed for removal because it has outgrown its landscape area or the removal is part of a landscape plan, or in order to construct development approved or allowed pursuant to the Lake Oswego Code or other applicable development regulations.*

This criterion is met if the tree proposed for removal is within the proposed development area or additionally as conditioned for development approval; whether an alternative development analysis is required is addressed in Criterion #3. [See Kash Investments, LU 17-0005; Mission Homes NW, LU 17-0016; Blue Palouse Properties LLC, TR 499-17-02043, AP 17-05]. Staff finds that Tree 1 is located within the proposed development area: construction and installation of the shared access lane because it is located approximately 8 feet from the southern property line (F-006, pg. 4).

2. *Removal of the tree, considering proposed mitigation measures, will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks;*

The Applicant states that the proposed removal will not impact erosion or soil stability because the area is flat (Exhibit F-001, pg. 54). Staff concurs with this finding and finds that no surface waters are located on site. The applicant states that the adjacent trees are not dependent on the subject tree for support or survival and that the tree is not a windbreak because it is not located to the southwest of any nearby trees to provide a windbreak against storm winds (Exhibit F-001, pg. 54). Staff concurs that Tree 1 is not located to the southwest of any other nearby trees and thereby does not serve as a windbreak against storm winds. This criterion is met.

3. *Removal of the tree will not have a significant negative impact on the character or aesthetics of the neighborhood. This standard is met when removal of the tree(s) does not involve:*
  - a. *A significant tree (defined as a healthy, noninvasive tree over 15" DBH that is considered significant to the neighborhood due to size, species, or distinctive character, or the only remaining tree on the property);*



*Element #1 – Healthy:*

The arborist report states that Tree 1 is in fair health (Exhibit F-006, pg. 2).

*Element #2 – Noninvasive:*

The tree is noninvasive: it is a Douglas fir tree (Exhibit F-006, pg. 2).

*Element #3 – Over 15” DBH:*

Tree 1 is over 15 inches DBH (Exhibit F-006, pg. 2): it is a 37-inch Douglas fir.

*Element #4 – Significant to the Neighborhood Due to Size, Species, or Distinctive Character:*

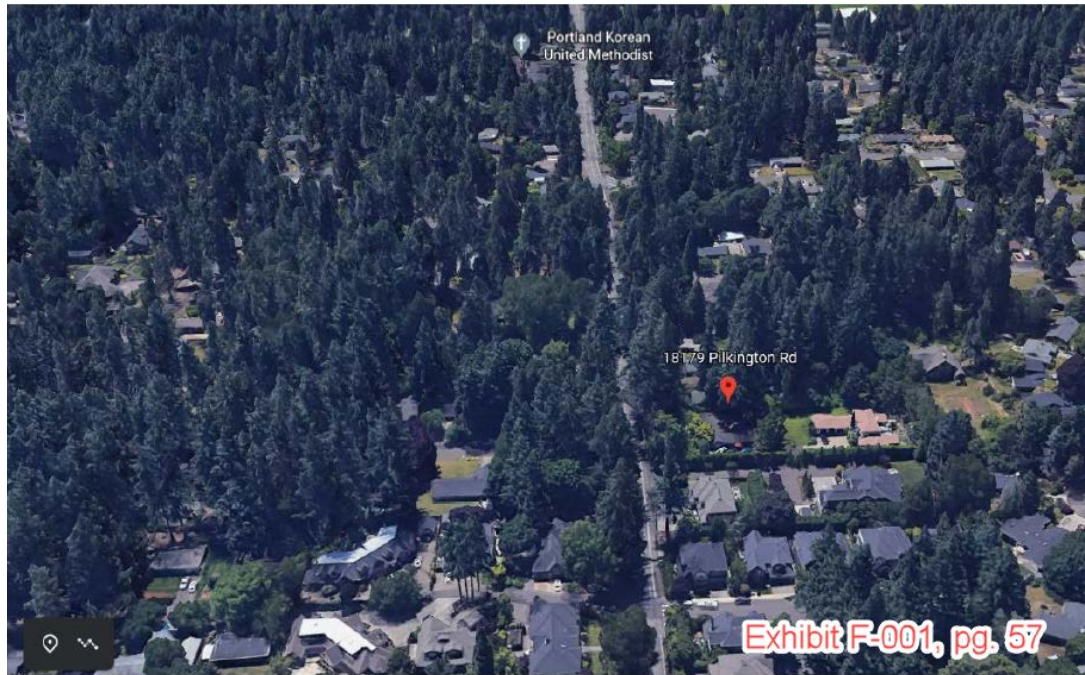
The tree proposed for removal is a 37-inch DBH Douglas fir tree (Exhibit F-006, pg. 2).

Three public comments make conclusory statements: Exhibit G-201 states that the tree proposed for removal is significant due to size because it is 37”, but there is no neighborhood context stated; Exhibit G-001 merely states that the tree is a “significant tree” without any factor or basis stated; and Exhibit G-202 states that the tree is 50 years old, will take more than a generation to regrow and will negatively impact the ecosystem and community value. Exhibit G-200 states that the tree is large, is “very prominent and visible” and removal will “adversely impact the character of the neighborhood.” Staff finds that this testimony is not sufficient to establish that the tree is “significant to the neighborhood due to size ... or distinctive location,” because:

a. For a tree to be significant to the neighborhood due to size, one must examine the relative size of trees in the neighborhood. The applicant’s narrative (Exhibit F-001, pg. 55) and arborist report (Exhibit F-006, pg. 2-3) indicate that at least six other trees on site are of similar or larger size than Tree 1. If the trees on the site are representative of other trees in the neighborhood, the tree would be in the upper 20% of range of size. Staff finds that removal of one tree within the upper 20% of the range of size in the neighborhood would not result in its removal being significant to the neighborhood due to size.

b. Similarly, the applicant states that there are at least six other Douglas fir trees on or near the site, including larger, healthier Douglas fir trees (Exhibit F-001, pg. 55). If the species mix on site is representative of the broader neighborhood, which appears likely based on aerial imagery (below), the removal of one Douglas fir tree in a neighborhood with many Douglas fir trees would not be significant to the neighborhood due to species.





c. The fact that the tree is visible, as it is located along the front property line, does not necessarily result in the tree being in a prominent location or uniquely visible at a prominent neighborhood location [Blue Palouse Properties, AP 17-05, DRC Findings]. The tree is set further back than a street tree. Not all street trees are in a prominent location *in the neighborhood*. While the removal of street trees automatically result in its removal not meeting Criteria #3, per subsection d, rather than a, a location further back along the right-of-way would ordinarily be of lesser prominence than a street tree. Tree 1's location, along the length of Pilkington, and opposite the Tree St. intersection but further south than Tree 5, a 57-inch DBH Douglas fir tree directly opposite the intersection, does not show that Tree 1 is in a prominent neighborhood location. Further, the applicant states that Tree 1 is located next to overhead powerlines that run along the west side of Pilkington Road and that the tree has been de-limbed on the street side for many years, resulting in a lopsided appearance that detracts from the tree's appearance while healthier, more attractive trees, such as Trees 2 and 3 are more distinctive to the neighborhood (Exhibit F-001, pg. 55).

As stated above, and described in Exhibit F-001, pg. 54-55, staff finds that Tree 1 is not a "significant tree" because it is not significant to the neighborhood due to size, species or distinctive character.

#### *Element #5 – Sole Remaining Tree*

If Tree 1 is removed, there are still trees on site that remain (Exhibit F-006, pg. 2-4).

Subconclusion – Subcriterion (a): From the application materials submitted and the cited Exhibits above, staff finds:

- Tree 1 is a healthy, native Douglas fir tree, that is over 15 inches DBH in size.



- Tree 1 is not a “significant tree” to the neighborhood due to size, species or distinctive character.
- It is not the only remaining tree on the property.

This subcriterion is met.

- b. Alterations to the distinctive features or continuity of the neighborhood skyline, as viewed from all public streets and properties within 300 ft. of the property;*

Exhibit G-200 states that the large fir trees on the east side of the property, including Tree 1, are “very prominent and visible, and their removal will adversely impact the character of the neighborhood. These trees are also very visible from our property to the East of this location (Exhibit G-200).”

Exhibit G-201 also states that removal of Tree 1 would “without question, alter the continuity of the neighborhood skyline – especially when viewed from the end of Tree St., at the three-way intersection of Pilkington and Tree St. (Exhibit G-201).” As discussed above under “distinctive character,” Tree 1 is offset from the intersection with Tree Street, is not located in a prominent location within the neighborhood, and a larger Douglas fir tree, Tree 5, is located directly across from the intersection, maintaining the treed appearance of the intersection.



The applicant states that the site is located in a relatively flat area, not on a hill or prominent slope, “therefore it does not create or frame a particular skyline” (Exhibit F-001, pg. 55). The applicant further states that there are many taller trees on or directly adjacent to the site and that the removal of Tree #1 alone will not alter distinctive features or the neighborhood skyline as viewed from public streets and properties within 300 feet (Exhibit F-001, pg. 55-57). Staff concurs that removal of Tree #1 will not alter the neighborhood skyline as demonstrated in Exhibit F-001, pg. 55-57. This subcriterion is met.

- c. A tree that serves as a visual screen between a residential zone and an abutting non-residential zone, or between a low density residential zone and a medium or high density residential zone, or between a medium and high density residential zone;*



The abutting properties are all zoned low density residential – upon annexation the property to the south will be zoned R-7.5, the same as the subject site. The tree proposed for removal does not serve as a visual screen between dissimilar zones.

*d. A street tree; or,*

The tree is located on private property (Exhibit E-003) and therefore is not classified as a street tree (LOC 55.02.020). Exhibit G-201 states that Tree 1 is a street tree because of its proximity to the traveled way of Pilkington Road and its visibility; however, pursuant to LOC 55.02.020, a street tree must be located within the public right-of-way, a pedestrian easement abutting a right-of-way, or within a street tree easement, or used to meet the street tree requirements for a prior development permit. Tree 1 is located on private property, is not currently located within a pedestrian or street tree easement and was not used to meet the street tree requirements for a prior development.

Tree 1 is not classified as a street tree.

*e. Greater than 50% of a stand of trees.*

“Stand (of trees) means a group of trees (of the same species or a mixture) that forms a visual and biological unit at least 15 ft. in height with a contiguous crown width of at least 120 feet” (LOC 55.02.020). The applicant provides a map and description of the stand of trees, which includes approximately 16 trees (Exhibit F-001, pg. 58). As demonstrated in the applicant’s narrative, Exhibit F-001, pg. 58, the removal of Tree 1 is approximately 6.25% of the stand canopy, less than 50%. This criterion is met.

Subconclusion – Subcriteria (a)-(e):

The applicant has demonstrated, and staff concurs, that the proposed removal of Tree 1 meets subcriteria (a)-(e) as discussed above. Therefore, an exception to criterion 3 is not required. Specifically, the applicant need not demonstrate under Exception b that alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone. However, if Tree 1 is found to be significant by a hearing body, the applicant has provided an alternative site plan, Exhibit E-012, which shows an alternative access lane location that would result in removal of three trees, rather than the removal of only Tree 1, and discusses alternative site plans on pages 59-62 of Exhibit F-001.

*4. Removal of the tree is not for the sole purpose of providing or enhancing views.*

As stated under the first criterion, the purpose of the removal is for development. Accordingly, removal cannot be for the sole purpose of providing or enhancing views. This criterion is met.

For the reasons outlined above, staff concludes that the removal of Tree 1 complies with all applicable criteria and is approved.



Mitigation [LOC 55.02.084]

Any tree approved for removal under the Type II tree analysis shall be mitigated at a minimum 1:1 ratio. "Significant trees" removed for development purposes shall be mitigated at a 2:1 ratio. Required street trees do not count towards the minimum tree mitigation requirements. Mitigation trees for site development to create a flag lot should have a minimum 2-inch caliper diameter for deciduous trees and a minimum 8-foot height for evergreen trees (LOC 50.07.007.2.f.v). All native trees must be mitigated with a native species selected from LOC Appendix 55.02-1, Native Mitigation Tree List.

Tree 1 is a native species tree and therefore a native species mitigation tree is required. Pursuant to LOC 50.07.007.2.f.v, a mitigation tree species capable of attaining a minimum height of 30 feet would be required. A mitigation plan for a native species tree capable of achieving a minimum height of 30 feet must be submitted with the verification tree removal application [Condition D(9)] and the mitigation tree must be planted and inspected prior to final occupancy of a new dwelling on Parcel 3 [Condition E(5)]. As conditioned, this standard is met.

**3. Any applicable condition of approval imposed pursuant to an approved ODPS or prior development permit affecting the subject property.**

There are no outstanding conditions of approval that affect the subject property.

Prepared By	Reviewed By	Approved By	Date
Ellen Davis, AICP Associate Planner	Evan Boone Deputy City Attorney	Jessica Numanoglu, AICP Planning Manager	4/15/2022
<i>EHD</i>	EB	JN	

**EXHIBITS**

**A-D** [No current exhibits; reserved for hearing use]

**E. GRAPHICS/PLANS**

E-001 Tax Map  
E-002 Vicinity Map  
E-003 Existing Conditions Map  
E-005 Preliminary Partition Plat  
E-006 Site Plan  
E-007 Grading and Utility Plan  
E-008 Preliminary Sight Distance Plan  
E-009 Access Lane and Fire Plan  
E-010 Landscape Plan  
E-011 Site Visit Photographs 2-9-2022  
E-012 Tree Removal Alternative Driveway Location



**F. WRITTEN MATERIALS**

F-001 Applicant's Narrative  
F-002 Preliminary Stormwater Report  
F-003 Preliminary Infiltration Report  
F-004 Fire Marshal Comments  
F-005 Neighborhood Meeting Notes  
F-006 Arborist Report  
F-007 Rivergrove Water District Letter  
F-008 Stormwater Analysis from Brown and Caldwell

**G. LETTERS**

Neither for nor Against (G1-99):

G-001 Klabe Comment 1-27-2022

Support (G100-199):

None

Opposition (G200+):

G-200 Volpel/Kimball Comment 2-10-2022  
G-201 Mikulka Comment 2-11-2022  
G-202 Chou Comment 4-13-2022

Date of Application Submittal: July 20, 2021

Date Application Declared Complete by Applicant: January 18, 2022

State Mandated 120-Day Rule: June 17, 2022 (30-day extension granted by applicant on February 24, 2022 from original date: May 18, 2022)



# **Development Review Permit & Rear Deck Setback Minor Variance**

---

Prepared For:

Habitat for Humanity Portland Region  
1478 NE Killingsworth St  
Portland, OR 97211

Prepared By:

Westlake Consultants, Inc.  
15115 SW Sequoia Parkway, Suite 150  
Tigard, OR 97224



**Applicant/Property Owner:** Habitat for Humanity Portland Region  
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c/o Leigh Armstrong  
Phone: 503-894-6486

**Applicant's Representative:** Ken Sandblast  
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Phone: (503) 684-0652  
Email: [ksandblast@westlakeconsultants.com](mailto:ksandblast@westlakeconsultants.com)

**Architect** Nate Ember  
InkBuilt Design  
2808 NE MLK Blvd. Ste G  
Portland, OR 97212

**Landscape Architect** Caitlin Pope Daum  
Studio Wild Landscape Architecture

**Proposed Project:** A Development Review Permit for Attached Residential Townhomes on 23 Lots and a Minor Variance to reduce a rear yard setback for decks on Lots 16-23 in the West Lake Grove (WLG) Design District.

**Property Location:** 16858 Boones Ferry Rd. Lake Oswego, OR 97035

**Tax Map/Lots:** 21E18AA/400 & 21E18AB/100, 200, 300, and 400 (5 Tax Lots)

**Site Size:** 1.92 Acres

**Zoning & Comprehensive Plan Designations** Residential Mixed Use (WLG RMU) & Townhome Residential (WLG R-2.5)

**Neighborhood Association** Lake Grove



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# Development Review Criteria - Lake Oswego Community Development Code

(Relevant criteria only)

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DR0.50 - Architectural Site Plan

DR0.71 - Color Perspective Views - B-Type Townhomes

DR0.72 - Color Perspective Views - C-Type Townhomes

DR0.73 - Color Perspective Views - D-Type Townhomes

DR0.74 - Color Perspective Views

DR1.01 - Building Plans - A/B-Type Townhomes

DR1.02 - Building Plans - C-Type Townhomes

DR1.02 - Building Plans - D-Type Townhomes

DR1.02 - Building Plans - Roof Plans

DR2.01 - Building Elevations - A-Type Townhomes

DR2.02 - Building Elevations - B-Type Townhomes

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DR2.04 - Building Elevations - C-Type Townhomes

DR2.05 - Building Elevations - D-Type Townhomes

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DR4.01 - Exterior Materials

DR4.11 - Windows / Doors



## Application Description

The Applicant, Habitat for Humanity Portland Region, is seeking Development Review approval for building design of a 23-lot single-dwelling townhouse development at West Lake Grove Townhomes, an approved subdivision in the City of Lake Oswego.

The Applicant seeks to provide new housing units for affordable home ownership while preserving the existing site features and trees and blending into and enhancing the existing character of the Lake Grove Neighborhood. The proposed development incorporates the Oregon Rustic style through the implementation of board and batten, gabled roofs and trimmed windows.

The proposed development will provide 23 single-dwelling townhomes situated along a new private street. The site will also feature three open space tracts meant to preserve existing trees and natural areas.

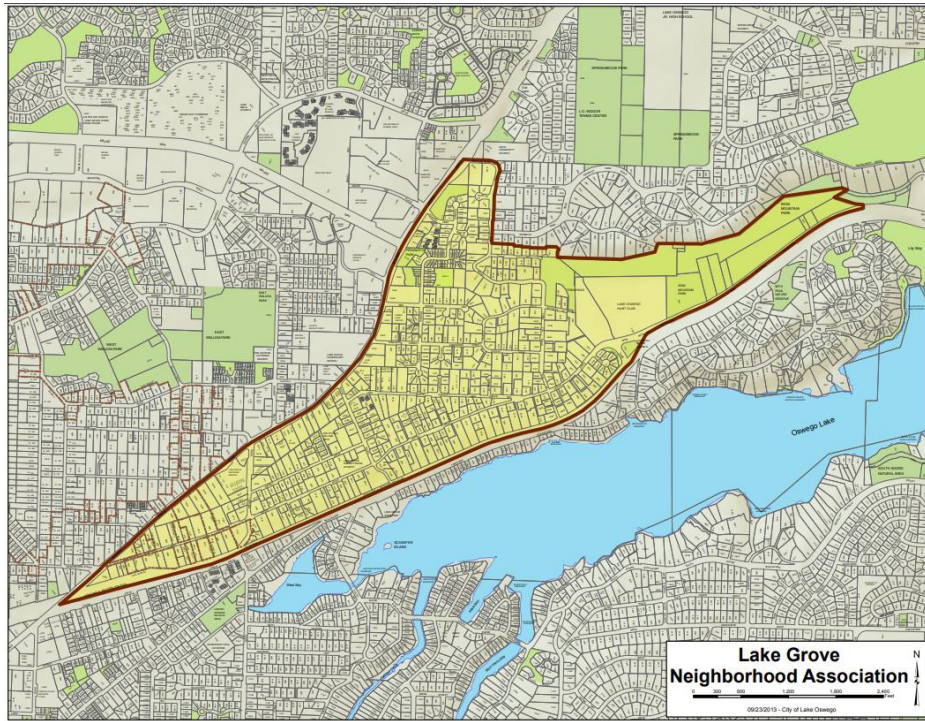
There is a minor variance requested to provide rear decks to be constructed for the houses on the south side of Radiance Lane, specifically Lots 16-23. This variance is limited to a 20% reduction of the minimum 25' rear setback which results in the proposed 20' rear setback for these lots.

*Figure 1: Aerial – Subject Property*





Figure 2: West Lake Grove Neighborhood Association Map



## Applicant's Narrative

After reviewing the City of Lake Oswego Community Development Code, the Applicant has found the following sections to be applicable to this Development Review application. Narrative responses are provided for each section below.

### **CHAPTER 50: COMMUNITY DEVELOPMENT CODE**

#### **50.02 Base Zoning Districts**

##### **50.02.002 Commercial, Industrial, Mixed Use Zones**

##### **50.02.002.2.a.iii Standards Applicable in Commercial Zones**

*All development in any commercial zone will be developed under a unified site plan. The site plan will identify circulation patterns and access points, method of provision of public services and general placement of lots and structures, general area and type of uses. Proposals with multiple ownerships shall include a written agreement of all owners that development of the site will occur pursuant to the site plan approved.*

**Response:** This Application proposes the subject property be developed under a unified site plan. Elements of the unified site plan are illustrated in the attached Architectural Site Plan (Sheet DR0.50) and Subdivision Plan (Sheet P1.00). These plan sheets clearly identify circulation patterns, access points, public services, location of lots, placement of structures, and types of uses. The provision of *Section 50.02.002.2.a.iii.* regarding multiple ownerships is not applicable to the proposed development as the subject property is owned by a single owner, Habitat for Humanity. These provisions are satisfied.



### **50.03 Use Regulations and Conditions**

#### **50.03.002 Use Table**

##### **50.03.002.2 Residential Use Table**

**Response:** As per *Table 50.03.002-2*, residential uses at R-5 density or greater are a permitted use in the WLG R-2.5 and WLG RMU zoning districts. The minimum density requirements of these zones were met through the approved subdivision, LU 18-0024. This provision is satisfied.

#### **50.03.003 Use-Specific Standards**

##### **50.03.003.1 Residential – Permitted Uses**

###### **a. Attached, Residential Townhome Uses in West Lake Grove**

**Response:** Minimum density standards of the zoning districts were met through the subdivision approval, per LU 18-0024. Lot Width and lot coverage standards are met as shown in the attached Site Plan (Sheet DR0.50) and Subdivision Plan (Sheet P1.00). Each of the 23 proposed townhomes will be located on a separate lot.

Per Subsection 50.03.003.1.a.ii and iii., attached for-sale townhomes is a permitted use in both the WLG RMU and WLG R-2.5 zones. These provisions are satisfied.

### **50.04 Dimensional Standards**

#### **50.04.001 Dimensional Table**

##### **50.04.001.4 Commercial, Mixed Use and Industrial Zones**

###### **Yard Setbacks (WLG R-2.5):**

*Front Yard: 10 feet*

*Rear yard and side yards abutting a single-family zone: 25 feet*

*Rear yard and side yards not abutting a single-family zone: 10 feet*

###### **Yard Setbacks (WLG RMU):**

*Front Yard: 10 feet*

*Rear yard and side yards abutting a single-family zone: 25 feet*

*Rear yard and side yards not abutting a single-family zone: 10 feet*

**Maximum Base Height (measured to the ridge): 35 feet**

**Maximum Lot Coverage: 60% excluding parking**

**Response:** As shown on the Site Plan, Sheet DR0.50, the proposed lots are designed with the following minimum setbacks: 10-foot front yard setbacks, 25-foot exterior side and rear yard setbacks when abutting a low-density residential zone; and 10-foot exterior side and rear yard setbacks when not abutting a low-density residential zone, and 0-foot interior side yard setbacks. Lot coverage does not exceed the required maximum of 60%. Building height compliance with the 35-foot maximum limit is shown on the attached Height Compliance exhibit, Sheet DR2.50.

##### **50.04.002 Special Street Setbacks**

**Response:** As per *Table 50.04.002-1*, the subject property's frontage on SW Upper Dr. requires a special street setback of 25 feet. The special street setback is applicable to Lot 9 through Lot 15 and is measured from the centerline of the existing SW Upper Dr. right-of-way. The required 10-foot front setback for the structures on these lots is measured from the special street setback, as shown on the Architectural Site Plan, Sheet DR0.50. These provisions are satisfied.



### **50.04.003 Exceptions, Projections, and Encroachments**

#### **50.04.003.8 8. General Exceptions for Building Projections, Decks, and Walkways And Pathways to Setbacks**

##### *b. Patios and Decks*

*Patios and decks on or above grade, but no more than 30 in. above grade, may project into a required yard, but may not be closer than three ft. to any property line. Patios and decks above 30 in. shall be subject to the zone setback. Such intrusion into the required yard is to be undertaken solely at the risk and expense of the owner. Any structure which is placed in a required yard, and is required to be moved for any reason, shall be moved without expense to the City and the person who bears such cost shall have no recourse against the City to recover such cost.*

**Response:** No patios or decks are being provided on the proposed townhomes. Units labeled “D” on the included Site Plan, Sheet DR0.50, have balconies that extend into the rear 25-foot setback. A Minor Variance is being sought with this application.

### **50.05 Overlay and Design Districts**

#### **50.05.005 West Lake Grove Design District**

##### **50.05.005.9 Clear and Objective Housing Standards for Approval**

##### **50.05.005.9.b. Clear and Objective Track 2 Alternative Applicability**

- i. A development in the West Lake Grove Design District (shown in Figure 50.05.005-N) that involves a structure for residential mixed use, multi-family residential, or attached single-family (three or more units) housing that creates new dwelling units may comply with this article in lieu of compliance with LOC 50.05.005.1 through 50.05.005.7:*
- ii. To the extent that any requirement of this overlay imposes a regulation relating to the same matter as the use, dimensional, or development regulations in this Code, this section shall prevail.*

**Response:** The applicant acknowledges the applicability of the clear and objective criteria. Responses to the applicable criteria have been listed below.

##### **50.05.005.9.d Standards Applicable to the Entire WLG Design District**

- ii. Streets and Circulation*
- iii. Pedestrian and Bicycle System*
- v. Street Lighting*
- vi. Landscaping Standards*
- vii. Preservation of Substantial Trees*
- viii. Buffer Areas*
- ix. Noise Mitigation*

**Response:** The standards of 50.05.005.9.d.ii. - v., vii., and ix. were addressed and met with the subdivision application approval (LU 18-0024).

##### *vi. Landscaping Standards*

**Response:** The attached Landscape Sheets (L1.0 through L3.2) depict the selection and placement of plantings which reinforce the “village” scale and character of Lake Grove and are consistent with the applicable provisions of this section. The site includes a landscaped buffer along the south and east boundaries, as well as landscaped open space tracts, as shown on the Landscape Plan, Sheet L1.0.



The subdivision provides 22% of the site as open space and landscaping, in compliance with the requirements of this section. Trees are spaced to meet the requirement of one tree for every 500 sq.ft. of landscaped area, and shrubs are planted at 15 plants per every 500 sq.ft. The mitigation plan, currently under the City's review of the PIP, has been incorporated into the landscape plan.

All landscaping will be irrigated with an underground system. Street trees are planned, as shown on the attached Landscape Plan, Sheet L1.2

The Applicant is requesting a separate, concurrent Major Variance to allow for a portion of the new trees to be sized at 1.5" caliper, and a portion of shrubs to be sized at 1-gallon. As explained in the variance request, significant site constraints (slopes, existing tree roots), the cost of larger plants and the difficulty of their installation, and the limited availability of native species at the 3" caliper size are major factors in the variance request. Please see the submitted Major Variance application materials and narrative for additional information.

The attached Landscape sheets indicate the trees and shrubs for which the variance is sought. Please see the variance narrative for additional information.

*vii. Preservation of Substantial Trees*

- (1) *Development plans shall preserve substantial trees to the extent practicable. Substantial trees for the purpose of this section, West Lake Grove Design District, are all trees measuring over 15 in. DBH or more except for invasive, dead or hazardous trees. Where compliance creates conflicts over preservation of different types of substantial trees, preservation of native trees such as Douglas firs is given higher priority than nonnative trees. It is not practical to preserve substantial trees where it would prevent development of public streets, utilities, or permitted land uses.*

**Response:** The Applicant is proposing to remove five trees that have been identified by a certified Arborist as anticipated to be impacted beyond acceptable thresholds by the construction of the townhomes. As per the submitted Arborist report, the Arborist conducted exploratory, subsurface root excavations at locations on the site where the proposed townhomes on Lots 7, 8, 9 & 15 are in proximity to existing trees. In summary, this field exploration revealed that major root pruning to accommodate foundations and retaining walls, as well as reduced water uptake caused by structures covering the root zones, would result in significant impacts to these five trees necessitating their removal.

- (2) *The approval authority shall have the discretion to allow modifications or require changes to the paving standards, such as the use of pervious surfaces, to preserve mature trees.*

**Response:** The five trees proposed for removal are impacted due to foundation walls required to construct the attached townhomes on Lots 7, 8, 9 and 15. The tree removal does not involve paving or pervious surfaces. This criterion is not applicable.

- (3) *Tree removal shall be mitigated. Where practicable, trees of the same or approved variety of no less than three caliper in. shall replace trees removed with trunk diameters*



*of six caliper in. or greater. Where complete mitigation is not practicable, payment shall be made into the City of Lake Oswego Tree Fund pursuant to LOC [55.02.084](#)(4).*

**Response:** Mitigation for removal of the proposed five trees will be based on the applicable requirements of the approved mitigation plan in this development review application. As per the submitted tree mitigation plan, the maximum number of onsite replacement trees feasible are being planted. In accordance with this code, a payment for the remaining difference in mitigation trees not practicable to plant will be made to the City Tree Fund.

*(4) A protection and maintenance plan to promote the continued survival of preserved trees shall be submitted for approval in conjunction with any development application.*

**Response:** Upon approval of the removal of the proposed five trees, the Tree Protection Plan pending City approval through the public improvement plans for the West Lake Grove Townhomes subdivision decision, will be updated to reflect the protection, in accordance with applicable City standards, of all remaining existing trees being retained on the site.

*(5) Incentives for Preservation of Substantial Trees*

*For each substantial tree retained on the lot, a 500 sq. ft. landscaping credit can be used to reduce the number of parking lot landscaping bulbs per subsection 9.vi(2)(b)(iv) of this section and/or the width of the landscaping buffer between a parking facility and the exterior wall of a building per subsection 9.vi(2)(b)(vi) of this section, but in no case shall the total amount of landscaping on site be reduced below 10%. A retained tree shall be credited only toward reduction in required landscaping. Sufficient landscape area at the base of each preserved tree shall be provided as recommended by a certified arborist. The decision body shall require as a condition of approval that, where a preserved tree dies or otherwise must be removed, a native evergreen tree, such as a western red cedar, western hemlock or Douglas fir of at least three caliper in., shall be planted.*

**Response:** The proposed development includes 23 townhomes with private driveways and garages. No parking lots or landscaping bulbs are planned. This subsection is not applicable.

*viii. Buffer Areas*

*viii.(2) Landscape Buffering*

*viii.(3) Screening*

**Response:** Per the requirements of this subsection, and in compliance with LU18-0024 Conditions of Approval, a 15' landscape buffer is included in the site landscaping and is depicted on the Landscaping Plan, Sheet L1.0. The trees and shrubs and ground covers have been selected and placed as per the spacing requirements of this section. A request for Major Variance that would reduce the sizes of some of the trees and shrubs located within the buffer is being submitted concurrently with this application. The buffer plantings are shown on the attached Landscape Plan at the requested size. Please see the Major Variance narrative for additional information.



As shown on the attached Landscape Plan, a 6' tall cedar fence is provided as screening along the east and south boundaries of the site.

x. *Building Design*

(2) *Elements and Styles*

*New buildings in West Lake Grove shall be designed in Arts and Crafts, English Tudor, or Oregon Rustic style, as described and outlined below.*

(c) *Oregon Rustic Required Design Elements*

i. *Massing/Composition:*

A. *Asymmetrical composition required. This requirement is met when the building form and detailing are not identical on both sides of a central line dividing the facade (see Figure 50.05.004-X).*

**Response:** All homes are of asymmetrical composition through facade articulation and placement and size of windows, and facade materials. Please refer to elevations (Sheets DR2.01 – DR2.06) and Exterior Materials (Sheet DR4.01).

B. *Multi-Family Residential and Mixed Use Structures: See LOC 50.06.001.7.c.i and 50.06.001.7.c.ii for building articulation requirements.*

**Response:** The proposed project is not a multi-family or mixed-use development. This criterion is not applicable.

ii. *Roof Style: Hipped and/or gable roofs (may be used in combination) with a minimum pitch of 5:12*

**Response:** The proposed development has gabled roofs with a pitch of 6:12, as illustrated on Sheet DR 2.01.

iii. *Eaves: Minimum eaves of 18 in.*

**Response:** The Proposed development has an eave projection of 18 inches, as shown on the Roof Plans, Sheet DR1.04.

iv. *Exterior Building Materials: Horizontal lap siding, board and batten, shingled siding, wood logs (unpeeled or half rounded) applied as siding, or combinations thereof. Stone (including river boulders) may be used in foundations or as siding for first-floor levels.*

**Response:** The main building facade material will be horizontal lap siding with accents of board and batten and/or shingled siding. Material transitions shall be accented with trim. Please refer to shown on Sheet DR4.01.



- v. *Windows: Multi-paned windows required. "Snap on," surface-applied window mullions are prohibited (simulated divided light windows wherein the mullion is integral to the window assembly are permitted).*

**Response:** All windows proposed will be multi-paned and/or mulled windows.

- vi. *Additional Design Elements: In addition to the required design elements, above, residential and residential mixed use structures built according to the Oregon Rustic style in the Downtown Redevelopment Design District shall provide at least one of the following design elements:*
  - A. *Windows: Functional shutters.*
  - B. *Molding: Minimum 3.5-in. wide trim on doors and windows. Molding should be simple, square cut, or single-angle cut trim. Carved accents such as newel posts, exterior banisters, railing, etc. are also encouraged.*

**Response:** All windows and doors to have a min. 3.5" wide trim. Trim will also be provided to further accentuate material changes and textural changes on the façade. The attached Sheet DR4.11 provides window and door details.

- C. *Building Materials: Natural, clear wood or semi-transparent finishes (instead of opaque paint).*
- D. *Other Elements: Prominent stone chimney.*

#### **50.05.005.9.e Design Standards for the Residential Mixed Use (WLG RMU) Zone**

- ii. *Required Design Elements*
  - The following design elements are required in the RMU zone:*
    - i. *Structures shall comply with the building articulation and building facade requirements in LOC 50.06.001.7.c.i.*

**Response:** Responses to LOC 50.06.001.7.c.i have been provided within that corresponding section this narrative.

#### **50.05.005.9.f Design Standards for the Residential Townhome (WLG R-2.5) Zone**

- ii. *Design Elements*
  - ii. *Structures shall comply with the building articulation and building facade requirements in LOC 50.06.001.7.c.i and 50.06.001.7.c.ii.*

**Response:** Responses to LOC 50.06.001.7.c.i & LOC 50.06.001.7.c.ii have been provided within that corresponding section this narrative.



## **50.06 Development Standards**

### **50.06.001 Building Design**

#### **50.06.001.7 Clear and Objective Housing Standards for Approval**

##### **50.06.001.7.b Clear and Objective Track 2 Alternative Applicability**

- ii. *Development that complies with subsection 7.b.ii of this section may comply with this article in lieu of compliance with LOC [50.06.001.1](#) through [50.06.001.6](#).*
- iii. *This article is applicable in all zones except the FMU zone to development that creates new dwelling units involving a residential mixed use, multi-family, or attached single-family (three or more units) residential structure.*

**Response:** The applicant acknowledges the applicability of the clear and objective criteria. Furthermore, responses to the applicable criteria have been listed below.

##### **50.06.001.7.c Design Standards**

###### *iv. Standards for Townhouse/Rowhouse Structures*

- (1) *All building elevations facing a street or public space shall be articulated along all stories by providing a minimum two-ft. horizontal change in building plane between abutting dwelling units (or units sharing a common wall). A change in plane shall be provided through at least two of the following:*
  - (a) *Projecting bays measuring at least six ft. in width.*
  - (b) *Building recesses measuring at least six ft. in width.*
  - (c) *Upper level balconies (projecting or recessed), measuring at least four ft. in width and projecting not more than two ft. beyond the building facade.*
  - (d) *Front porch or stoop projections measuring at least six ft. in width.*

**Response:** Each proposed townhome has a projecting porch with roof that is a minimum of 6 feet in width, as illustrated in the Building Plans, Sheets DR1.01 – DR1.03.

- (e) *Recessed building entries measuring at least six ft. in width.*

**Response:** Each proposed townhome has a recessed front entry that measures a minimum of 6' feet in width. This recessed entry is covered by a lower roof structure to further break down the mass of the front facade.

- (2) *Roofline articulation shall be provided in a manner that corresponds with the facade articulation. This shall be accomplished by providing the following roofline or roof form elements at least every 30 ft., as viewed from adjacent street(s), public courtyards, and plazas.*
  - (a) *Roofline articulation shall include gables, dormers, offsets in ridgeline, stepped parapets, cornice lines, or changes in roofline elevation.*
  - (b) *The distance between rooflines where articulation occurs shall be measured from the center point of the street-facing gable, dormer, or offset, to the center point of the next street-facing gable, dormer, or offset, or to the*



*edge of the roof if that is the next closest break in the roofline (see Figure 50.06.001-N).*

**Response:** The proposed rooflines articulate to correspond with the projecting bay and recessed entry. These are done with the addition of a gable at the projection location which orients 90 degrees from the main roof structure. The roof articulation occurs less than every 30'.

- (3) *The front entry to each individual unit shall either provide a covered porch or stoop that is at least six ft. in depth or be recessed at least two ft. into the front building elevation.*

**Response:** The recessed front entry is covered by a porch roof and is at least 6' in depth.

- (4) *All building elevations facing a street or public space shall provide a minimum of 25% glazing. Glazing may be provided in windows or doors.*

**Response:** 25% glazing is provided on all street and public facing facades.

#### **50.06.002 Parking**

##### **50.06.002.2 Standards for Approval**

###### **50.06.002.2.a. Vehicle Parking**

1. Single-family dwelling and middle housing	1 space per dwelling unit
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**Response:** Two spaces per dwelling are provided either in a designated parking pad or within an enclosed garage. In addition, 5 parallel spaces are provided along the private drive.

#### **50.06.003 Circulation and Connectivity**

##### **50.06.003.3 On-Site Circulation-Bikeways, Walkways, and Accessways**

###### **50.06.003.3.a. Applicability**

**Response:** The West Lake Grove Townhomes will contain 23 townhomes on individual lots, with individual homeowners, and within residential zones. As such, all onsite circulation improvements will be privately-owned and used by the homeowners. The project does not include bikeways, walkways or accessways, as those are intended for public use.

The Boones Ferry and Upper Drive rights-of-way provide nearby circulation for public circulation and connectivity. As shown on the Landscape Plan Sheet L1.0, the West Lake Grove Townhomes project plans to provide a public pedestrian path that will connect from the Upper Drive right-of-way to Boones Ferry Road offsite to the northeast corner of the Habitat subdivision.

###### **50.06.003.3.b.ii.-v. Standards for Approval**

**Response:** As noted above, The West Lake Grove Townhomes project includes privately-owned residential townhomes, each on an individual lot. As such, onsite circulation improvements are not required to meet the standards of this subsection.



- (ii.) The project includes a sidewalk along the north side of Radiance Lane. In addition, there is a 5' wide pathway planned to connect the sidewalk to Upper Drive, along the site's eastern boundary.
- (iii.) Circulation improvements on the site will be privately owned and not provided for public use. As such, these are not required to be designed to ADA standards.
- (iv.) The sidewalk on Radiance will be concrete and will be differentiated from the asphalt roadway.
- (v.) The Boones Ferry Road right-of-way provides nearby access for public use by bicycles and pedestrians. The Radiance Lane sidewalk provides a direct connection from the project to Boones Ferry Road.

#### **50.06.003.3.c. Standards for Construction**

**Response:** As a residential townhome project, the West Lake Grove Townhomes will meet the appropriate standards for residential private-use circulation standards. No bikeways, walkways or accessways are planned for the project.

The project will include onsite private circulation improvements for the homeowners of the townhomes. All onsite improvements are designed, and will be constructed, to meet City site improvement and private residential standards.

#### **50.06.004 Site Design**

##### **50.06.004.1 Landscaping, Screening, and Buffering**

**Response:** The proposed project is subject to Landscaping Standards of the West Lake Grove District. Please refer to the Applicant's responses to 50.05.005, above.

#### **50.06.006 Geologic Hazards and Stormwater Management**

**Response:** The standards within 50.06.004 were addressed and met with the subdivision application approval and subsequent public improvement application (LU 18-0024).

#### **50.06.008 Utilities**

**Response:** The standards within 50.06.004 were addressed and met with the subdivision application approval and subsequent public improvement application (LU 18-0024).

#### **50.08 Variances**

##### **50.08.002 Minor Variances**

##### **50.08.002.2 Minor Variance Classifications**

- a. *A variance for a single-family dwelling, middle housing dwelling, or an associated accessory structure that does not comply with LOC 50.03.004.2.b, Reduction of Side or Rear Yard Setbacks for Accessory Structures, provided:*
  - i. *Twenty percent or less reduction from yard setbacks or the Oswego Lake setback:*
    - (1) *The resulting side yard setback is not less than five ft.;*

**Response:** The proposed variance is to allow a 20% encroachment into the south setback facing the undevelopable railroad property in order to allow the townhomes on that side of the site to have a usable outdoor deck space. The natural slope and resultant grading of the site does not allow for



occupiable yards on grade. The variance would provide positive benefits for the future residents of the property, allowing them to access views to the south including the natural character of the adjacent property.

### **50.08.002.3 Minor Variance Criteria**

#### **50.08.002.3.a General**

*Except as provided in subsection 3.b of this section, the reviewing authority may grant a minor variance from the requirements of this Code if the following criteria are met:*

- i. The granting of the variance will not be detrimental to the public health or safety;*

**Response:** The proposed variance would allow a 5' encroachment into the 25' back yard of the privately-owned townhomes located along the southeast property line, adjacent to the existing railroad right-of-way. This variance is requested to provide the addition of decks to the Type D townhomes. As these townhomes will be privately owned on individual private lots, there will be no public access to the decks or yards and, therefore, no detriment to public health or safety. As discussed further below, the addition of these decks will not impact natural or physical systems that would result in any harm to the public.

- ii. The granting of the variance will not be materially injurious to properties or improvements within 300 ft. of the property;*

**Response:** The requested variance will allow the addition of decks on the first floor of the Type D units, as shown on Architectural Site Plan Sheet DR0.50, and are located on Lots 16-23. As designed, the placement of the decks is such that impacts to properties within 300 feet are minimized in terms of access to light or views or other material impacts. As the decks are placed on the south side of the units, the properties to the north would not be directly impacted. To the west, the subject property lies within the 300' feet. To the east, residential homes will be buffered by the 15' planted buffer strip along the subject property's east property line. The railroad right-of-way that abuts the site to the southeast will not be negatively impacted, as the right-of-way is used only by freight trains and the right-of-way width provides adequate separation of the uses. The homes south of the subject units within 300' are not expected to be impacted by the addition of the decks, as the proposed decks are of a small size and profile. In addition, the site will have a planted 15' buffer along the property line to minimize any visual impacts to properties to the east and south.

- iii. The granting of the variance will have little or no negative impact on the streetscape (e.g., pedestrian environment or other aspects of the public realm that contribute to the neighborhood character); and*

**Response:** As the proposed decks are located at the back of the units, there will be no impact to the streetscape of the project.

- iv. The proposed development will not adversely affect existing physical and natural systems such as traffic, drainage, Oswego Lake, hillsides, designated Sensitive Lands, historic resources, or parks, and the potential for abutting properties to use solar energy devices any more than would occur if the development were located as specified by the requirements of the zone.*

**Response:** The proposed decks are 5' x 8' in size and will be cantilevered over the existing grade. Given the topography, these decks provide usable outdoor space on Lots 16-23 and will be individually attached to the houses on lots. The site is not located within any designated Sensitive Lands and does not have historic resources. As the decks are of small size (5' by 8') and low profile.



The adjacent property to the south is a 100' wide railroad right-of-way that slopes steeply below Lots 16-23 and contains numerous existing evergreen trees. These decks will not affect the ability of neighboring properties to use solar energy devices

In compliance with variance criteria, this setback reduction would not negatively impact views, access to light or solar energy, physical or natural systems, or any other concern for the neighboring property or the public.

## Conclusion

As proposed, this Development Review and Minor Variance Application demonstrates through a combination of the findings in this narrative and supporting substantial evidence that all applicable Lake Oswego *Municipal Code* standards and criteria are satisfied. The Applicant thereby respectfully requests the City of Lake Oswego's approval of this land use application.



# **Major Variance Application**

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To  
**West Lake Grove Design District Code**  
for  
**Minimum Tree Caliper & Minimum Shrub Size**

Prepared For:

Habitat for Humanity Portland Region  
1478 NE Killingsworth St  
Portland, OR 97211

Prepared By:

Westlake Consultants, Inc.  
15115 SW Sequoia Parkway, Suite 150  
Tigard, OR 97224



**Applicant/Property Owner:** Habitat for Humanity Portland Region  
1478 NE Killingsworth St  
Portland, OR 97211  
c/o Leigh Armstrong  
Phone: 503-894-6486

**Applicant's Representative:** Ken Sandblast  
Westlake Consultants, Inc.  
15115 SW Sequoia Parkway, Suite 150  
Tigard, OR 97224  
Phone: (503) 684-0652  
Email: [ksandblast@westlakeconsultants.com](mailto:ksandblast@westlakeconsultants.com)

**Landscape Architect** Studio Wild Landscape Architecture

**Proposed Project:** A Major Variance to reduce the minimum tree caliper size from 3-inch to 1.5-inch, and the shrub size from 2-gallon to 1-gallon in the West Lake Grove (WLG) Design District.

**Property Location:** 16858 Boones Ferry Rd. Lake Oswego, OR 97035

**Tax Map/Lots:** 21E18AA/400 & 21E18AB/100, 200, 300, 400 (5 Tax Lots)

**Site Size:** 1.92 Acres

**Zoning & Comprehensive Plan Designations** Residential Mixed Use (WLG RMU) & Townhome Residential (WLG R-2.5)

**Neighborhood Association** Lake Grove



## **Project Description and Existing Conditions**

The West Lake Grove Townhomes subdivision plat includes the approved removal of native conifer and deciduous trees. As a statement of the value that the City of Lake Oswego puts on maintaining a native tree canopy, City code states that trees planted for mitigation of these removals must be native species.

Habitat for Humanity and the project design team agree with this value of re-establishing as much of a native tree canopy as possible.

The proposed tree mitigation plan includes **57** new trees in total. These include: (i) six (6) street trees along Boones Ferry, specified as Swamp White Oak, a high-quality non-native tree that is adapted to site conditions, (ii) four (4) street trees planted on private property along Upper Drive, of which two are a native Douglas fir, and (iii) three (3) are a non-native Liquidambar that is well adapted to Oregon and shows superior fall color. The mitigation plan also includes 14 site trees in the shared open-space tracts, all of which are native species adapted to the site, including Douglas fir, Western red cedar, and just 2 bigleaf maple to complement the predominately evergreen canopy. And within the required 15' buffer planting, the mitigation plan includes 32 trees that are a mix of locally and regionally native evergreen trees including Douglas fir, Western red cedar, and shore pine. This combination was chosen to comply with the West Lake Grove district's emphasis on an evergreen canopy, and to provide a variety of foliage types.

In addition to the proposed tree canopy, we have proposed a shrub and groundcover layer that is primarily made up of native vegetation as well. Use of native vegetation is in keeping with the West Lake Grove District design standards, which call for "High quality designed landscapes involving native plant materials or those which have naturalized to the locale, which will grow to significant size and impart seasonal color and interest".

We believe that a primarily native plant palette is appropriate for the site because it will be low maintenance, drought tolerant, blend with the adjacent forested character of the railroad right of way, augment the surrounding treed character of the West Lake Grove neighborhood, and support local wildlife. Native wildlife including songbirds and beneficial pollinators need a variety of native plants within all the available vegetation layers, short to tall, to complete their life cycles.

In summary, planting native trees and shrubs of typical nursery sizes where constraints of site conditions and/or species characteristics warrant, will provide a healthier landscape and much greater benefit to the neighborhood and the City of Lake Oswego, compared to planting code-minimum sizes with no regard to context.

## **Summary of Variance Requests**

This major variance request includes:

- Planting native deciduous trees of a 1.5" caliper and native evergreen trees of 6' height where significant challenges exist to the planting of 3" caliper trees, which is within the root protection zones of existing trees, and where site slopes are greater than 3:1, making access difficult..



This change would affect 2 native deciduous trees, and 6 native evergreen trees, representing 14% of the total trees on site. This request represents the minimum change necessary.

- Planting 1-gallon shrubs in some areas where the specified plant variety is intended to be a smaller shrub for safety and design reasons. The primary reason for this request is that shrubs that will be relatively small at maturity and that grow incredibly fast as some natives do, are typically available in only a 1-gallon size. The primary considerations behind this request are availability, plant health, and installation effort, however, given that over 1,100 shrubs are scheduled to be planted on the site, there is a cost benefit to planting the smaller size, as well.
- Casefile LU 22-0059 includes a request for removal of five trees due to the impacts of the construction of townhomes. When approved, this variance will be applicable to the mitigation requirements of this application, including the requested five trees.

## **Applicable Landscape Standards: West Lake Grove Design District**

The West Lake Grove Plan District general landscaping standard, Subsection 50.05.005.4.f.iii(2)(a), calls for evergreen trees to be a minimum of 3" caliper, and deciduous trees to be a minimum of 3" caliper. These standards apply to the open space tracts and common areas of the site.

Within 15' buffer areas along the south and east boundaries of the site, Subsection 50.05.005.9.d.viii.2 calls for a minimum of 6' tall evergreen trees, and 3" caliper deciduous trees. As shown in the submitted Landscape Plan, Sheet L1.1, the plan includes a required 15' buffer along the eastern and southern boundaries of the site.

The West Lake Grove Plan District landscaping standard calls for required shrubs to be a minimum of 2-gallon container size, per Subsection 50.05.005.4.f.iii(2)(b).

## **Applicant's Narrative Responses to Variance Criteria**

### ***Chapter 50.08 Variances***

#### ***50.08.004 Major Variances***

##### ***50.08.004.3.a Major Variance Criteria***

*The reviewing authority may grant a major variance from the requirements of this Code if:*

- The request is necessary to prevent unnecessary hardship based on the following considerations:*
  - (1) The physical circumstances of the property involved;*
  - (2) Whether a hardship was created by the person requesting the variance;*
  - (3) The economic impact on the applicant if the variance is denied; and*
  - (4) Other factors deemed relevant by the reviewing authority.*

## **RESPONSE:**



## **(1) Physical circumstances of the site:**

### **Related to trees**

Due to the physical circumstances of the site, planting smaller trees is proposed for reasons of planting logistics, preservation of the existing native landscape, and health of the newly planted trees.

Most of the site is constrained by steep slopes and/or by the presence of existing mature trees which need to be preserved. These conditions make the logistics of planting larger trees with large/heavy root balls very difficult.

Hand installation of the larger-sized trees (3-inch caliper) on the site may not be possible due to their size and weight, requiring the use of machinery to move and install the trees, potentially harming the primarily native landscape. For example, the root ball of a 1.5-inch caliper tree would be approximately 18 inches in diameter and weigh 250 lbs., while a 3-inch caliper tree would have a 32-36-inch root ball and weigh at least 850 lbs.

The Site Constraints exhibit, attached Sheet L1.4, provides information about physical constraints in specific areas of the site.

Tract A is constrained by portions of steep slopes (2:1), and by underground sanitary and storm sewer utilities. Where flat and accessible ground exists and is not constrained by utilities, the plan includes 3" caliper trees. However, in the steeper portion of Tract A, we are requesting a reduction to the required tree size so that the root balls can be planted by hand.

In Tract B, along the eastern edge of the site, the alignment of the new water line rules out the planting of any new site trees. The only trees being proposed in Tract B are 6' evergreen buffer trees, where space allows.

In Tract C, a grove of large mature conifer trees is being preserved. The plan proposes 4 new conifers to be planted in the grove to diversify the canopy layers and ages of the trees. This was a new planting area not identified in exhibit F-014, but identified by the current design team as a way to increase the number of new trees planted on site. However, all of these new trees would be planted within the root protection zones of the existing mature trees. As required by the arborist, all planting work done within the tree protection zones must be by hand. Also, smaller planting holes minimizes potential conflict with existing tree roots. Thus, smaller trees as requested are more protective of existing tree health.

Not only will planting smaller-caliper trees benefit the existing mature trees on the site, based on established horticultural industry experience, transplanting trees and shrubs at smaller sizes leads to less transplant shock and, ultimately, the plant establishes to its new environment more quickly if it is planted at a smaller size. The Applicant's goal is to establish a tall, healthy, thriving native tree canopy on the site, which would be better fostered by planting tree stock of a 1.5" caliper for deciduous or 6' height for evergreens.

### **Related to shrubs**

The site includes several locations where public safety dictates that shrubs and groundcover be kept to 36" maximum height or lower. This includes in the public Right of Way, portions of the 5' path that is shown along the eastern property line, and the grove in Tract C where human visitation is to be expected.



Site conditions around existing trees to be preserved, especially in Tract C, also mean that smaller planting holes would be of benefit to the health of the existing trees.

## **(2) Hardship Not Created by Applicant:**

The Applicant has not created the hardship, as the request to reduce the required planting size is in response to installation feasibility, the promotion of plant health of the newly planted trees and the established native landscape, plant availability and cost.

### **Tree Installation:**

The site's character, including steep slopes in some areas and the presence of existing mature native trees to be preserved, supports the Applicant's request to select 1.5" caliper trees and to place and plant the new trees carefully, through hand-digging versus machine excavation. The Site Constraints Exhibit, L1.4, illustrates the areas that present the greatest challenge to installation.

### **Shrub Installation:**

This planting plan includes over 1,100 shrubs (not including groundcovers). A planting hole for a two-gallon plant needs to be dug 25% larger than a hole for a one-gallon plant. By specifying 88% of shrubs in the smaller one-gallon size, a significant amount of labor can be saved and the impact to the roots of surrounding native trees is minimized.

### **Tree Availability:**

The Applicant contacted a number of local large-scale suppliers of native trees and found that they do not stock or plan to grow native deciduous or evergreen trees in 3" caliper size. Such tree stock would need to be contract-grown, which is a more costly process requiring a much longer lead time.

### **Shrub Availability:**

Our plan contains a combination of taller and shorter shrubs, as is demanded by good design principles, creating an aesthetic environment, and ensuring clear site lines and visibility as is required for public safety. Shrubs selected for the landscape are more generally available in the 1-gallon size, as well, and as mentioned, plants at a smaller size would minimize transplant shock and more effectively allow the plants to become established and thrive.

There is a relationship between the ultimate size of the shrub and the container size in which it might be available. Shrubs that ultimately grow to larger sizes are reasonably available in 2-, 3-, or 5-gallon size. Shrubs that remain small, such as the native Cascade Oregon grape (*Mahonia nervosa*), are more generally available in 1-gallon size. This is because they grow more slowly, and a plant in a 2-gallon container is already very close to or at its mature size. Additionally for fast-growing native shrubs such as snowberry and thimbleberry, growers do not grow them to 2-gallon size because there is no demand at that size as most landscapers plant them at the smaller size.



### **(3) Economic Impact / Planting Costs:**

The purchase and installation cost of the trees and shrubs is a factor in this variance request. The higher plant material costs, in addition to the higher installation cost of the larger-sized trees, mentioned above, pose a significant economic impact. The range of available sizes of plant material reflects the nursery industry's experience in providing plant materials of optimal health, as well as the logistics of moving plant materials. As mentioned above, the availability of trees at the 3" caliper size is very limited, and the selected shrubs are more readily available in the 1-gallon size.

#### **Trees:**

Efforts and costs increase exponentially with increased size of plant material. A 1.5" caliper tree will have a rootball of about 18" diameter, be 10-12' tall, weigh about 250 lbs, and it requires 1-2 workers to maneuver the tree into the hole. A 3" caliper tree will have a rootball of 32-36" diameter, may be 14-16' tall, weigh at least 850 lbs, and need to be maneuvered either by machinery or by a crew of 4 strong workers, at very considerable effort. Considering the steep slopes present on much of the site, hand labor to install 3" caliper trees may not be possible.

A typical 1.5" caliper deciduous native tree or 6' height native conifer costs \$150 each. Installed, the price would be about \$300 per tree. By comparison, a 3" caliper tree costs about \$500 plus another \$500 to install, bringing the total cost to \$1,000 per tree. The requested variance for 8 trees would lead to cost savings of \$5,600. See Sheet L1.2 of the landscape plan for the total proposed trees being planted.

#### **Shrubs:**

On average, a one-gallon plant costs \$8, while a 2-gallon plant costs \$16 on average. Planted costs (including installation) would be \$16 and \$32, respectively. By using one-gallon size plants for 82 percent of the scheduled planting, about \$9000 will be saved in plant costs, and an additional \$9000 on installation costs for a total of \$18,000 estimated savings.

We propose using 2-gallon shrubs for larger shrub species, which account for 18% of all shrub materials on the planting plan.

- ii. *Development consistent with the request will not be injurious to the neighborhood in which the property is located or to property affected by the request based on the following considerations:*
  - (1) *An analysis of the physical impacts such development will have, such as visual, noise, traffic and the increased potential for drainage, erosion and landslide hazards;*
  - (2) *The perceptions of residents and owners of property in the neighborhood concerning the incremental impacts occurring as a result of the proposed variance; and*
  - (3) *Other factors deemed relevant by the reviewing authority.*

**Response:** The proposed deviation from the larger planting size is expected to result in trees that more readily reach their full potential in terms of size and health.

Planting the smaller trees would reduce the disturbance of existing roots and soil near existing trees and areas of the site that have steeper slopes.



Initially, the trees and shrubs will be smaller, however, they will likely reach the 3" caliper/2-gallon size within three years. Ultimately, the trees and shrubs will have a greater chance of surviving the transplant shock and growing to healthy maturity.

No negative impacts are expected, as the achievement of a tall, thriving native tree canopy over time is more likely through this proposed variance. The perception of neighbors is likely to be positive with an onsite landscape that is thriving.

*iii. The request is the minimum variance necessary to make reasonable use of the property.*

**Response:** The request to reduce tree sizes impacts only 8 of the total 57 trees proposed on the site and is the minimum variance necessary. The request focuses on areas of the site where physical circumstances make planting larger trees much more difficult and, potentially, costly given the labor and machinery that may be required.

The request to reduce shrub sizes is limited to those species where larger sizes are out of line with the characteristics of the plant being specified, which is then reflected in its availability.

This request to reduce the required plant sizes is based on precedent and experience of the Landscape Architect and local area standards. Industry standards and best practices are reflected in the codes of many municipalities, which generally list 1.5" caliper as a minimum tree size, and 1-gallon as a minimum shrub size.

The landscape architecture team has determined that, in areas of the site with significant physical constraints, as shown on the attached Site Constraints exhibit, Sheet L1.4, the optimal and minimum sizes of 1.5" caliper or 6' height trees and 1-gallon shrubs will allow for the outcome for the new trees and shrubs and retain a natural and forested appearance on the site.





## NOTICE OF DEVELOPMENT REVIEW COMMISSION DECISION

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**File No.:** LU 22-0059

**Date of Decision:** August 7, 2023

**Property Owner/Applicant:** Habitat for Humanity Portland Region

**Applicant's Representative:** Westlake Consultants, Inc.

**Location of Properties:** 16858 Boones Ferry Road and 5100, 5054, and 5022 Upper Drive (Tax References 21E18AA00400 and 21E18AB00100, 21E18AB0000, 21E18AB00300 and 21E18AB00400)

**Description of Decision:** The Development Review Commission approved, subject to the conditions set forth in the Findings, Conclusions and Order document (decision) available as described, below:

- A Development Review Permit to construct 23 townhouses;
- A minor variance to reduce the required rear yard setback from 25 to 20 feet for Units D16-D23;
- Modification of LU 18-0024 (previously approved 23-lot subdivision for this site) to decrease the mitigation tree planting size and shrub size;
- A major variance to reduce minimum landscape planting sizes from 2-gallon to 1-gallon for shrubs within Tract C and from 3-inch caliper to 1.5-inch caliper for eight (8) trees; and,
- Removal of two (2) trees, Trees #2139 and 2144, for development purposes.

This decision will become final unless appealed as described below. For further information, please contact (staff), at 503-635-0290.

**How to Obtain Further Information:** The decision (staff report, findings, and all exhibits) are available for review online at [www.lakeoswego.city](http://www.lakeoswego.city). Type LU 22-0059 in the search box at the top of the screen and click on "public record of file" or a copy may be reviewed at City Hall:

Planning and Building Services Department  
City of Lake Oswego  
P.O. Box 369  
380 "A" Avenue  
Lake Oswego, OR 97034  
Phone: (503) 635-0290

**(OVER)**

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Respect. Excellence. Trust. Service.



**Right to Appeal:** This decision may be appealed to the City Council by filing a written Notice of Intent to Appeal within **fifteen calendar days** of the date of decision, above. Please note only those persons who have participated in the process by submitting either oral or written testimony may appeal this decision.

A Notice of Intent to Appeal shall:

1. List the File Number and Date of Decision.
2. Contain a statement that demonstrates that the appellant is the applicant or appeared orally or in writing at the hearing.
3. Include name, address and signature of the appellant.
4. Be accompanied by payment of a filing fee, if applicable.
5. Describe the issues raised for Council's consideration and the specific reasons why the appellant believes the Development Review Commission's decision is incorrect or not in conformance with the applicable criteria. Failure to comply with these requirements can result in rejection of the appeal.

The Notice of Intent to Appeal must be filed by **5:00 p.m., Tuesday, August 22, 2023:**

City Recorder  
City of Lake Oswego  
P.O. Box 369  
380 "A" Avenue  
Lake Oswego, OR 97034  
Phone: 503-635-0215  
[CityRecorder@lakeoswego.city](mailto:CityRecorder@lakeoswego.city)

There is no fee to file an appeal on this application.





# City of Lake Oswego

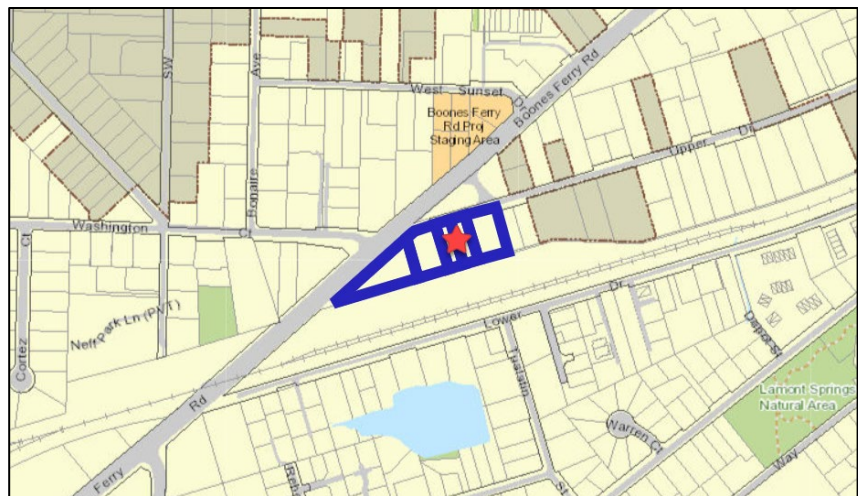
## Planning Division

<b>File Number</b>	LU 22-0059	<b>Report Date</b>	June 9, 2023
<b>Applicant/Owner</b>	Habitat for Humanity Portland Region	<b>Zoning</b>	WLG RMU and WLG R-2.5
<b>Applicant's Representative</b>	Westlake Consultants, Inc.	<b>Neighborhood</b>	Lake Grove
<b>Site Addresses</b>	16858 Boones Ferry Road and 5100, 5054, and 5022 Upper Drive	<b>120-day Deadline</b>	September 9, 2023
<b>Tax References</b>	21E18AA00400 and 21E18AB00100, -200, -300 and -400	<b>Public Hearing Date</b>	June 21, 2023
<b>Staff</b>	Ellen Davis, AICP, Associate Planner		

### I. APPLICANT'S REQUEST

The applicant is requesting approval of the following:

- Development Review Permit to construct 23 townhouses;
- A minor variance to reduce the required rear yard setback from 25 to 20 feet for units D16-D23;
- Modification of LU 18-0024 to decrease the mitigation tree planting size and shrub size;
- A major variance to reduce minimum landscape planting sizes from 2 gallon to 1 gallon for shrubs and from 3-inch caliper to 1.5-inch caliper for trees; and,
- Removal of five (5) trees for development purposes.



### II. RECOMMENDATION

**Approval** of a Development Review Permit to construct 23 townhouses, minor variance to reduce the required rear yard setback for units D16-D23, and major variance and modification of LU 18-0024 to reduce the minimum planting size of eight (8) mitigation trees, with conditions; **denial** of the proposed modification of LU 18-0024 and major variance to reduce minimum shrub planting size from 2 gallon to 1 gallon and **denial** of the proposed tree removal. The recommended conditions of approval are listed below.



Conditions			Post Approval Use Only	
A.	Prior to Issuance of Any Grading or Building Permits, the Applicant/Owner Shall:		Notes/ Status	Dept.
	1.	Submit final building plans for review and approval of staff that are the same or substantially similar to Exhibits E-004, and E-007 through E-013 <u>if</u> the 6-foot right-of-way directly south of the subject site is vacated prior to building permit issuance; however, if the 6-foot right-of-way is not vacated, then for Units D16-D23, the structures shall meet the 20-foot rear yard setback, (such as by removal of the rear decks), measured from the current south property line, as varied by the approved minor variance.		
	2.	Record a covenant pursuant to LOC 39.06.105(5)(d) or pay all applicable fees waived to date.		
	3.	Submit a final drainage report, prepared by a registered engineer, that complies with the Stormwater Management Code and LOSWMM, to the satisfaction of the City Engineer. If the final design is as proposed, the final design report must:		
	a.	Demonstrate that all new and redeveloped impervious surface generated by the project is accounted for in the sizing of water quality and flow control facilities.		
	b.	Demonstrate that the proposed stormwater management facilities meet the minimum geometry and configuration requirements in LOSWMM, Section 4.6.		
	c.	Demonstrate that sizing calculations to determine the required number of treatment cartridges is consistent with the General Use Level Designation approval documents from Washington Department of Ecology and adhere to vendor recommendations for maintenance, given the configuration of the treatment facility downstream of detention. By locating downstream of detention, a larger volume of runoff will be treated than typically associated with a design flow rate of 0.06 cfs and could result in more frequent maintenance needs.		
	d.	Include facility sizing calculations, to demonstrate that the proposed buried stormwater detention facility has sufficient storage and match the 2-year, 5-year, and 10-year pre-developed discharge rates. If the calculated orifice size needed to meet the flow control requirements is less than the City's minimum allowable construction standard of 1.0 inch, the required orifice size should be provided in the calculations but may be increased to 1.0 inch in the design drawings.		
	4.	Submit final plans that comply with the LOSWMM for all stormwater management facilities. Final facility placement must adhere to setback distances defined in LOSWMM Table 3.1.		
	5.	Obtain a DEQ Construction Stormwater Permit (NPDES 1200-C) prior to construction.		
	6.	Per LOC Chapter 52, apply for and obtain an approved erosion prevention and sediment control permit issued through the City of Lake Oswego, and install and maintain all BMPs as indicated in the permit. These measures must remain in place as indicated throughout the development period.		



	7.	Townhomes on Lots 1 and 2 and Lots 22 and 23 may not be constructed until townhomes on the other 19 lots are reviewed and approved in compliance with the general and specific landscaping standards, building design (LOC 50.05.005.4.g), and required design elements for the townhomes (LOC 50.05.005.5.b and 7.b) is shown.		
<b>B.</b>	<b>Prior to the Final Building Inspection, the Applicant/Owner Shall:</b>			
	1.	Provide certification from the engineer of record that the stormwater facilities were constructed per the design and are functioning properly.		
	2.	Provide proof of recorded operations and maintenance plans (OMPs) for each stormwater facility. The OMPs must describe how to properly maintain the facilities, the frequency of maintenance required and the party responsible for maintaining the facilities.		
	3.	<p>Install all street trees and landscaping as proposed in Exhibit E-005 or substantially similar, and all required mitigation trees <u>if</u> the 6-foot right-of-way directly south of the subject site is vacated prior to building permit issuance; however, <u>if the 6-foot right-of-way is not vacated</u>, then the landscape plantings and mitigation trees in the southern landscape buffer shown on Exhibit E-005 shall be planted on site (based on the current property line location), and request an inspection by staff.</p> <p>The required minimum planting size for:</p> <p>a. Shrubs shall be met per LOC 50.05.005.9.d.vi;</p> <p>b. Trees shall be met per LOC 50.05.005.9d.vi, except per the major variance, the size of trees shall be reduced from 3-inch caliper to 1.5-inch caliper for trees within root protection zones and areas of steep slope.</p> <p>Any mitigation trees located on individual lots shall be planted prior to final building inspection for the dwelling on each lot.</p> <p>[Note: The applicant is advised to request the inspection well in advance of the desired occupancy or final inspection date, as any missing or dead landscaping will be required to be installed/replaced prior to approval of the final occupancy.]</p>		
	4.	Provide a 1-year guarantee (one 12-month growing season from the date of installation) for all landscape materials, pursuant to LOC 50.06.010.2. The guarantee shall consist of a security in the amount of 5% of the total landscaping cost (including labor). The applicant/owner shall also submit a landscape maintenance plan for review and approval of staff.		

#### **Code Requirements:**

- Expiration of Development Permit:** Pursuant to LOC 50.07.003.17, the Development Review Permit approved by this decision shall expire three years following the effective date of the development permit, and may be extended by the City Manager pursuant to the provisions of this section.
- Tree Protection:** Submit a tree protection plan and application as required by LOC 55.08.020 and 55.08.030 for review and approval by staff, including off-site trees that are within the construction zone. The plan shall include:



- a. The location of temporary tree protection fencing, consisting of a minimum 6-foot high cyclone fence secured by steel posts around the tree protection zone, or as recommended by the project arborist and approved by the City.
- b. A note stating that no fill or compaction shall occur within the critical root zones of any of the trees, or that if fill or compaction is unavoidable, measures will be taken as recommended by a certified arborist to reduce or mitigate the impact of the fill or compaction. The note shall also inform contractors that the project arborist shall be on site and oversee all construction activities within the tree protection zone.
- c. A note that clearly informs all site contractors about the necessity of preventing damage to the trees, including bark and root zone. The applicant and contractor(s) shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction.
- d. A sign shall be attached to the tree protection fencing which states that inside the fencing is a tree protection zone, not to be disturbed unless prior written approval has been obtained from the City Manager and project arborist.

**Notes:**

1. The applicant is advised to take part in a Post Land Use Approval meeting. City staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting, please contact the staff coordinator at (503) 635-0290.
2. The land use approval for this project does not imply approval of a particular design, product, material, size, method of work, or layout of public infrastructure except where a condition of approval has been devised to control a particular design element or material.
3. Development plans review, permit approval, and inspections by the City of Lake Oswego Planning and Building Services Department are limited to compliance with the Lake Oswego Community Development Code, and related code provisions. The applicant is advised to review plans for compliance with applicable state and federal laws and regulations that could relate to the development, i.e., Americans with Disabilities Act, Endangered Species Act. Staff may advise the applicant of issues regarding state and federal laws that staff member believes would be helpful to the applicants, but any such advice or comment is not a determination or interpretation of federal or state law or regulation.

**III. APPLICABLE REGULATIONS**

<b>CODE CRITERIA APPLICABLE TO APPLICANTS REQUEST</b>				
<b>Code Section</b>	<b>Title</b>	<b>Condition (C), Variance (V), or Exception (E)</b>	<b>Criteria Met</b>	<b>Page # in Staff Report</b>
<b>City of Lake Oswego Community Development Code [LOC Chapter 50]</b>				
50.02.002	Commercial, Industrial, Mixed Use Zones		Yes	Page 7
50.03.002.3	Commercial, Mixed Use, Industrial & Special Purpose Districts Use Table		Yes	Page 8



<b>CODE CRITERIA APPLICABLE TO APPLICANTS REQUEST</b>				
<b>Code Section</b>	<b>Title</b>	<b>Condition (C), Variance (V), or Exception (E)</b>	<b>Criteria Met</b>	<b>Page # in Staff Report</b>
50.03.003	Use Specific Standards		Yes	Page 8
50.04.001.4	Dimensional Standards for WLG Zones	Condition A(1)	Yes	Pages 8-9
50.04.002	Special Street Setbacks		Yes	Pages 9-10
50.05.005	West Lake Grove Design District Standards	Condition A(1)	Yes	Pages 10-13
50.06.002	Parking		Yes	Page 13
50.06.003.1	Access/Access Lanes (Flag Lots)		Yes	Page 13
50.06.003.2	On Site Circulation – Driveways & Fire Access Roads		Yes	Page 13
50.06.003.3	On Site Circulation – Bikeways, Walkway & Accessways		Yes	Page 13
50.06.004.1	Landscaping, Screening & Buffering	Condition B(3)	Yes	Page 13
50.06.004.2; 50.07.004.2	Fences		Yes	Pages 13-14
50.06.004.3	Lighting Standards		Yes	Page 14
50.06.006.3; 50.07.004.1	Stormwater Management Standards	Conditions A(3)-(5) and B(1)-(2)	Yes	Page 14
50.07.003.1	Application Procedures			
50.07.003.5	Conditions on Development			
50.07.003.6	Effect of Decision			
50.07.003.7	Appeals			
50.07.003.10	Certificate of Occupancy			
50.07.003.11	Modification of Development Permits		Yes/No	Pages 17-23
50.07.003.14	Minor Development Decisions			
50.08.002	Minor Variances		Yes	Pages 14-17
50.08.004	Major Variances		Yes/No	Pages 17-23
<b>City of Lake Oswego Utility Code [LOC Chapter 38]</b>				
38.25	Stormwater Management Code	Conditions A(3)-(5) and B(1)-(2)	Yes	Pages 23-24
<b>City of Lake Oswego Streets &amp; Sidewalks Code [LOC Chapter 42]</b>				
42.03.135	Method of Establishing Special Street Setback Reference Line		Yes	Page 24
55.02.010 – 55.02.084	Tree Removal & Mitigation		No	Pages 24-33
Prior Approvals: LU 18-0024 23-lot subdivision				



#### **IV. BACKGROUND/EXISTING CONDITIONS**

1. The site is approximately 1.9 acres, consisting of five tax lots, all vacant. The site has frontage on Boones Ferry Road, a major arterial, and Upper Drive, a neighborhood collector street (Exhibit E-001).
2. The site is in the West Lake Grove (WLG) Design District and is zoned WLG RMU (west half – Tax Lots 21E18AB00400 and -300) and WLG R-2.5 (east half – Tax Lots 21E18AB00100 and -200, and 21E18AA00400). The properties to the north across Boones Ferry Road are zoned WLG RMU and are developed with commercial structures. The properties to the northwest across Boones Ferry Road and Washington Court are zoned R-7.5 and developed with single-family dwellings. The property to the northeast across Upper Drive is vacant and split zoned WLG R-2.5, WLG OC, and WLG RMU, and is owned by the City. The property to the east is zoned R-7.5 and is developed with a single-family dwelling. The property to the south is zoned R-7.5 and is the Union Pacific Railroad right-of-way (Exhibit E-002).
3. The site slopes down from an elevation of 202 feet along the north property line to an elevation of 180 feet along the southern property line (Exhibit E-003).
4. The site was approved for a 23-lot townhouse subdivision with a private street per LU 18-0024.
5. The materials show an additional 6-foot pedestrian right-of-way to the south of the site as being a part of the subject site. That was based on the assumption by the applicant that a pathway vacation would be approved by the Lake Oswego City Council on June 6, 2023, per proposed Ordinance 2926 (a request to vacate the full length of the 6-foot right-of-way between Bryant Road and Boones Ferry Road). The vacation proposal was not approved by the City Council on June 6, 2023. The current location of the south property line is indicated in Exhibit E-016 for reference.

#### **V. PUBLIC NOTICE OF APPLICATION AND APPLICANT’S BURDEN OF PROOF**

##### **A. Neighborhood Meeting:**

A neighborhood meeting for the proposal was held on July 25, 2022, to satisfy the requirements of LOC 50.07.003.1.f (Exhibit F-006).

##### **B. Public Notice to Surrounding Area:**

The City has provided adequate public notice and opportunity to comment, as required by LOC 50.07.003.3.a. Two comments were received as of the date of this report:

Exhibit G-500 (incorrectly dated June 21, 2023, as it was received June 6, 2023) opposes the application. The specific components of the application opposed, and the reasons for opposition are unclear from the submitted comment, “busy intersection with Boones Ferry Road and Upper Drive” and “avoid a dangerous, environmental disaster.” No specific criteria are directly addressed; a continuation of the Commission’s public hearing appears to be requested [per LOC 50.07.003.4.a.xii and ORS 197.763(6)(a)], presumably to submit additional evidence, e.g., “I would like a second meeting.”



Exhibit G-100 supports the proposed townhouse construction, but opposes removal of Trees 1318 and 2139, discussed below under LOC 55.02.080. The comment also expresses concerns related to the use of the Upper Drive right-of-way to the north of the site and requests closure of a portion of Upper Drive with a gate or bollards and landscaping in this portion of the right-of-way. Public improvements within the rights-of-way abutting the subject site were addressed and required in LU 18-0024 as a consideration and condition of the subdivision approval. The current application includes no required public improvements.

C. Burden of Proof:

Per LOC 50.07.003.1.b, the applicant for a development permit shall bear the burden of proof that the application complies with all applicable review criteria or can be made to comply with applicable criteria by imposition of conditions of approval. The applicant has provided sufficient evidence to enable staff to evaluate the proposal. These documents are listed as exhibits at the end of this report.

VI. MINOR DEVELOPMENT

A. Classification of Application

Minor Development [LOC 50.07.003.14.a]: The applicant is requesting approval of a Development Review Permit for a townhouse development. This is classified as minor development per Subsection 14.a.ii(5). The applicant is also requesting a minor variance to reduce the required rear yard setback for Lots 16-23 to reduce the setback from 25 feet to 20 feet, a major variance to the WLG requirements for minimum shrub and tree planting sizes, and modification of the conditions of approval of LU 18-0024 (23-lot subdivision for future townhome development). Both the minor and major variances are classified as minor development per LOC 50.07.003.14.a.ii(15). Minor modifications to approved minor development review permits are classified as minor development per LOC 50.07.003.14.a.ii(18).

B. Criteria for Review of Application

Per LOC 50.07.003.14.d, for any minor development application to be approved, it shall first be established that the proposal complies with:

**1. The requirements of the zone in which it is located;**

**Site Specific Standards for Commercial, Mixed-Use, & Industrial Zones [LOC 50.02.002.2]**

Per LOC 50.02.002.2.iii, all development in any commercial zone will be developed under a unified site plan. The site plan will identify circulation patterns and access points, method of provision of public services and general placement of lots and structures, general area and type of uses.

As the applicant states in the narrative (Exhibit F-001, pg. 6) and demonstrated in the site plan (Exhibit E-004), the site is proposed to be developed under a unified site plan. This standard is met.



**Use Table [LOC 50.03.002.3]**

The lots are zoned WLG RMU and WLG R-2.5. The applicant proposes attached, “for-sale,” single-family residential townhouse development. This is a permitted use in both the WLG RMU and WLG R-2.5 zones. Compliance with minimum residential density requirements were reviewed when the site was subdivided into 23 lots per LU 18-0024. This standard is met.

**Use-Specific Standards – Attached, Residential Townhome Uses in West Lake Grove [LOC 50.03.003.1.a]**

Compliance with minimum density, minimum lot width, and creation of individual lots was reviewed under LU 18-0024. Compliance with the maximum 60% lot coverage is addressed below under dimensional standards. As demonstrated in Exhibit E-004, each attached townhome unit is located on a separate lot. This standard is met.

**Dimensional Standards for WLG Zones [LOC 50.04.001.4.b and LOC 50.03.003.1.a.i(2)]**

This section contains the underlying WLG zone. Dimensional standards for the WLG RMU and WLG R-2.5 districts are listed in the table below. The applicant proposes a 23-lot townhouse development; the site was previously approved for subdivision into 23-lots under LU 18-0024.

<b>WLG RMU: Units A1, A2, and B3-B8</b>		
<b>Standard</b>	<b>Requirement</b>	<b>Proposed</b>
<b>Setbacks</b>		
Front (Boones Ferry Road)	10 feet	10 feet
Sides	10 feet (not abutting a single-family residential zone)	10 feet
Rear	10 feet (not abutting a single-family residential zone)	10 feet (Unit A1) or greater
<b>Lot Coverage</b>	60%	Range of 17 - 39%
<b>Height</b>	35 feet	Range of 28.2 - 35 feet

<b>WLG R-2.5: Units C9-C15</b>		
<b>Standard</b>	<b>Requirement</b>	<b>Proposed</b>
<b>Setbacks</b>		
Front (Upper Drive)	10 feet (measured from special street setback line)	10 feet
Sides	10 feet (not abutting a single-family residential zone)	10 feet



Rear	10 feet (not abutting a single-family residential zone)	Approx. 29 feet
<b>Lot Coverage</b>	60%	Range of 29 - 41%
<b>Height</b>	35 feet	34.75 feet

<b>WLG R-2.5: Units D16-D21 and WLG RMU: Units D22-23</b>		
<b>Standard</b>	<b>Requirement</b>	<b>Proposed</b>
<b>Setbacks</b>		
Front (Radiance Lane)	10 feet	10 feet
Sides	10 feet (not abutting a single-family residential zone)	10 feet
Rear	25 feet (abutting a single-family residential zone)	<b>20 feet</b> <b>(Minor Variance Requested)</b>
<b>Lot Coverage</b>	60%	Range of 24 - 43%
<b>Height</b>	35 feet	30.1 feet

As shown in the site plans, elevation plans, and building sections (Exhibits E-004, E-007 and E-008) and demonstrated in the tables above, the townhouses can comply with the applicable dimensional standards, as the rear yard setback is varied by the minor variance (discussed below), and as conditioned [Condition A(1)]. This standard is met.

[Note: Condition A(1) allows for two alternatives, depending on whether the 6-foot right-of-way along the southern property line is vacated prior to issuance of a building permit:

- If the vacation occurs: the final building plans for review and approval of staff must be the same or substantially similar to Exhibits E-004, and E-007 through E-013; or,
- If the vacation has not occurred: the final building plans for review and approval of staff are the same or substantially similar to Exhibits E-004, and E-007 through E-013, except for Units D16-D23, which shall meet the 20-foot rear yard setback, (such as by removal of the rear decks), measured from the current south property line, as varied by the approved minor variance.]

#### **Special Street Setbacks [LOC 50.04.002]**

The City Engineer establishes the centerline from which the special street setback (SSS) reference line is measured, pursuant to LOC 50.04.002.3 [§2]. All yard setbacks are measured from the special street setback line (they are exclusive of the special street setback) [Subsection 3].

Upper Drive is identified as having a special street setback of 25 feet measured from the SSS reference line established pursuant to LOC 42.03.135. The reference line is the line equidistant between the boundary lines of the existing 30-foot right-of-way. (See LOC



42.03.135 discussion, below). Yard setbacks shall be measured starting from a point 25 feet from the SSS reference line or from the lot line abutting the street, whichever is furthest from SSS reference line. In this case, the SSS extends 10 feet into the site and the 10-foot front yard setback is measured from there. As show on Exhibit E-004, the proposal complies. This standard is met.

## **2. Overlay and Design District standards;**

### **West Lake Grove Design District Clear and Objective Standards [LOC 50.05.005.9]**

The applicant has chosen to comply with the clear and objective review track for lots within the West Lake Grove Design District including the WLG RMU and WLG R-2.5 zones. To the extent that any requirement of this overlay imposes a regulation relating to the same matter, the WLG standards prevail [Subsection 9.b].

#### **Standards that Apply to Entire WLG Design District [Subsection 9.d]**

**Streets & Circulation/Pedestrian & Bicycle System [Subsections 9.d.ii & 9.d.iii]:** Streets, pedestrian and bicycle facilities, including public improvement requirements were addressed in LU 18-0024 under LOC 50.05.005.4.b,c,d and e. There are no modifications proposed with this application. This portion of the standard is not applicable.

**Required Street Lighting [Subsection 9.d.v]:** Street lighting was addressed and required under LU 18-0024. There are no modifications proposed with this application. This portion of the standard is not applicable.

**Landscaping [Subsection 9.d.vi]:** The percentage/sq. footage of the site that was set aside for landscaping was addressed in LU 18-0024. A specific landscaping plan indicating the proposed plantings is provided in Exhibit E-005. Staff finds that Exhibit E-005 demonstrates compliance with the landscape style criteria per Subsection 9.d.vi(1)(a-d) and site landscaping [Subsection 9.d.vi(3)], as follows:

An asymmetrical composition of plant materials around buildings, parking lots and within required landscaped buffers, provides meandering pedestrian pathways along Boones Ferry Road and the east side of the site, and the proposed tree species include trees which grow to a minimum height of 25 feet and provide a spread of 15 feet when mature. Native evergreen tree species are proposed where there is sufficient growing space: shore pine, Douglas fir, and Western red cedar (Exhibit E-005).

The landscape plan demonstrates informal natural groupings of landscape materials and includes drought-resistant plant materials (Exhibit E-005). Substantial existing trees are preserved as part of the development application and are incorporated in the proposed landscape plan. One tree, a minimum of three inches caliper for every 500 sq. ft. of landscaped area, including evergreen tree species such as Douglas fir and Western red cedar, which reach a mature height of at least 70 feet, are proposed where site conditions warrant (Exhibit F-001, pg. 9). At least 15 shrubs of a minimum 2-gallon size for every 500 sq. ft. of landscaped area and mulch are also proposed in compliance with the requirements of this overlay district (Exhibit E-



005). Approximately 22,410 sq. ft. of landscaped area is proposed, requiring 44 trees and 672 shrubs. 57 trees and approximately 800 shrubs are proposed (Exhibit E-005).

Note that the applicant requests a major variance to reduce the minimum tree size to 1.5 inches caliper or 6 feet height for eight of the 57 proposed trees and to reduce the minimum shrub size to one gallon for 82% of the proposed shrubs (Exhibit F-002, pg. 3-4). See discussion of the Major Variances, below, under LOC 50.08.004. If the requested major variances are not approved (either fully or partially), all landscaping shall meet the minimum size requirements [Condition B(3)].

Irrigation is proposed underground (Exhibit E-005, pg. 8). Street trees are proposed an average of every 30 linear feet along the entire development site frontage along both Boones Ferry Road and Upper Drive (Exhibit E-005).

As conditioned [Condition B(3)] and varied [see LOC 50.08.004 discussion, below], this portion of the standard is met.

**Preservation of Substantial Trees [Subsection 9.d.vii]:** The applicant explains that the proposal preserves substantial trees to the extent practicable (Exhibit F-001, pg. 9) “[It is not practical to preserve substantial trees where it would prevent development of public streets, utilities, or permitted land uses”]. Staff concurs that the remaining substantial trees on site not already approved for removal under LU 18-024 are preserved with the note that staff recommends denial of the requested tree removal and finds that none of the five trees (all five considered substantial) can be removed without the applicant demonstrating that there are no reasonable alternatives to removal (see discussion under LOC 55.02.080). This portion of the standard is met.

**Buffer Areas [Subsection 9.d.viii]:** The 15-foot buffer along the south and east property lines of the unified site was established in LU 18-0024, however, the required fence and landscaping buffer are shown in Exhibit E-005. Note that the 15-foot buffer shall be planted on the subject property, i.e., if the 6-foot right-of-way to the south of the property is not vacated, plantings shall *not* occur in the off-site 6-foot right-of-way [Condition B(3)]. As conditioned, this portion of the standard is met.

**Noise Mitigation [Subsections 9.d.ix]:** This standard was addressed in LU 18-0024 under subsection 4.j. This portion of the standard is not applicable.

**Building Design [Subsection 9.d.x]:** The WLG building design standards ensure high quality, asymmetrical, residentially-themed structures in one of the allowed WLG styles. The applicant has selected the Oregon Rustic style, Subsection 9.d.x.2.c. The proposed design complies with this subsection as follows:

- i. Massing/Composition. Asymmetrical composition is demonstrated in the elevation plans for each townhouse (Exhibit E-007).
- ii. Roof Style. Gable roofs with a pitch of 6:12 are provided (Exhibits E-007 and E-010).



- iii. Eaves. A minimum eave of 18 inches is included on all townhouse, as demonstrated in the roof plans (Exhibit E-010).
- iv. Exterior Building Materials. A combination of board and batten, horizontal lap siding, and shingled siding are proposed (Exhibit E-012).
- v. Windows. The proposed windows consist of two or more panes as required (Exhibit E-013).
- vi. Additional Design Elements. 3.5-inch wide trim on doors and windows is proposed in compliance with element B (Exhibit E-007).

As discussed above, this portion of the standard is met.

#### **Design Standards – RMU [Subsection 9.e]:**

Required Design Elements [Subsection 9.e.ii]: Structures shall comply with the building articulation and façade requirements implemented under the general Clear & Objective Housing Standards per LOC 50.06.001.7.c.i. This design regulation applies only to multi-family and residential mixed-use structures, not to the proposed townhouse development. This portion of the is not applicable.

#### **Design Standards – R-2.5 [Subsection 9.f]:**

Required Design Elements [Subsection f.ii]: Structures shall comply with the building articulation and façade requirements in LOC 50.06.001.7.c.i and LOC 50.06.001.7.c.ii.

LOC 50.06.001.7.c.i applies only to multi-family and residential mixed-use structure, not to the proposed townhouse development. LOC 50.06.001.7.c.ii is applicable to townhouse/rowhouse structures. Compliance is discussed below in detail:

1. Massing & Articulation. Building elevations facing a street must be articulated by providing a minimum 2-foot horizontal change in plane and provide a change in plane through two of the five options, Options a-e. The applicant demonstrates a 2-foot horizontal change in building plane between abutting dwelling units and complies with both Options d and e by providing a 6-foot wide front porch and recessed building entries (Exhibit E-009 and E-007).
2. Roofline Articulation. Compliance with the roofline articulation requirements is demonstrated in the elevation plans (Exhibit E-007) with a gable at least every 30 feet.
3. Front Entry Design. The front entry to each individual unit must either provide a covered porch/stoop at least six feet in depth or must be recessed at least two feet into the front building elevation. As demonstrated in the floor plans, Exhibit E-009, the front entry to each individual unit is recessed at least two feet into the front building elevation.
4. Street-Facing Design. All building elevations facing a street or public space shall provide a minimum of 25% glazing. Glazing may be provided in windows or doors. As demonstrated in the elevation plans, Exhibit E-007, 25% glazing is provided on all building elevations facing a public street.

As discussed above, this portion of the standard is met.



Staff finds that, as conditioned, the applicable WLG clear and objective standards are met.

### **3. The Development Standards applicable to minor developments;**

#### **Parking [LOC 50.06.002]**

Required parking for single family residential dwellings is one off-street parking space per unit. The applicant is providing at least one parking space per unit (Exhibit E-004). This standard is met.

#### **Access/Access Lanes [LOC 50.06.003.1]**

This standard was addressed under LU 18-0024. See Staff Report, LU 18-0024, pg. 14-15. There are no modifications proposed with this application. This standard is not applicable.

#### **On-Site Circulation – Driveways & Fire Access Roads [LOC 50.06.003.2]**

This standard was addressed under LU 18-0024. See Staff Report, LU 18-0024, pg. 15. There are no modifications proposed with this application. This standard is not applicable to this application.

#### **On-Site Circulation – Bikeways, Walkways & Accessways [LOC 50.06.003.3]**

This standard is applicable to all minor development involving the construction of a new structure other than a detached single-family dwelling, middle housing dwelling, or accessory structures, and requires the provision of ADA walkways between public entrances and the adjacent street system.

The applicant discusses compliance with this standard on page 13 of Exhibit F-001. The site plan also shows the existing and proposed pathways on the site and to the public sidewalk (Exhibit E-004). The proposed development will comply with this standard with the existing network of sidewalks and the new pathways between the front entrances of the proposed buildings and leading to the public sidewalk along Boones Ferry Road (Exhibits E-004 and F-001, pg. 13). This standard is met.

#### **Landscaping, Screening & Buffering [LOC 50.06.004.1]**

Per LOC 50.05.004.2.b, in the event that WLG standards regulate the same matter as another Community Development Code article, the WLG standards supersede. This standard is not applicable.

#### **Fence Standards [LOC 50.06.004.2]**

The maximum height of a retaining wall located in a setback is four feet (retaining wall height is measured from the top of the footing to the top of the retaining wall) [Subsection 2.vii(1); LOC 50.10.003.2 Height, Retaining Wall]. The maximum height for a fence or fence/wall combination is six feet. Conditions A(6) and A(7) of LU 18-0024 require a 6-foot tall wood or masonry sight-obscuring fence or wall as required by LOC 50.05.005.9.d.viii(3) and submittal of a final retaining wall plan in compliance with the four-foot height



limitation, respectively. As previously conditioned under LU 18-0024 and as submitted, this standard is met.

**Lighting [LOC 50.06.004.3]**

Per LOC 50.05.004.2.b, in the event that WLG standards regulate the same matter as another Community Development Code article, the WLG standards supersede. This standard is not applicable.

**Stormwater Management [LOC 50.06.006.3]**

This standard is applicable to all development where:

- i. Greater than 1,000 sq. ft. of impervious surface is created; or
- ii. The sum of impervious surface created and/or replaced is greater than 3,000 sq. ft.; or
- iii. Maintenance is performed on greater than or equal to 3,000 sq. ft. of existing impervious surface that results in an additional offsite hydrological impact (LOC 50.06.006.3.a).

Because this development would authorize outright permitted development that will exceed 3,000 sq. ft. of replaced impervious surface, the applicant must demonstrate that, based upon LOC Article 38.25, Stormwater Management Code, the capacity, type, location, feasibility and land area required of the proposed stormwater management system and stormwater disposal facilities as well as any connection to off-site facilities can be provided.

See discussion under LOC 38.25, Stormwater Management Code, below. As conditioned [Conditions A(3)-A(5) and B(1)-B(2)], this standard is met.

**Minor Variance Standards [LOC 50.08.002.3]**

The applicant is requesting a minor variance to reduce the 25-foot rear yard setback to 20 feet for Units D16-23 (Exhibit F-001, page 15). There are two alternative rear elevation dwelling designs, depending on whether the 6-foot right-of-way is or is not vacated prior to building plans issuance:

- If the 6-foot right-of-way south of the subject site is vacated prior to building permit issuance, the south property line is measured as shown in Exhibit E-004 and the architectural plans for Units D16-D23 are as shown in Exhibits E-007 through E-011.
- If the 6-foot right-of-way south of the subject is not vacated prior to building permit issuance, the south property line is measured as shown in Exhibit E-016, and the architectural plans for Units D16-D23 as shown in Exhibits E-007 through E-011 would be modified, i.e., the decking removed.<sup>1</sup>

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<sup>1</sup> If the vacation does not occur, the applicant is required by Condition A(1) to reduce the length of the structure [Condition A(1) assumes this minor variance is granted]. It is up to the applicant to decide how the reduction shall be addressed. Staff believes it is likely that the decks for these units would be deleted; however, the applicant could also decide to reduce the length of the dwelling and retain the deck. For purposes of analyzing the potential impact of a minor variance to the rear yard setback, the greatest design impact is assumed, e.g., the decks are removed, rather than reducing the floor area within the dwellings, presenting the rear elevation of the dwellings without the decks to the surrounding area.



Per LOC 50.08.002.2.a, up to a 20% variance to a required yard setback may be requested as a minor variance. Minor variances can be approved provided:

*1. The granting of the variance will not be detrimental to the public health or safety;*

The proposed portions of the structures that would be located within the setback area reduced by this minor variance are located in the rear yard, adjacent to the existing railroad right-of-way (Exhibit E-016). The applicant states that the proposed decks (or portions of the structure if the 6-foot right of way south of the site is not vacated) “will be privately owned on individual private lots, there will be no public access to the decks or yards and, therefore, no detriment to public health or safety (Exhibit F-001, pg. 14).” The portion of the structure within the setback area requested to be varied (either decks, if vacation occurs, or rear wall or deck<sup>2</sup>, if the vacation does not occur), will not be detrimental to public health or safety as neither design plan will not impede vision clearance for vehicles entering or exiting the site, and the Fire Marshal and the Building Division have determined that the reduced rear yard setback will not violate any fire or building regulations. Staff therefore finds that the proposed variance will not be detrimental to the public health or safety. This criterion is met.

*2. The granting of the variance will not be materially injurious to properties or improvements within 300 feet of the property;*

In determining whether the requested variance will be materially injurious to nearby properties or improvements, the potential impact to properties within 300 feet of the site are technically considered; the impact to neighboring properties that would be directly affected by the variance is most particularly considered. There are approximately 30 properties within 300 feet of the site’s boundaries (Exhibit E-002).

Staff notes that there were no comments in opposition to the proposed minor variance received from the abutting neighbors, which is some evidence that the neighbors do not perceive the proposed development to “materially injure” the use of their respective properties.

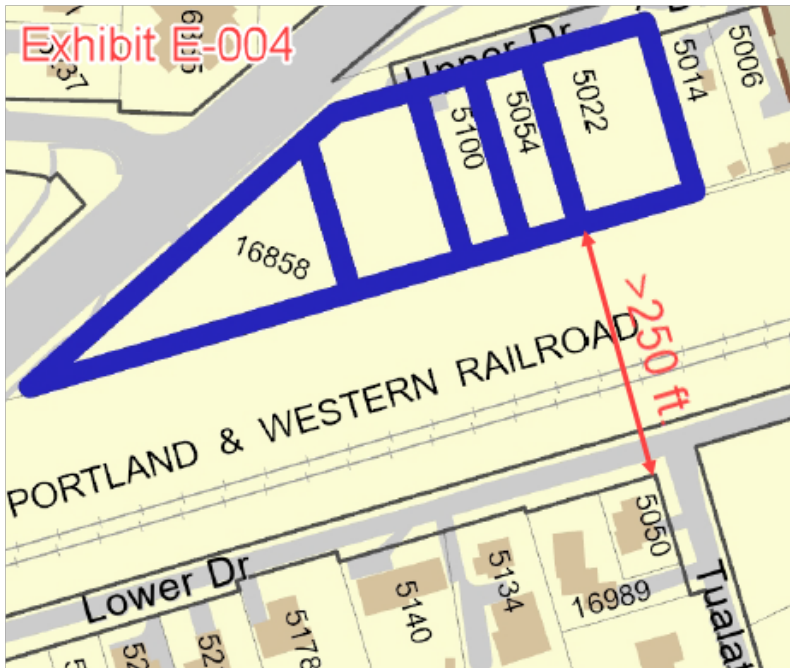
The properties most likely to be affected by the minor variance request are the railroad right-of-way and the properties to the south of the D units across the 6-foot right-of-way indicated in Exhibit E-016 (if vacation does not occur). The railroad right-of-way is 200 feet

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<sup>2</sup> See footnote 1 above.



in width and Lower Drive is 45 feet in width; the nearest residential properties to the south are over 250 feet from the subject site.



The railroad will not be affected given the topography (there is a steep slope from the lots down to the railroad bed) and the intermittent use of the railroad for freight trains. The topography and the approximately 250-foot width of the railroad and Lower Drive rights-of-way indicates that the reduction of the rear setback for the subject property from 25 feet to 20 feet will have no privacy impact on the neighboring houses to the south because the 5-foot difference will be imperceptible at such a distance.

The proposed reduction of the rear yard setback will not be materially injurious to neighboring properties abutting the rear yard because of the small scale of the reduction and the large approximately 250-foot rights-of-way between the subject property and the nearest neighboring properties to the south. The proposed 5-foot variance would reduce the distance between the neighboring properties to the south and the proposed townhouses by 1% (Exhibit E-002). The applicant also notes that a 15-foot landscape buffer will be planted along the south property line of the subject site, further reducing the proposed decks' visibility from the south (Exhibit F-001, pg. 15-16 and E-005)

Staff finds that the proposed 5-foot reduction to the rear yard setbacks of Units D16-23 will have minimal potential negative impacts to the abutting properties; the proposed variance would not be materially injurious to neighboring properties. This criterion is met.

3. *The granting of the variance will have little or no negative impact on the streetscape (e.g., pedestrian environment or other aspects of the public realm that contribute to the neighborhood character); and,*

The proposed variance would allow construction of eight decks (if the vacation of the 6-foot right-of-way occurs) or, if vacation does not occur, construction either with or without decks and with only slight modification to the location of the structures' rear wall for Units D16-23. The location in the rear yard is not visible from the Upper Drive or Boones Ferry Road rights-of-way (Exhibit E-001). To the south of the proposed decks, a 200-foot wide railroad right-of-way separates the subject site from the Lower Drive right-of-way. The 220-foot distance separating the nearest edge of the Lower Drive right-of-way from the proposed decks/rear elevation of the dwelling units decreases the visibility, which is further decreased by existing trees and vegetation within the rights-of-way and the proposed 15-foot landscape buffer



along the south property line of the subject site (Exhibit E-005). Approving the minor variance for a 5-foot reduction to the rear yard setback will have no impact on the streetscape. This criterion is met.

4. *The proposed development will not adversely affect existing physical and natural systems such as traffic, drainage, Oswego Lake, hillsides, designated sensitive lands, historic resources, or parks, and the potential for abutting properties to use solar energy devices any more than would occur if the development were located as specified by the requirements of the zone.*

The proposed minor variance request does not increase traffic, as the use remains attached single-family dwellings regardless of the variance request, and is not located near drainage areas, Oswego Lake, sensitive lands, or historic resources, so will have no impact. Stormwater from the structures will be discharged in accordance with the Stormwater Manual and Plumbing Code, which will be reviewed at time of building permit review. There are no designated sensitive lands on the site. The site does not contain any historic resources. As discussed, above, there will be no visual impact to the streetscapes and there are no changes to the approved access location. Construction of the decks with footings (if the 6-foot right of way to the south is vacated) will not adversely affect any existing slopes. If the decks cannot be constructed, then the location of the rear wall of the structures will shift only slightly to comply with the requested 20-foot rear yard setback from the existing south property line as indicated in Exhibit E-016. The minor variance will not deter any abutting properties from the use of solar devices as the proposed structures comply with the maximum shade point height and will not cast shade affecting any abutting properties. No tree removal along the south property line is proposed so the canopy visible from the south would not be affected. For these reasons, no negative impacts to existing physical and natural systems are expected. This criterion is met.

Staff finds the criteria for a minor variance are met.

#### **Major Variance Standards [LOC 50.08.004]**

Major variances are significant changes from the Code requirements that are likely to create impacts on adjacent properties or users. The purpose of major variances is to allow development not in conformance with the requirements of the Community Development Code owing to special circumstances or conditions beyond the applicant's control when application of the Code standards would result in undue and unique hardship or would result in a taking of private property without compensation under state and federal law. A variance is a permit for an exception to the Code requirements in order to elevate the development potential on a site up to a minimum reasonable use of the property.

The applicant is requesting approval of a major variance to reduce the minimum caliper for mitigation trees from 3 inches to 1.5-inches, and to reduce the required shrub size from 2-gallon to 1-gallon (LOC 50.05.005.9.d.vi.3.b.i-ii). This request would also modify the approved subdivision landscape buffering plan per LU 18-0024, which had proposed 20 5-inch mitigation trees (Exhibit F-014, pg. 3, LU 18-0024).



As prescribed by LOC 50.08.004.3.a, the reviewing authority may approve a major variance from the code requirement if it is established that:

- i. *The request is necessary to prevent an unnecessary hardship based on the following considerations:*

Physical Circumstances of the Site: It must first be determined whether there is a hardship resulting on the property before determining that the hardship is unnecessary. The threshold for what constitutes a “hardship” is ascertained by the third criterion’s “minimum variance necessary to make *reasonable use of the property*.” A hardship occurs when, without the variance, the owner would not be able to make “reasonable use” of the property. Thus, it is not a standard so strict that a regulatory taking precluding all economic value must be shown, but then again it is not a guarantee to all uses that an unconstrained site would enjoy.

The applicant states that most of the site is constrained by steep slopes and/or by the presence of existing mature trees to be preserved (Exhibit F-002, pg. 5) and the presence of numerous utility lines further reduces available spaces for larger plantings. These site constraints (steep slopes, utility lines, and remaining trees with large root protection zones) create an unnecessary hardship for the larger hole size required to plant larger stature trees and shrubs without the variance.

Hardship – Unnecessary: If the applicant is not able to comply with the code requirements and make reasonable use of the property, then the considerations in LOC 50.08.004.3.a (physical circumstances, self-created, economic impact, other relevant factors) address whether the circumstance(s) creating the hardship – the inability to make reasonable use of the property -- is “unnecessary”. Not all considerations must be found to exist on the property for the hardship to be unnecessary.

*(1) The physical circumstances of the property involved;*

Tree Size: The property contains steep slopes, as shown in Exhibit E-003, and areas within the critical root zone of trees proposed to remain on site. The applicant clearly indicates these areas of physical constraint in Exhibit E-005, pg. 5.

The applicant explains that “A 1.5” caliper tree will have a rootball size of about 18” diameter, be 10-12’ tall, weigh about 250 lbs, and it requires 1-2 workers to maneuver the tree into the hole. A 3” caliper tree will have a rootball of 32-36” diameter, may be 14-16’ tall, weigh at least 850 lbs, and need to be maneuvered either by machinery or by a crew of 4 strong workers, at very considerable effort. Considering the steep slopes present on much of the site, hand labor to install 3” caliper trees may not be possible (Exhibit F-002, pg. 7).” Staff concurs that the steep slopes and existing trees to remain are a physical hardship to planting 3-inch caliper trees in constrained locations on the site.

Shrub Size: Regarding the requested variance to reduce shrub size from 2-gallon to 1-gallon, the applicant fails to demonstrate that a *physical circumstance* of the site would preclude planting of 2-gallon shrubs. The applicant’s discussion focuses instead on a desire for lower plantings in certain areas for use preferences and a potential benefit to existing trees (Exhibit F-002, pg. 5-6). Although existing trees are a physical circumstance relating to the



property, there is no evidence submitted that demonstrates that planting of code-required shrub size would result in removal of any existing trees.

Tree Size: The site's steep slope and existing trees to remain are a physical circumstance limiting portions of the site available for larger mitigation trees. Staff concurs with the applicant that there are existing physical circumstances related to the site that make the hardship unnecessary related to the planting of 3-inch caliper mitigation trees in constrained locations.

Shrub Size: The applicant has not demonstrated that a physical circumstance would prevent the placement of 2-gallon shrubs on site.

Staff finds that physical circumstances create an unnecessary hardship for the planting of 3-inch caliper mitigation trees within areas of steep slope and root protection zones for existing trees to remain. However, staff finds that no physical circumstance on the site would prevent installation of 2-gallon shrubs.

*(2) Whether a hardship was created by the person requesting the variance;*

The steep slope and existing trees are a pre-existing condition on the site, as demonstrated by the topographic survey prior to construction, Exhibit E-003. Staff finds that the need for the variances was not created by the applicant nor intentionally self-created by the applicant's predecessors. This consideration is met.

*(3) The economic impact on the applicant if the variance is denied; and*

Mere reduction in value from what the value of the property would be if the variance were granted is not sufficient to meet this factor. This factor requires an extraordinary impact upon the applicant akin to precluding development of the parcel or approaching substantial prohibition of development. (If this factor is met, Criterion iii allows a variance to the extent needed to make "reasonable use" of the property.)

The applicant states that efforts and costs increase exponentially with increased size of plant material (Exhibit F-002, pg. 7). The applicant provides specific costs in Exhibit F-002, pg. 7:

	<b>Required</b>	<b>Proposed Variance</b>
<b>Trees</b>	3-inch caliper: \$1,000	1.5-inch caliper or 6-foot height: \$150
<b>Shrubs</b>	2 gallon: \$32	1 gallon: \$16

The applicant further states that the proposed variance to plant 82% of shrubs at 1 gallon instead of 2 gallon will save approximately \$18,000 in plant and installation costs (Exhibit F-002, pg. 7).

Staff finds that this cost is part of the expected cost of compliance with the WLG landscaping standard and does not present an economic burden to the development of the 23-lot townhouse subdivision project so as to be an "extraordinary impact upon the applicant akin to precluding development of the parcel or approaching substantial prohibition of development." This consideration is not met, but staff has found this consideration is rarely



met; it is only a consideration of what constitutes an “unnecessary hardship,” not a criterion itself.

Staff finds that denial of the requested tree size and shrub size variances would not have a negative economic impact on the project to the degree required for this consideration.

*(4) Other factors deemed relevant by the reviewing authority.*

No other factors were presented by the applicant for consideration.

Subconclusion for Criterion i – Unnecessary Hardship:

Tree Size: Staff finds that the site contains physical circumstances, steep slopes and existing trees proposed to remain, that were not created by the applicant such that compliance with the code standard for tree size would create an “unnecessary hardship” because compliance with the code standard would result in an extraordinary burden to this applicant “owing to special circumstances or conditions beyond the applicant’s control, [such that] application of the Code standards would result in undue and unique hardship.”<sup>3</sup> This portion of the standard is met for the proposed variance to mitigation tree size.

Shrub Size: As discussed above, staff finds that the applicant has not demonstrated compliance with this criterion for the requested variance to minimum shrub size.

*ii. Development consistent with the request will not be injurious to the neighborhood in which the property is located or to property affected by the request based on the following considerations:*

*(1) An analysis of the physical impacts such development will have, such as visual, noise, traffic and the increased potential for drainage, erosion and landslide hazards;*

Tree Size: This consideration focuses on the physical impacts (visual, noise, traffic, drainage, erosion and landslide hazards) of the proposed hardship-based variance to the code standard in comparison to the impacts that would be expected from development that complies with the code standard. The first Major Variance criterion analyzes whether code compliance results in an unnecessary hardship to the property owner. The second Major Variance criterion looks to whether accommodating the hardship would have *greater* impacts on the neighborhood than would occur with code compliance. If injury is found, then the third Major Variance criterion requires minimization of the variance as necessary to make reasonable use of the property.

To address this consideration, the applicant states that after three years, the same caliper size tree as required to be planted now would result due to assumed growth. The question is whether the smaller tree size will have physical impacts (visual, noise, traffic, drainage, erosion and landslide hazards) greater than would occur by compliance with

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<sup>3</sup> The text cited in this paragraph is taken from the purpose section of Major Variance. To be clear, that does not mean that the Purpose section, LOC 50.08.003.1, is a criterion itself. Rather, it is used as context to interpret the meaning of “unnecessary hardship” and what degree of “physical circumstances” would contribute to a finding of “unnecessary hardship.”



the code standard, such that the requested major variance to permit a smaller-sized tree would be injurious to the neighborhood. There would be some visual “injury” to the neighborhood by having to wait three years to have a tree of the size required now by the code standard. To offset this visual impact, the applicant argues that because the smaller sized tree has a higher survival rate, that will mitigate the visual impacts of the smaller sized trees as more would survive in the long term (Exhibit F-002, pg. 7-8). Based on staff experience, staff finds that the difference in visual impact between a 1.5-inch caliper tree and a 3-inch caliper tree is not substantial.<sup>4</sup> No other greater impacts of a smaller-sized tree are identified by the applicant or the public.

The applicant states that the proposed size reduction of new planting materials would reduce the physical disturbance in areas of steep slopes. As previously discussed, there is a substantial difference in the rootball of a 3-inch caliper tree and a 1.5-inch caliper tree (Exhibit F-002, pg. 7). The applicant states that smaller required planting sizes within areas of steep slopes and existing trees will allow for smaller holes to be dug, decreasing impacts on erosion and soil stability. The proposed variance to reduce minimum tree planting sizes within areas of steep slopes and existing tree canopy will not negatively impact vision, noise, or traffic.

Staff finds that granting the variance to minimum tree size at time of planting would not be injurious to the neighborhood. This consideration is met.

Shrub Size: The applicant does not specifically address this consideration in relation to reduced shrub size other than the discussion that smaller-sized plantings have a greater chance of survival as discussed above (Exhibit F-002, pg. 8). That the applicant does not provide evidence of an analysis of the physical impacts, e.g., visual impact of smaller shrubs in comparison with larger sized shrubs in the applicant’s narrative (Exhibit F-002). Similar to the discussion regarding tree size, a smaller sized shrub at time of planting will grow to be equivalent with the larger sized shrub over time. Based on staff experience and the absence of any public comments regarding visual impacts, staff finds that the difference in visual impact between a 2-gallon shrub planting and a 1-gallon shrub planting is not substantial.

Staff finds that granting the variance to the minimum shrub size at the time of planting would not result in physical impacts such as visual, noise, traffic, drainage, erosion or landslide hazards. This consideration is met.

*(2) The perceptions of residents and owners of property in the neighborhood concerning the incremental impacts occurring as a result of the proposed variance; and,*

No comments in opposition to the proposed variance were received as of the date of this report. The absence of public comment identifying negative impacts resulting from the major variances to tree size and shrub size upon the neighborhood may be considered in the analysis whether the proposed development will meet this criterion. Given that the neighboring properties to the east and south are not located within the WLJ Overlay and that 1.5-inch caliper mitigation trees and no minimum shrub sizes (or numbers) apply to

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<sup>4</sup> Exhibit G-100 asks for additional mitigation in tree size for removal of Tree 2139. That is addressed under the Tree Removal LOC 55.02.084 discussion, below.



their properties, staff finds that granting the variance from the WLG Overlay minimum planting sizes in constrained areas would not be injurious to the neighborhood or adjacent properties. This consideration is met.

*(3) Other factors deemed relevant by the reviewing authority.*

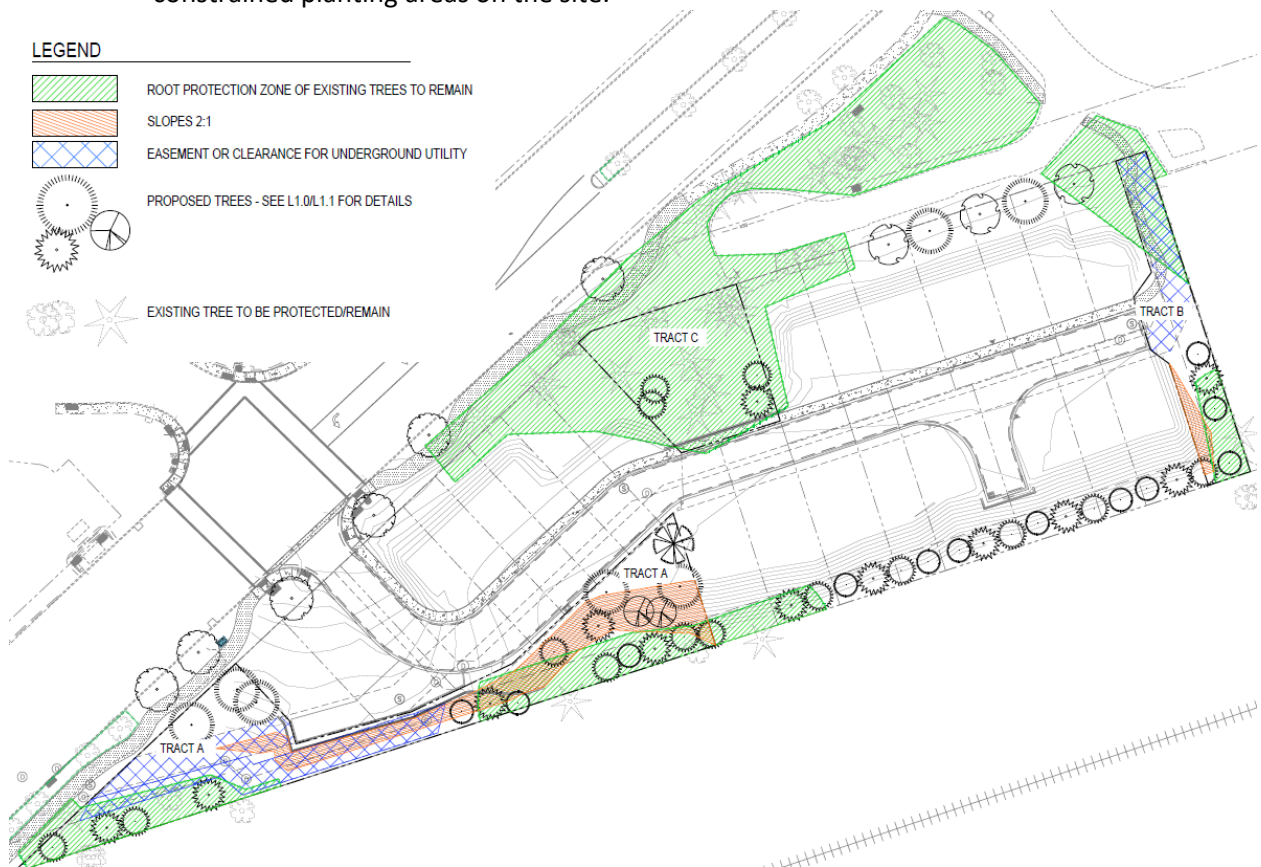
The applicant did not provide any additional relevant factors for consideration.

Subconclusion for Criterion ii – Injury to Neighborhood.

Staff finds that granting the variances will not be injurious to the neighborhood.

*iii. The request is the minimum variance necessary to make reasonable use of the property;*

Tree Size: The requested variance to tree planting size is the minimum necessary because it only seeks to vary the required size within constrained areas on the site. The request includes size reduction for eight of the total 57 trees proposed rather than a request to reduce planting sizes for all mitigation trees. Exhibit E-005, pg. 5, visually demonstrates the constrained planting areas on the site:



The proposed planting plan on page 4 of Exhibit E-005 shows that full size 3-inch caliper trees are proposed where no constraints exist and that the smaller sized 1.5-inch caliper trees are proposed within root protection zones and areas of steep slope. Staff finds that the requested variance for reduced mitigation tree sizes within certain areas is the minimum necessary to achieve reasonable use of the property, e.g., townhouse development. For the tree size variance, this criterion is met.



Shrub Size: On the other hand, the applicant states that the request to reduce shrub size is limited to those [native] species where larger sizes are not commercially available and where the larger size would be out of line with characteristics of the plant specified (Exhibit F-002, pg. 8). Staff finds that the applicant has not provided evidence that the variance to shrub size is the minimum necessary to make reasonable use of the property.

Subconclusion for Criterion iii: Minimum Variance Necessary:

Tree Size: Staff finds that the request to decrease minimum tree planting size for eight trees within physically constrained locations is the minimum variance necessary. This criterion is met for the proposed variance to mitigation tree size.

Shrub Size: Staff finds that the applicant has not demonstrated compliance with this criterion for the requested variance to minimum shrub size. This criterion is not met for the proposed variance to minimum shrub size at time of planting.

**Conclusion:** Staff finds that the criteria are met for the requested major variance to reduce the minimum mitigation tree size from 3-inch to 1.5-inch caliper. However, the applicant has not demonstrated compliance with the criteria with regards to the requested major variance to reduce to minimum shrub size.

**4. Any additional statutory, regulatory or Lake Oswego Code provisions which may be applicable to the specific minor development application;**

**City of Lake Oswego Stormwater Management Code [LOC Chapter 38]**

The Stormwater Management Code is applicable to development activities that meet the impervious area thresholds in LOC 38.25.120 [LOC 38.25.100(2)(a)].

All stormwater management facilities shall meet the standards for “large projects” if the new and/or redeveloped impervious area is greater than or equal to 3,000 sq. ft. For purposes of determining applicability, all applications on a given parcel or contiguous parcels under common ownership conducted within a 3-year period shall be considered cumulatively. This proposal will result in development that exceeds 3,000 sq. ft. of new impervious surface and is therefore reviewed as a “large project” ( $\geq 3,000$  sq. ft. impervious area) [LOC 38.25.120(1)(d)(i)].

The applicant has submitted a stormwater report prepared by a registered engineer, which includes a geotechnical report, (Exhibit F-003), and proposed construction plans. The City’s contract Stormwater Review Engineer reviewed the project and detailed the findings in Exhibit F-007, which documents applicant information and findings related to LOC 38.25.120.1, Project Classification Procedures and Requirements. The Lake Oswego Stormwater Management Manual (LOSWMM) provides additional information including specifications and procedures for the proper implementation of the requirements of the Stormwater Management Code and is referenced as applicable [LOC 38.25.110].

Based upon the preliminary stormwater design submitted to demonstrate the feasibility of a final stormwater design complying with the Stormwater Management Code, staff finds the preliminary stormwater design is feasible as submitted.



As discussed in Exhibit F-007 and conditioned [Conditions A(3)-A(5) and B(1)-B(2)], this standard is met.

**Method of Establishing Special Street Setback Reference Line [LOC 42.03.135]**

The "special street setback reference line" is to be established for streets listed in LOC 50.04.002.3 by the City Engineer,

The special street setback reference line shall be the line equidistant between the boundary lines of the right-of-way, unless the City Engineer, based on site-specific factors, determines an alternative method is reasonable for the continuous alignment of the centerline of the existing or anticipated future traveled surface of a street. The City Engineer has not identified any site-specific factors warranting an alternative centerline location. The reference line is the line equidistant between the boundary lines of the existing 30-foot right-of-way. This standard is met.

**City of Lake Oswego Tree Code [LOC Chapter 55]**

**Type II Tree Removal [LOC 55.02.080(2)]**

The Tree Code is intended to regulate the removal of trees and to protect trees as a natural resource of the City [LOC 55.02.010]. There are 52 trees on this site (Exhibit E-003). Thirty-six of those trees were approved for removal in LU 18-0024; five additional trees, Trees: 1120, 2139, 2144, 2145, 1318, are requested for removal to construct the proposed townhouses (Exhibits E-014 and F-008). Approval of LU 18-0024 specifically created open space Tract C in order to retain the trees located within Tract C, including Trees 1120 and 2139, and decreased the number of townhouses on the site from 25 to 23.

Trees proposed for removal in conjunction with a minor development permit can be granted tree removal permits if the follow criteria are met:

1. *The tree is proposed for removal because it has outgrown its landscape area or the removal is part of a landscape plan, or in order to construct development approved or allowed pursuant to the Lake Oswego Code or other applicable development regulations;*

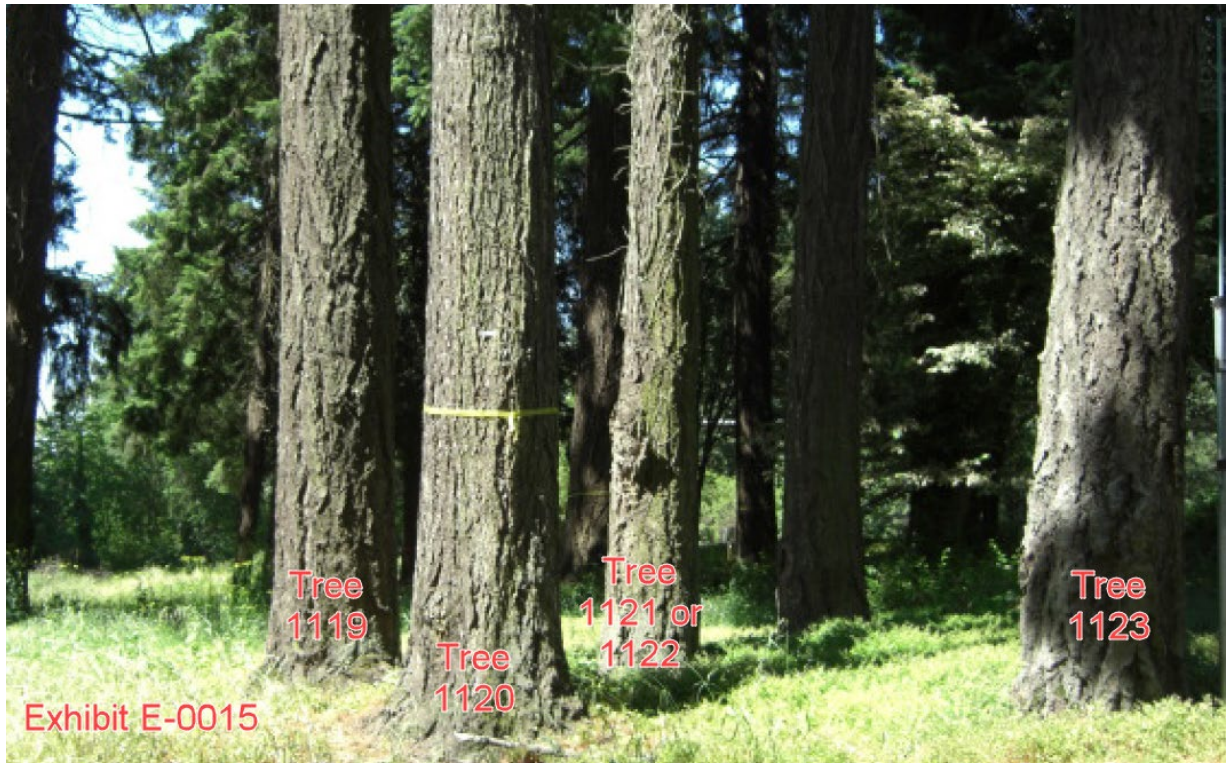
This criterion is met if the tree proposed for removal is within the development area proposed by the applicant; whether an alternative development analysis is required is addressed under Criterion #3, below. [See Kash Investments (LU 17-0006); Mission Homes NW (LU 17-0016); Blue Palouse Properties LLC (TR 499-17-02043/AP 17-05).]

The applicant's arborist states that the five trees are proposed for removal for construction and site improvements. Staff finds that this criterion is met because the applicant has shown that construction activities will take place within a portion of each tree's root zone (Exhibit F-008 pg. 8).

2. *Removal of trees, considering proposed mitigation measures, will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks;*



Staff concurs with the applicant's arborist's findings, Exhibit F-008, pg.3, except that staff finds that impacts of the removal of Tree 1120 and Tree 2144 on nearby trees to remain are not adequately addressed in Exhibit F-008. Trees 1119-1123 form a grouping of trees in close proximity, recommended for preservation as an intact group by the City's contract arborist (Exhibits E-015, pg. 4-5, 10, and 18, and F-009, pg. 1). The City's contract arborist also finds that removal of Tree 2144 would have a significant negative impact on Tree 2145 if only one of the trees were approved for removal (Exhibit F-009, pg. 2). The applicant's arborist incorrectly states that all trees are currently exposed to winds from all compass directions and that the trees are relatively spaced out and no newly exposed trees will be retained (Exhibit F-008, pg. 3). Staff disagrees with this finding for Tree 1120, which is located in a stand of trees as shown in the image below.



This criterion is met for the removal of Trees 1318, 2139, 2144, and 2145 (if both Trees 2144 and 2145 are retained or removed together; see Exhibit F-009, pg. 2). This criterion is not met for Tree 1120.

3. *The removal will not have a significant negative impact on the character or aesthetics of the neighborhood. This standard is met when removal of the trees does not involve:*
  - a. *A "significant tree" (over 15" DBH, healthy, noninvasive, and is considered significant to the neighborhood due to size, species, or distinctive character, or the only remaining tree on a property) [LOC 55.02.020 Definitions];*



*Element #1 – Healthy:*

“Healthy” is “good” or “fair” health. [See DRC adoption by incorporation of Staff Reports in Richard (AP 21-03); Roderick Family LLC (AP 20-01)]. The applicant’s arborist finds that all five trees are healthy (Exhibit F-008, pg. 8).

*Element #2 – Noninvasive:*

None of the five Douglas fir trees requested for removal are invasive per the [Invasive Tree Species List](#)<sup>5</sup> (Exhibit F-008, pg. 8).

*Element #3 – Over 15” DBH:*

All five trees proposed for removal are over 15 inches DBH (Exhibit F-008, pg. 8):

Tree 1120: 27 inches

Tree 2139: 60 inches

Tree 2144: 41 inches

Tree 2145: 22 inches

Tree 1318: 55 inches

Subconclusion – Elements #1-3: The trees meet the first three elements of the definition of “significant tree.”

*Element #4 – Significant to the Neighborhood Due to Size:*

The question for this element is whether any specific tree that also meets the first three elements is significant to the neighborhood because of its size. The Development Review Commission has interpreted<sup>6</sup> this element to require examination of the neighborhood in which the specific tree is located: a 45-inch tree is significant to a neighborhood where the general range of sizes of other trees is substantially smaller, such that the 45-inch tree would be substantially taller or bigger than most other trees in the neighborhood. However, a 45-inch tree would not itself be significant to a neighborhood where it is within the general range of sizes of other trees and is not substantially taller or bigger than most other trees in the neighborhood. For a tree’s size to be “significant” to the neighborhood, its absolute size is irrelevant.

The arborist states that the proposed removal does not involve removal of a significant tree to the neighborhood due to size, but does acknowledge that Trees 1318 and 2139 are large diameter trees (Exhibit F-008, pg. 3). The size range for trees proposed to remain on site, representative of the size of trees within the neighborhood, ranges from six inches to 40 inches DBH (Exhibit E-003).

One public comment, Exhibit G-100, opposes the removal of Tree 2139 on the grounds that this is the largest tree in the development and removing this tree will make the area look denuded; the smaller size mitigation trees within this area will take decades to fill in the gap created by the removal of this large tree.

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<sup>5</sup>[http://www.ci.oswego.or.us/sites/default/files/fileattachments/planning/webpage/12530/invasive\\_tree\\_species\\_list.pdf](http://www.ci.oswego.or.us/sites/default/files/fileattachments/planning/webpage/12530/invasive_tree_species_list.pdf)

<sup>6</sup> AP 17-05 [TR 499-17-02043]







The question for this element is whether any specific tree is significant to the neighborhood because of its distinctive character. The Commission has interpreted this element to require, as distinct from size or species, that the tree provides distinctive character to the neighborhood, i.e., by being in a prominent location or uniquely visible at a prominent neighborhood location, such as a prominent street corner, e.g., the tree is “of landmark importance” or sentinel to the neighborhood, providing a unique and irreplaceable element in the neighborhood skyline [Tercek, LU 21-0044; Red Dog Investments, LLC (AP 20-02)].

As discussed above, all five trees proposed for removal are Douglas fir trees, a common species and canopy within the broader neighborhood, and all five trees are located on the subject site, not in a uniquely visible and prominent location (see Pictometry image above). No tree proposed for removal is significant to the neighborhood due to distinctive character.

Subconclusion – Although all five trees proposed for removal are healthy, noninvasive, and over 15 inches diameter, only Trees 1318 and 2139 are significant to the neighborhood due to size; none of the five trees are significant to the neighborhood due to species or distinctive character.

*Element #7 – Sole Remaining Tree*

If the proposed tree removal is approved, approximately 10 trees would remain on site (Exhibit E-003 and E-014).

Subconclusion – Subcriterion (a): Staff finds that Trees 1318 and 2139 are “significant trees” to the neighborhood due to size; Trees 1120, 2144, and 2145 are not “significant trees.” An Exception analysis is required for the removal of Trees 1218 and 2139.

- b. Alterations to the distinctive features or continuity of the neighborhood skyline, as viewed from all public streets and properties within 300 feet of the property;*

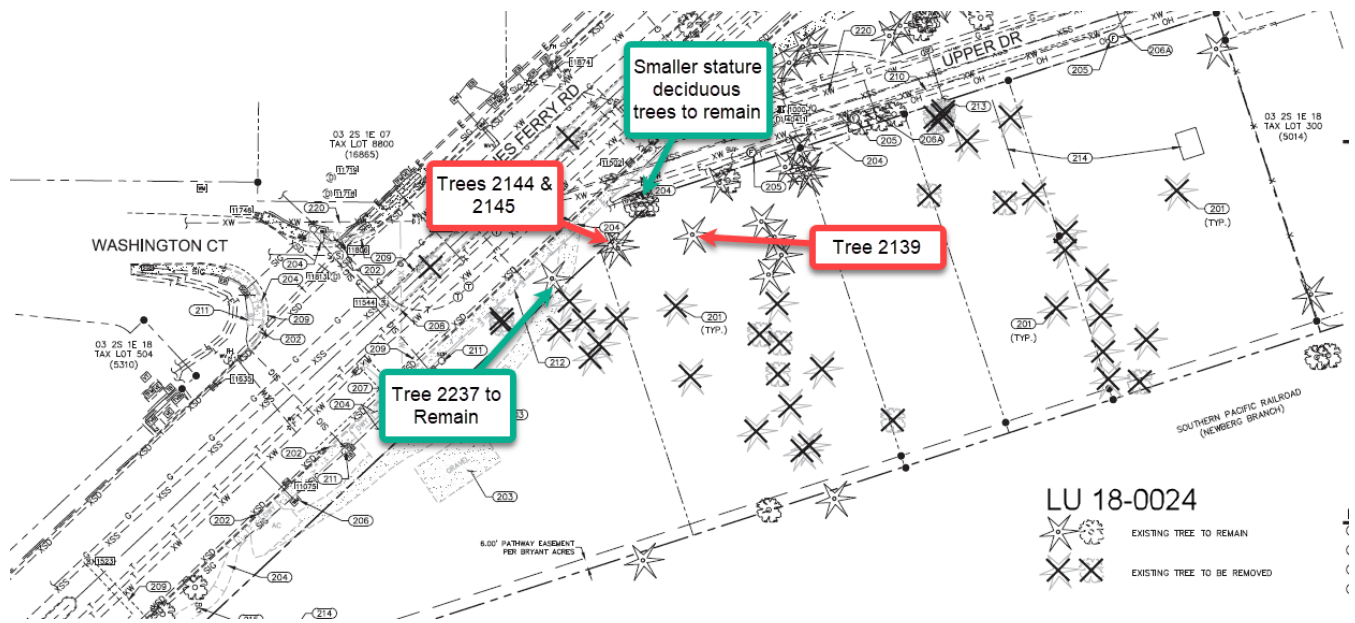




Staff finds that the proposed removal of Trees 1318, 2144, and 2145, all of which are prominently visible from Upper Drive and Boones Ferry Road, respectively, and are visible from adjacent sites, would alter distinctive features or continuity of the neighborhood skyline as viewed from public streets and properties within 300 feet of the site. Tree 1318 is located in close proximity to the east property line and is a prominent feature in the neighborhood skyline as viewed from the abutting residential property to the east and from the Upper Drive right-of-way as shown in the photograph to the right and in Exhibit E-015 pages 1-3 and 20-21.

Trees 2144 and 2145 are located near the Boones Ferry Road right-of-way and maintain the continuity of the skyline in conjunction with the trees preserved in Tract C in LU 18-0024. Although it is difficult to visualize because the trees approved for removal in LU 18-0024 have not yet been removed from the site, with the proposed removal of Trees 2144 and 2145, only Tree 2337 would remain along the Boones Ferry Road frontage north of the private street. What currently is a fully treed skyline will change with the removal of trees already approved under LU 18-0024. Removal of Trees 2144 and 2145 will create a gap in the remaining skyline between Tree 2237 and the smaller deciduous trees to remain at the northwest corner of the site. See the map and photograph below.





Trees 2139 and 1120, however, are less prominently visible from off-site and are not distinctive features nor necessary for the continuity of the skyline because the remaining trees within Tract C maintain the neighborhood skyline (Exhibits E-014 and E-015).



Staff finds that the removal of Trees 1318, 2144, and 2145 does not meet this criterion, but that the removal of Trees 1120 and 2139 does not alter a “distinctive feature or continuity of the neighborhood skyline.” An Exception analysis is required for the removal of Trees 1318, 2144, and 2145.

- c. A tree that serves as a visual screen between a residential zone and an abutting non-residential zone, or between a low density residential zone and a medium or high density residential zone, or between a medium and high density residential zone;*

The site abuts a residential zone to the east and south; Tree 1318 is located near the east property line (Exhibit E-014). The applicant’s arborist report does not address this criterion for this tree. Without any evidence on the record to the contrary, staff finds that this criterion is not met for Tree 1318. The other four other trees requested for removal are not located near a boundary between dissimilar zones and do not serve as a visual screen (Exhibit E-014). One tree that is deemed to serve as a visual screen is proposed for removal (Tree 1318). An Exception analysis is required for the removal of Tree 1318.

- d. A street tree, or,*

The survey provided shows that none of the trees proposed for removal are located in the public right-of-way (Exhibit EF-003). The removal does not involve a “street tree.”

- e. Greater than 50% of a stand of trees.*

A “stand of trees” is defined as “... a group of trees (of the same species or a mixture) that forms a visual and biological unit of at least 15 ft. in height with a contiguous crown width of at least 120 feet (LOC 55.02.020).” The applicant’s arborist states that Trees 1120, 2139, 2144, and 2145 are located within a grove of nine trees, and that removal of four of the nine trees is less than 50% (Exhibit F-008, pg. 4). Tree 1318 is not located within a stand (Exhibit E-014). Staff concurs that the proposed tree removal is not greater than 50% of a stand of trees.

Conclusion:

- Tree 1120 does not meet Criterion 2, as its removal would have significant negative impacts on nearby trees to remain.
- Tree 1318 is significant to the neighborhood due to size, is a distinctive feature within the neighborhood skyline, and is deemed to serve as a screen between dissimilar zones.
- Tree 2139 is significant to the neighborhood due to size
- Trees 2144 and 2145 provide continuity of the neighborhood skyline and their removal would negatively impact the skyline as viewed from the public right-of-way.

See the discussion, below, for Exception Criteria:

*Exceptions: Criterion #3 is not applicable when:*

- a. A tree is likely to or will continue to cause damage to a permanent, viable existing structure, or to infrastructure, such as utilities or paved landscape features, that cannot be remedied through reasonable tree maintenance or pruning; or*



The applicant is seeking removal based on proposed development, not existing development. This exception criterion is not applicable.

*b. Alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone. In making this determination, the City may consider alternative site plans or placement of structures (development purpose) or alternate landscaping designs (outgrown landscape area; landscape plan) that would lessen the impact on trees, so long as the alternatives continue to comply with other provisions of the Lake Oswego Code.*

A public comment, Exhibit G-100, specifically requests consideration of alternatives to the removal of Tree 1318, including alternate water line locations. Staff notes that the water line approved in LU 18-0024 has already been altered such that Tree 1318 can be adequately protected during installation; the current proposal for removal of Tree 1318 appears to be based solely on townhouse construction (Exhibit F-008, pg. 4).

The applicant's arborist states that:

"Given the topography difference between the north and south side of the property, significant grading is needed to allow for the road to be constructed and buildable terrain to be created. The exploratory excavation revealed that the trees in proximity to the development would be significantly affected by the proposed site improvements. Large anchor roots would need to be pruned to allow for the placement of the retaining walls and foundation footings which could cause the trees to become hazardous. The proposed structures will cover too much of the root zones of the trees which will likely result in a loss of water uptake and ultimately could cause tree failure. The site plan attached in Appendix C – Proposed Removals shows the tree protection zones and critical root zones of the trees. Appendix D can be referenced for details regarding the root locations. Retention of the trees shown that are circled would likely result in the loss of up to 4 lots / homes (Exhibit F-008, pg. 4)."

Staff finds that tree removal for the proposed private road construction was reviewed and approved in LU 18-0024; the current tree removal request pertains only to tree removal necessary for construction of the proposed townhouses. No photographs of exploratory excavation at the proposed foundation lines of the proposed structures have been provided nor has the applicant provided any specific evidence of root sizes or locations in relation to those proposed structures' foundations to support the assertion that construction would necessitate root pruning that could cause tree(s) to become hazardous. Staff concurs with the City's contract arborist's findings that insufficient evidence of exploration of reasonable alternatives was provided (Exhibit F-009, pg. 2-3). Without specific evidence of root sizes, locations, and proposed building foundation locations, staff cannot find that this Exception criterion is met based on evidence in the record at the time of this report.

If evidence is submitted into the record regarding root sizes and locations in regard to proposed structure locations, then the applicant will also need to demonstrate exploration of alternative construction techniques, such as pier and grade beam foundation systems, and alternative site plans and floor plans, including shifting units or losing an under-stair storage area in the lower level of Units C9 and C15 in the closest corners to Trees 1120 and 1318, for example (Exhibit E-009).



At the time of publication of this report, the applicant has not submitted evidence that no reasonable alternatives to tree removal exist, therefore the applicant did not meet the burden of proof to demonstrate compliance with this Exception and staff must recommend denial of the requested tree removal for all five trees. However, additional evidence may be presented to the Commission at the hearing on these issues for the Commission's determination.

*4. Removal of the tree is not for the sole purpose of providing or enhancing views.*

Removal of the trees is not for the sole purpose of providing or enhancing views because the trees are being removed for development purposes, as stated, above, under Criterion #1. This criterion is met.

**Conclusion:** For the reasons outlined, above, staff concludes that, based on evidence in the record at the time of publication of this staff report, the applicant has not shown that the proposed tree removal complies with all applicable criteria, or that an exception to Criterion 3 is warranted. Therefore, staff recommends denial of the proposed tree removal for all five trees.

If additional evidence is submitted into the record such that the Commission approves removal of any or all trees requested, staff recommends that a condition of approval is added requiring that the applicant apply for and receive a verification tree removal permit prior to issuance of any building permit for construction of the townhouses.

**Mitigation [LOC 55.02.084(4)(a)(ii)]**

Any tree approved for removal under the Type II tree analysis shall be mitigated at a minimum 1:1 ratio except that "significant trees" removed for development purposes must be mitigated at a 2:1 ratio. If the Commission approves removal of Trees 1318 and 2139 and if the Commission finds these trees to be "significant trees," then each tree will be required to be mitigated at a 2:1 ratio. Mitigation trees shall have a minimum 3-inch caliper within the WLG Overlay. All native trees must be mitigated with a native species selected from LOC Appendix 55.02-1, Native Mitigation Tree List.

A public comment, Exhibit G-100, states that "it will take decades for the proposed 1" "toothpick" replacement trees to fill-in the gap" created by removal of Tree 2139. Staff finds that, based on Douglas fir growth rates, decades would be required for the mitigation tree to reach a similar size to the current 60-inch tree. Staff recommends denial of removal of Tree 2139. (If the Commission finds that Tree 2139 should be removed, the Commission may consider additional conditions of approval to mitigate the impact upon the built environment pursuant to LOC 55.02.094.)

The applicant's arborist incorrectly states that all mitigation requirements were reviewed under LU 18-0024 (Exhibit F-008, pg. 4). The new tree removal request, if approved, generates a new requirement to comply with this provision.

If any tree removal is approved, then staff recommends a condition of approval to finalize the mitigation plan for the property including the number, size, species, and location of required mitigation trees with the verification tree removal application. A staff inspection of the planted mitigation trees is required by Condition B(3).



**5. Any applicable condition of approval imposed pursuant to an approved ODPS or prior development permit affecting the subject property.**

All conditions of approval imposed as part of the prior approvals will remain in effect and will become conditions of approval for the present request, except as modified by this decision or those conditions that have already been completed.

**VII. CONCLUSION**

Based upon the materials submitted by the applicant and findings presented in this report, staff concludes:

- That the Development Review Permit to construct 23 townhouses, minor variance to reduce the required rear yard setback for units D16-D23, major variance to reduce minimum landscape planting sizes from 3-inch caliper to 1.5-inch caliper for trees within root protection zones and areas of steep slope, and modification of LU 18-0024 by major variance to reduce the minimum planting size of eight mitigation trees complies with all applicable criteria and standards or can be made to comply through the imposition of conditions; and,
- The major variance request to reduce minimum shrub planting size from 2 gallon to 1 gallon, and the proposed tree removal cannot be approved based on the evidence in the record at time of publication of this report.

**EXHIBITS**

**A-D** [No current exhibits; reserved for hearing use]

**E. GRAPHICS/PLANS**

- E-001 Tax Map
- E-002 Vicinity Map
- E-003 Existing Conditions Survey
- E-004 Site Plan
- E-005 Landscape Plans
- E-006 Subdivision Plan
- E-007 Elevation Plans
- E-008 Building Sections
- E-009 Floor Plans
- E-010 Roof Plans
- E-011 Perspective Drawings
- E-012 Materials
- E-013 Window and Door Cutsheets
- E-014 Tree Removal Plan
- E-015 Site Visit Photos June 5, 2023
- E-016 Site Plan with Current South Property Line Location

**F. WRITTEN MATERIALS**

- F-001 Applicant's Narrative
- F-002 Applicant's Narrative for Major Variance Criteria



F-003 Preliminary Stormwater Report  
F-004 Stormwater O & M Plan  
F-005 Fire Marshal Memo  
F-006 Neighborhood Meeting Minutes  
F-007 Brown & Caldwell, Stormwater Analysis  
F-008 Arborist Report, May 31, 2023  
F-009 City's Contract Arborist's Memo

**G. LETTERS**

Neither for nor Against (G-001 to G-099):

None

Support (G-100 to G-500):

G-100 Anderson 06-07-2023

Opposition (G-500+):

G-500 Gehrig 06-06-2023

Date of Application Submittal: November 14, 2022

Date Application Determined to be Complete: May 12, 2023

State Mandated 120-Day Rule: September 9, 2023



BEFORE THE DEVELOPMENT REVIEW COMMISSION OF THE  
CITY OF LAKE OSWEGO

DEVELOPMENT REVIEW PERMIT, ) LU 22-0059  
MINOR VARIANCE, MAJOR VARIANCES, ) HABITAT FOR HUMANITY  
MODIFICATION OF CONDITIONS OF ) FINDINGS, CONCLUSIONS & ORDER  
APPROVAL OF LU 18-0024, AND REMOVAL )  
OF FIVE TREES FOR A 23-LOT )  
TOWNHOUSE DEVELOPMENT )

**NATURE OF APPLICATION**

The applicant is requesting approval of the following for a Townhouse Development:

**Minor Development :**

- Development Review Permit to construct 23 townhouses;
- A minor variance to reduce the required rear yard setback from 25 to 20 feet for Units D16-D23;
- Modification of LU 18-0024 to decrease the approved mitigation tree planting size and shrub size;
- A major variance to reduce minimum landscape planting sizes from 2 gallon to 1 gallon for shrubs and from 3-inch caliper to 1.5-inch caliper for trees; and,
- Removal of two (2) trees for development purposes. [The applicant withdrew three trees for removal during the Commission's consideration of its application.]

The site is located at 16858 Boones Ferry Road and 5100, 5054, and 5022 Upper Drive (Tax Reference 21E18AA00400 and 21E18AB00100, -200, -300 and -400).

**HEARING**

The Development Review Commission (Commission) held a public hearing and considered this application at its meeting of June 21, 2023. At the hearing, a continuance was requested and the Commission continued the matter to July 17, 2023, and elected to leave the record open for further written testimony ("new evidence" by July 5; "rebuttal evidence" by July 11). The following exhibits were received after publication of the June 9, 2023, Staff Report and were entered into the record at the June 21<sup>st</sup> and July 17<sup>th</sup> meetings:

**F Exhibits: Written Documents**

- F-010. Applicant's Written Testimony 7-5-2023
- F-011. Applicant's Written Testimony 7-5-2023
- F-012. Applicant's Rebuttal of G-580, received 7-11-2023
- F-013. Retraction Letter Submitted by Applicant 7-11-2023
- F-014. Additional Rebuttal Submitted by Applicant 7-11-2023



1  
2 G Exhibits: Public Comments  
3

4 Support:

5 G-101. Comments from Gunn, received June 9, 2023  
6 G-102. Comments from Myers, received June 16, 2023  
7 G-103. Comments from Castle, received June 17, 2023  
8 G-104. Comments from Gunn, received June 17, 2023  
9 G-105. Comments from Anderson, received June 17, 2023  
10 G-106. Comments from Perham, received June 17, 2023  
11 G-107. Comments from Elliott, received June 18, 2023  
12 G-108. Comments from Greaves, received June 18, 2023  
13 G-109. Comments from Gray, received June 19, 2023  
14 G-110. Comments from Norton, received June 19, 2023  
15 G-111. Comments from George, received June 19, 2023  
16 G-112. Comments from Hull, received June 19, 2023  
17 G-113. Comments from Brewington, received June 19, 2023  
18 G-114. Comments from Borchers, received June 19, 2023  
19 G-115. Comments from Korwin, received June 19, 2023  
20 G-116. Comments from Bosch, received June 19, 2023  
21 G-117. Comments from Thompson, received June 19, 2023  
22 G-118. Comments from Gronowski, received June 19, 2023  
23 G-119. Comments from Shuford, received June 19, 2023  
24 G-120. Comments from Apter, received June 19, 2023  
25 G-121. Comments from Johnson, received June 19, 2023  
26 G-122. Comments from Borduin, received June 20, 2023  
27 G-123. Comments from Reddy, received June 20, 2023  
28 G-124. Comments from Coleman, received June 20, 2023  
29 G-125. Comments from Crawford, received June 20, 2023  
30 G-126. Comments from Antoniskis, received June 20, 2023  
31 G-127. Comments from Cooper, received June 20, 2023  
32 G-128. Comments from Gronowski, received June 20, 2023  
33 G-129. Comments from Gunadi, received June 20, 2023  
34 G-130. Comments from Rarick, received June 20, 2023  
35 G-131. Comments from Joshi, received June 20, 2023  
36 G-132. Comments from Platt, received June 20, 2023  
37 G-133. Comments from Heintz, received June 21, 2023  
38 G-134. Comments from Ganzini, received June 21, 2023  
39 G-135. Comments from Smith, received June 21, 2023  
40 G-136. Comments from Cooper, received June 21, 2023  
41 G-137. Comments from Bartho, received June 21, 2023  
42 G-138. Comments from McCreath, received June 21, 2023  
43 G-139. Comments from Lievens, received June 21, 2023  
44 G-140. Comments from Lievens, received June 21, 2023  
45 G-141. Comments from Belfiore, received June 21, 2023  
46 G-142. Comments from Griffin, received June 21, 2023



1 G-143. Comments from To, received June 21, 2023  
2 G-144. Comments from Campos, received June 21, 2023  
3 G-145. Comments from Ganzini, received June 21, 2023  
4 G-146. Comments from LO for Love, received June 21, 2023  
5 G-147. Comments from Wallin, received June 21, 2023  
6 G-148. Comments from Evart, received June 21, 2023  
7 G-149. Comments from Kahl, received June 21, 2023  
8 G-150. Comments from Cliff, received June 21, 2023  
9 G-151. Comments from Atwood, received June 21, 2023  
10 G-152. Comments from Cliff, received June 21, 2023  
11 G-153. Comments from Hartman, received June 21, 2023  
12 G-154. Comments from Johnson, received June 21, 2023  
13 G-155. Comments from Meier, received June 21, 2023  
14 G-156. Comments from Tseng, received June 21, 2023  
15 G-157. Comments from Horne, received June 21, 2023  
16 G-158. Comments from Meier, received June 21, 2023  
17 G-159. Comments from Barram, received June 21, 2023  
18 G-160. Comments from Johnson, received June 21, 2023  
19 G-161. Comments from Graham, received June 21, 2023  
20 G-162. Comments from Warne, received June 22, 2023  
21 G-163. Comments from Carroll, received June 21, 2023  
22 G-164. Comments from Gonnerman, received July 3, 2023  
23 G-165. Comments from Hartline, received July 3, 2023  
24 G-166. Comments from Buck, received July 3, 2023  
25 G-167. Comments from Diaz, received July 5, 2023  
26 G-168. Comments from Smith, received July 7, 2023  
27 G-169. Comments from Smith, received July 7, 2023  
28 G-170. Comments from Sparling, received July 7, 2023  
29 G-171. Comments from Ganzini, received July 10, 2023  
30 G-172. Comments from Cady, received July 10, 2023  
31 G-173. Comments from MacIntosh, received July 10, 2023  
32 G-174. Comments from Craig, received July 10, 2023  
33 G-175. Comments from Bosch, received July 10, 2023  
34 G-176. Comments from Alexander, received July 10, 2023  
35 G-177. Comments from Greaves, received July 10, 2023  
36 G-178. Comments from Lake Grove NA, received July 10, 2023  
37 G-179. Comments from Platt, received July 11, 2023  
38 G-180. Comments from Gunadi, received July 11, 2023  
39 G-181. Comments from Palm, received July 11, 2023  
40 G-182. Comments from Cooper, received July 11, 2023  
41 G-183. Comments from Ledoux, received July 11, 2023  
42 G-184. Comments from Myers, received July 11, 2023  
43 G-185. Comments from Millan-Simpkins, received July 11, 2023  
44 G-186. Comments from Cook, received July 11, 2023  
45  
46



Opposition:

G-501. Comments from Culver, received June 12, 2023  
G-502. Comments from Culver, received June 12, 2023  
G-503. Comments from Byrne, received June 13, 2023  
G-504. Comments from Hamilton-Scott, received June 14, 2023  
G-505. Comments from Rana, received June 14, 2023  
G-506. Comments from Johnston, received June 14, 2023  
G-507. Comments from Spann, received June 15, 2023  
G-508. Comments from Conklin, received June 15, 2023  
G-509. Comments from Johnson, received June 17, 2023  
G-510. Comments from Green, received June 17, 2023  
G-511. Comments from Conklin, received June 17, 2023  
G-512. Comments from Silka, received June 18, 2023  
G-513. Comments from Linkfield, received June 18, 2023  
G-514. Comments from Courtney, received June 18, 2023  
G-515. Comments from Rohrer, received June 18, 2023  
G-516. Comments from Knapik, received June 18, 2023  
G-517. Comments from Bechtold-Yoo, received June 18, 2023  
G-518. Comments from Rohde, received June 18, 2023  
G-519. Comments from Bismar, received June 18, 2023  
G-520. Comments from Petty, received June 18, 2023  
G-521. Comments from Smith, received June 18, 2023  
G-522. Comments from Szabo, received June 18, 2023  
G-523. Comments from Westwood, received June 19, 2023  
G-524. Comments from Chiang, received June 19, 2023  
G-525. Comments from Wright, received June 19, 2023  
G-526. Comments from Johnson, received June 19, 2023  
G-527. Comments from Edelberg, received June 19, 2023  
G-528. Comments from Owen, received June 19, 2023  
G-529. Comments from Scott, received June 19, 2023  
G-530. Comments from York, received June 19, 2023  
G-531. Comments from Keuneke, received June 19, 2023  
G-532. Comments from Buchman, received June 19, 2023  
G-533. Comments from Thomas, received June 19, 2023  
G-534. Comments from Gardner, received June 19, 2023  
G-535. Comments from Arnold, received June 19, 2023  
G-536. Comments from Johnson, received June 19, 2023  
G-537. Comments from Kitchen, received June 19, 2023  
G-538. Comments from Diaz, received June 19, 2023  
G-539. Comments from Dover, received June 19, 2023  
G-540. Comments from Boyle, received June 19, 2023  
G-541. Comments from Miller, received June 20, 2023  
G-542. Comments from Marzouk, received June 20, 2023  
G-543. Comments from Mohr, received June 20, 2023  
G-544. Comments from Mohr, received June 20, 2023  
G-545. Comments from Halberg, received June 20, 2023



1 G-546. Comments from McLeod, received June 20, 2023  
2 G-547. Comments from McLeod, received June 20, 2023  
3 G-548. Comments from Culver, received June 20, 2023  
4 G-549. Comments from Hunt, received June 20, 2023  
5 G-550. Comments from Stines, received June 20, 2023  
6 G-551. Comments from Meckel, received June 20, 2023  
7 G-552. Comments from Thomas, received June 20, 2023  
8 G-553. Comments from Blommer, received June 21, 2023  
9 G-554. Comments from Volpel, received June 21, 2023  
10 G-555. Comments from Froming, received June 21, 2023  
11 G-556. Comments from Messmer, received June 21, 2023  
12 G-557. Comments from Buzbee, received June 21, 2023  
13 G-558. Comments from Blommer, received June 21, 2023 (duplicate of G-553)  
14 G-559. Comments from Rowlings, received June 21, 2023  
15 G-560. Comments from Lundeen, received June 21, 2023  
16 G-561. Comments from Wosko, received June 21, 2023  
17 G-562. Comments from Rosewood Neighborhood Association, received June 21, 2023  
18 G-563. Comments from Jolliff, received June 21, 2023  
19 G-564. Comments from Menon, received June 21, 2023  
20 G-565. Comments from Beeler, received June 21, 2023  
21 G-566. Comments from Backus, received June 21, 2023  
22 G-567. Comments from Mohr, received June 21, 2023  
23 G-568. Comments from Tieman, received June 22, 2023  
24 G-569. Comments from Petree, received June 22, 2023  
25 G-570. Comments from Madriago, received June 22, 2023  
26 G-571. Comments from Morris, received June 24, 2023  
27 G-572. Comments from Culver, received July 2, 2023  
28 G-573. Comments from Spann, received July 3, 2023  
29 G-574. Comments from Fulton, received July 3, 2023  
30 G-575. Comments from Spann, received July 4, 2023  
31 G-576. Comments from Hamilton-Scott, received July 4, 2023  
32 G-577. Comments from Hamilton-Scott, received July 5, 2023  
33 G-578. Comments from Janney, received July 5, 2023  
34 G-579. Comments from Culver, received July 5, 2023  
35 G-580. Comments from Blommer, received July 5, 2023  
36 G-581. Comments from Rosewood Neighborhood Association, received July 5, 2023  
37 G-582. Comments from Hamilton-Scott, received July 5, 2023  
38 G-583. Comments from Blommer, received July 5, 2023  
39 G-584. Comments from Thomas, received July 5, 2023  
40 G-585. Comments from Rana, received July 5, 2023  
41 G-586. Comments from Culver, received July 11, 2023  
42 G-587. Comments from Rosewood NA, received July 11, 2023  
43 G-588. Comments from Blommer, received July 11, 2023 [See Commission's Order on  
44 Evidence, striking a portion of this Exhibit.]  
45 G-589. Comments from Hamilton-Scott, received July 11, 2023  
46



Neither For Nor Against:

G-003. Testimony from Uchida, received July 11, 2023

**CRITERIA AND STANDARDS**

<b>Chapter 50 Community Development Code</b>	
50.02.002	Commercial, Industrial, Mixed Use Zones
50.03.002.3	Commercial, Mixed Use, Industrial & Special Purpose Districts Use Table
50.03.003	Use Specific Standards
50.04.001.4	Dimensional Standards for WLG Zones
50.04.002	Special Street Setbacks
50.05.005	West Lake Grove Design District Standards
50.06.002	Parking
50.06.003.1	Access/Access Lanes (Flag Lots)
50.06.003.2	On Site Circulation – Driveways & Fire Access Roads
50.06.003.3	On Site Circulation – Bikeways, Walkways & Accessways
50.06.004.1	Landscaping, Screening & Buffering
50.06.004.2; 50.07.004.2	Fences
50.06.004.3	Lighting Standards
50.06.006.3; 50.07.004.1	Stormwater Management Standards
50.07.003.1	Application Procedures
50.07.003.5	Conditions on Development
50.07.003.6	Effect of Decision
50.07.003.7	Appeals
50.07.003.10	Certificate of Occupancy
50.07.003.11	Modification of Development Permits
50.07.003.14	Minor Development Decisions
50.08.002	Minor Variances
50.08.004	Major Variances
<b>Utility Code [LOC Chapter 38]</b>	
38.25	Stormwater Management Code
<b>Streets &amp; Sidewalks Code [LOC Chapter 42]</b>	
42.03.135	Method of Establishing Special Street Setback Reference Line



Tree Code [LOC Chapter 55]	
55.02.010 – 55.02.084	Tree Removal and Protection
<b>Prior Cases:</b> LU 18-0024 - 23-lot subdivision	

## **CONCLUSION**

The Commission concludes that LU 22-0059 can be made to comply with all applicable criteria by the application of certain conditions of approval [modifications to staff recommended Conditions reflected, below].

## **FINDINGS AND REASONS**

The Commission incorporates the June 9, 2023, Staff Report, with all exhibits, and staff memorandums to the Commission dated June 20<sup>th</sup> and July 14<sup>th</sup> as support for its decision, supplemented by the further findings and conclusions below.

Following are the supplemental findings and conclusions of the Commission:

- 1. Exhibit G-574 Continuance Request.** Exhibit G-574 contains a request for a second continuance. The Commission voted to deny this continuance request as no certain terms for the continuance were specified. Note: The second continuance request contained in Exhibit G-580 was withdrawn by the commenter prior to the continued hearing.
- 2. Trees.** As discussed in the July 14<sup>th</sup> Staff Memo, pgs. 14-15, the applicant withdrew three trees (Trees #1120, 1318, and 2145) from the request and provided additional evidence demonstrating that Exception 3b is met for Trees #2139 and 2144. Based on this additional evidence, the Commission approves the requested removal of Trees #2139 and 2144.
- 3. Major Variance to Shrub Size.** As discussed in the July 14<sup>th</sup> Staff Memo, pg. 11, the Commission accepts staff's recommendation to allow 1-gallon shrub sizes at time of planting within Tract C only, which contains the majority of trees retained on the site.

## **ORDER**

**IT IS ORDERED BY THE DEVELOPMENT REVIEW COMMISSION of the City of Lake Oswego that:**

1. LU 22-0059 is approved, subject to compliance with the conditions of approval set forth in Subsection 2 of this Order. (The use of strikethrough and **bold** show the Commission's tentatively approved changes made to the proposed staff-recommended conditions.)
2. The conditions for LU 22-0059 are as follows:



A.	<b>Prior to the Issuance of Any Grading or Building Permit, the Applicant/Owner Shall:</b>	
	1.	Submit final building plans for review and approval of staff that are the same or substantially similar to Exhibits E-004, and E-007 through E-013, <b>as modified (C Units only) in Exhibit F-011, pg. 48-52)</b> <u>if</u> the 6-foot right-of-way directly south of the subject site is vacated prior to building permit issuance; however, if the 6-foot right-of-way is not vacated, then for Units D16-D23, the structures shall meet the 20-foot rear yard setback, (such as by removal of the rear decks), measured from the current south property line, as varied by the approved minor variance.
	2.	Record a covenant pursuant to LOC 39.06.105(5)(d) or pay all applicable fees waived to date.
	3.	Submit a final drainage report, prepared by a registered engineer, that complies with the Stormwater Management Code and LOSWMM, to the satisfaction of the City Engineer. If the final design is as proposed, the final design report must:
	a.	Demonstrate that all new and redeveloped impervious surface generated by the project is accounted for in the sizing of water quality and flow control facilities.
	b.	Demonstrate that the proposed stormwater management facilities meet the minimum geometry and configuration requirements in LOSWMM, Section 4.6.
	c.	Demonstrate that sizing calculations to determine the required number of treatment cartridges is consistent with the General Use Level Designation approval documents from Washington Department of Ecology and adhere to vendor recommendations for maintenance, given the configuration of the treatment facility downstream of detention. By locating downstream of detention, a larger volume of runoff will be treated than typically associated with a design flow rate of 0.06 cfs and could result in more frequent maintenance needs.
	d.	Include facility sizing calculations, to demonstrate that the proposed buried stormwater detention facility has sufficient storage and match the 2-year, 5-year, and 10-year pre-developed discharge rates. If the calculated orifice size needed to meet the flow control requirements is less than the City's minimum allowable construction standard of 1.0 inch, the required orifice size should be provided in the calculations but may be increased to 1.0 inch in the design drawings.
	4.	Submit final plans that comply with the LOSWMM for all stormwater management facilities. Final facility placement must adhere to setback requirements from building foundations (10 ft.) and property lines (5 ft.) per LOSWMM Table 3.1.



	5.	Obtain a DEQ Construction Stormwater Permit (NPDES 1200-C) prior to construction.
	6.	Per LOC Chapter 52, apply for and obtain an approved erosion prevention and sediment control permit issued through the City of Lake Oswego, and install and maintain all BMPs as indicated in the permit. These measures must remain in place as indicated throughout the development period.
	7.	Townhomes on Lots 1 and 2 and Lots 22 and 23 may not be constructed until townhomes on the other 19 lots are reviewed and approved in compliance with the general and specific landscaping standards, building design (LOC 50.05.005.4.g), and required design elements for the townhomes (LOC 50.05.005.5.b and 7.b) is shown.
	8.	Per LOC Chapter 52, submit an Erosion Control Plan and apply for and obtain an erosion prevention and sediment control permit issued through the City of Lake Oswego and a NPDES 1200-C Permit from Oregon DEQ. Install and maintain all erosion control BMPs as indicated in the permits.
	9.	<b>Apply for a Verification tree removal permit for the two trees approved for removal (Trees 2139 and 2144).</b>
	10.	<p><b>Submit a final landscape plan for review and approval of staff. The landscape plan shall be the same or substantially similar to Exhibit E-005 with the following modification:</b></p> <p><b>Shrubs shall be 2-gallon size at time of planting, except that 1-gallon shrubs may be planted within Tract C.</b></p>
<b>B.</b>	<b>Prior to the Final Building Inspection, the Applicant/Owner Shall:</b>	
	1.	Provide certification from the engineer of record that the stormwater facilities were constructed per the design and are functioning properly.
	2.	Provide proof of recorded operations and maintenance plans (OMPs) for each stormwater facility. The OMPs must describe how to properly maintain the facilities, the frequency of maintenance required and the party responsible for maintaining the facilities.
	3.	<p>Install all street trees and landscaping as proposed in Exhibit E-005 or substantially similar, and all required mitigation trees <u>if</u> the 6-foot right-of-way directly south of the subject site is vacated prior to building permit issuance; however, <u>if the 6-foot right-of-way is not vacated</u>, then the landscape plantings and mitigation trees in the southern landscape buffer shown on Exhibit E-005 shall be planted on site (based on the current property line location), and request an inspection by staff.</p> <p>The required minimum planting size for:</p> <p>a. Shrubs shall be met per LOC 50.05.005.9.d.vi, <b>except that 1-gallon sizes may be planted within Tract C;</b></p>



		<p>b. Trees shall be met per LOC 50.05.005.9d.vi, except per the major variance <b>(8 trees)</b>, the size of trees shall be reduced from 3-inch caliper to 1.5-inch caliper for trees within root protection zones and areas of steep slope.</p> <p>Any mitigation trees located on individual lots shall be planted prior to final building inspection for the dwelling on each lot.</p> <p>[Note: The applicant is advised to request the inspection well in advance of the desired occupancy or final inspection date, as any missing or dead landscaping will be required to be installed/replaced prior to approval of the final occupancy.]</p>
	4.	<p>Provide a 1-year guarantee (one 12-month growing season from the date of installation) for all landscape materials, pursuant to LOC 50.06.010.2. The guarantee shall consist of a security in the amount of 5% of the total landscaping cost (including labor). The applicant/owner shall also submit a landscape maintenance plan for review and approval of staff.</p>

DATED this 7<sup>th</sup> day of August, 2023

/s/ Randy Arthur  
Randy Arthur, Chair  
Development Review Commission

/s/ Kat Kluge  
Kat Kluge  
Administrative Support

**TENTATIVE DECISION – July 17, 2023**

AYES: Arthur, Dewes, Leek, Poinsette, and Sangrey

NOES:

ABSTAIN: Bates, O'Connor

ABSENT:

**WRITTEN FINDINGS – August 7, 2023**

AYES: Arthur, Poinsette, Dewes and Leek

NOES:

ABSTAIN: O'Connor

ABSENT: Bates and Sangrey



**Case File: PA-23-0061**

**Location:** 791 4<sup>th</sup> St., Lake Oswego

**Type of Application:** Minor Development.

The applicant is requesting a major alteration of a historic landmark (Brown-Vose House) consisting of the rehabilitation and expansion of the house. The existing house is nonconforming requiring a Residential Infill Design (RID) variances to the front, side, and rear setbacks. The proposed rear-facing addition conforms to City code and does not increase any nonconformities. These applications are classified as minor development per LOC 50.07.003.14.a.ii.(15) and (25).

**Neighborhood Contact:** First Addition Neighborhood Association

**Comprehensive Plan:** NA for this type of application

**General Provisions:** Alteration of a nonconforming dwelling. This project is requesting an exception to demolishing a nonconforming dwelling while allowing more than 50% of the existing dwellings floor area to be added. The existing structure is a Local Designated Landmark (LDL) that was built in 1885. It is nonconforming to the front yard, south side yard, and street side setbacks. This project seeks variances that will preserve a nonconforming historic dwelling. It will expand the existing floor area of 1,729 SF building by 1443 SF, which includes an attached garage. The project will require removal of a large Douglas fir tree that lies in the footprint of the proposed expansion. The proposed addition conforms with the existing code while adhering to the restrictions of the code regarding historic landmarks.

**Zone:** R-6

**Use Regulations and Conditions:** Compliant

### **Dimensional Standards (LOC 50.04)**

**Max Floor Area:** Compliant. 3250 SF is allowed. The proposed plan calls for a new floor area of 3246 SF.

$$2750 \text{ SF} + [(\text{actual lot size}-6000 \text{ SF} \times .19)] \text{ plus } 500 \text{ SF for garage} = 3250 \text{ SF}$$

**Setbacks:** noncompliant front and side (yard and street) setbacks for existing historic structure. Rear setback and new addition complaint.

<b>SETBACK REQUIREMENTS</b>	<b>Existing structure</b>	<b>Proposed To New Addition</b>
Front Yard Set Back 20 ft	7' 7" (to porch, to remain)	NA
Street Yard Set Back 7.5 ft	6' 5" (to side porch, to remain)	27' 0"
Side Yard Set Back 7.5 ft	6' 9" (to house, to remain)	8' 0"
Rear Yard Set Back 15ft	78' 8" (to house) 9.1' (to shed that will be removed)	16' 11" (new garage)

*See RID variance to the setback requirements for the front, side, and street side setbacks.*



**Max Base Height @ ridge:** Compliant. 28 – 32 ft base height is allowed for a lot with sloping topography. The existing structure is 27.1' and the new addition ridge sits below the existing ridge. The addition's ridge is 24' 8" at its highest point.

**Max Lot Coverage:** Compliant. 35% (2100 SF) is allowed and the new plan proposes 34.7% lot coverage (2083 SF).

## **Development Standards (LOC 50.06)**

### **Building Design**

**Street Front Planes [Subsection 2.b-d]:** Compliant with the new setback. The front of the structure sits within the front setback plane the structure making the structure compliant. The overall projection does meet the exception for street front setback plane as it is less than 1/3 of the existing structure's roof penetrates the street front setback [50.06.0012C]. The width of the structure is 95' 5" and the penetration from the street with the new setback is 9' 11". See image on plan set page 12.

$$9' 11" < 31' 10" \text{ (one third of the structures width)}$$

**Street Side Setback Planes:** Compliant.

**Side Yard Setback Plane – Interior Yard [Subsection 2.e]:** Compliant with exception i.e. (1). The gable end that protrudes into the setback is less than 1/3 of the structure length at 12' in height. The protruding gable is 14' 3" wide at 12' height, which is less than one third the length of the structure of 95' 5".

**Side Yard Appearance and Screening [Subsection 2.f.i-iii]:** Compliant using Treatment 2. The new structure has more than 2 planes that are offset by a minimum of 16" with wall planes wider than 4' for one full story. All new overhangs are 16", trim width is 5" and over 15% of the side elevations are occupied by windows or doors (walls = 1698 SF, windows and doors = 280 SF = 16.5%). Plan set page 5 (floor plan) and page 7 (south elevation).

**Corner Lots – Side Yards that Abut Street [Subsection 2.f.iv]:** NA requirement met for side yard screening.

### **Additional R-6 Structure Design Standards [Subsection 3.a-d]**

- A. Roof design** = Compliant. All primary roof forms meet the minimum pitch of 6:12.
- B. Front Porch** = NA, applies to new structures
- C. Alleys** = Compliant. A gravel driveway is being proposed.
- D. Street Trees** = NA, applies to new structure.

### **Additional R-6 Structure Design Standards [LOC 50.06.001.4.b]:**

**Access:** Compliant. The site plan shows that the garage will be accessed from the alley in compliance with this standard.



#### **PARKING [LOC 50.06.002]**

Parking [LOC 50.06.002]: No parking is required per OAR 660-012-0430, 660-012-0435, 660-012-0440 for this site because is located within one-half mile of TriMet Bus Line #35, the city's most frequent bus transit line.

#### **SITE DESIGN [LOC 50.06.004]**

Fences [LOC 50.06.004.2]: A new 3' picket fence is being proposed along the property line from the existing fence west approximately 26' then returning to the house. This will help create less confusion as to where the front of the house is. No retaining walls are proposed.

#### **Stormwater Management [LOC 50.06.006.3]:**

**Stormwater management requirements:** Not applicable. Less than 1000 SF of new impervious surface area will be created. The proposed new impervious surface area is 898 SF. The existing impervious surface area is 1337 SF. 130 SF of existing impervious surface area (concrete below and to the east of the existing shed (shed will be removed) will be replaced with a new pervious paver driveway system.

#### **SOLAR ACCESS [LOC 50.06.007]**

Solar Balance Point [LOC 50.06.007.2]: The addition would shade E Avenue to north, which is an undevelopable area; therefore, the proposal is exempt from the maximum shade point height standard [LOC 50.04.004.3].

#### **UTILITIES [LOC 50.06.008]**

Utilities [LOC 50.06.008]: Please see survey for a visual location of existing utilities. No changes proposed to any existing utilities – all existing to remain.

The existing dwelling and addition will be serviced with public water from an existing line on 4<sup>th</sup> St. Natural Gas will be provided from an existing line from the alley. Electricity, telephone, and cable TV will be brought from the existing overhead utility poles from the corner of E Ave and the alley. Sanitary/sewer is connected from the existing lateral to the sewer on the alley.

#### **HISTORIC PRESERVATION [LOC 50.06.009]**

The Brown-Vose house is designated as a Lake Oswego historic landmark built in 1885. The original east-west gable is believed to be the oldest section of the house and may have been the original house with the kitchen and stairway being the first addition, and the laundry room and main floor bath a second addition. The little room off the living room on 4<sup>th</sup> St. (the library), is likely to have been a conversion of the front porch in the 1920s or 30s based on the 2" walls and the folklore.

New clues that are being uncovered, specifically, the siding found on the kitchen pantry wall (shared wall with the dining room), the placement of a ceiling beam in the northwest bedroom, the fact that the



landing at the top of the stairs and the south facing bedroom floor is lower than the east-west gable portion of the house, the basement is only under the kitchen, and the shed roof west facing gable does not match other roof forms of houses built in the same period. Based on the time the house it is not unreasonable for the kitchen to have been an addition, Finally, based on the foundation, the laundry room and bathroom were added at some point after the kitchen/rest of the house.

The goal of the proposed design's is to restore and maintain the historic integrity of the existing house, return parts of the house to the original condition (front porch), build an addition that complimentary the existing historic structure. The proposed design achieves this by:

- Keeping the proposed addition to the southeast side of the house. The only demolition to the existing structure would be to the single level laundry room, bathroom, and deck).
- Maintaining the overall form of the original east-west gable section of the house and the west façade.
- The east-west gable will be maintained on both sides (the proposed addition would be to the south of the east gable). Other additions to historic houses on corner lots have not preserved any part of the structure on the backyard side of the house.
- Details on both the E St side front porch will be repaired as need and remain the same, except for adding a diamond detail at the top point of the gable in the frieze.
- Create an open front porch by removing the 2" walled room/library off the living room and replacing the walls with a railing and the doors to this room with original house windows (use windows from the east wall in the dining room, the windows in the library are in poor condition and the dining room windows are the same size and in better condition). See plan page 11 for details.
- Repair all original wood windows and add wood storm windows. With the following exceptions:
  - Windows from the east side of the of the dining room will be repaired and used in the living room.
  - Library windows will be eliminated because the wall will become a railing.
  - The kitchen window, which is not original, will be replaced with a wood window and moved to the west 2' to allow the kitchen sink to have counter space on either side.
  - Replace the east side dining room windows with wood French doors. The opening size would not change.
- Keeping the addition below the ridge line of the existing roof ridge.
- Using a shingle siding on the addition to complement, but not match the existing lap siding.
- Use lap siding on the garage to complement the original.
- The new addition windows will be wood and will trim that matches the original house. They will be smaller, but similar in proportion.
- Repair the existing front doors in accordance with the Secretary of the Interior standards.

Proposed changes to the existing structure:

- Adding wood storm windows to the existing wood windows.
- Adding a diamond detail in the gable of the E St. front porch and the 4<sup>th</sup> St. gable.
- Adding a belly band to the 4<sup>th</sup> St. gable



- Replacing the library walls with a spindled railing that matches the decorative spindle detail under the porch eaves. See front elevation on page 7 & 11 of plan set.
- Continue the spindle around the entire front porch where the walls are removed and railing added, also match the decorative brackets and posts used on the 4<sup>th</sup> and E St. porches. See front elevation on page 7 & 11 of plan set.

Existing condition:

- The existing doors, which are not believed to be original, are brittle and fragile.
- The existing doors do not provide basic physical security, thermal barriers, nor fire protection.
- Many of the decorative stained-glass pieces are cracked and need to be replaced.
- The north door's main glass is newer, does not show the characteristic of turn-of-the-century wavy glass.

Below specifically addresses Historic Preservation code requirements for major alterations:

LOC 50.06.009:

SUBSECTION 7.C: Criteria of Approval for Major Alteration of a Landmark.

In order to approve a major alteration of a landmark, the reviewing authority shall find that:

i. The proposed alteration will not diminish the historical or architectural significance of the landmark.

SUBSECTIONS 7.E.I-IV

e. *Additional Considerations for Granting Authority's Deliberations.*

*The following considerations are to be used as a guide in the granting authority's deliberations when approving applications under subsections 7.b through 7.d of this section:*

i. *The alteration is consistent with the use of the resource.* The Brown-Vose house was built as a residential house. The proposed changes will maintain its historical significance and function while making updates that allow it to be more conducive to how family's live today: adding more living space, a double car garage, functional outdoor living, an owner's suites, and safe functional stairs. These changes will help ensure the house remains a viable residence for decades to come.

ii. *The significance of the resource and the community benefit to preserving it.*

The Brown Vose house is one of the oldest houses in Lake Oswego and was listed as a local landmark by the owner at the time (John and Jennifer Teton) and approved by the City. Over the years, it has also received grants by the city for external repairs. By maintaining its historical significant features and use, the community's history is being preserved allowing residents to see how houses were designed in the late 1800's and demonstrating how they can evolve and maintain their significance as they age.

iii. *The public interest in the preservation of the resource.*



When the City placed the structure on its landmark's list, it deemed the structure one of public interest worthy of preservation. The public interest is served by having this house undergo an addition because it allows the house to remain a viable historic landmark for the community. The addition is subordinate to the existing structure and maintains the general appearance of the front façade; bringing it back to what is believed to be its original state with an open front porch. For more detail about the addition, please see comments below.

iv. *The physical condition of the resource.*

The over all condition of the resource is in fair condition. Substantial work to the foundation is required and the stairs are unsafe with its high and uneven steps. Most of the windows are repairable, but storm windows need to be added for energy efficiency. The front (west side) and side (north side) doors are in poor condition. The wood is dry, some muntins are missing are ready to fall-off, and some lights are cracked. The main window (the center window) in the side door is not original. They will take substantial work to restore. The siding and porch details need some basic repair work, but overall is in good condition.

SUBSECTION 7.F.I-VIII

f. *Additional Criteria for Reviewing Authority's Deliberations.*

The following criteria shall be met when approving applications under subsections 7.b through 7.d of this section:

i. *Building Height:*

*Existing building height should be maintained. Raising or lowering a structure's permanent elevation when constructing a foundation should be avoided, except as required by Building Code or floodplain requirements.*

The foundation work that will be done to stabilize the structure will not alter the building height. The proposed addition does not impact the original structure; hence, the main structure's height is not changed. The roof of the addition is lower than the existing structure.

ii. *Horizontal Additions:*

*The scale and proportion of building additions, including the relationship of windows to walls, shall be visually compatible with the traditional architectural character of the historic building. Contemporary construction is acceptable if the design respects the building's original architectural style and is compatible with the original scale, materials, window and door opening proportions of the structure.*

The proposed addition is visually compatible with the original structure and similar to additions made to older houses. The addition is behind the main façade of the house making it unnoticeable from the front. From the side, it is located behind the original structure's gable set back on the southeast side of the lot which helps the passerby see that it is an addition and not part of the original house, making it subordinate to the original structure. The garage has a steep roof pitch to compliment the original structure.



The windows are compatible maintaining the vertical nature of the ones on the original house. The panes also mimic the original. Most of the windows are also double hung like the original, except for the casement windows located in the hallways by the stair landings which were chosen to help ensure furniture could be moved up and down the stairs. These windows will have lites that will mimic the look of the double-hung windows.

The siding of the addition will complement the existing and not match to help further differentiation of the old and new aspects of the structure. The existing structure has lap siding, and the new addition will be shake.

### iii. Roof Form:

*Alteration of roof pitches, roof shapes, and materials should maintain the architectural style of the building.*

The only change to the existing structure is the removal of the laundry room and bathroom bump out on the southeast corner of the house which is an addition. The original roof pitch will not be altered. The addition will rest upon the house's existing roof's southeast corner and a cricket will be added for drainage. The new roof type will match the existing asphalt roof. The pitch of the addition is slightly flatter than the existing to keep it subordinate to the original house and maintain head-height inside. The new garage has a steeper roof pitch, like the original house, to maintain compatibility between the two side gables visible from E Ave.

### iv. Rehabilitation Work:

*Preserve existing historic building elements or replace with building elements and materials that replicate the historic elements, as documented through verifiable evidence, such as photographs.*

The goal is to first preserve and repair historic elements of the house, if that is not possible, historic elements will be replicated. Specifically:

- Original windows will be repaired, and wood storm windows will be added to the structure. The windows from the dining room, on the east side of the house, will be reused on the front of the house where the existing opening from the living room to the library was. These windows are in better condition than the ones in the existing library.
- It is believed that the library was originally a front porch based on the thickness of the walls and the architectural style of the other remaining homes of the same era. The walls will be removed and replaced with a spindle railing. The details on this porch will match the existing side porch.
- The doors and transoms on the west and north façade will be repaired and replicated where needed (some lights are cracked, muntins are missing and some brittle beyond repair). Original hardware will be cleaned and reused. New bolt locks will be added that are period appropriate.
- The siding on the existing structure will be kept and repaired where necessary.
- The details on the north façade porch and the west façade porch will be repaired, where needed, and will be replicated if necessary.



v. Window Restoration:

*Windows (frames, sashes, muntins, glazing, sills, heads, hoodmolds, paneled or decorated jambs, moldings and exterior shutters) that define the historic character of the building should be retained and preserved. This is achieved by:*

Original windows will be repaired to their original condition by a window preservationist, and wood storm windows will be added to the structure.

The windows from the dining room, on the east side of the house, will be reused on the front of the house where the existing opening from the living room to the library is currently located. These windows are in better condition than the ones in the existing library.

The windows will be reglazed, recalked, and new glass installed where necessary. Weather-stripping will be installed. The windows will also be repainted to help protect the wood and the overall integrity of the window as a whole.

The kitchen window on the south side of the house, which is not original, will be replaced and moved slightly to the west. The existing window is sliding window. The new window will be the same.

vii. Signs, Lighting, Landscaping, Fences:

*Signs, lighting, and other appurtenances, such as walls, fences, awnings, and landscaping, shall be visually compatible with the scale and traditional architectural character of the historic building.*

Currently determining which door to use to enter the house is very confusing. Therefore, a new picket fence is being proposed to the northwest corner of the house to help clearly establish to visitors which door to use and to add a bit more privacy to the side of the house. The fence will be approximately 3' tall and will extend north from the northwest corner of the house to the property line and continue south to the existing fence.

No changes are being proposed to the north fence and the fence along the ally will be moved west to ensure it is on the property and allows appropriate visual access for the driveway.

**Porch lighting**

*Viii Additional Standards (Secretary of Interior Standards).*

The intent of the addition is to maintain the Secretary of Interior Standards and ensure the Brown-Vose house retains its historic integrity.

(1) Retention of Original Construction:

*A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.*



The property will continue to be used for its original purpose as a residence.

(2) Historic Integrity:

*The historic integrity of the property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*

The historic integrity of the structure is being maintained with minimal changes being made to the original structure. As stated above, the existing library walls will be replaced with spindle railings and revert to a front porch. All existing details will remain, and a few will be added that are period appropriate (the belly band in the gable on the west façade with decorative shingle that matches the north façade's gable above and a spindled railing on the north porch).

The windows will be repaired using the secretary of interior standards.

The addition is located away from the street and is not visible from the main (west) façade of the house.

(3) Time Period Consistency:

*Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.*

The proposed changes are consistent with the period and the addition is complimentary and does not give the false sense of being part of the original structure.

(4) Historic Changes:

*Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.*

Though the existing library off the living room could be considered historically significant in its own right, its walls are about 2.5 inches thick, and the room is very narrow. Making this a functional room and energy efficient would not be possible. Therefore we are recommending bringing it back to its original state.

The laundry room and bathroom addition made to the southeast side of the house does not have any notable significance to it. It is also the best location for a larger addition that maintains the original east-west gable portion of the house.

Response For items v-viii:

The intent of the project is to retain the historical significance of the structure and to follow the Secretary Interior Standards guidelines.



(5) Distinctive Architectural Features:

Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

(6) Preservation, Restoration and Rehabilitation:

Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

(7) Appropriate Treatments:

Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

(8) Archaeology:

Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

(9) New Additions:

New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

(10) Reversibility:

New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

**VARIANCES [LOC 50.08]**

**Design Variances [LOC 50.08.003]:** Four design variances are being requested:

1. Nonconforming front setback
2. Nonconforming street side setback
3. Nonconforming side yard setback

**Design Variance 1:** The existing structure has a nonconforming front setback of 7' 7", requiring a 13' 5" reduction of the 20' front setback.

**General Design Variance Criteria (LOC 50.08.003):**



(LOC 50.08.003.3.a.i): Compliance with the front yard setback is not practical due to the characteristics of the existing structure. The existing structure, The Brown-Vose House, was built in 1885 and is a Local Designated Landmark (LDL). It is a historic First Addition neighborhood house and is an “excellent example of late-nineteenth-century Vernacular with Queen Anne character-defining features and is one of the oldest extant houses in Lake Oswego” (Oregon Inventory of Historic Properties, Historic Resources Survey Form, Pg 3). “The Brown-Vose House is one of the oldest and best-preserved examples of a two-story Vernacular house remaining in Lake Oswego and contributes to the historic character of the First Addition neighborhood. With its asymmetrical form and central porch supported by turned posts and embellished with decorative brackets, it possesses a few key character-defining features of the Queen Anne style, also popular at the time of the house’s late-nineteenth-century construction.” (Oregon Inventory of Historic Properties, Historic Resources Survey Form, Pg 3).

Further, structures on the LDL are required to go through a rigorous review process to be demolished under LOC 50.06.009. Demolition of this structure to meet the current code is highly doubtful because only under specific circumstances listed under 50.06.009.6.b, which includes HRAB determining, for example, that the landmark is a severe hazard, the benefits of demolition outweigh the benefits of keeping the landmark and that no alternatives to demolition exist, or that keeping the structure would deny the property owner reasonable economic use. Based on these criteria, it is unlikely that demolition of this historic property would be permitted.

The goal of the proposed design is to maintain the structure’s historical integrity by:

- Placing the addition and garage on the south side of the site.
- Ensuring the addition and garage complement, but do not match the historic structure.
- Making the rooflines of the addition and garage subordinate to the historical structure.
- Only removing a small section of the east side of the structure that was a later addition.

The requested reduction will allow the historic structure to remain intact and there would be no change to the existing west façade allowing the historic nature of the structure to be undisturbed.

In addition, the proposed variance will also be maintaining a unique relationship with the house across the street, 3557 E Ave., another historic dwelling built in 1900. The proximity of these two historic dwellings offers a unique glimpse of what First Addition looked like at the turn of the 20<sup>th</sup> century.

(LOC 50.08.003.3.b): The proposed variance will ensure that an important piece of lake Oswego’s history will be thoughtfully and carefully preserved while resulting in a project that is exceptional in the quality of detailing, appearance, and materials. The original wood windows will be repaired, and new wood storm windows will be added to increase the energy efficiency of the home and bring to current energy standards. The front porch will be brought back to its original state (an 18’ in length front porch that is open on three sides. Currently, 15’ of the porch is walled in. Based on the wall construction, it is believed to be an addition made in the 1920s or 30’ when Irma Vose lived there). Bringing the front porch back to its original state will also be more compliant with the requirement for new construction in First Addition to have a front porch.

The details on the house will remain and a few details are being proposed which are in keeping with the details of the existing house and other historic houses in the neighborhood built during the same time period. The siding of the original house will be kept and repaired as needed as will all the trim and



details. The details being proposed include diamond shingling on the front west side gable to match the shingling on the north side porch gable, a wood balustrade around the front porch to replace the west and north wall and a railing on the south side of the porch, a belly band added to the west gable (like other historic neighborhood houses), and a diamond detail in the gables peak. The proposed front door will be replicated to match the existing door with Oregon sources Alder wood stained to match the original, tempered satin obscured glass for safety, security, and thermal characteristic, and new hardware to match the existing. The panels will match the original door panels and it will retain, where possible, otherwise replicate, decorative carnival glass. Specifics regarding the materials can be found in the plan set page 7 (elevations) and page 12 (material board).

#### **Residential Infill Design Review Variance Criteria (LOC 50.08.003.6):**

Residential Dwelling Size (LOC 50.08.003.6.a): The proposed design makes no changes to the front (west) façade of the historic structure. The proposed addition is on the southeast side of the house and its roofline is approximately 2.5' below the ridge of the existing house, helping to create the perception that the dwelling size has not changed since the early 1900s. The lack of change is one of the reasons this design is more compatible than another design because it maintaining its existing positive relationship neighborhood without any visible changes from 4<sup>th</sup> St., In essence, it gives the perception that there has not been a change to the historic structure in about a century and helps to maintain its historic significance from its west façade and providing an important historical visual context to the neighborhood (a neighborhood feature that section 50.02.001.2.b.iii.6 alludes to being important to the neighborhood). Additionally, by allowing the front porch to remain and reverting it back to an open front porch, the house becomes more compatible with the houses in its vicinity because most have a prominent front porch. Finally, the proposed addition allows the house to become more compatibly sized to the other houses in its vicinity while maintaining its historic integrity. The average house size of those in the vicinity (the houses presented on pages 16-20 on the submitted plan set) is ~2775 SF, of these houses, those built after 2000 average ~3715 SF. Increasing the square footage of the existing house from 1579 SF to 3247 SF (including the garage) with the addition makes it more compatible with the size of neighboring homes.

Relationship to the Street (LOC 50.08.003.6.b): The proposed design ensures that the historic integrity of the house remains on both street sides of the structure. From 4<sup>th</sup> St. the addition will not be seen, and no change to the structure will be identifiable. On E St., the proposed addition has been made on the southeast side of the structure where a bathroom and laundry room were added at some point in the house's history (approximately 5.5' of this single level addition would be removed to construct the proposed 2 story addition that steps down to a once story before leading to the attached story and a half garage). By keeping the addition to the southeast side of the house, the original structures integrity is kept intact, and the east-west side gable is not altered, which helps visually maintain its integrity from both the 4<sup>th</sup> and E St.

**Design Variance 2:** The existing structure has a non-conforming street side setback of 6' 5", requiring a 1' 1" reduction of the 7' 5" setback.



**General Design Variance Criteria (LOC 50.08.003):**

(LOC 50.08.003.3.a.i): Compliance with the street side yard setback is not practical due to the characteristics of the existing structure. The only portion of the north side of the structure that is noncompliant is a 1' 1" section of a 5' x 8' 6" existing single level front porch). It is highly likely that this was once the front façade of the house

Further, structures on the LDL are not allowed to be demolished under LOC 50.06.009, except under specific circumstances listed under 50.06.009.6.b, which includes HRAB determining, for example, that the landmark is a severe hazard, the benefits of demolition outweigh the benefits of keeping the landmark and that no alternatives to demolition exist, or that keeping the structure would deny the property owner reasonable economic use. Based on these criteria, it is unlikely that demolition of this property would be allowed. Removal of the north porch would also unlikely be permitted because of the requirements listed in 50.06.009.7. Removal of the north porch would be a substantial change to the appearance of the house especially because the porch sits on the northwest side of the house. It faces E Ave. It can be readily seen from E Ave, but also from the intersection of 4<sup>th</sup> and E., therefore it is made easily visible from a public right-of-way and a prominent feature of the house. Removing the porch would diminish the historic integrity of the house.

The goal of the proposed design is to maintain the structure's historical integrity by:

- Placing the addition and garage on the south side of the site.
- Ensuring the addition and garage complement, but do not match the historic structure.
- Making the rooflines of the addition and garage subordinate to the historical structure.
- Only removing a small section of the east side of the structure that was a later addition.

The requested reduction will allow the historic structure to remain intact and there would be no change to the existing north façade allowing the historic nature of the structure to be undisturbed.

(LOC 50.08.003.3.b): The proposed variance will ensure that an important piece of lake Oswego's history will be thoughtfully and carefully preserved while resulting in a project that is exceptional in the quality of detailing, appearance, and materials. The original wood windows will be repaired, and new wood storm windows will be added to increase the energy efficiency of the home and bring to current energy standards. The proposed porch door will be replicated to match the existing door with Oregon sources Alder wood stained to match the original, tempered satin obscured glass for safety, security, and thermal characteristic, and new hardware to match the existing. The panels will match the original door panels and it will retain, where possible, otherwise duplicate, decorative carnival glass. This is a better option than repairing because it not only provides better energy efficiency, physical safety, and fire safety, but gaining these efficiencies with a storm door would detract from the decorative nature of the doors. The condition of many of the door elements are also questionable or failing.

The details on the house will remain and a few details are being proposed which are in keeping with the details of the existing house and other historic houses in the neighborhood built during the same period. The siding of the original house will be kept and repaired as needed as will all the trim and details. The details being proposed include a diamond detail in the gable on the front porch peak. Specifics regarding the materials can be found in the plan set page 7 (elevations) and page 12 (material board).



Finally, a new 3' picket fence is being proposed along the property line from the existing fence west approximately 26' then returning to the house. This will help create less confusion as to where the front of the house is.

**Residential Infill Design Review Variance Criteria (LOC 50.08.003.6):**

Residential Dwelling Size (LOC 50.08.003.6.a): The proposed design is more compatible than a new structure that would be compliant because the proposed addition does not impact the front façade (west) or the original east-west gable of the house which is also viable from E St. Because it is stepped back significantly from E St. the overall impression of its size is reduced, therefore easing its impact and helping to maintain the historic integrity of the existing structure. By keeping the addition to the south side of the house and the height of the addition below the existing roof (approximately 2.5' below the ridge of the existing house) the addition compliments the historic portion of the house as well as keeps it subordinate helping to ensure the viewer can reasonably see that it is a well-thought-out addition and not original (an important criteria when adding to a historic structure). The proposed design also has a variety of heights and wall plane setbacks also help to create an illusion of a smaller structure. The square footage of the house is also similar to that of the new construction houses in the neighborhood.

Relationship to the Street (LOC 50.08.003.6.b): The proposed design ensures that the historic integrity of the house remains on both street sides of the structure. From 4<sup>th</sup> St. the addition will not be seen, and no change to the structure will be identifiable. On E St., the proposed addition has been made on the southeast side of the structure where a bathroom and laundry room were added at some point in the house's history (approximately 5.5' of this single level addition would be removed to construct the proposed 2 story addition). By keeping the addition to the south side of the house, the original structure's integrity is kept intact, and the east side gable is not altered. This allows pedestrians to view the original portion of the house as it was built over 100 years ago while demonstrating how a historic structure can also be updated to meet the needs of today's families. Also, by keeping the addition along the same lines of the laundry room and bathroom addition and, hence, deeper into the lot and further from E Ave., the overall scale feels more compatible with the structure and does not overwhelm the existing house while making its overall size more compatible with the new homes being built in the vicinity.

The new deck which will be less than 30" off the ground, will not be visible from the street because of the fence and landscaping, yet at the same time will offer the highly valued exterior entertaining space that is often expected out of new houses.

In addition, the proposed variance will also be maintaining a unique relationship with the house across the street, 3557 E Ave., another historic dwelling built in 1900. The proximity of these two historic dwellings offers a unique glimpse of what First Addition looked like at the turn of the 20<sup>th</sup> century.

Finally, a new 3' picket fence is being proposed along the property line from the existing fence west approximately 26' then returning to the house. This will help create less confusion as to where the front of the house is while maintaining the historic significance of the house and allow pedestrians to visually enjoy the charm of this historic house.



**Design Variance 3:** The existing structure has a non-conforming side yard setback of 6' 9", requiring a 9" reduction of the 7' 5" setback.

**General Design Variance Criteria (LOC 50.08.003):**

(LOC 50.08.003.3.a.i): Compliance with the side yard setback is not practical due to the characteristics of the existing structure. The existing structure two-story south facing gable end is 14' 3" wide and sits 9" into the 7' 5" setback. Removing this would negatively impact the historic nature of the structure. The existing structure, the Brown-Vose House, was built in 1885 and is a Local Designated Landmark (LDL). Removal of the bathroom and laundry room one level addition (time of the addition is unknown), allows for a new two-story addition to be added that meets the side set-back requirement.

Further, structures on the LDL are required to go through a rigorous review process to be demolished under LOC 50.06.009. Demolition of this structure to meet the current code is highly doubtful because it is unlikely to meet the criteria of the code based on the historic significance of the structure as deemed by the City.

The goal of the proposed design is to maintain the structure's historical integrity by:

- Placing the addition and garage on the south side of the site.
- Ensuring the addition and garage complement, but do not match the historic structure.
- Making the rooflines of the addition and garage subordinate to the historical structure.
- Only removing a small section of the east side of the structure that was a later addition.

The requested reduction will allow most of the south façade to remain intact with no change to the existing kitchen wall or second story gable on the south façade, allowing the overall historic nature of the structure to remain.

(LOC 50.08.003.3.b): The proposed variance will ensure that an important piece of lake Oswego's history will be thoughtfully and carefully preserved while resulting in a project that is exceptional in the quality of detailing, appearance, and materials. The original wood windows will be repaired, and new wood storm windows will be added to increase the energy efficiency of the home and bring to current energy standards. The proposed porch door will be replicated to match the existing door with Oregon sources Alder wood stained to match the original, tempered satin obscured glass for safety, security, and thermal characteristic, and new hardware to match the existing. The panels will match the original door panels and it will retain, where possible, otherwise replicate, decorative carnival glass.

The details on the house will remain and a few details are being proposed which are in keeping with the details of the existing house and other historic houses in the neighborhood built during the same period. The siding of the original house will be kept and repaired as needed as will all the trim and details. The details being proposed include a diamond detail in the gable on the front porch peak. Specifics regarding the materials can be found in the plan set page 7 (elevations) and page 12 (material board).

**Residential Infill Design Review Variance Criteria (LOC 50.08.003.6):**

Residential Dwelling Size (LOC 50.08.003.6.a): The proposed design is more compatible than a new structure that would be compliant because the proposed addition is compliant and creates no new



nonconformities. By keeping the addition to the southeast side of the house and the height of the addition below the existing roof (approximately 2.5' below the ridge of the existing house) the addition compliments the historic portion of the house as well as keeps it subordinate, helping to ensure the viewer can reasonably see that it is a well-thought-out addition and not original (an important criteria when adding to a historic structure). The proposed design also has a variety of heights and wall plane setbacks to help create an illusion of a smaller structure. The square footage of the house is also similar to that of many of the new construction houses in the neighborhood.

Relationship to the Street (LOC 50.08.003.6.b): The proposed design ensures that the historic integrity of the house remains on both street sides of the structure. From 4<sup>th</sup> St. the addition will not be seen, and no change to the structure will be identifiable. On E St., the proposed addition has been made on the southeast side of the structure where a bathroom and laundry room were added at some point in the house's history (approximately 5.5' of this single level addition would be removed to construct the proposed 2 story addition). By keeping the addition to the south side of the house, the original structures integrity is kept intact, and the east side gable is not altered.

Relationship to the Neighbors (LOC 50.08 003.6.c): looking at the front of the house on 4<sup>th</sup> St. there is no visual change to the house.

In addition, the proposed variance will also be maintaining a unique relationship with the house across the street, 3557 E Ave., another historic dwelling built in 1900. The proximity of these two historic dwellings offers a unique glimpse of what First Addition looked like at the turn of the 20<sup>th</sup> century.

Most of the houses in the vicinity of the Brown-Vose house appear to be built up to or close to both side setback lines at least on a portion of the structure. The proposed addition is like many of these houses in that there is a variation proximity to the setback, at some points the structure is built right up to or over the setback line and in other areas the structure is brought closer to the center of the lot providing variation for the neighbor immediately next to the house.

For the neighbors directly to the south, the proposed design has less impact than other designs because the addition offers a variety of heights (single, two, and story and a half) creating a visually more interesting and less obtrusive building than other designs. By connecting the house and the garage with a one-story sunroom there is a sense that the garage and house are separate entities creating the sense of more space between the two. Another feature that creates less impact for the neighbors it that the house has a variety of wall planes providing more space within the setback and therefore more privacy.

### **Other Ordinances**

**Stormwater Management [LOC Chapter 38.25]:**

**Streets and Sidewalks [LOC Chapter 42]**

Sight Distance at roadway intersections, Private streets, and Driveways (LOC 42.03.130):



**Tree Removal and Mitigation (LOC Chapter 55):**

A tree removal application has been provided with this application for the Douglas Fir that sits in the middle of the lot.

The reason for the removal of the douglas fir tree is to allow for a proposed addition to the existing house. The tree sits in the middle of the lot and there are no alternative designs that will not disrupt the root system.

The 31.5" in diameter douglas fir is in fair to poor condition. It dropped many large branches in the most recent ice storm and has been topped.

Removing the tree will not have a significant negative impact on erosion, soil stability, flow of surface water, protection of adjacent trees, or existing windbreak.

Removal of the tree will not impact the character of the neighborhood. There are many large douglas fir trees in the neighborhood (many to on lots to the east) but this one stands. Removing this topped tree may actually improve the site lines. Additionally, this tree doesn't provide any visual screen between zoning districts.





## NOTICE OF MINOR DEVELOPMENT DECISION

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**File No.:** LU 24-0028

**Date of Decision:** October 24, 2024

**Property Owner:** Tonya R. Nichols and Ronald J. Walters, Trustees of the Nichols-Walters Trust

**Applicant's Representative:** Verdick Residential Designs, LLC

**Location of Property:** 791 4th Street (Tax Reference 21E03DA06000)

**Description of Proposed Development:** The applicant is requesting a major alteration of a historic landmark (Brown-Vose House) consisting of an addition and alterations to the house. As part of the proposed addition, Residential Infill Design (RID) variances are requested to reduce the front yard (4th St.), street side yard (E Ave.), and internal side yard setbacks. The applicant is also requesting removal of one tree in order to construct the addition.

**Description of Decision:** Staff has tentatively approved this application subject to the conditions set forth in the staff report (decision) available as described below. This decision will become final unless appealed as described below. For more information, please contact the staff coordinator, **Senior Planner, Evan Fransted** at [efransted@lakeoswego.city](mailto:efransted@lakeoswego.city) or 503-675-3732.

**How to Obtain Further Information:** The decision (staff report and all exhibits) are available for review online at [www.lakeoswego.city](http://www.lakeoswego.city). Type LU 24-0028 in the search box at the top of the screen or a copy may be reviewed at City Hall:

Planning and Building Services Department  
City of Lake Oswego  
P.O. Box 369  
380 "A" Avenue  
Lake Oswego, OR 97034  
Phone: (503) 635-0290

**(OVER)**

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**Right to Appeal:** This decision may be appealed by filing a written Request for a Hearing along with the appeal fee within **fifteen** calendar days from the date of decision, above. A Request for Hearing shall:

1. List the File Number and Date of Decision.
2. Request that a hearing be held on the application.
3. Include name, address and signature of the appellant.
4. Be accompanied by payment of any filing fee.

Failure to comply with these requirements can result in rejection of the Appeal.

The Request for a Hearing must be filed by **5:00 p.m., November 8, 2024:**

City Recorder  
City of Lake Oswego  
P.O. Box 369  
380 "A" Avenue  
Lake Oswego, OR 97034  
Phone: (503) 635-0215  
[CityRecorder@lakeoswego.city](mailto:CityRecorder@lakeoswego.city)

**Decision Making Process:** If appealed, this application will be heard at a noticed public hearing held by the Development Review Commission (DRC). Any person may appear and testify. The DRC will render a final decision, which may be appealed to the City Council. If not appealed, this decision will become final and binding.

The cost to file an appeal is **\$773**.





<b>File Number</b>	LU 24-0028	<b>Report Date</b>	Oct. 24, 2024
<b>Applicants / Owners</b>	Tonya R. Nichols and Ronald J. Walters, Trustees of the Nichols-Walters Trust		
<b>Applicant's Representative</b>	Verdick Residential Designs, LLC		
<b>Site Address</b>	791 4th Street	<b>Tax Reference</b>	21E03DA06000
<b>Zoning</b>	R-6	<b>Neighborhood</b>	First Addition - Forest Hills
<b>120-day Deadline</b>	Dec. 21, 2024	<b>Staff</b>	Evan Fransted, ACIP, Senior Planner

## I. APPLICANT'S REQUEST

The applicant is requesting a major alteration of a historic landmark (Brown-Vose House) consisting of an addition and alterations to the house. As part of the proposed addition, Residential Infill Design (RID) variances are requested to reduce the front yard (4th St.), street side yard (E Ave.), and internal side yard setbacks. The applicant is also requesting removal of one tree in order to construct the addition.



## II. DECISION

**Approval** of LU 24-0028 with conditions. The conditions of approval are listed below.

Conditions			Post Approval Use Only	
A.	Prior to the Issuance of Any Grading or Building Permit, the Applicant/Owner Shall:		Notes/Status	Dept.
	1.	Submit final building plans for review and approval of staff that are the same or substantially similar to the site plan and elevations illustrated on Exhibits E-005 – E-011 along with the following:  a) The existing entrance doors on the west (4th St.) and north elevation (E Ave.) must be preserved unless demonstrated that the doors are beyond repair. Submit final door plans that detail elements that are to be repaired or replaced.		

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		<p>b) Detail any original building element that is being replaced if determined that it cannot be repaired.</p> <p>c) Plans must state that chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used.</p>		
	2.	<p>Submit and record at the Clackamas County Recorder's Office a Notice of Development Restriction containing the restriction listed below for review and approval of City staff. [Staff can provide a template for the Notice upon request.]</p> <p>a. The house on the site received exceptions to reduce the front yard (4th St.), street side yard (E Ave.), and south side yard setback through the Residential Infill Design (RID) Review process and was specifically approved for its design. No external alterations to the house structure (including changes to or removal of approved building design features or materials) shall be permitted, including changes during construction, without prior written approval by the City of Lake Oswego, per City of Lake Oswego Planning File No. LU 24-0028.</p>		
	3.	Per LOC Chapter 52, apply for and obtain an approved erosion prevention and sediment control permit issued through the City of Lake Oswego, and install and maintain all erosion control BMPs as indicated in the permit.		
	4.	Utilize a licensed surveyor to locate and reference any property corner monuments that may be disturbed, destroyed, or covered by construction activity.		
	5.	Submit a geotechnical report for review and approval of the City Engineer and Building Official.		
	6.	Apply for a Verification tree removal permit for the tree approved in Exhibit E-005 and submit a final mitigation plan showing one native mitigation tree that is a minimum 1.5-inch caliper for a deciduous tree or 6-foot tall for an evergreen tree, to the satisfaction of Planning staff.		
<b>B.</b>	<b>Prior to the Final Building Inspection or Occupancy of the Dwelling, the Applicant/Owner Shall:</b>			
	1.	Request a final inspection by the Planning staff to inspect required mitigation trees and ensure that the house complies with the approved final plans, per Conditions A(1), above.		
	2.	Obtain a street opening permit from the Engineering Department for the new driveway approach onto the alleyway between 3 <sup>rd</sup> Street and 4 <sup>th</sup> Street.		
	3.	Remove any non-exempt vegetation and other obstructions within the clear sight triangles (i.e., existing fence on the subject property) as needed to meet the sight distance requirements.		



	4.	Submit a Final Sight Distance Certification that documents that the available sight distance in both directions of the new driveway is sufficient for the safe operation of the access.		
	5.	Utilize a licensed surveyor to reset any disturbed, destroyed, or covered property corner monuments.		
	6.	Install the mitigation tree required by Condition A(6) and request an inspection by staff. [The applicant is advised to request the inspection well in advance of the desired occupancy or final inspection date, as any missing or dead landscaping will be required to be installed/replaced prior to approval of the final occupancy.]		

**Code Requirements:**

1. **Expiration of Development Permit:** Per LOC 50.07.003.17, the development approved by this decision shall expire three years following the effective date of the development permit, and may be extended by the City Manager pursuant to the provisions of this section.
  
3. **Tree Protection:** Submit a tree protection site plan and application as required by LOC 55.08.020 and 55.08.030 for review and approval by staff, including off-site trees that are within the tree protection zone of a protected tree or within a development area for the project. The plan shall include:
  - a. The location of proposed tree protection measures (i.e. temporary tree protection fencing, rigid surface, wood chips, etc.). Tree protection fencing shall consist of a minimum 4-foot high metal fence secured by metal posts at the edge of the tree protection zone, or as recommended by a certified arborist and approved by the Planning Division.
  - b. A note stating that no construction activities shall occur within the fenced protected area of any of the trees, or that if construction activities are unavoidable, tree protection measures as recommended by a certified arborist will be followed to reduce or mitigate the impact of construction activities. The note shall also inform contractors that supervision by a certified arborist is required on site to oversee construction activities within the tree protection zone.
  - c. A note that clearly informs all site contractors about the necessity of preventing damage to the trees, including bark and root zone. The applicant and contractor(s) shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction.
  - d. A sign shall be attached to the tree protection fencing which states that inside the fencing is a tree protection zone, not to be disturbed unless prior written approval has been obtained from the City Manager and project arborist.

**Notes:**

1. The applicant is advised to take part in a Post Land Use Approval meeting. City staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval



necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting, please contact the staff coordinator at (503) 635-0290.

2. The land use approval for this project does not imply approval of a particular design, product, material, size, method of work, or layout of public infrastructure except where a condition of approval has been devised to control a particular design element or material.
3. Development plans review, permit approval, and inspections by the City of Lake Oswego Planning and Building Services Department are limited to compliance with the Lake Oswego Community Development Code, and related code provisions. The applicants are advised to review plans for compliance with applicable state and federal laws and regulations that could relate to the development, i.e., Americans with Disabilities Act, Endangered Species Act. Staff may advise the applicants of issues regarding state and federal laws that staff member believes would be helpful to the applicants, but any such advice or comment is not a determination or interpretation of federal or state law or regulation.

### III. APPLICABLE REGULATIONS

<b>CODE CRITERIA APPLICABLE TO APPLICANTS REQUEST</b>				
<b>Code Section</b>	<b>Title</b>	<b>Condition (C) Variance (V) Exception (E)</b>	<b>Criteria Met</b>	<b>Page # in Report</b>
<b>City of Lake Oswego Community Development Code [LOC Chapter 50]</b>				
50.01.006	Nonconforming Uses, Structures, Lots & Site Features		Yes	Pages 7-8
50.02.001	Residential Zones		Yes	Page 8
50.03.002.2	Residential Use Table		Yes	Page 8
50.04.001.1	Residential Low Density Zones Dimensional Standards		Yes	Page 8
50.06.001.2	Structure Design-Residential Zones		Yes	Pages 8-9
50.06.001.3	R-6 Residential Zone Additional Requirements		Yes	Page 10
50.06.001.4	Garage Appearance and Location		Yes	Page 10
50.06.003.2	On-Site Circulation, Driveways & Fire Access	Conditions B(2) and B(3)	Yes	Pages 10-12
50.06.004.2; 50.07.004.2	Fences		Yes	Page 12
50.06.006.1; 50.07.004.10	Weak Foundation Soils		Yes	Page 13



<b>CODE CRITERIA APPLICABLE TO APPLICANTS REQUEST</b>				
<b>Code Section</b>	<b>Title</b>	<b>Condition (C) Variance (V) Exception (E)</b>	<b>Criteria Met</b>	<b>Page # in Report</b>
50.06.006.3; 50.07.004.1	Stormwater Management Standards		Yes	Page 13
50.06.007.2.c	Maximum Shade Point Height Standard		Yes	Page 13
50.06.008; 50.07.004.11	Utilities; Streets/Sidewalks (Pathways) and Other Public Infrastructure		Yes	Page 14
50.06.009; 50.07.004.4	Historic Preservation	Conditions A(1) and B(1)	Yes	Pages 14-25
50.07.003.1	Application Procedures			
50.07.003.5	Conditions on Development			
50.07.003.6	Effect of Decision			
50.07.003.7	Appeals			
50.07.003.14	Minor Development Decisions			
50.08.003.3	General Design Variance Criteria	Conditions A(2) and B(1)	Yes	Pages 25-29
50.08.003.6	Residential Infill Design Review Variance Criteria	Conditions A(2) and B(1)	Yes	Pages 29-34
<b>City of Lake Oswego Utility Code [LOC Chapter 38]</b>				
38.25	Stormwater Management Code		Yes	Page 34
<b>City of Lake Oswego Streets &amp; Sidewalks Code [LOC Chapter 42]</b>				
42.03.130	Sight Distance at Roadway Intersections, Private Streets & Driveways	Conditions B(2) – B(4)	Yes	Pages 34-35
<b>City of Lake Oswego Tree Code [LOC Chapter 55]</b>				
55.02.010 – 55.02.084	Tree Removal and Mitigation	Condition A(6) and B(6)	Yes	Pages 35-40
<b>Prior Approvals:</b> LU 12-0030 (Detached ADU at 775 4th St., previously part of the site)				

#### **IV. BACKGROUND/EXISTING CONDITIONS:**

- A. The site is approximately 6,000 square feet and is located on corner of 4<sup>th</sup> Street and E Avenue, both local streets (Exhibit E-001). The site slopes down from 210 feet in elevation near the northwest corner to 204 feet near the southeast corner (Exhibit E-005). There are three trees on the property that are six inches or more in diameter (Exhibit E-003). One tree



(36-inch Douglas Fir) is requested for removal for the construction of the addition to the house.

- B. The site is zoned R-6 and is developed with a 1,729 sq. ft., two-story single-family dwelling (Exhibit F-001. pg. 1). Surrounding properties are also zoned R-6 and developed with single-family dwellings, except the public library across 4<sup>th</sup> Street, which is zoned PF (Public Function).
- C. The dwelling is designated as an Historic Landmark, the Brown-Vose House, as noted in the City's Historic Resource Survey Form (Exhibit F-005). The house was built in 1885 and is an excellent example of a later-nineteenth century vernacular style house with secondary Queen Anne features (Exhibit F-005 pg. 3). The house is nonconforming to the front, street side, and side yard setback requirements (Exhibit E-003).

## **V. REVIEW AND APPROVAL PROCEDURES**

### **A. Neighborhood Meeting**

No neighborhood meeting is required by LOC 50.07.003.1.f.

### **B. Public Notice to Surrounding Area**

The City has provided adequate public notice and opportunity to comment on this application pursuant to LOC 50.07.003.3.a. Three public comments were received.

Exhibit G-100 expresses support for the restoration of the historic house and requested variances.

Exhibit G-500 expresses concern for the replacement of the existing paved driveway with gravel (for compliance with the stormwater management standards) and the RID standards. After the comment was submitted, the applicant revised the proposal to include pervious pavers in the driveway instead of gravel. Compliance with the stormwater management standards is addressed below. The driveway materials are not building materials and are not relevant to the RID standards.

Exhibit G-501 expresses concern for the requested setback variances from the front, street side and side yard setbacks, but particularly the variance to the south side yard. This comment is addressed in the RID variance standards, below.

### **C. Burden of Proof**

Per LOC 50.07.003.1.b, the applicants for a development permit shall bear the burden of proof that the application complies with all applicable review criteria or can be made to comply with applicable criteria by imposition of conditions of approval. The applicant has



provided sufficient evidence to enable staff to evaluate the proposal. These documents are listed as exhibits at the end this report.

## **VI. MINOR DEVELOPMENT**

### **A. Classification of Application**

LOC 50.07.003.14.a.ii(16) describes an application for RID Review design variances as minor development. Subsection 14.a.ii(25) describes major alterations to an Historic Landmark as minor development.

### **B. Criteria for Review of Application**

Per LOC 50.07.003.14.d, for any minor development application to be approved, it shall first be established that the proposal complies with:

#### **i. The requirements of the zone in which it is located;**

#### **Nonconforming Uses, Structures, Lots and Site Features [LOC 50.01.006]**

#### **Demolition or Alteration of a Nonconforming Dwelling [Subsection 2.b]**

*In a residential zone, an existing nonconforming residential dwelling shall be removed or brought into conformance with this Code upon:*

- i. Demolition of the dwelling under LOC 45.12.100(1)(d), except where demolition results from the Building Official ordering the reconstruction of a wall under LOC 50.01.006.2.c because it is unsafe. Demolition is defined as removal of 50% or more of the total surface area of exterior walls or perimeter foundation of a residential structure as it existed on June 2, 2022, either as a single project or cumulatively over five years or less. "Exterior wall" is defined as "a wall enclosing a dwelling that has a surface exposed to the outside, including all framing and sheathing, from top plate to bottom plate, on all stories."; or*
- ii. An increase in floor area of the dwelling by 50% or more where the total floor area of the dwelling after the addition exceeds 90% of maximum allowed floor area, except as provided in LOC 50.01.006.3 - Expansion of Nonconforming Structures.*

The existing dwelling is nonconforming to the front yard, south side yard, street side setbacks (E Ave.) and street front setback plane. The dwelling is approximately 1,729 sq. ft. Per Subsection 2.b.ii, the maximum allowed increase in floor area (less than 50%) is 864.4 sq. ft., for a total floor area of 2,593.4 sq. ft. The proposed addition results in a floor area increase greater than 50% at 1,517 sq. ft., for a total 3,246 sq. ft., which exceeds 90% of the maximum floor area allowed, discussed below. Based on this standard, the proposal requires the dwelling to be either removed (demolished) or brought into conformance with the front yard, south side yard, street side setbacks (E Ave.) and street front setback plane standards.



The applicant is requesting design variances to maintain the existing dwelling's nonconforming setbacks through the RID Review process (Exhibit F-001, pg. 1). The approval of the requested RID variances would permit the nonconformities and, therefore, the nonconforming standards would no longer apply (LOC 50.06.001.1.b). Compliance with the variance standards is addressed, below, under LOC 50.08.003.3, General Design Variance Standards / LOC 50.08.003.6, RID Review standards.

#### **Residential Use of Property [LOC 50.03.002]**

The site is zoned R-6, a residential zone. The uses permitted are stated in Table 50.03.002-1, and include dwellings. The application is for alteration and an addition to an existing single-family dwelling. This standard is met.

#### **R-6 Zone Dimensional Standards [LOC 50.04.001]**

The R-6 zone dimensional standards and review of the proposal's compliance to those standards are listed in the table below. The standards proposed to be modified by the requested RID Review design variances are shown in ***bold italic***:

<b>R-6 Zone Dimensional Standards</b>		
	<b>Required</b>	<b>Proposed</b>
<b>Primary Structure Setbacks</b>		
<b>Front Yard</b>	20 ft. (North Shore Rd.)	<b><i>7.58 ft.</i></b> (Existing)
<b>Side Yard</b>	7.5 ft.	<b><i>6.75 ft.</i></b> (Existing), 7.5 ft (addition)
<b>Street Side Yard</b>	7.5 ft.	<b><i>6.41 ft.</i></b> (Existing), 17 ft. (addition)
<b>Rear Yard</b>	15 ft.	16.91 ft.
<b>Maximum Floor Area</b>	3,250 sq. ft., including garage	3,246 sq. ft. with garage
<b>Lot Coverage</b>	2,100 sq. ft. or 35%	2,083 sq. ft. or 34.7%
<b>Height</b>	28-34 ft.	27.25 ft. (existing), 26.16 ft (addition)
<b>Max. Impervious Surface</b>	60% or 3,600 sq. ft.	2,235 sq. ft.

The proposed addition to the existing structure and new impervious surface complies with the applicable R-6 zone dimensional standards. The applicant is requesting design variances to maintain the existing dwelling's nonconforming setbacks through the RID Review process (Exhibit F-001, pg. 1). Compliance with the variance standards is addressed, below, under LOC 50.08.003.3, General Design Variance Standards / LOC 50.08.003.6, RID Review standards. This standard is met.

## **2. The Development Standards applicable to minor developments;**

#### **Building Design [LOC 50.06.001]**



The proposed development must comply with the following structure design standards:

**Front Yard Setback Plane [Subsections 2.b and d]**

The profile of a structure that fronts on a street shall fit behind a plane that starts at the front yard setback line and extends upward to 20 ft. in height, then slopes toward the center of the lot at a 6:12 pitch up to the maximum base height of the zone. The profile of a structure that fronts on a side yard abutting a street shall fit behind a plane that starts at the front yard setback line and extends upward to 20 ft. in height, then slopes toward the center of the lot at a 12:12 pitch up to the maximum base height of the zone.

The applicant is requesting a design variance to maintain the existing dwelling's nonconforming front yard setback through the RID Review process (Exhibit F-001, pg. 1). The existing dwelling complies with the front yard setback plane, with allowed roof form penetration under Subsection 2.c.i, as measured from the requested RID variance front yard setback line along 4<sup>th</sup> Street (Exhibit E-009). The proposed addition is located more than 40 feet from 4<sup>th</sup> Street and fits below the front yard setback plane (Exhibits E-005). This portion of the standard is met.

**Side Yard Setback Plane [Subsection 2.e]**

The side profile of a structure is required to fit behind a plane that starts at the side property line and extends upward to 12 feet in height, sloping toward the center of the lot at a 12:12 pitch up to the maximum allowed height.

The elevation plans demonstrate that the existing dwelling and proposed addition comply with allowed roof form penetration under Subsection 2.e.i(1) and complies with the side yard setback plane standard (Exhibit E-009). This portion of the standard is met.

**Side Yard Appearance and Screening [Subsection 2.f]**

The development must comply with one of the side yard appearance and screening treatments of this standard. Treatment 2 prescribes the side elevation of a structure shall consist of the following:

- 1) Two or more planes that are offset by a minimum of 16 inches. The wall planes shall be a minimum of four feet in width, and shall result in a change in a wall plane for one full story;
- 2) Walls shall include a roof eave overhang of 16 inches or greater; and
- 3) Windows and/or doors shall occupy a minimum of 15% of the side elevation facing the street, and all windows shall have a window trim that is a minimum of four inches in width.



As indicated on Exhibit E-008, the dwelling complies with Treatment 2. This portion of the standard is met.

#### **Additional R-6 Structure Design Standards [Subsection 3.a-d]**

Roof Design: The minimum roof pitch for primary roof forms of a single-family or middle housing dwelling shall be 6:12. Shed type and flat roofs are not permitted as primary roof forms on single-family or middle housing dwellings. Secondary roof forms, such as sunrooms, balconies, dormers, porticos, or bays, may be flat or shed roof types. See Figure 50.06.001-J: Identification of Primary and Secondary Roofs.

As shown on the elevation plans (Exhibit E-008), the primary roof includes a minimum pitch of 6:12. This portion of the standard is met.

Alleys: Alleys that serve single-family or middle housing residences only shall be paved with gravel or permeable material.

The existing alley is partially paved with some gravel and is considered nonconforming to this standard. No modifications to the alley are proposed (Exhibit E-005). The alley is permitted to continue as nonconforming (LOC 50.01.006.2.a).

Front Porch: This standard only applies to a new primary structure.

The proposal is for an addition to the existing dwelling; therefore, this standard does not apply.

Street Trees: This standard only applies to a new primary structure.

The proposal is for an addition to the existing dwelling; therefore, this standard does not apply.

#### **R-6 Garage Design Standards [Subsection 4.b]**

Access [Subsection 4.b.i.]: Garages shall be accessed from an alley, if available.

The site plan shows that the garage will be accessed from the alley in compliance with this standard (Exhibit E-005).

Garage Appearance Standards [Subsection 4.b.ii-iv.]: These standards do not apply because the proposed garage is not facing a street, as access to the garage is from the alley (Exhibit E-005).

#### **On-Site Circulation, Driveways & Fire Access [LOC 50.06.003.2]**

This standard regulates driveways, including slopes and geometric design, particularly those related to emergency vehicle access.



Maximum Driveway Approach Width [Subsection 2.b.i(5)(a), ii]

The maximum width is 24 feet for a two car garage (12 ft. per garage stall).

The site plan shows the proposed new driveway approach width and driveway width is 24 feet wide (Exhibit E-005). This portion of the standard is met.

Driveway Distance to Intersection [Subsection 2.b.i(1)]: On corner lots where the adjacent streets are fully improved to their anticipated ultimate width, the nearest edge of a proposed driveway to the intersection shall be no closer than 30 ft. when measured from the projected curb of the street (in this case, edge of existing pavement along E Avenue) that is the most parallel to the alignment of the proposed driveway.

The applicant is proposing a new 24-foot wide driveway access to the alleyway between 4th Street and 3rd Street. The Site Distance Plan, Sight Distance at Driveway figure (Exhibit E-013), shows the new driveway located 38 feet away from the edge of pavement on E Avenue. Accordingly, this portion of the standard is met.

Driveway Safe Entrance and Exit [Subsection 2.b.i.(4)]: Driveway approaches shall be designed per City standards and be located so that drivers entering or exiting the driveway can see approaching traffic for a sufficient distance to make a safe entrance and exit, and that American Association of State Highway and Transportation Officials (AASHTO) standards shall be used in determining compliance with this standard.

Sight distance from the driveway to the north would extend approximately 44 feet before being obstructed by a fence on the subject property. Visibility to the south from the driveway is expected to extend approximately 80 feet before the sight line crosses the neighboring property.

Driveways serving one residence along alleys are required to maintain at least 80 feet of visibility when viewing down the alley from 10 feet behind the nearest edge of the traveled way at a height of 42 inches above the surface, unless otherwise approved by the City Engineer (LOC 42.03.130.4.b.v.).

- Sight distance to the south from the center of the proposed access extends at least 80 feet, meeting the requirement.
- Sight distance to the north would be adequate for approaching vehicles traveling up to 11 mph to slow or stop to avoid collisions with traffic backing out of the center of the proposed access location (based on calculations of stopping sight distance for roadways carrying less than a daily average of 400 vehicles from the 2nd Edition of AASHTO's Guidelines for Geometric Design of Low-Volume Roads and assuming a level grade over the braking distance).



Since vehicles will be able to park on the northern half of the new driveway, and since vehicles turning from E Avenue will need to reduce speeds to enter the alleyway, the fence on the subject site should be removed or modified to allow a driver parked on the north side of the driveway to see a vehicle turning right from E Avenue into the alleyway. See Condition B(3).

The Engineering staff has reviewed the proposed access location and concurs that a driver using the new driveway should be able to see approaching traffic for a sufficient distance to make a safe entrance or exit per AASHTO standards, subject to the compliance with the following conditions:

- a. Non-exempt vegetation and other obstructions within the clear sight triangles (i.e. existing fence on the subject property) shall be removed or modified as needed to meet the sight distance requirements [LOC 42.03.130(4)(c, d)] [Condition B(3)]; and
- b. A Final Sight Distance Certification shall be submitted prior to occupancy that documents that the available sight distance in both directions is sufficient for the safe operation of the access as required with Condition B(4).

Per Condition B(2), a street opening permit is required for the new driveway approach onto the alleyway.

As conditioned, this portion of the standard is met.

Driveway Grades [Subsection 2.b.iii]: The maximum slope and cross slope for a driveway is 15% and 5%, respectively [Subsection 2.b.iii(1) and (5)].

The site plan demonstrates the new driveway will not exceed the maximum slopes (Exhibit E-005). This portion of the standard is met.

Conclusion: As conditioned, this standard is met.

#### **Fence Standards [LOC 50.06.004.2]**

In residential zones, fences and walls, or a fence/wall/retaining wall combination, shall not exceed six ft. in height [Subsection 2.b.i.(1)]. When located in a required setback, fences, walls, and retaining walls in residential zones shall not exceed four feet in height [Subsection 2.b.i.(1)].

The project includes installation of a new three-foot tall picket fence along the alley and north side of the driveway and a 4-foot picket fence along the E Avenue and 4<sup>th</sup> Street frontages in compliance with this standard (Exhibits E-005 and F-001, pg. 3).



#### **Weak Foundation Soils [LOC 50.06.006.1]**

This standard applies to lots identified as containing "Potential Weak Foundation Soils" on the Weak Foundation Soils Maps (Subsection 1.a, b). As shown on the City's Soils Maps, the site is mapped as containing potential weak foundation soils.

The actual presence of weak foundation soil is not a cause for denying development, but may cause structural modifications to be required, or structures to be relocated (Subsection 1.d). Compliance with this standard can be ensured at the time of building permit with the Building Department. As a condition of approval, the applicant will be required to comply with this standard as part of the building permit application process [Condition A(5)]. As conditioned, this standard is met.

#### **Stormwater Management Standards [LOC 50.06.006.3; LOC 38.25]**

Stormwater management requirements are applicable to all development where:

- i. Greater than 1,000 sq. ft. of impervious surface is created; or
- ii. The sum of impervious surface created and/or replaced is greater than 3,000 sq. ft. ("large project"); or
- iii. Maintenance is performed on greater than or equal to 3,000 sq. ft. of existing impervious surface that results in an additional offsite hydrological impact. [§3a].

The development will not exceed 1,000 sq. ft. of new impervious surface or exceed 3,000 sq. ft. of created and/or replaced impervious surface; therefore, this standard is not applicable. [Exhibit E-005].

See discussion under LOC 38.25, Stormwater Management Code, below.

#### **Solar Balance Point [LOC 50.06.007.2]**

The purposes of this section are to promote the use of solar energy and to minimize shading of structures to the north of the site by structures and accessory structures. Structures must comply with the Maximum Shade Point Height standard (Subsection 2.c), which regulates the shade cast on properties to the north of the subject site. Per LOC 50.04.003.d, a proposed structure shall be exempt if the structure shades one or more of the following: an undevelopable area; or the wall of an unheated space, such as a typical garage; or less than 20 sq. ft. of south-facing glazing.



Staff has verified (Exhibits E-005 and E-008) that the proposed addition to the dwelling would shade E Avenue, which is an undevelopable area; therefore, the proposal is exempt from LOC 50.06.007.2.c. This standard is met.

**Utilities; Streets/Sidewalks (Pathways) and Other Public Infrastructure [LOC 50.06.008]**

All utilities and street improvements required for this development shall be constructed in accordance with Engineering Department's policies, design standards, technical specifications, and standard details.

The applicant has submitted a Site & Impervious Surface Plan (Exhibit E-005) showing how the existing home connects to water and sanitary sewer from existing services.

- A. *Sanitary Sewer*: There is an existing public sanitary sewer main located in the alley between 3<sup>rd</sup> Street and 4<sup>th</sup> Street. No modification to the existing sanitary service for the site is proposed.
- B. *Water and Hydrants*: A public water main is located in 4<sup>th</sup> Street. No modification to the existing water service for the site is proposed.
- C. *Storm Drains and Approved Points of Disposal*: See comments under the Stormwater Management Code below.
- D. *Streets, Sidewalks, and Right-of-Way Dedication*: An applicant is required to install, when required by City codes or plans, street public infrastructure listed in LOC 50.06.008.3.d.i. The Engineering staff has reviewed the development proposal and field conditions in the context of the City's codes, improvement policies, and Transportation System Plan (TSP).

The existing public right-of-way along 4<sup>th</sup> Street, E Avenue, and the alleyway between 3<sup>rd</sup> Street and 4<sup>th</sup> Street are sufficient for their identified roadway classifications in the City's TSP. The proposed Major Alteration to the existing historic home will not contribute an additional burden to the street and sidewalk near the site. Accordingly, per Subsection 3.e.i, no right-of-way dedication or frontage improvements is required as a condition of this proposal.

- E. *Other Utilities*: It is the applicant's responsibility to ascertain the availability of electric, gas, telecommunications, and cable TV. All new utilities shall be installed underground.

**Historic Preservation – Alterations of a Landmark [LOC 50.06.009.7]**

A "minor alteration" for historic preservation purposes is an alteration (including an addition to a structure) that does not:

- a. Change the height of the building;



- b. Make a substantial change to an elevation visible from the public right-of-way, a public open space, or Oswego Lake;
- c. Increase the floor area more than 20% provided the building addition is not visible from the public right-of-way, a public open space, or Oswego Lake; and
- d. Reduce the square footage of the original structure other than removing previous additions or treatments that did not contribute to the historical or architectural significance of the landmark as stated in the findings of fact for the landmark designation [LOC 50.01.003.2, Definitions, "Alteration, Minor (Historic Preservation)"].

A "major alteration" for historic preservation purposes is an exterior alteration that is not a minor alteration [LOC 50.01.003.2, Definitions, "Alteration, Major (Historic Preservation)"].

As discussed, above, the main house is an historic landmark (Exhibit F-005). The applicant is proposing the following alterations to the main house (Exhibits E-008 and E-010):

- North Elevation (E Ave.): new addition along the east portion; new deck; restoration of all existing windows; repair side porch door; and, repair side porch with new deck floor and railing.
- West Elevation (4th St.): removal of former front porch walls and replacement with new covered front porch with column posts and decorative spindle railing; repair of front door and door transom; new paint on siding, trim, and window sashes; restoration of existing windows and, add diamond shingles at gable with belly band below.
- East Elevation: removal of a portion of the exterior laundry room and bathroom walls and replacement with new addition.

Although the proposed project work does not change the height of the landmark structure (Subsection 9.7.a) or reduce the floor area of the existing (original) landmark structure (Exhibits E-005 and E-008) ( Subsection 9.7.d), the north and east building elevations are visible from E Avenue and the west building elevation is visible from 4<sup>th</sup> Street and the alteration makes a substantial change in those elevations (Subsection 9.7.b), and the proposed addition increases the floor area by more than 20% (proposed increase is 87.7%) ( Subsection 9.7.c). Accordingly, the proposed alteration project does not meet the definition of Minor Alteration, and it is therefore a Major Alteration. The project is reviewed under the Major Alteration criteria, below [Subsection 7.c].

#### Major Alteration (Subsection 7.c)

In order to approve a request for a major alteration, the reviewing authority shall find that either Subsection 7.ci or 7.c.ii is met and that Subsection 7.c.iii considerations are reviewed:

- i. *The proposed alteration will not diminish the historical or architectural significance of the landmark; or*



*Exception: Alterations to provide handicapped access shall be allowed; to the extent practicable the design of the handicapped access shall not diminish the landmark's historical or architectural significance.*

- ii. For alterations that diminish the historical or architectural significance, through an ESEE analysis, it can be shown that the benefit to the community of allowing the alteration outweighs the benefit to the community of preserving the resource in its present condition; **and***
- iii. The additional considerations under subsection 7.e of this section are considered and the additional criteria under subsection 7.f of this section are met. The findings of fact regarding the historical or architectural significance for the designation of the landmark shall be used as the primary factual basis upon which decisions are based concerning its historical or architectural significance.*

The applicant proposes to meet the criteria under Subsection 7.c.i by demonstrating that the proposed alteration project does not diminish the architectural or historic significant of the landmark because (Exhibit F-001, pgs. 4-5):

- The only demolition to the existing structure would be to the single level laundry room, bathroom, and deck in the rear (Exhibit E-006).
- The proposal maintains the overall form of the original east-west gable section of the house and the west façade, as shown in Exhibit E-008.
- The E Avenue side front porch will be repaired as needed and remain the same.
- The addition will create an open front porch on the west façade by replacing the walls with a railing and the doors to this room with original house windows.
- The historic multi-flued chimneys, historic polygonal bay windows, and historic entrance with carved wood lintel will remain (Exhibit E-010).
- All original wood windows and added wood storm windows will be repaired, except for replacement of the east side dining room windows and west side kitchen window. The opening sizes will not change.
- The ridge line of the proposed addition is below the existing roof ridge.
- The project will use shingle siding on the addition to complement, but not match the existing lap siding, and will use lap siding on the garage to complement the original.
- The new addition windows will be wood and will use trim that matches the original house.
- The existing front doors will be repaired in accordance with the Secretary of the Interior standards.
- The project will add a diamond detail at the top point of the gable in the frieze and belly band details in the 4th St. gable and E Street side front porch and garage gable.



The existing and proposed elevation drawings, below, show the proposed changes to the front elevation along 4<sup>th</sup> Street (Exhibit E-010).



(E) WALLS TO BE CONVERTED TO A RAILING.



The photo, below, shows the existing north elevation facing E Avenue (Exhibit E-010).



The north elevation plan (Exhibit E-008), below, shows the proposed new addition in relation to the existing dwelling.







“the doors and transoms on the west and north façade will be repaired and replicated where needed (some lights are cracked, muntins are missing and some brittle beyond repair).” (Exhibit F-001, pg. 7).

“The existing doors do not provide basic physical security, thermal barriers, nor fire protection.” (Exhibit F-001, pg. 5).

“The proposed front door will be replicated to match the existing door with Oregon sources Alder wood stained to match the original, tempered satin obscured glass for safety, security, and thermal characteristic, and new hardware to match the existing. The panels will match the original door panels and it will retain, where possible, otherwise replicate, decorative carnival glass.” (Exhibit F-001. Pg. 12).

The application did not provide plans that detail the individual elements of the doors that will remain after the doors are to be “repaired and replicated.” It is unclear if the main wood frame of the doors will remain. The City’s Historic Resource Survey lists both doors as a character defining feature (Exhibit F-005, pg. 2). The Historic Resource Advisory Board (HRAB) supports the applicant’s proposal to repair the doors and states that there is no evidence in the record that the doors are damaged to the extent where they require complete replacement (Exhibit F-003). Staff finds the existing entrance doors are important historic features of the house that must be preserved. Staff finds that a complete replication of the door would be the same as replacement. Therefore, staff finds the doors may be repaired, but not replaced, consistent with Secretary of Interior standards Subsection 7.f.viii – Preservation, Restoration and Rehabilitation discussed below. Condition A(1) requires the doors to be retained and for the applicant to submit final plans that clearly show the elements that are to be repaired or replaced to ensure that the alterations do not result in cumulative replacement of the doors.

North, East and South Elevations: The existing portion of the dwelling will be retained except for removal of a portion of the laundry room and bathroom, and removal of the deck (Exhibit E-008). The new addition includes cedar shake and lap siding painted the same green as the existing house. The cedar shake will provide a clear transition from the historic house to the new addition. The new windows are wood, double hung with trim to match the existing windows. The new deck includes Ipe mahogany to match the E Avenue side porch. The garage gable includes shingles in the same diamond pattern, soffit, eaves, and frieze as proposed on the front façade. The garage also includes lap siding and steeply pitched gable roof that is compatible with the existing dwelling. Staff finds that the proposed alterations retain the existing historic character and incorporate similar materials of the existing landmark.

As required with Condition A(1), staff concurs with the applicant that the alteration does not diminish the architectural or historic significance of the landmark because the alterations would retain the existing historic character and include complementary building materials and elements called out in the Cultural Resources Inventory (Exhibit F-005).



This portion of the standard is met.

Additional Considerations for Granting Authority's Deliberations [Subsection 7.c.iii / Subsection 7.e]

The following considerations are to be used as a guide in the granting authority's deliberations when approving a major alteration under Subsection 7.c:

- i. The alteration is consistent with the use of the resource.*

The resource is a single-family dwelling; the proposal maintains the residential use of the resource (Exhibit F-001, pg. 5). This consideration is met.

- ii. The significance of the resource and the community benefit to preserving it.*
- iii. The public interest in the preservation of the resource.*
- iv. The physical condition of the resource.*

According to the City's Historic Resource Survey, the house is one of the oldest and best preserved examples of a two-story vernacular house remaining in the City (Exhibit F-005, pg. 3). The public interest is in preservation of the resource's significant elements in their current physical condition. The applicant states the house overall is in fair condition with repair necessary to the foundation, windows, doors and some lights (Exhibit F-001, pg. 6). As described in the applicant's narrative and as shown on the plans, the proposed alterations are part of an effort to maintain, restore, and preserve the property for future generations (Exhibits E-005 - E-011, and F-001, pages 5-6).

The proposed tree removal includes removal of a 36-inch diameter Douglas-fir tree. The Survey does not identify this specific tree as being part of the historic resource (Exhibit F-005).

These considerations are met.

Additional Criteria for Reviewing Authority's Deliberations [Subsection 7.f]

The following criteria shall be met when approving applications under Major Alterations, Subsection 7.c of this standard:

- i. Building Height. Existing building height should be maintained. ....*

The existing building height will be maintained at 27.25 feet because the proposed addition is lower in height (Exhibit E-008). This criterion is met.

- ii. Horizontal Additions. The scale and proportion of building additions, including the relationship of windows to walls, shall be visually compatible with the traditional*



*architectural character of the historic building. Contemporary construction is acceptable if the design respects the building's original architectural style and is compatible with the original scale, materials, window and door opening proportions of the structure.*

The scale of the proposed addition is compatible with the existing dwelling's design and massing (Exhibits E-008 and F-001, page 6-7). The addition is on east side of the existing dwelling, which is not visible from the front façade. The applicant states that from the side, the addition is located behind the original structure's gable set back on the southeast side of the lot, which helps the passerby see that it is an addition and not part of the original house, making it subordinate to the original structure (Exhibits E-014 and F-001, pg. 6). As viewed from the sides, the addition maintains compatibility with like materials but differentiates the new construction with a lower roof ridge lines and a combination of shake siding that transitions to horizontal lap siding on the garage portion to match the lap siding on the house (Exhibit E-008). The proposed new windows and doors are similar in design as the existing with double hung or double casement wood windows and with single door or French door design (Exhibit E-010). This criterion is met.

*iii. Roof Form. Alteration of roof pitches, roof shapes, and materials should maintain the architectural style of the building.*

The primary roof of the building will remain (Exhibit E-008). As discussed above, the roof pitches of the addition and garage are steeply pitched the same or similar to the existing dwelling roof pitch. The new roofs will include the same asphalt shingles as the existing. This criterion is met.

*iv. Rehabilitation Work. Preserve existing historic building elements or replace with building elements and materials that replicate the historic elements, as documented through verifiable evidence, such as photographs.*

The applicant states the goal is to first preserve and repair historic elements of the house, but if that is not possible, historic elements will be replicated (Exhibits E-008 and F-001, pg. 7). The applicant proposes to repair or reuse original windows and repair doors, siding and the north porch (Exhibit F-001, pg. 7). Staff finds that the proposed repair of the historic windows, exterior entrance doors and siding would meet this standard. Compliance with this criterion can be ensured with Condition A(1) that requires the applicant to submit final building plans for review and approval of staff that are the same or substantially similar to the site plan and elevations illustrated on Exhibits E-005 – E-011. As conditioned, this criterion is met.

*v. Window Restoration. Windows (frames, sashes, muntins, glazing, sills, heads, hoodmolds, paneled or decorated jambs, moldings and exterior shutters) that define the historic character of the building should be retained and preserved. This is achieved by:*  
*(1) Protecting and maintaining the wood and architectural metal that comprise the window frame, sash and muntins.*



- (2) *Making windows weathertight by reglazing, recaulking and replacing or installing weather-stripping.*
- (3) *Repairing window frames and sashes by patching, splicing, consolidating or otherwise reinforcing, and replacing in kind parts that are extensively deteriorated or missing.*
- (4) *Replacing a window in kind that is documented to be too deteriorated to repair*

The applicant states that original windows will be repaired to their original condition by a window preservationist, and wood storm windows will be added to the structure (Exhibits E-008 and F-001, pg. 8). Staff finds that the proposed window restoration helps preserve the existing historic building elements in accordance with this standard. This criterion is met.

*vi. Window Replacement: Window replacements shall match the original windows in materials and appearance. The original number of window panes (or lights) shall be maintained or restored when window replacements are required. Double-pane windows may be installed if:*

- (1) *No observable tinting of the glass panes is used.*
- (2) *A spacer bar is present between the inner and outer mullion.*
- (3) *The same trapezoidal profile of the outside putty seam is used.*
- (4) *The same frame size as the original windows is used.*
- (5) *The same inside profile is used*

As discussed above, the applicant proposes to repair or reuse all the original existing windows (Exhibit F-001, pg. 8). This standard is not applicable.

*vii. Signs, Lighting, Landscaping, Fences. Signs, lighting, and other appurtenances, such as walls, fences, awnings, and landscaping, shall be visually compatible with the scale and traditional architectural character of the historic building.*

The proposal does not include any signs or landscaping. The applicant states repair may be necessary to some lights, but those lights are not shown on the plans (Exhibit F-001, pg. 6). The project includes installation of a new three-foot tall picket fence along the alley and north side of the driveway and a 4-foot tall picket fence along the E Avenue and 4th Street frontages in compliance with this standard (Exhibits E-005 and F-001, pg. 3). Staff finds that the proposed fence with traditional design is compatible with the scale and character of the building. Compliance with this criterion can be ensured with Condition A(1) that requires the applicant to submit final building plans for review and approval of staff. As conditioned, this criterion is met.

*viii. Additional Standards (Secretary of Interior Standards)*



- (1) Retention of Original Construction: A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.*

The use of this property has always been residential. The alteration to the dwelling will continue this use (Exhibit F-001, pg. 9). This criterion is met.

- (2) Historic Integrity: The historic integrity of the property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*

As discussed, above, the proposal retains and preserves the existing historic integrity of the dwelling required with Condition A(1). As conditioned, this criterion is met.

- (3) Time Period Consistency: Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.*

As discussed, above, the proposed addition will be complementary to the existing dwelling, but is designed to be distinguishable from the original. No conjectural features or elements from other buildings are proposed (Exhibits E-008 and F-001 pg. 9). The physical record of the property's historic time period is retained. This criterion is met.

- (4) Historic Changes: Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.*

The plan shows that the only elements of the house that are proposed to be removed are the front porch replacement that is currently a library, as well as the laundry and bathroom addition on the rear that were not originally part of the house (Exhibit E-006, E-008 and F-005). The applicant states that the existing library walls off the living room are about 2.5 inches thick, and the room is very narrow, which does not allow for a functional room; therefore, the proposal is to bring back the front porch to its original state (Exhibit F-001, pg. 9). The narrative also states the laundry room and bathroom addition to the southeast side of the house do not have any notable historic significance. Staff concurs with the applicant that removal of the library walls with replacement of the new covered porch and removal of laundry room and bathroom exterior walls will not diminish the historic integrity of the structure. The proposal retains all existing historic features of the house and property. This criterion is met.

- (5) Distinctive Architectural Features: Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.*



Staff finds the proposal retains all the existing architectural features, including the asymmetrical form with the new addition, central porch with turned posts, shiplap and patterned singles, double hung sash windows, and entrance with multi-colored and multi-light transom (Exhibits E-008). This criterion is met.

*(6) Preservation, Restoration and Rehabilitation: Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.*

The applicant states the following (Exhibit F-001, pg. 9):

“The intent of the project is to retain the historical significance of the structure and to follow the Secretary Interior Standards guidelines.”

Compliance with this criterion can be ensured with Condition A(1). As conditioned, this criterion is met.

*(7) Appropriate Treatments: Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.*

The applicant’s narrative does not directly address this standard (Exhibit F-001, pg. 8). Compliance with this criterion can be ensured at the building permit phase with Condition A(1)(c). This criterion is met.

*(8) Archaeology: Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.*

There are no archaeological artifacts called out in the Cultural Resources Inventory (Exhibit F-005) and the Historic Resources Advisory Board did not note any when provided plans for review. This criterion is not applicable.

*(9) New Additions: New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.*



The proposed alteration, including the addition, does not destroy or remove historic materials that characterize the property. As stated, above, the design of the proposed addition and alterations is compatible in its massing, scale, and size to the main house (Exhibits E-008 and E-010). No conjectural features or elements from other buildings are proposed. The physical record of the property's historic time period is retained. This criterion is met.

*(10) Reversibility: New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.*

Staff finds that the proposed addition could be removed in the future and the site restored to its existing appearance with minimal effort (Exhibit E-008). This criterion is met.

Conclusion: Staff finds that that the applicable criteria for a major alteration are met as conditioned; this standard is met.

#### **Design Variance Standards [LOC 50.08.003]**

The purpose of design variances is:

“Design variances allow adjustments of certain standards of this Code where the resulting design would be superior to development in the surrounding neighborhood or would better achieve the purpose/objectives of the applicable zone or design district and design standards. **No demonstration of hardship is required**” (LOC 50.-08.003.1).

The applicant is requesting design variance approval through the RID Review criteria in order to construct an addition onto the existing dwelling:

- Reduce the front yard (4th St.) from 20 ft. to 7.58 ft.;
- Reduce the street side yard (E Ave.) from 7.5 ft. to 6.41 ft.; and,
- Reduce the side yard setback from 7.5 ft. to 6.75 feet.

The purpose of the requested variances is to allow the historic structure to remain intact (Exhibit F-001, pg. 11).

Exhibit G-501 expresses concern for the requested setback variances from the front, street side and side yard setbacks, but particularly the variance to the south side yard. The commenter does not cite any standards that are not met. The commenter discusses that she is opposed because she feels crowded from her neighbor's dwelling that impacts sunlight and breeze. Staff notes that the requested variances are to allow the retention of the existing dwelling built in 1885. The proposed addition meets the required setbacks. Therefore, the requested variances will have no new impact on the abutting property to the south or any nearby property in terms of light or breeze.



The reviewing authority shall only approve a design variance if it determines that both the General Design variance criteria (LOC 50.08.003.3.a and b) and the RID Review variance criteria (LOC 50.08.003.6) have been met.

General Design Variance Criteria [LOC 50.08.003.3]

- a. *The applicant demonstrates that:*
  - i. *Compliance with the applicable standard is not practicable due to the physical characteristics of the site or existing structure; or*
  - ii. *An alternative design will better accomplish the purposes, goals, or objectives of the base district and any adopted plan or overlay district applicable to the property.*

The applicant seeks to demonstrate compliance under Subsection a.i, stating that compliance with the yard setback standards is not practicable due to the physical characteristics of the site and existing structure (Exhibit F-001, pg. 11).

“‘Practicable’ means capable of being done after considering and balancing cost, existing technology, and logistics in light of overall project purposes” [LOC 50.10.003.2, Definitions / “Practicable”].

In interpreting “practicable” in relation to this criterion, the context of purpose as stated for design variances is on the purpose and objectives of the zone (LU 18-0020, Moyer).

The site is 6,000 square feet and is located at the corner of 4th Street and E Avenue (Exhibit E-001). The existing dwelling is a historic landmark (Brown-Vose House) built in 1885 and is nonconforming to the front, street side and side yard setbacks. The existing dwelling is approximately 1,729 sq. ft. The proposed addition results in a floor area increase of 1,517 sq. ft. for a total 3,246 sq. ft. or an increase of 87.7%. The purpose of the requested variances is to allow the historic structure to remain intact and allow for the proposed addition that increases the floor area of the dwelling by more 50%, which would require compliance with the setbacks or demolition of the house as discussed above under Nonconforming Standards on page 6 of this report (Exhibits E-004 – E-012 and F-001, pg. 11). The proposal does not change the yard setbacks of the existing dwelling. The proposed addition meets the required yard setbacks (Exhibit E-005).

The applicant’s narrative states that the current setbacks cannot be met for the existing structure (Exhibit F-001, pg. 11). The narrative explains that it is not practicable, considering the overall project purposes, to alter the existing dwelling to meet the required yard setbacks and allow the historic structure to remain intact.

Staff concurs with the applicant that “compliance with the applicable standard is not practicable due to the physical characteristics of the site or existing structure”, i.e., the building footprint located within the required setbacks. In “considering and balancing cost, existing technology, and logistics,” the only option to construct improvements to the nonconforming structure would be to demolish the dwelling. While demolition would have been the intent for most



nonconforming structures that would be subject to subsection of LOC 50.01.006.2.b when such a substantial addition is proposed, in the case of historic structures, that is not possible because of the criteria for demolition of historic landmarks under LOC 50.06.009.6.b.i:

*b.i. In order to allow the demolition of a landmark, the HRAB shall find that:*

*(1) The landmark is a severe hazard to public health or safety; or*

Elements of the structure need repair but is not a hazard to public health or safety (Exhibit E-008 and F-001, pg. 4-5).

*(2) Through an Economic Social Environmental and Energy (ESEE) analysis, that the benefits of demolishing the landmark and the construction of the conflicting use outweigh the benefits of preserving the landmark, and that there are no alternatives to demolishing the landmark; or*

Tear-down of historic structures with replacement of new does not outweigh the benefits of retaining the historic landmark, as evidenced by the applicant's efforts to repair the structure and retain as a viable structure. The purposes of these historic preservation requirements are to promote the preservation and restoration of landmark structures and foster neighborhood pride and sense of identity based on the recognition and use of historic resources. LOC 50.01.001.2.b.i, ii. See also Lake Oswego Comprehensive Plan, Community Culture chapter, Historic Preservation section, Policy 1:

"Preserve, enhance, and protect Lake Oswego's historic resources through procedures and standards designed to identify, restore and protect structures, sites, objects and districts of historic and cultural value within the city."

and the First Addition / Forest Hills Neighborhood Plan, Goals: Housing, Land Use, and Neighborhood Character, Goals 4 and 15, quoted below.

*(3) A denial of the request will deny the property owner reasonable economic use of the property; and*

*(4) The applicant completed a viable site development plan for the site including plans approved, if applicable, by the Building Official.*

The applicant is not asking to demolish the structure and has not submitted an alternative site plan for a new replacement residence. The applicant wishes to continue to make reasonable economic use of the property by allowing use of the property as permitted by the underlying zone.

Thus, the applicant would not likely qualify for demolition of the historic structure under LOC 50.06.009.6.b. Accordingly, this option is not "practicable" due to the historic landmark designation. Staff finds that designing improvements to the nonconforming structure that meets



all of the yard setbacks is “not practicable” due to the existing structure design and historic landmark designation. This criterion a.i is met.

*b. The applicant demonstrates that the proposed variance will:*

- i. Result in a project that is exceptional in the quality of detailing, appearance and materials; or*
- ii. Create a positive unique relationship to other nearby structures, views or open space.*

The applicant addresses Subsections b.i for the setback variances (Exhibit F-001, pgs. 11-12). The applicant’s narrative states (Exhibit F-001, pg. 11):

“The proposed variance will ensure that an important piece of lake Oswego’s history will be thoughtfully and carefully preserved while resulting in a project that is exceptional in the quality of detailing, appearance, and materials. The original wood windows will be repaired, and new wood storm windows will be added to increase the energy efficiency of the home and bring to current energy standards. The front porch will be brought back to its original state (an 18 feet in length front porch that is open on three sides. Currently, 15 feet of the porch is walled in. Based on the wall construction, it is believed to be an addition made in the 1920s or 30’ when Irma Vose lived there). Bringing the front porch back to its original state will also be more compliant with the requirement for new construction in First Addition to have a front porch.”

“The details on the house will remain and a few details are being proposed which are in keeping with the details of the existing house and other historic houses in the neighborhood built during the same time period. The siding of the original house will be kept and repaired as needed as will all the trim and details. The details being proposed include diamond shingling on the front west side gable to match the shingling on the north side porch gable, a wood balustrade around the front porch to replace the west and north wall and a railing on the south side of the porch, a belly band added to the west gable (like other historic neighborhood houses), and a diamond detail in the gables peak.”

The purpose of the design variance, particularly as applied to a RID design variance, is not to create a structure that is “exceptional” by being unusual or not typical to the neighborhood and streetscape, so that it is visually dominating, but rather that the detailing, appearance, and materials are exceptional in achieving, for RID design variances, a “more compatible, positive relationship” of the proposed structure even with the variances. To that end, the materials should be high quality and by being complementary to the style of the structure, achieve the purpose of the design variance to offset impacts through design. By context, the requirement for “exceptional” is not to create a design or use materials that overwhelms, but rather affirms and elevates the neighborhood character (DRC Findings, Hutchinson, LU 20-0032).

Staff agrees with the applicant’s narrative that the proposed alterations to the existing dwelling are complementary to the style of the historic structure. Staff finds that the proposed addition is also complementary to the historic structure, as discussed above under the Historic



Standards, and includes high quality exceptional materials (Exhibit E-008 and E-011). In conclusion, the proposal results in a project that is exceptional in the quality of detailing, appearance and materials in compliance with criterion b.i. This criterion is met.

*c. If the subject property is not located in the Downtown Redevelopment Design District or Lake Grove Village Center Overlay District, and is not the subject of a RID application... [additional criteria for subsection c omitted].*

The applicant is requesting RID Review design variances (Exhibit F-001). This criterion is not applicable.

**Conclusion:** Staff finds that Criterion a.i (physical characteristics), and Criterion b.i (exceptional quality of design) are met as proposed for the requested variances. The General Design variance standard is met.

#### Residential Infill Design Review Standards [LOC 50.08.003.6]

These standards provide an alternative review process for construction or alteration of outright permitted accessory structures in residential zones that do not meet the clear and objective development standards of the Code, but may be found to be otherwise compatible with the character of the neighborhood and surrounding residential development.

Variances may be granted to some of the requirements of the underlying zone standards if the applicant demonstrates that the proposed design results in development that is better than that which would meet the clear and objective standards. In making this determination, the City Manager shall consider the structure size, relationship to the street, and relationship to the neighbors [Subsections 6.a, 6.b, and 6.c] per the RID Review criteria in LOC 50.08.003.6 as well as the General Design variance criteria in LOC 50.08.003.3.a and 50.08.003.3.b. In considering additions to existing structures, the analysis is not focused solely on the impact of the proposed additions without looking at the resulting structure and whether those additions are better than if it were placed in a manner that would conform to the clear and objective standards. The question for RID approval is whether the resulting structure (whether conforming or nonconforming) with the additions, is better than development that would meet the clear and objective standards [LU 05-0056, Luhr], [LU 07-0042, Zmrhal].

#### Neighborhood Character and Patterns of Development

In determining whether the RID criteria are met, the pattern and character of development on all lots within 300 ft. of the subject site shall be considered, along with any neighborhood design objectives or guidelines for residential development that have been adopted by the local neighborhood association. The First Addition – Forest Hills Neighborhood Association Plan includes the following applicable neighborhood design objectives or guidelines (Exhibit F-006):

- Goals: Housing, Land Use, and Neighborhood Character (Exhibit F-006, pgs. 21-24).



#### FIRST ADDITION

1. To the maximum extent feasible, single family housing shall be preserved and steps taken to preserve its amenities and value. Special attention should be given to insuring that adjacent higher density housing, if developed, will not adversely affect neighborhood single family development.
2. Provide for compatible streetscapes in the residential area by encouraging access to garages through alleys, if available, for single family detached and attached dwellings, secondary dwelling units and multi-family dwellings, or an alteration affecting the garage(s) for these types of land uses.

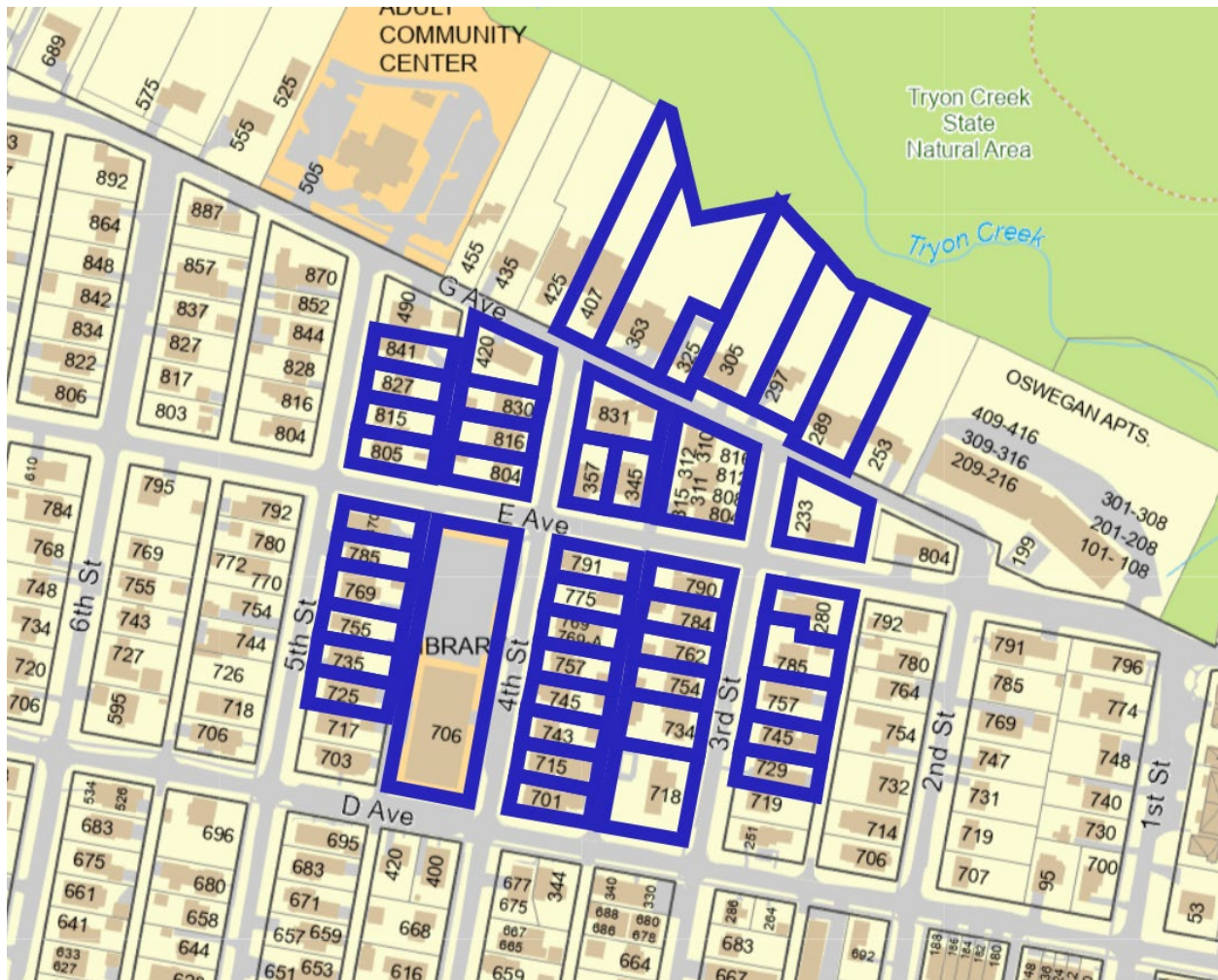
#### FIRST ADDITION / FOREST HILLS

4. Promote upgrading and remodeling of residential structures, rather than demolition and new construction.
5. Protect the character of the neighborhood by encouraging new residences and residential alterations to be compatible with the building size and proportion of existing dwellings.
15. Preserve and enhance First Addition/Forest Hills's historic resources through the identification, restoration and protection of structures, sites and objects of historic and cultural value within the neighborhood.

The requested variances allow the preservation and upgrade of the Brown-Vose House Historic Landmark. The density on the site does not change (Exhibit E-005). The streetscape along 4<sup>th</sup> Street will remain the same. The streetscape along E Avenue will include the new addition that is compatible with the existing structure and takes access from the alley. The proposed addition complies with all applicable R-6 zone standards, including maximum floor area, maximum height and setback planes, resulting in a building size compatible with the existing dwellings in the neighborhood. Staff finds that the applicable policies in the First Addition – Forest Hills Neighborhood Association Plan are met.

The applicant provided a photo inventory of dwellings within 300 feet of the site in order to demonstrate the pattern and character of development within the immediate neighborhood (Exhibit E-012). The map below shows that there are 44 properties with dwellings within 300 feet of the site. The area is developed with a mix of architecture styles, but are mostly single or two-story traditional, mid-century modern or contemporary styles with a variety of siding materials and flat or gabled roofs (Exhibit E-012). The proposed improvements to the Brown-Vose House Historic Landmark in the vernacular style with Queen Anne features are consistent with the existing eclectic development character.





### ***Residential Dwelling or Accessory Structure Size (Subsection 6.a)***

A variance may be approved when a more compatible, positive relationship between the size of a proposed structure and the scale and character of a neighborhood is demonstrated, and is typically gauged by whether the proposed design offers features that diminish the perceived scale and improve the perceived character of the larger dwelling. A variance may be permitted to the degree to which the structure design offers features that diminish the perceived scale and improves the perceived character by consideration of distance and visibility from the street and adjoining properties, topography, building number, form, mass and orientation, and landscaping.

The applicant's narrative and associated exhibits demonstrate that, to the extent perceivable, the following design features and locational factors diminish the perceived scale of the structure (Exhibits E-005 – E-011 and F-001, pg. 12):

- The proposed design retains the front (west) façade of the historic structure.
- The proposed addition to the nonconforming structure is code-compliant.



- There are several surrounding dwellings on the properties within 300 feet that do not meet the required front, side or street side yard setbacks (see map above and in the photos in Exhibit E-012).
- The average house size within 300 feet is approximately 2,775 SF, and of these houses, those built after 2000 average approximately 3,715 sq. ft. Increasing the square footage of the existing house from 1,579 SF to 3,246 sq. ft. (including the garage) with the addition results in a more compatible house with the size of neighboring homes (Exhibit F-001, pg. 12).
- The height of the proposed addition is less than the existing dwelling (27.25 ft.) at 26.16 feet. The addition includes three sections that step down from the existing roofline, rather than one large continuous roofline, which breaks up the massing and retains the smaller, simple vernacular aesthetic of the structure (Exhibit E-008).
- The proposed building materials for the addition include cedar shake and lap siding, wood double hung and casement windows, side porch and deck with Ipe mahogany decks, garage with Juliette balcony and gable with diamond pattern shingles, which add variation and details that breakup the massing (Exhibits E-008 and E-011).

Staff finds that the proposed design results in a development that is better than what could be approved without the exceptions (demolishing the house), as described above (visibility from nearby properties, design, materials, and breaking up the massing) will, to the extent perceivable, create a more positive relationship between the size of the structure and the scale and character of neighboring residences. This standard is met.

#### **Relationship to the Street (*Subsection.6.b*)**

*Refers to exceptions to **Front Yard Setback**, **Street Front Setback Plane**, and **Garage Appearance and Location***

Infill that is compatible will make a positive contribution to the scale and character of the streetscape and is typically gauged by whether the safety and experience of a pedestrian using the street is enhanced. The proposed structure design is evaluated by considering such factors as distance and visibility from the street, prevailing patterns of front yard setback, topography, preservation of existing trees and other features of perceived value to the street, mass and orientation relative to the street, entry treatment relative to the street, garage and parking area character and visibility, and screening elements.

This criterion is applicable to the requested reduction to the front yard setback along 4<sup>th</sup> Street and street side yard setback along E Avenue. Per this standard, “a positive contribution is typically one that enhances the safety and experience of a pedestrian using the street.” The applicant’s narrative and associated exhibits demonstrate the following design features and locational factors provide a positive contribution to the scale and character of the streetscape in the terms of the front yard and street side yard setbacks (Exhibits E-005 – E-011 and F-001, pages 12 and 14):



- As stated above, the proposed design ensures that the historic integrity (since 1885) of the house remains as viewed from both streets.
- The new porch on 4<sup>th</sup> Street creates a pedestrian-friendly approach to the house from the street.
- Multiple roof forms, windows, porch, deck and garage balcony break up the street-facing façade along E Avenue.

Staff finds that with regard to the reduction of the front and street side yard setbacks, the proposed design results in a development that is better than what could be approved without the exceptions. The proposed design will make a positive contribution to the scale and character of the streetscapes while enhancing the safety and experience of a pedestrian using the streets because the design is compatible with nearby properties that are nonconforming to street side yard and front yard setbacks and design details, which diminish the perceived size and scale of the building when viewed from 4<sup>th</sup> Street and E Avenue. This standard is met.

#### **Relationship to the Neighbors (*Subsection.6.c*)**

*Refers to variances to **Side Yard Setback**, Side Yard Setback Planes, Side Yard Appearance and Screening.*

Infill that is compatible will not diminish the scale, character or privacy of neighboring houses and will avoid visual conflict with neighbors. The relationship between the proposed house and the neighboring houses is determined by evaluating distance and visibility from adjoining properties, preservation of existing landscape features perceived to be of value to adjacent properties, topography, perceived proportion relative to adjacent properties, perceived sight lines to and from windows and decks, treatment of elevations visible to adjacent properties, and landscaping and screening.

This criterion is applicable to the requested variance to the nonconforming south side yard setback of the existing dwelling. The applicant's narrative and materials demonstrate that the proposed design offers the following site conditions and design features that diminish the perceived scale, enhances the character and privacy to neighboring dwellings, and avoids visual conflicts with neighbors with regard to the side yard setback along the south lot line (Exhibits E-005 – E-011 and F-001, pgs. 18-20):

- There are several dwellings located within 300 feet of the site that are do not comply with the required side yard setbacks (see map above). The proposed variance will have no additional impact as the existing dwelling location will remain the same and the new addition exceeds the required 7.5-foot side yard setback at 8 feet from the closest point to the south lot line.
- The design of the structure is compatible in scale to the rest of the dwellings in the neighborhood because the design meets the maximum lot coverage, maximum floor area, maximum height, and setback planes.



- The proposed elevation along the south side yard, where the closest abutting dwelling is located, consists of multiple roof forms that step down from the existing roof to reduce impacts to abutting property to the south.

**Conclusion.** Staff finds that the resulting design is better than a structure that meets the front, street side, and side yard setback standards. Staff therefore concludes that the proposed development meets the RID Review design variance criteria. The RID Review standard is met.

**3. Any additional statutory, regulatory or Lake Oswego Code provisions which may be applicable to the specific minor development application;**

**Stormwater Management Standards [LOC 50.06.006.3; LOC 38.25]**

At this stage of the project, the question per LOC 50.06.006.3.b is whether the applicant can demonstrate that it is possible, likely, and reasonably certain to succeed that the requirement of the Stormwater Management Code can be met, based upon the development activities and impervious area thresholds in LOC 38.25.120 [LOC 38.25.100(2)(a)].

All stormwater management facilities shall meet the standards for “small projects” if the new impervious area is greater than or equal to 1,000 sq. ft. and less than 3,000 sq. ft. or “large projects” if the new and/or redeveloped impervious area is greater than or equal to 3,000 sq. ft. For purposes of determining applicability, all applications on a given parcel or contiguous parcels under common ownership conducted within a 3-year period shall be considered cumulatively.

The Engineering staff finds that the proposed new impervious area will be 731 sq. ft. and the sum of the proposed impervious surfaces that will be created and/or replaced will be 898 sq. ft. as indicated on Exhibit E-005; therefore, no performance standards will be required to be demonstrated according to the provisions of this standard and LOC Article 38.25.

The Engineering staff notes that at the time of building permit submittal, the applicant will be required to demonstrate that the stormwater runoff from any new impervious roof surface area be directed to an approved point of discharge, per the Plumbing Code. As conditioned, this standard is met.

**Sight Distance at Roadway Intersections, Private Streets & Driveway [LOC 42.03.130]**

This standard requires that non-exempt vegetation, fence, or signage be located no higher than 30 inches within a “clear sight triangle.” The clear sight triangle is that area enclosed by the lines formed by the intersection approach legs of roadways, private streets and driveways and a straight line drawn diagonally across the corner, connecting those lines at the various



distances per AASHTO guidelines. As previously discussed, under LOC 50.06.003.2, and as conditioned, this standard is met.

### **Tree Code [LOC Chapter 55]**

There are three trees on the property that are six inches or more in diameter (Exhibit E-003). The applicant is requesting to remove one 36-inch Douglas Fir tree for the construction of the addition to the house (Exhibit E-005).

### **Type II Tree Removal [LOC 55.02.080]**

Trees proposed for removal in conjunction with a minor development can be granted tree removal permits if the following criteria are met:

1. *The tree is proposed for removal because it has outgrown its landscape area or the removal is part of a landscape plan, or in order to construct development approved or allowed pursuant to the Lake Oswego Code or other applicable development regulations.*

The applicant proposes to remove one tree for development purposes.

*Development Purpose:* This criterion is met if the tree proposed for removal is within the proposed development area by the applicant or additionally as conditioned for development approval; whether an alternative development analysis is required is addressed in Criterion #3. [See Kash Investments, LU 17-0005; Mission Homes NW, LU 17-0016; Blue Palouse Properties LLC, TR 499-17-02043, AP 17-05].

Staff finds that the tree proposed for removal is within the proposed development area of the addition (Exhibit E-005). This criterion is met.

2. *Removal of the trees, considering proposed mitigation measures, will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks;*

The narrative states that there are no negative impacts to erosion and soil stability based on the proposed tree removal (Exhibit F-001, pg. 17). The tree is located in the middle of the site in a relatively flat area. The site plan illustrates that there are no other nearby trees that will be impacted by the removal (Exhibit E-005). An erosion control permit is required per Condition A(3). For these reasons, staff finds that the tree removal will not have a significant negative impact on erosion control, the flow of surface waters, protection of adjacent trees, or existing windbreaks. This criterion is met.

3. *The removal will not have a significant negative impact on the character or aesthetics of the neighborhood. This standard is met when removal of the trees does not involve:*



- a. *A significant tree (over 15" DBH, healthy, noninvasive, and is considered significant to the neighborhood due to size, species, or distinctive character, or the only remaining tree on a property.);*

*Element #1 – Healthy:*

The narrative states the tree is in fair to poor condition (Exhibit F-001, pg. 17). Staff has construed "healthy" to be met by either "good" or "fair" condition, and the DRC has incorporated this interpretation. See Staff Reports and DRC Findings in Renaissance Custom Homes, (AP 22-03, -04); Richard (AP 21-03); Roderick Family LLC (AP 20-01). Due to lack of information, staff concludes the tree is to be considered healthy.

*Element #2 – Noninvasive:*

The Douglas-fir tree is a noninvasive species. It is not listed on the Invasive Species List [LOC 55.02.080, Definitions (Invasive Tree Species)].

*Element #3 – Over 15" DBH:*

The tree is listed over 15 inches DBH at 36 inches (Exhibits E-003 and E-005).

Subconclusion - Elements # 1-3: The tree is further examined for Elements #4 or #5 because it meets Elements #1-#3.

*Element #4 – Significant to the Neighborhood Due to Size, Species, or Distinctive Character:*

The findings regarding "significant to the neighborhood due to size, species or distinctive character" are discussed, below, for the trees. A tree is not considered significant to the neighborhood due to size or species if the tree's size or species is not rare in the neighborhood and the size or species is not readily visible to the neighborhood. [See Blue Palouse Properties; AP 17-05, DRC Findings, pg. 4; Mclver, AP 18-07, Staff Report, pg. 5 (DRC Findings, pg. 1).] A tree is not considered to have distinctive character to the neighborhood if it is not in a visually prominent location within the neighborhood and does not present a rare visual characteristic relative to its surroundings or of landmark importance. [See Tercek, LU 21-0044; Red Dog Investments, LLC, AP 20-02 (two 53" Tulip trees with large full canopies, and distinctive canopy form, were prominently visible, of horticultural quality that made the trees of landmark importance, and the trees were a sentinel to the neighborhood); Blue Palouse Properties, AP 17-05, DRC Findings; Monogram Custom Homes, AP 18-01 DRC Findings, pgs. 3-4; Renaissance Homes, AP 22-03, -04).]

It is the applicant's burden to show that the subject tree does not meet Element #4. The applicant's narrative states that the tree is not significant due to its size, health, and location



(Exhibit F-001, pg. 17). The narrative states there are many large Douglas-fir trees in the neighborhood and the tree does not provide visual screen between zoning districts.

Staff finds that the Douglas-fir tree is not rare in terms of size or species because there are other large Douglas-fir trees in the neighborhood. Although the tree is visually prominent from E Avenue and 4<sup>th</sup> Street, the tree blends in with the surrounding trees in the neighborhood and does not itself provide distinctive character to the neighborhood (see photos below). Element #4 is met.



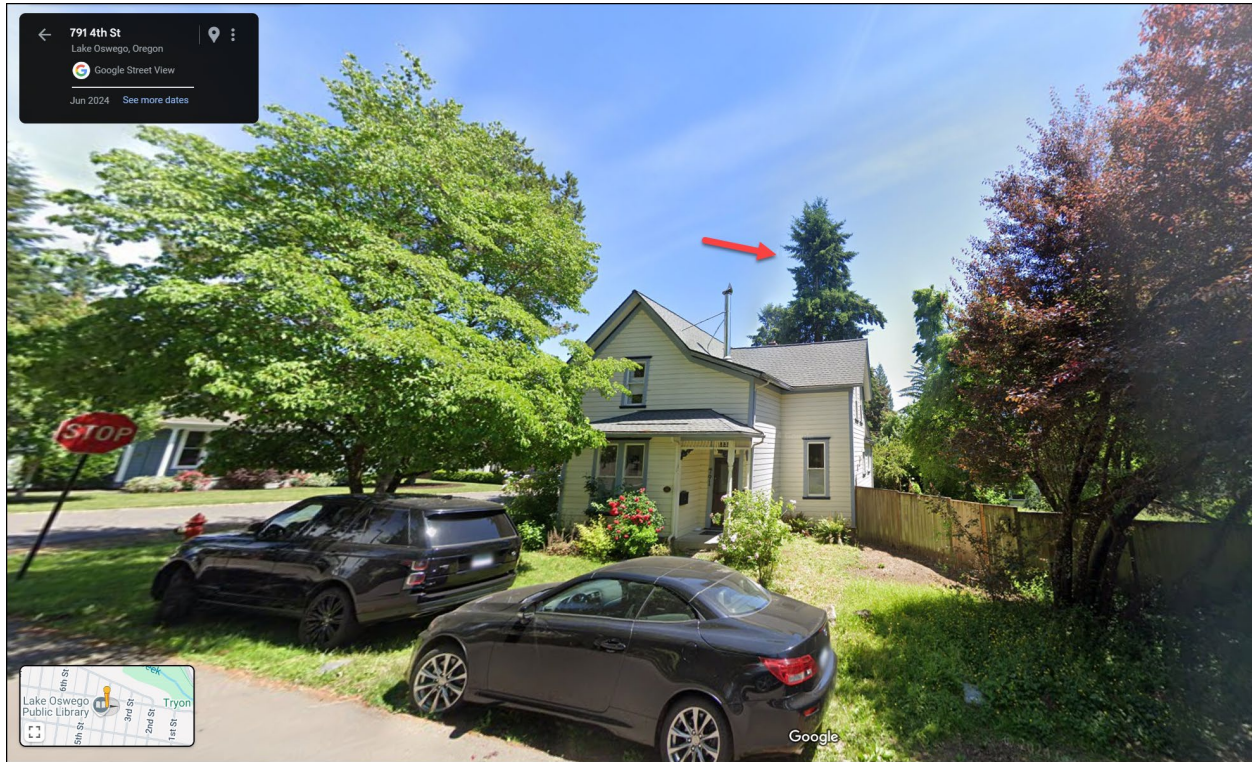
#### *Element #5 – Sole Remaining Tree*

If the tree is removed, there are still two trees on site that remain (Exhibit E-005).

Subconclusion – Subcriterion 3(a): The tree meets Elements #1-3 and 5 but not Element #4 of a “significant tree,” and therefore it is not a “significant tree”.



- b. Alterations to the distinctive features or continuity of the neighborhood skyline, as viewed from all public streets and properties within 300 ft. of the property;





As shown in the Street View photos above, the tree is prominent in the neighborhood skyline as viewed from 4<sup>th</sup> Street and E Avenue. The large Douglas-fir contributes to the continuity of the neighborhood skyline. Removal of the tree will alter the continuity of the neighborhood skyline, as viewed from E Avenue.

- c. A tree that serves as a visual screen between a residential zone and an abutting non-residential zone, or between a low density residential zone and a medium or high density residential zone, or between a medium and high density residential zone;*

The abutting properties are zoned residential. The tree proposed for removal does not serve as a visual screen between the dissimilar zones. This subcriterion is met.

- d. A street tree; or,*

The tree is not a street tree (Exhibit E-005). This subcriterion is met.

- e. Greater than 50% of a stand of trees.*

A “stand of trees” is defined as “...a group of trees (of the same species or a mixture) that forms a visual and biological unit at least 15 ft. in height with a contiguous crown width of at least 120 ft” [LOC 55.02.020].

The tree proposed for removal is not part of a stand of trees (Exhibit E-005). This subcriterion is met.

**Sub-Conclusion:**

The tree is not considered a “significant tree” but the removal of the tree will alter the neighborhood skyline. Therefore, the removal of Tree #6 requires compliance with an Exception below.

*Exceptions: Criterion #3 is not applicable when:*

- a. A tree is likely to or will continue to cause damage to a permanent, viable existing structure, or to infrastructure, such as utilities or paved landscape features, that cannot be remedied through reasonable tree maintenance or pruning; or*

The applicant is seeking removal based on proposed development, not existing development. This exception criterion is not applicable.

- b. Alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone. In making this determination, the City may consider alternative site plans or placement of structures (development purpose) or alternate landscaping designs (outgrown landscape area; landscape plan) that would lessen the*



*impact on trees, so long as the alternatives continue to comply with other provisions of the Lake Oswego Code.*

The Douglas-fir tree is proposed for removal for construction of the addition to the existing dwelling. The tree is located near the middle of the site within the allowed buildable area when considering required yard setbacks. The site plan (Exhibits E-005) shows that the proposed garage portion of the addition would require the removal of the tree. Relocating the garage addition further from the street to retain the tree would not meet the 7.5-foot side yard setback. Moving the garage addition in the opposite direction closer to E Avenue to retain the tree would not meet the 7.5-foot street side yard setback. Staff finds that there is no reasonable alternative to the removal of tree that would allow the property to be used as permitted in the zone.

This criterion is met.

*4. Removal of the tree is not for the sole purpose of providing or enhancing views*

Removal of the trees is not for the sole purpose of providing or enhancing views because the trees are being removed for development purposes, as stated for Criterion 1, above.

**Conclusion:** For the reasons outlined above, staff concludes that removal of the Douglas-fir tree complies with the applicable criteria. As a condition of approval, the applicant shall apply for a verification tree removal permit for the tree prior to approval of any construction plans [Condition A(6)].

Mitigation [LOC 55.02.084(4)(a)(ii)]

Any tree approved for removal under the Type II tree analysis shall be mitigated at a minimum 1:1 ratio. "Significant trees" removed for development purposes shall be mitigated at a 2:1 ratio. Required street trees do not count towards the minimum tree mitigation requirements. Mitigation trees should have a minimum 1.5-inch caliper diameter for deciduous trees and a minimum 6-foot height for evergreen trees. All native trees must be mitigated with a native species selected from LOC Appendix 55.02-1, Native Mitigation Tree List.

The tree proposed for removal is a native tree and not considered a "significant tree" as defined by LOC 55.02.020, and as analyzed in the Lake Oswego Tree Code [LOC Chapter 55] discussion regarding LOC 55.02.080(3)(a), above. Therefore, one native mitigation tree is required (1:1). As a condition of approval, the applicant will be required to submit a final mitigation plan that shows at least one native tree that is a minimum 1.5-inch caliper for deciduous trees or 6-foot tall for evergreen trees [Condition A(6)].



**4. Any applicable condition of approval imposed pursuant to an approved ODPS or prior development permit affecting the subject property.**

There are no prior conditions of approval that affect the subject property.

**VII. CONCLUSION**

Based upon the materials submitted by the applicant and findings presented in this report, staff concludes that LU 24-0028 complies with all applicable criteria and standards or can be made to comply through the imposition of conditions.

**VIII. ACTION TAKEN**

**Approval** of LU 24-0028, subject to the conditions identified on pages 1-3.

Prepared By	Reviewed By	Approved By	Date
Evan Fransted, AICP Senior Planner	Evan Boone Deputy City Attorney	Jessica Numanolgu, AICP, Community Development Director	October 24, 2024
<i>EF</i>	EB	JN	

**EXHIBITS**

**A-D** [No current exhibits; reserved for hearing use]

**E. GRAPHICS/PLANS**

E-001 Tax Map  
E-002 Location Map  
E-003 Existing Conditions Survey  
E-004 Cover Sheet  
E-005 Site Plan and Impervious Surface Plan  
E-006 Floor Plans  
E-007 Front Façade Perspective  
E-008 Elevation Plans  
E-009 Setback Planes  
E-010 Historic Review Plans and Materials  
E-011 Materials Board  
E-012 Surrounding Properties within 300 feet  
E-013 Sight Distance Plan

**F. WRITTEN MATERIALS**



- F-001 Applicant's Narrative
- F-002 Structural Engineering Feasibility Letter and Structural Markup Plans
- F-003 HRAB Comments
- F-004 Fire Marshal Comments
- F-005 Historic Resource Survey Form
- F-006 First Addition-Forest Hills Neighborhood Plan

**G. LETTERS**

Neither for nor Against (G-001 to G-099):

None

Support (G-100 to G-500):

G-100 Gustafson 09-06-2024

Opposition (G-500+):

G-500 Ockert 07-18024

G-501 Kraus 09-04-204