



22500 Salamo Road
West Linn, Oregon 97068
<http://westlinnoregon.gov>

WEST LINN CITY COUNCIL MEETING NOTES April 15, 2024

[Call to Order \[6:00 pm/5 min\]](#)

Council Present:

Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Carol Bryck, Councilor Leo Groner, and Interim Councilor Kevin Bonnington.

Staff Present:

City Manager John Williams, City Recorder Kathy Mollusky, City Attorney Bill Monahan, Senior Planner John Floyd, and Parks & Recreation Director Megan Big John.

[Approval of Agenda \[6:05 pm/5 min\]](#)

Council President Mary Baumgardner moved to approve the agenda for the April 15, 2024, West Linn City Council Meeting. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Carol Bryck, and Councilor Leo Groner.

Nays: None.

The motion carried 4 - 0

Interim Councilor Bonnington arrived after the vote was taken.

Public Comment [6:10 pm/10 min]

Public Comment - John McCabe

John McCabe, West Linn, spoke to the use of Oppenlander Field by sports teams, obtaining information from the School District, the late use of lights at Athey Creek Field, and the closed roundabout in Fields Bridge Park.

Teri Cummings, West Linn, talked about the questionable investigation of the West Linn Police Department (WLPD) compliance with Oregon Law and WLPD policies.

Karie Oakes, West Linn, asked questions about the decision process to select the investigator and scope of the Farley investigation.

Mayor and Council Reports [6:20 pm/15 min]

Reports from Community Advisory Groups

No reports were given.

Community Advisory Group Appointments

Mayor Bialostosky placed before Council appointing Kate McKinzie and Shatrine Krake to the Arts & Culture Commission, Jake Ridens to the Transportation Advisory Board, and removing Jay Clingman from the Sustainability Advisory Board.

Council President Mary Baumgardner moved to approve the Mayor's Community Advisory Group appointments and removal. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Carol Bryck, Councilor Leo Groner, and Interim Councilor Kevin Bonnington.

Nays: None.

The motion carried 5 - 0

Lady B Tugboat Decision

John Williams, City Manager, stated the Advocates for Willamette Falls History (AWFH) was seeking a temporary home for a 40-ft steel tugboat formerly at work on the Willamette River while they searched for a permanent home. The AWFH had committed to some fundraising and resources to move the boat if the City accepted and stored it for up to 10 years while doing fundraising. Finding storage had been difficult, and neither the Parks Master Plan nor the Charter have provided a definitive answer about storage of a large tugboat. Staff's answers to Council questions and key comments from Council were as follows:

- The *Lady B* might not differ historically from other exhibits in City parks, but it differed in scale.
- The Charter stated City-owned park and open space should be preserved for recreational use and environmental preservation and enhancement. It was unclear if a historical use was considered recreational. Updates to the Charter needed to be approved by the voters.
- Storage, installation, and long-term costs of the City owning and maintaining the tugboat were of concern.
- The empty lot on Clark St in Wilderness Park was considered but was not ideal, and it was unclear if the Master Plan allowed items for historical interpretation there. Council President Baumgardner pointed out a debris pile from the storm of 2021 remained in that parking lot for some time which was also not really a park use, but the City must be adaptable.
- The April 30th deadline for a decision on the *Lady B* was apparently flexible as long as some progress was being made.
- The tugboat was a historical artifact or relic that was once a boat but would not go back into the water. In theory, no maintenance cost would exist as it had been sitting outside and could handle the elements. Once it was permanently displayed, the actual restoration would be relevant.
- Storage in City parks was not authorized unless the City went to the voters and they chose to do so. Storage at the Bolton Fire Station would have ingress and egress issues. Council had not yet discussed the future of the Bolton Fire Station, nor had it been discussed with the Bolton neighborhood.

Mayor Bialostosky appreciated the AWFH's passion for the tugboat. He was totally open to the idea if he could be convinced a spot to accommodate it existed that would not create issues for the City, or that the tugboat could be installed in a park. At the end of the meeting, Council could discuss whether to add the item to a future agenda. He noted the matter was time sensitive and he would work with the City Manager on it.

[Business Meeting \[6:35 pm/90 min\]](#)

[Agenda Bill 2024-04-15-01: Public Hearing: Appeal of approval of a Class II Design Review \(DR-23-01\) to construct a new commercial building at 1919/1949 Willamette Falls Drive](#)

[Appeal Information](#)

[Applicant Testimony](#)

[Appellant Testimony](#)

[Additional Public Comment through 4-12-24](#)

[Additional Public Comment through 4-15-24](#)

[Presentation](#)

Handout

Mayor Bialostosky introduced the Agenda Bill for the appeal of approval of DR-23-01, a Class II Design Review to construct a new commercial building at 1919 & 1949 Willamette Falls Dr filed by Ian and Audra Brown. He explained the hearing procedures and called to order the public hearing.

Bill Monahan, City Attorney, covered the preliminary legal standards and appeal rights and noted the substantive criteria from the Community Development Code (CDC). He asked if any Councilors had any conflicts of interest or bias.

Interim Councilor Bonnington stated he was a member of the Planning Commission when it approved this application. The terms of approval were based on his suggestion originally. He would have no issue hearing the application and appeal nor with making a decision based on the facts or new evidence.

No other members of Council declared conflicts of interest, bias, or ex-parte contacts.

City Attorney Monahan asked if any audience member wished to challenge a conflict of interest or impartiality of any member of Council.

- Erik Stevenson, Applicant's Representative, stated he did not have a challenge, but confirmed through questioning that Interim Councilor Bonnington could make a fair and unbiased decision and that he had no financial interest in the outcome of the project.
- Karie Oakes challenged Mayor Bialostosky due to campaign donations he received from the Applicant, IKON Construction. Mark Handris, Owner of IKON, had donated \$2,500 from each of his companies, totaling \$5,000, which she believed was about half of the total amount of contributions the Mayor received.

Mayor Bialostosky responded he had taken contributions from many people in West Linn including Mr. Handris. He had grown up and had gone to school with one of Mr. Handris' daughters. He had not discussed the application with Mr. Handris. He may have had a yard sign at the Appellants' house in 2020. He pledged to the community, the Browns, and IKON that he would make a decision that applied the facts and the Code. He stated he did not owe anyone anything.

Councilor Leo Groner moved to Accept Karie Oakes' challenge of the impartiality of or bias on the part of Mayor Bialostosky. The motion did not receive a second and was lost.

Councilor Carol Bryck moved to Deny Karie Oakes' challenge of impartiality of or bias on the part of Mayor Bialostosky. Interim Councilor Kevin Bonnington seconded the motion.

Council President Baumgardner stated she had served with the Mayor for 3 ½ years and was completely confident in his ability to assess the facts objectively and neutrally.

Interim Councilor Bonnington noted that it was somewhat inevitable that donations would be received from the number of people and businesses in a city the size of West Linn. Based on his experience over the past three years, the Mayor's integrity on such matters was impeccable and he believed he could handle the case.

Councilor Groner agreed and stated his experience with Mayor Bialostosky had shown him to be completely above board and he had no problem with his decision making.

Ayes: Council President Mary Baumgardner, Councilor Carol Bryck, Councilor Leo Groner, and Interim Councilor Kevin Bonnington.

Nays: None.

The motion carried 4 - 0

Mayor Bialostosky confirmed the Appellants were comfortable with his participation.

City Attorney Monahan asked if any member of the audience wished to challenge the jurisdiction of Council to hear the matter.

- Danny Schreiber, West Linn Historic Review Board (HRB) Co-Chair, stated that according to the City Code all applications involving Chapter 58 should go through the HRB. The application had twice previously gone through the HRB, but not in its current form. The Applicant bypassed the HRB and went directly to the Planning Commission because he did not like the HRB's earlier decision.

City Attorney Monahan understood the last application acted upon by the Planning Commission had elements removed. Nothing was added to the application that had not been seen by the HRB. He did not believe the HRB had jurisdiction because it had seen all elements of the application, but perhaps not arranged as it was today.

John Floyd, Senior Planner, stated the application was presented to the HRB and then elements were removed, and some modifications made in that removal before it went to the Planning Commission. The Code was not clear on how to proceed when modifications were made between the HRB recommendation and the Planning Commission's final consideration. That was something the Planning Commission had taken up as part of their deliberations.

City Attorney Monahan believed the City Council had jurisdiction to hear the case, and he had given the same interpretation to the Planning Commission when the issue was raised at its hearing. The challenge would be noted for the record.

City Attorney Monahan clarified ex parte contacts by the Councilors would include site visits. No member of Council declared any site visits.

Senior Planner Floyd gave the Staff presentation via PowerPoint which included the components of the appeal, a description of the project, zoning, procedural requirements, and design. He then responded to Council questions as follows:

- No design exceptions were outstanding that had not been approved by the HRB.
- No other restaurant or bar on Willamette Falls Dr was subject to noise studies. Staff's position was that outdoor eating and drinking was common in the area, and that a rooftop deck was similar to a patio or sidewalk seating. Some public testimony stated the rooftop deck was substantially different. The project would provide the first potential rooftop commercial use in the area.
- No part of the rooftop patio exceeded the 35 ft height restriction. The patio did not have a cover, so it was not a third story and was open to the elements. The highest part was the 5 ½ ft metal enclosure around it. The red-dotted line on Slide 11 represented the 35 ft height limit. The square lines at the top represented the stairwell and the elevator enclosures. The elevator shaft exceeded the height limit, but was specifically authorized by the height exception.
- The height and location of the stairwell and elevator enclosures would be the same if the rooftop patio did not exist. Roof access could be provided through ladders and hatches, but it was easier for people and equipment to access a roof through stairways and elevators.
- The adopted noise condition said in part that subsequent to the first noise study, the Applicant shall submit a new noise study not more than once per year in response to a noise complaint associated with the deck. The WLPD would have to receive a noise complaint in that circumstance.
- If a new noise study showed non-compliance with the City's noise ordinance, the City could compel the Applicant to use corrective measures. A violation of a condition of approval would be enforceable through the Code enforcement program.
- Discussed at the Planning Commission meeting was the possibility of allowing access to the rooftop patio to only tenants of the building and not to customers, but it was decided that such a condition of approval would be difficult for the City to enforce.
- Discussion of a third story to the structure was more relevant to a proposed lounge. The lobby elevator could be considered a story but, under the exemption, it was not a space used for human occupancy because it was transitory space and served as an extension of the story below it. The stairwell and elevator did not constitute a story.
- Noise studies were conducted by people with certain technical proficiency. The background noise level would be measured, followed by measurement of noise during a typical patio use. A determination would then be made whether the noise had increased and whether it was in violation of the City's noise ordinance hours or levels of noise. The person doing the study would make recommendations on how the noise could be attenuated and determine the methodology to be used.

- Two enforcement mechanisms existed for noise: First, a noise study for ongoing activities that were repeatable and measurable; and second, calls to the police who would document the noise. Most noise complaints in the City were addressed through enforcement of the noise ordinance.
- The noise study would be more appropriate for ongoing issues that would have operations or shift patterns, such as industrial equipment.

Appellant's Argument

Kerry Richter, Appellant's Attorney, Bateman Seidel Miner Blomgren Chellis & Gram, P.C., Portland, said most would agree the proposed design from February 2024 had been improved. It reduced the areas committed to a third story and reduced the height of the upper pediment on the 12th St frontage, but that still did not comply with the clear and objective standards in the Code which was why the Browns filed an appeal. It was important for Council to know the Appellants were not asking that Council deny the application, rather they were asking for revisions to the conditions of approval they believed were necessary to satisfy the standards.

- The Appellants' main concern was noise. Their residence was located about 65 ft to 70 ft from the proposed building, right on the other side of Knapps Alley. The new development would overlook the Browns' bedroom windows and their second-floor patio.
- She asked Mr. Brown to describe his experience with the neighborhood and residency regarding noise to provide a baseline for Council to consider in determining whether the proposed development would violate the noise standards.

Ian Brown, Appellant, West Linn, stated he and Audra Brown had lived at 1968 6th Ave adjacent to the Commercial Design District for almost 12 years. Their bedroom overlooked Knapps Alley and their front door faced Willamette Primary School on 6th Ave. The neighborhood was beautiful and they often left their windows open in the spring and fall and on cool summer nights.

- They were accustomed to living just off of Willamette Falls Dr. They had lived behind the newest large commercial building for several years and were accustomed to that, too. Some noises bothered them, and some did not. The traffic on Willamette Falls Dr was a background hum that was buffered by the commercial buildings and did not bother them most of the time. If a construction truck started up and idled for a while in Knapps Alley, it would wake them up.
- Their house did not get much noise from cafés or other sidewalk activity on Willamette Falls Dr because it was buffered by large commercial buildings. However, when people walked down Knapps Alley and were raucous after late night celebrations, their voices carried into their house, even when they were down the block. It did not happen a lot, but they knew what it sounded like and they did not want it to be a regular occurrence.
- When kids climbed on top of the school across the street, their voices could also be heard inside the house even though the school was farther away from their house than the proposed new building. Sometimes he would tell the kids to get off the roof.

- They could tell the difference between the noise of traffic, pedestrians, and cafés on the main street buffered by the mass of the commercial buildings compared to the noise of people celebrating in Knapps Alley and the noise of people on the roof of neighboring buildings. The noise made was different from the normal sounds of the Willamette Commercial District and they did not want it to be a regular occurrence. It was not an undefined fear, rather observed facts.
- The proposed development was not like the current sidewalk activity. The builder's proposed rooftop setting was bigger than the seating areas on the sidewalk. It was closer to the neighbors and it was not buffered in the same way. The Applicant had emphatically assured the HRB and the Planning Commission that no restaurant, bar, or similar loud use would be built, but they had not been willing to commit to those assurances.
- The Browns loved the neighborhood and wanted to maintain what they had.

Ms. Richter noted no existing rooftop decks or patios existed on any non-residential uses, nor did any elevator lobbies exit onto the rooftops in businesses along Willamette Falls Dr. Noise was regulated in West Linn. The City's general noise standards were set forth in MC 5.487.2 and prohibited any noise that unreasonably annoyed, disturbed, injured, or endangered the comfort, repose, health, safety, or peace of reasonable persons of ordinary sensitivity. The threshold involved annoyance and disturbance. Mr. Brown had testified that he knew the difference, and a reasonable likelihood existed that regular activity of the outdoor patio area by customers and tenants and communications taking place late into the night would have a disturbing and discomforting effect.

- The design review criteria required the Applicant to undertake and submit appropriate noise studies and mitigate as necessary to comply with the Code. CDC 55.100.4 stated this obligation was directly applicable to businesses or activities, meaning the Applicant had to show that their businesses or activities would not disturb or annoy the neighbors. If the Applicant could not show that the business or activity would not exceed the thresholds, they needed to conduct a noise study assuming the worst-case scenario. For example, in the case of a zone change with an unknown type of proposed building and a necessary traffic evaluation, the most traffic that could be generated by any uses would be assumed as the worst-case scenario. The Appellants were asking the Applicant to assume the worst-case scenario for noise, such as a dance club with a live band on the roof. Mitigation and buffering should take place at that level because the Applicant was not willing to limit the uses.
- The Applicant sought unlimited flexibility but had not offered any evaluation of the noise impacts or any buffering to address this criterion by any qualified expert. They proposed a 5 ft 6 inch steel wall, and said landscaping would be installed, but no indication was given on what mitigative buffering effect the wall would have.
- The architect had stated the deck had been moved as far away from the residence as possible, but no evaluation was provided of any impact that change in distance would have on mitigating noise. Whether the steel wall or landscaping would have an effect

was speculation. In fact, the drawing showed a standing person's head above the landscaping and wall, resulting in no mitigative effect on voices.

- The architect characterized the design modifications as reducing the “chance of” noise. That was not good enough to meet the burden of mitigating noise. It might work or it might not, and if it did not work their response was to let the Appellant file a complaint or to let the Appellant suffer a disturbance. The Code required the Applicant to identify expert evidence to show that the noise standards would not be violated.
- Although it is not the Appellants’ burden to produce evidence that the noise would be excessive and insufficiently mitigated, she submitted into the record a 2024 report submitted at the meeting of the Acoustical Society of America evaluating the impacts pubs and bars have on residential uses. The report indicated bars with open windows or terraces generated significantly more noise than those without, and that the noise more often than not caused anxiety and disturbed sleep for the nearby residents as a result of human conversations.
- The Applicant claimed they could not evaluate noise now because no uses were proposed. Based on her 30-year experience as a land use attorney, noise experts often did noise studies on uses not yet in place. The architect could project how many occupants might be expected in 750 sq ft, a noise engineer could project how much noise could be expected by human conversation, and mitigation could be designed to reduce annoyance or disturbance to neighboring residents.
- The Applicant was advocating to delete all of the prospective conditions on noise buffering, allowing the City’s enforcement process to address excessive noise. The noise standards of Municipal Code 5.487 were insufficient because they required action by the Appellants or other neighbors to document and initiate a complaint and required action by the City to pursue enforcement, and that was entirely at the City’s discretion. The burden should not be placed on the neighbors to monitor and complain and then the City’s police and enforcement arm to do what the Code required at the outset. The Code required the Applicant to mitigate noise for abutting non-commercial residents. That applied exactly to this case.
- The Applicants had no obligation to show whether noise impacts would be significant. The City’s noise standards would be violated. It was not a question of whether the Browns’ fears or concerns were well-founded. The Code imposed the obligation to evaluate and buffer for noise on the Applicant, and they had not borne the burden in this case.
- The Appellant believed the only way to resolve these concerns and satisfy the standards would be to impose three additional conditions of approval:
 1. The rooftop lounge should not be used by retail customers for the consumption of food or beverages that were purchased on site. This would be a revision to the condition the Appellants proposed to the Planning Commission to respond to Staff’s concern about enforcement regarding the difficulty of telling a tenant’s guest from a customer. If no restaurant or café was built, no constraint would be imposed. If a restaurant or café were built, a terrace would either be advertised or not, and that would solve the City’s enforcement concerns. Food and beverage sale and consumption at night would cause

the noise violation. It was essential for the City to get a handle on and deal with the uses at the outset because the Applicant had been unwilling to provide a noise study.

2. Restricting the use of amplification to only small, hand-held Bluetooth speakers with no amplification of sound within the rooftop lounge. This was fairly consistent with the City's noise ordinance.
3. The Appellant proposed a clarification to the Planning Commission's Condition No. 10 that a noise study be conducted while the rooftop was occupied. Noise studies evaluated the baseline noise, and then studied the noise with occupants. The amount of variation would be reduced if the baseline noise study was conducted at 5 pm or 6 pm peak hour when more noise might be made, compared to 7 pm or 8 pm.

Ms. Richter continued with three issues concerning the building height:

1. The 35 ft height was exceeded by the finial in the middle of the front façade. Even the Applicant stated certain decorative features exceeded the threshold.
 2. The elevator lobby and the stairwell exit have a ceiling and a floor. Staff stated that those features would not be used for human occupancy because they were transitory, but that made no sense. A hallway is transitory, but it was for human occupancy. The utility infrastructure for the top of the elevator was not for human occupancy because the public would never go there, but an elevator lobby was for the public to use and constituted a third story. It was designed consistent with the Building Code to meet the commercial building occupancy, so it was the Appellant's view that it was a third story that the HRB found to be prohibited.
 3. No other building along Willamette Falls Dr had three rows of human-scale windows. The entire corner of the proposed building's façade and the full length along 12th St appeared to have windows on the third floor. She understood they would not be viewed from the inside out as windows because no ceiling would exist, but the whole purpose of the design guidelines was to ensure uniformity by using a design that elevated and was compatible with the historic architecture.
- By allowing such a design, Council would be approving what appeared to be a three-story building and it would set a precedent. That was a very dangerous road to go down because it threatened the historic resources that existed along Willamette Falls Dr and in the Historic District.
 - It was very clear from the purpose statement in the Code that uniformity in façade design was intended and should be maintained, and only one false front design typology existed along Willamette Falls Dr. The proposed design did follow that requirement, and a concern was raised by the HRB in the first round. The Applicant revised the application twice, and it was not correct to say that the revisions only removed things from the design. They removed the windows on 12 St and replaced them with paneling. That was not removal of the third story elements that were of concern. For that reason, the Appellant urged Council to remand the application to the HRB for review with respect to the third-story design and Code requirements.

- She explained the criteria in CDC 55.100.D.4 stated it was necessary to find that businesses or activities that could reasonably be expected to generate noise in excess of the noise standard shall undertake and submit appropriate noise studies. The Appellant contended that it was likely the rooftop would generate noise in excess of the standard because the standard was fairly low, and no noise studies existed to evaluate how buffering would occur. The Code clearly obligated buffering. The Appellant understood that the Applicant had not proposed a use yet, but the choices were to not propose a use, assume the most noise possible so the buffering and mitigation could happen for everything below that level, or address the issue later when the use was known in a way that would mitigate for the noise and allow the public to participate in that determination.

Mayor Bialostosky asked how occupancy of the patio would be defined in this context. He questioned whether it was related to occupying the space on a tenancy basis or temporarily, such as walking through the area.

- Ms. Richter replied the occupancy level would be what 750 sq ft could accommodate under the Building Code.

Interim Councilor Bonnington stated he was somewhat confused by the definition of human occupancy. The patio did not appear to fall under the definition he looked up which stated, "Use of a building for people sleeping, cooking, bathing, using sanitary facilities, and similar dwelling purposes for carrying out a trade, profession, industry or business not including personal or commercial storage or where there is no common human presence."

- Ms. Richter responded that human occupancy relating to the Mayor's question was how many people would make noise on the patio. It appeared Interim Councilor Bonnington's question was about three stories, height, and things that were exempt from height because they were not for human occupancy. She did not believe the deck was above 35 ft and it had no ceiling. It was not a story as the City interpreted the term. It appeared to her that occupancy related to purposes of height concerned the elevator lobby and the stairwell which both had ceilings. The public would be able to access the deck through those two means on this commercial construction, and that would make it consistent with Interim Councilor Bonnington's definition of occupancy.

Interim Councilor Bonnington believed it was a gray area, and could go either way with the definition. It would be better if the Code suggested a definition, but he was more concerned because the Appellant's team had raised the issue on that particular space. He inquired if the condition approved last time already called for the type of noise study the Appellant was requesting. He could appreciate their concern because he did not like hearing things outside his window either. He acknowledged tenants were not available now, but how could the noise level be restricted or a study done for something that was not there? The noise study would be triggered by occupancy of the building.

- Ms. Richter replied that the difficulty she had with the Condition approved by the Planning Commission was that it did not state that the sound study had to be conducted when the roof was occupied, but when 50 percent of the building was rented. It also did not specify the time of day when it was likely people would be on the roof. It could be done at 3 am when no one was on the roof and it would not prove anything.

Mayor Bialostosky stated Ms. Richter's point was understood as were the Appellant's concerns related to livability and neighborhood impacts.

Applicant's Argument

Garrett Stevenson, Land Use Attorney representing the Applicant, stated he was brought in when the appeal was filed. He said the Applicant's architect would provide background on the design as he was far better prepared to address the design issues raised. Afterward, Mr. Stevenson would provide legal responses to the Appellant's arguments. He directed Council to his April 12, 2024 letter included in the meeting packet that dispensed with a number of the questions raised tonight.

Scott Sutton, SG Architecture, architect for the Applicant, stated he assumed Council had read the letter included with the packet on Friday where SG Architecture had outlined the process to date. They had begun designing the building a little over a year ago, submitted a design review application in early 2023, and went through the first HRB meeting in June where the design included the enclosed lounge. They had interpreted that to be a mezzanine rather than a floor which caused a big discussion, resulting in the building being approved with conditions and with the exception of the lounge. The application was sent to the Planning Commission for their determination. SG Architecture addressed some of the concerns raised in the HRB meeting as well as the conditions resulting in plans and elevations where the lounge was changed from an occupied lounge to unoccupied general building storage. IKON owned a lot of real estate and buildings along Willamette Falls Dr and was always in need of additional storage.

- The Applicant had been through a number of hearings and had made adjustments to the design in response to the comments, criticisms, and concerns brought raised by the HRB, the Planning Commission and the neighbors. They had tried hard to accommodate the neighbors the best they could. The process had been long and they appreciated the patience and efforts shown. He hoped Council would approve the application.

Mr. Stevenson addressed the height issue. He believed no question existed about whether the building met the maximum height requirements. Page 12 of the letter he had submitted on Friday stated the only item in excess of 35 ft was the decorative piece mentioned by Ms. Richter and the top of the elevator housing. No occupiable space existed above the 35 ft proposed.

- An elevator housing and its vestibule on the roof were not considered the top story of a building, so that argument was not credible and completely incongruent to how buildings work and function. Quite an issue had been made about the vestibule, and, based on his inquiries, elevators providing roof access without vestibules were not built anymore because rain and wind would damage the elevator.
- Even if the argument had a common-sense persuasion, CDC 41.030, Projections Not Used for Human Habitation, was very broad-based and would include both a limitation on the number of stories and height. It stated: "Projections such as chimneys, spires, domes, elevator shaft housing, towers, aerials, flagpoles, and other similar objects not used for human occupancy are not subject to the building height limitations of this Code."
- In this case, the Code limited the height of the building in two ways, the 35 ft maximum and the number of stories. What happened before the HRB was a long and tortured process, but it was simple for the purposes tonight. The Applicant went to the HRB to ask for a third story on the building, the HRB declined, and his client listened to the HRB and removed the third story. They retained the roof deck which was a permitted use in the zone. No prohibition existed in the general commercial zone on access to the roof nor was it prohibited by the Design District. The answer was simply that a roof deck was allowed and could service any use of the underlying zone.
- He emphasized the Appellant's entire case was based on speculation that noise on the roof deck would violate the City's nuisance codes. The Applicant planned for different types of uses and certain assumptions were made about the uses' impact on the surrounding areas. They did not use a design review process to limit otherwise allowed uses of the building simply because of a neighbor's heartfelt belief that something bad could happen in the future. That was why the City had noise ordinances. He had reviewed the City's noise ordinances and found them very comprehensive and restrictive. In this case, no evidence nor reasonable idea existed that people having drinks or dinner on the roof would exceed the noise limits. What was present was the understandable fear of a neighbor who was seeing a building going up across from an alley and who did not want to hear anyone talking from the top of the building. However, talking on top of a building was not prohibited by the noise ordinance, rather only certain types of noise that exceeded what a reasonable person could handle. He did not believe any justification existed for the conditions proposed by the Appellants that would limit otherwise allowable uses of a section of the building.
- The Planning Commission had authority in this case to request a noise study and it did so. He believed the condition was well-intentioned, though some problems existed in the condition's language. No tenant was identified yet and no basis existed to order a noise study now. A comprehensive noise study requirement and a very restrictive and easily-triggered noise enforcement ordinance existed if a problem arose on the roof. A noise engineer could make educated guesses about a future level of noise, but he did not believe that was the intent of the Code. He had done noise studies for different types of uses such as industrial facilities and doggy daycares, and in every case the noise study was done when a concrete use was known that could be measured. The

Applicant's team did not believe that the amount of noise generated from the roof deck would exceed the noise limits imposed by the City's Nuisances Code.

- An additional problem with Condition No. 10 was that it was not triggered by any use that would create noise there in the first place, rather only by 50 percent occupancy of the building. A noise study would not be productive if the building were occupied at 50 percent by uses not using the roof deck with any frequency.
- Other issues with Condition No. 10 were that a noise study could be required once a year from any complaint that was issued by a neighbor for any reason whatsoever, and it indicated no right to respond. The Condition did not imply any investigation by the City of the complaint, but the Nuisances Code provided a process whereby the Applicant or the owner of the building had a right to respond to a noise complaint.
- The Applicant did not believe a noise study done now would be helpful as nothing existed to measure. Contrary to Ms. Richter's comment, no such requirement existed in the Code to do a worst-case analysis. The critical sentence read, "If the decision-making authority reasonably believes a proposed use may generate noise exceeding the standards specified in the Municipal Code, then the authority may require the Applicant to supply professional noise studies from time to time during the user's first year of operation to monitor compliance with the City standards."
- He believed the Code was thoughtfully written because it understood something needed to be present to be measured which was not the case now. The noise study had to be required in order for the Applicant to meet their burden of proof. The City could order a noise study as the Planning Commission did or generate one through an enforcement action which made more sense.
- In his opinion, the building met all applicable criteria. He understood the neighbors' concern, but the problem with the Appellant's case was that it was not supported by the Code. The Applicant believed the Code already in place that dealt with nuisance noises was sufficient and they certainly did not believe it was in the City's, the neighbors', or the Applicant's interest to do a noise study before some occupancy of the building that could create noise.
- He read from Page 6 of his letter included in the meeting packet as follows: "What I would recommend in the absence of the removal of Condition No. 10 was the following: The Applicant shall submit a noise study after the City's issuance of a business license of a building allowing an eating and drinking establishment as defined by the CDC." The Appellant had stated that the main concern was an eating and drinking establishment, so the Condition of approval should be related to that concern.
- An additional problem was that sometimes the owner of the building might not know the moment 50 percent occupancy was reached. The Applicant tried to find a mechanism that would trigger the condition such as a business license. The City and the Applicant would know about it, and it would be far more enforceable. In this case, it would be the issuance of a business license for an eating and drinking establishment.
- The second part of the condition would state that the noise study must address the provisions of Municipal Code Chapters 5.487.3 as in Condition No. 10 now. It stated, "The noise study shall be conducted in the first July or August after the business license issues and when customers are present on the roof deck." The issue was not the

difference between the baseline and the noise that would be created, rather if the noise level created would cause a problem. The two sentences were from the original Condition and the Applicant would agree with them if the Condition were approved.

- The final part stated, "The City may order IKON to provide additional noise studies if it receives one or more well-founded complaints related to the use of the roof deck." The Applicant believed that was a critical piece and did not believe that any mere complaint should trigger IKON's requirement to spend several thousand dollars on a noise study, especially when it was unknown if the study would result in anything useful.

Mr. Stevenson answered questions from Council as follows:

- The Applicant wanted to keep the rooftop patio due to the nice view and to provide a nice place for people to be. No restaurant was proposed now, but one might be in the future. The use of the roof deck by a restaurant or anyone else would be an outright permitted use under the Code, which was why the Applicant was so strongly opposed particularly to the first two conditions the Appellants were requesting because they would use a design review process to eliminate the allowable uses of the building. He understood the Planning Commission's aim for Condition No. 10 and that it was well-intentioned. Some parts of it would be workable but he recommended fixing two main elements if it were retained: First, to study a use that actually produced noise to make the noise study worth everybody's time; and second, his clients wanted the same rights to defend themselves against any complaint. He suspected that the Condition's intent was not to prohibit that right.
- Council's intent was very laudable and he did not challenge Council's or the Planning Commission's authority to impose the Condition. The Applicant wanted to make sure the Condition would result in something that was good for the community and for IKON.
- The Code had noise standards and enforcement mechanisms because it was unusual to remove commercial components simply because somebody feared it might exceed the noise ordinance. A fundamental disagreement between the Applicant and the Appellant was the premise that if a food and beverage use was chosen for the roof deck it would necessarily exceed the noise limits. The Applicant did not believe that was a given and did not believe noise limits would be exceeded.
- The Applicant had no idea what the building might be used for. The core focus of the Appellants' concern was a food and beverage use somewhere in the building. The Code did not state a roof deck must have a noise study, but said, "Businesses or activities that could reasonably be expected to generate noise in excess of the noise standards." He wanted to clarify that he did not believe a certain type of use, food and beverage or ancillary to any other commercial use, automatically fit into the category of a business or activity that could reasonably be expected to generate noise in excess of the noise standards. He believed it would be far more appropriate to do what the Planning Commission did and attempt to word a condition that required a noise study at some point. He vehemently disagreed with the idea that the Applicant had to prophylactically prevent use of the roof deck as an accessory to any other use otherwise allowed in the

district. The main reason for this belief was that a permissible use would be removed from the building through a design review, but no basis existed for that. The mechanism that existed through the Code was a noise study.

- The Applicant understood both the positions of Council and the Planning Commission but, when he looked at the application for the first time last week, he did not see a basis to require a noise study because he did not see enough evidence to suggest that a potential use would generate noise in excess of the noise standards. The noise standards did not say that hearing conversation was a per se violation. It would have to be noise or conversation that would bother a reasonable person. If noise emanated from people talking and enjoying beverages from the roof deck, the level of noise generated would be permissible under the City's noise standards and Code just like any other place where such activities happened. He did not see evidence in the record of something that would generate noise in excess of the noise standards. which was why he believed Council could and should rely on the enforcement standards already in the Code to deal with the potential noise problem.
- Assuming the Condition of approval remained, he agreed with Council that a mechanism existed to require a noise study. The changes that the Applicant was proposing would make the process better and less reactive to an individual complaint. Triggering a noise study through issuance of a business license was far easier for everybody to track than trying to wait for 50 percent building occupancy because it was unknown if that would make use of the roof deck at all.

Public Testimony

James Manning, Oregon City, stated he was Chair of the HRB and Chair of the Waterfront Project but noted his comments today would not be related to those positions. He spoke to current noise levels in areas with both businesses and houses and noted mechanisms were already in place for violations. The new project would bring income, jobs and benefits to the entire city and should be supported wholeheartedly.

Danny Schreiber, West Linn, HRB Vice Chair, spoke to the purpose of the HRB and its review of this application. He believed the Applicant was trying to go around the HRB and was concerned about setting a precedent by not having the HRB review the revision of the project from a three-story to a two-story building. He noted Staff had advised the Applicant to go back to the HRB but they chose not to.

Kathie Halicki, West Linn, Willamette Neighborhood Association (WNA) President, noted that during the Planning Commission meeting, the architect had stated multiple times that the rooftop patio plan was a new plan, so the WNA believed the plan should go back to the HRB. She spoke to precedent setting should Council deny the appeal, believing it would allow developers to circumvent West Linn's Council, Boards, and Commissions.

Karie Oakes, West Linn, agreed with the other public testimony and the Appellant's testimony. She believed that the revised application needed to go to the WNA first based on CDC 99.038,

Neighborhood Contact Required, and back to the experts at the HRB. She spoke to concerns about precedent setting in procedure and in building design.

Senior Planner Floyd read the second paragraph on Page 6 of the Agenda Bill and clarified that in terms of intent, the Applicant submitted the original design followed by three subsequent modifications and additional testimony. Each modification was done in response to direction, testimony, and concerns expressed at each hearing. It appeared to Staff that the Applicant was trying to respond to what they heard to get to an approval. The result was that the application bounced a couple of times between the HRB and the Planning Commission. Staff could not require the application to be withdrawn but believed it would be easier for the Planning Commission to follow the record without having to sift through four separate designs. The bulk of the structure had not changed during the modifications, mostly the outer pediment and the third story had been diminished. No substantive changes had been made to the project other than the height area.

Ms. Oakes noted the first line of the second paragraph on Page 6 stated that Staff recommended the application be withdrawn and noted that did not sound like a modification.

Mayor Bialostosky responded that Council had taken note of her concerns and could follow up if it had further questions.

Teri Cummings, West Linn, spoke to the concern about noise and measuring noise levels, and to not knowing the proposed building's use. She also addressed the economic benefit of authentic historic areas. The building would have a third floor for the top area. She recommended remanding the application back to the HRB.

Applicant Rebuttal

Mr. Stevenson asked to present his rebuttal after the Appellant's rebuttal.

Appellant's Rebuttal

Ms. Richter noted Mr. Stevenson had challenged her claim that the City could require a noise study, or that her clients had produced some evidence that the noise standards would be violated before the City could impose a condition. She pointed out CDC 55.100.D.3 stated, "Structures or on-site activity areas which generate noise, lights, or glare shall be buffered from adjoining residential uses in accordance with the standards in subsection C of this section where applicable." That is an affirmative obligation of the Applicant at the outset, but they had not provided acoustical, engineering-supported analysis of any buffering. Instead, they had said they had no obligation to do so because the uses were permitted outright. The uses were permitted outright so long as the uses were buffered. The Applicant had not provided buffering, so the City must impose conditions.

- The conditions the Appellants proposed would, first, constrain the use consistent with what the Applicant's architect said repeatedly at the Planning Commission that the

terrace would not be used as a bar or a restaurant and that it would rarely be used as a tenant improvement. She asked that Council hold the Applicant to that assertion and constrain the use because the Applicant was unwilling to agree to a Condition to do so.

- Second, she suggested a condition prohibiting amplified music because the Applicant had not proposed buffering.
- Third, the Applicant proposed a Condition to be triggered when an occupancy permit was issued for a food or drinking establishment. That would not work because other uses could violate the noise standards. A church, a dog park, or a day care center could theoretically violate the standard and would require a noise study. If Council was inclined to accept the Applicant's condition, she proposed revising the first sentence to make it clear a noise study would be conducted when a permit for occupancy of the terrace was issued. If the occupancy was changed in the future, another noise study should be done. The use was not likely to change often in commercial leasing. The burden would be on a new tenant to do the noise study and address the impacts.
- If Council was inclined to go with a version of Condition No. 10, such as just the noise study, and to not limit the use at the outset as she had proposed, she wanted Council to require that notice be given to neighbors along with an opportunity to appeal the evaluation of the noise study. If Council deferred a finding of compliance with criteria to a later proceeding that required a discretionary evaluation, the law stated notice must be provided to neighbors within the required number of feet along with a right to appeal the decision to the City Council.
- She had served for five years on the Portland Historic Landmarks Commission and three years as its Chair. She had a Master's Degree in historic preservation and she believed the proposed building reads as three stories. Historic preservation did not care how many floors were on the inside, rather how it reads from the outside. In this case, it was three stories because it had three, double-hung window sets. Even the minimized windows on 12th St looked like usable interior space.
- She urged Council to send the application back to the HRB. The Applicant had an obligation to make a decision within 365 days and could waive that limit under State law. The Applicant could accommodate an additional review by the HRB if Council wanted to propose conditions related to noise and send it to the HRB for comment. That could be the final decision if it was not appealed. This action would allow Council to take care of the noise issue within its expertise and would allow the HRB to weigh in on the design issues.

Final Rebuttal

Mr. Stevenson re-emphasized that this current process was a design review and not a conditional use permit application. The Code did not require the City to demonstrate a certain definite use was going into the proposed building. He understood the neighbors' concerns the City did not know what uses would go into the building, but he could tell them that what did go in would be permitted in the general commercial Code as modified by the Design District. He was sympathetic to the Appellant's concerns, but no requirement existed in the Code to commit to a certain use. Further, he did not believe any basis existed to limit particular uses. If

Council decided after this case that it wanted more control over specific uses rather than the design specified by the Design District, it could impose a requirement for conditional use permits, etc.

- Limiting certain uses in the building would be essentially a zone change without going through the proper process. Design review was not the right place to talk about uses. He could guarantee that when a tenant requested a tenant improvement, the City would have the opportunity to look at the proposed use, look at the Code, and would either approve or deny the use. He suspected the City would not receive an application for a use that was not otherwise permitted by the Code.
- He had never, as Ms. Richter suggested, taken the position that the Planning Commission could not require a noise study, rather on numerous occasions he had stated it could. He was referring to whether a noise study was warranted in this case. He did not believe a noise study could be required because it was entirely based on the speculation from the two individuals who had filed the appeal. The Applicant had proposed a condition they believed was more than adequate to accommodate a noise study if the City Council decided to impose one. He wanted to make sure that if a noise study was done, it would reveal information that was useful to the community.
- He completely disagreed with Ms. Richter that if a noise study was done, the Applicant would have to return to a subsequent land use proceeding. That was not reflected at all in the applicable Code. The Code stated, "If staff determines before or during the pre-application conference that the land uses expected to generate noise that may exceed DEQ standards, the application shall include a noise study." Staff never made that determination. Additionally, the Code said, "If the decision-making authority reasonably believes a proposed use may generate noise exceeding the standard specified in the Code, then the authority may require the Applicant to supply professional noise studies from time to time during the user's first year of operation." No deferral of a required finding existed in the Code. The process would start with the City Council in this case requiring a noise study which would be clearly retrospective coming after the approval. No basis existed to turn the noise study into a land use proceeding, and the Applicant would very strongly object to that. If the Appellants decided to take that issue to the Land Use Board of Appeals (LUBA) they would not win because the Code was clear about when the noise study should occur. It was also clear that requiring the noise study after approval was how the Code was set up and it would not be deferring a finding that was otherwise required in order to support an approval.
- Noise buffering was proposed by the Applicant in two forms, one being a wall and the other being some potted vegetation that was expected to grow substantially taller than the wall. It was simply not true that the proposed rooftop deck lacked buffering, and it was also not true that the Code required buffering specifically to be evaluated through a noise study.
- He understood the application was initially presented with three stories. He understood based on what his client and the architect had told him that the HRB liked the building except for the third story and it did not know if it had the authority to approve a third story. The application was then referred to the Planning Commission which referred it

to the HRB for a decision on whether a design exception for a third story was approvable. The HRB said that it did not believe it was approvable, and the Applicant removed the feature. He did not understand why any plausible argument regarding the third story had not been thoroughly evaluated in this process. It worked the way design reviews were supposed to work. He believed this process had been substantially responsive to the feedback it received from the decision makers.

- It was difficult to understand which body made what decisions. The HRB made decisions on only one matter in this case, whether or not a design exception could be approved. A design exception was no longer needed because the third story had been removed. The Planning Commission was the decision maker on design reviews. No basis existed to suggest the HRB needed to do a subsequent review of a building that did not require any design exceptions. He understood the proposed building was not in the Historic District, so a lot of the arguments about the Historic District elements of the application did not hold up. It was not a question of maintaining the consistency or qualities of the District, rather whether or not the building could meet the clear and objective standards in the design review Code. The Planning Commission decided that it had. After nine months of public review, he saw no reason to disturb that determination. He did not believe the 120-day clock could be further extended because the maximum extension granted was 245 days which the Applicant had already done. They did not believe going back to the HRB was appropriate or necessary.
- Given how long the public review process had taken, he requested Council to deliberate and deny the appeal tonight. He believed it was important to finish within the State-mandated timeframe and he had no interest in retaining the right to a final written argument. He apologized if his request for a decision tonight put Council in a bind, but he did not believe it was good practice to push the case beyond the 120-day limit as it had been waived to the maximum extent possible. He did not believe that trying to shoehorn another hearing between now and Council's May 6th meeting would be productive.
- If Council did impose a condition, he believed it could be tightened-up to make it better for all concerned.

Mayor Bialostosky confirmed there were no questions for the Applicant and called for any Council questions for Staff.

Senior Planner Floyd confirmed Staff's belief that the correct procedures had been followed with respect to the HRB and the Planning Commission.

Mayor Bialostosky confirmed there were no further questions for Staff and closed the public hearing. He verified with the Planning Manager earlier today about the 120-day clock and the final decision and Order must be signed by May 1, 2024, which would allow Council time to hold a meeting to reach a decision.

Interim Councilor Bonnington believed some of the modifications to the approval would need to be changed, such as the language regarding how, when, and why a noise study would be

triggered and to set a time of day for the study. He believed procedures were followed correctly. The Planning Commission had returned the application to the HRB to determine if the proposed building met the definition of a third story. The Planning Commission had not believed it was capable of making that decision at the time. The HRB decided that the definition was met and suggested the third story be removed. He agreed and was confident the revised application met the Code, but appreciated the other Councilors might want to think longer on the matter.

Mayor Bialostosky believed addressing matters related to the appeal would extend tonight's meeting and other topics still needed to be addressed.

Councilor Groner agreed triggering a noise study by the application for a business license made sense. The use would also be known that way.

Councilor Bryck preferred to set another meeting due to the late hour and the additional wordsmithing necessary to address concerns.

Interim Councilor Bonnington stated that what triggered a noise study and when, and being conscientious of it not having an extreme burden when one person made a complaint, needed to be supported by an actual process. Everything hinged on the noise study and accountability of complying with it.

Council President Baumgardner suggested that having a noise study would be a better process rather than waiting until someone was provoked into making a complaint.

Interim Councilor Bonnington believed it would be necessary to be very clear on what measures could be taken if the noise study was unreasonable. Just having one done would not assuage any concerns raised.

Mayor Rory Bialostosky moved to continue deliberations on the appeal of DR-23-01 to April 22, 2024, date certain, at 6:00 pm. Interim Councilor Kevin Bonnington seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Carol Bryck, Councilor Leo Groner, and Interim Councilor Kevin Bonnington.

Nays: None.

The motion carried 5 - 0

[Adjourn to Work Session \[8:05 pm/5 min\]](#)

Minutes approved 6-17-24.



22500 Salamo Road
West Linn, Oregon 97068
<http://westlinnoregon.gov>

CITY COUNCIL AGENDA

Monday, April 15, 2024

6:00 p.m. – Special Meeting & Work Session – Council Chambers & Virtual*

- | | |
|-----------------------|------------------|
| 1. Call to Order | [6:00 pm/5 min] |
| 2. Approval of Agenda | [6:05 pm/5 min] |
| 3. Public Comment | [6:10 pm/10 min] |

The purpose of Public Comment is to allow the community to present information or raise an issue regarding items that do not include a public hearing. All remarks should be addressed to the Council as a body. This is a time for Council to listen, they will not typically engage in discussion on topics not on the agenda. Time limit for each participant is three minutes, unless the Mayor decides to allocate more or less time. Designated representatives of Neighborhood Associations and Community Advisory Groups are granted five minutes.

- | | |
|-------------------------------------------|------------------|
| 4. Mayor and Council Reports | [6:20 pm/15 min] |
| a. Reports from Community Advisory Groups | |
| b. Community Advisory Group Appointments | |
| c. Lady B Tugboat Decision | |

- | | |
|---------------------|------------------|
| 5. Business Meeting | [6:35 pm/90 min] |
|---------------------|------------------|

Persons wishing to speak on agenda items shall complete the form provided in the foyer and hand them to staff prior to the item being called for discussion. A separate slip must be turned in for each item. The time limit for each participant is three minutes, unless the Mayor decides to allocate more or less time. Designated representatives of Neighborhood Associations and Community Advisory Groups are granted five minutes.

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| a. <u>Agenda Bill 2024-04-15-01: Public Hearing: Appeal of approval of a Class II Design Review (DR-23-01) to construct a new commercial building at 1919/1949 Willamette Falls Drive</u> | |
| 6. Adjourn to Work Session | [8:05 pm/5 min] |
| 7. Tualatin Valley Fire & Rescue State of the District Presentation | [8:10 pm/15 min] |
| 8. Community Recreation Center Feasibility Study Phase 2 Update | [8:25 pm/30 min] |
| 9. Concepts for City Charter Changes | [8:55 pm/30 min] |

10. City Manager Report

[9:25 pm/5 min]

11. City Attorney Report

[9:30 pm/5 min]

12. Adjourn

[9:35 pm]

Agenda Bill 2024-04-15-01

Date Prepared: April 4, 2024

For Meeting Date: April 15, 2024

To: Rory Bialostosky, Mayor
West Linn City Council

Through: John Williams, City Manager *JRW*

From: Darren Wyss, Planning Manager *DSW*

Subject: Appeal of DR-23-01

Purpose

To hold a public hearing and consider the appeal ([AP-24-01](#)) by Ian and Audra Brown of the Planning Commission approval of a Class II Design Review ([DR-23-01](#)) to construct a new commercial building at 1919/1949 Willamette Falls Drive.

Question(s) for Council:

Should the Council approve the appeal AP-24-01 or deny the appeal and uphold the Planning Commission approval of DR-23-01?

Public Hearing Required:

Yes

Background & Discussion:

The Applicant (Icon Construction and Development LLC) submitted an application on January 10, 2023 for a Class II Design Review ([DR-23-01](#)) to construct a new commercial building at 1919/1949 Willamette Falls Drive. Planning staff deemed the application complete on May 2, 2023.

The subject properties are zoned General Commercial and are also located within the Willamette Falls Drive Commercial Design District (WFDCDD). Decision-making authority is assigned to the Planning Commission (PC) by Community Development Code (CDC) Chapter 99.060.B.2(h), but only after a review and recommendation by the Historic Review Board (HRB) per CDC 99.060.D.2(c).

Procedural History

The HRB held a public hearing on June 13, 2023, which was noticed in accordance with CDC Chapter 99, to consider the application with three Design Exceptions (CDC Chapter 58.090) for 1. Use of fiber cement in lieu of wood siding; 2. Use of Hardi-Plank in lieu of wood siding and trim; and 3. Use of support posts for the corner awning.

The issue of building height was a central point of deliberation, including the definition of “story” and whether a proposed rooftop lounge and restroom constituted a mezzanine or a third-story. The definition of story was significant as the WFDCDD limits new construction to no more than two stories.

After substantial discussion, the HRB provided a recommendation of approval, subject to five conditions of approval and a recommendation of “further analysis” of the mezzanine area (aka third-story) by the Planning Commission.

In response to testimony and deliberations at the HRB hearing, the Applicant submitted revised plans (August 15 and September 13, 2023) to reduce the visual impact of the third story and supplemental findings to support an additional Design Exception to exceed the two-story limit. Concurrent with that change was a redesign that removed the need for support pillars under the awning.

At the October 4, 2023 PC public hearing, which was noticed in accordance with CDC Chapter 99, the hearing was opened, but testimony was not received, nor did deliberations begin at the recommendation of staff and the City Attorney. As noted by Ian and Audra Brown in their written testimony, only the HRB may approve a Design Exception to the WFDCDD Standards, and a new Design Exception had been introduced after the HRB made their recommendation on June 13th. Therefore, the Planning Commission voted to remand the new design exception back to the HRB so they could render a decision on the Design Exception to exceed the two-story limit.

The Applicant provided additional materials for the remand hearing before the HRB on October 23, 2023.

The HRB held a second public hearing, which was noticed in accordance with CDC Chapter 99, to take up the matter of the added Design Exception to exceed the two-story height limit in the WFDCDD as remanded by the PC. After receiving testimony, the HRB closed the public hearing, deliberated, and voted to deny the Design Exception on the grounds it failed to satisfy the approval criteria of CDC Chapter 58.090.

Planning staff recommended the applicant withdraw the application and submit a new application to clean up the procedural history of the project. The applicant submitted a letter on January 29, 2024 rescinding the request for a Design Exception to exceed the two-story height limit and stated the intent to move forward with a newly revised design, included with the letter, that eliminated the portion of the proposed building that was denied the Design Exception.

The PC held a public hearing on February 21, 2024, which was noticed in accordance with CDC Chapter 99, to consider the Class II Design Review application. After receiving public testimony, the PC closed the public hearing, deliberated, and voted to approve the application with 10 conditions of approval. The conditions included the eight recommended by staff and two new conditions regarding the rooftop deck lighting plan and noise studies. The PC Final Decision and Order is found as Agenda Bill Attachment 2.

The Appellants submitted a timely appeal of the decision on March 11, 2024. The applicable criteria identified include CDC Chapter 58.080.C(3) and CDC Chapter 55.100(C-D) as the grounds for the appeal (see Agenda Bill Attachment 1).

The City received two written comments (see Attachment 4) prior to publication of the Agenda Packet. Additional comments will be sent as received.

The Applicant has submitted a series of 120-day clock extensions to accommodate revising the plans in response to HRB and PC discussions/decisions. Oregon Revised Statute 197.178(5) permits extending the period for a total of 245 days. The Applicant has utilized the allowed 245 days and the City must issue the final decision no later than May 1, 2024.

Appeal Hearing Responsibility

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

Appeal Applicable Criteria

The applicable criteria for this appeal are CDC Chapters 19, 41, 46, 48, 55, 58, and 99.

Appeal Hearing Process

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

Budget Impact:

None

Sustainability Impact:

None

Council Goal/Priority:

Not related to a Council goal

Council Options:

1. Uphold the Planning Commission approval of DR-23-01 by denying the appeal (AP-24-01).
2. Modify the Planning Commission approval of DR-23-01 and deny the appeal (AP-24-01).
3. Overturn the Planning Commission approval of DR-23-01 by approving the appeal (AP-23-01), thus denying the proposal.

Staff Recommendation:

Staff recommends denial of the appeal (AP-24-01) based on the findings in the record for DR-23-01.

Potential Motion:

1. Move to tentatively deny the appeal AP-24-01 and **uphold** the Planning Commission approval of DR-23-01 and direct staff to bring back findings for adoption.
2. Move to tentatively deny the appeal AP-24-01 and **uphold** the Planning Commission approval of DR-23-01 with the following modifications (*list modifications*), and direct staff to bring back findings for adoption.

3. Move to make a tentative decision to approve the appeal AP-24-01, thereby **overturning** the Planning Commission approval of DR-23-01 for the following reasons (*list reasons*), and direct staff to bring back findings for adoption.

Attachments:

1. [Appellant application AP-24-01, dated March 11, 2024.](#)
2. [DR-23-01 Planning Commission Final Decision and Order, dated February 29, 2024](#)
3. [Planning Commission Meeting Notes for February 21, 2024 Public Hearing](#)
4. [Public Comments for Appeal Hearing Received by April 4, 2024](#)
5. AP-24-01 City Council Hearing Affidavit and Notice Packet.
6. [Staff Report to the Planning Commission for February 21, 2024 Public Hearing](#)
7. [DR-23-01 Project Page](#) (hyperlink)
 - a. Applicant Materials
 - b. Public Notices
 - c. Public Comments
 - d. Staff Reports
 - e. Recommendations
 - f. Final Decisions
8. Planning Commission Meeting Notes and Recordings
 - a. [October 4, 2023 Meeting Notes](#)
 - b. [October 4, 2023 Video](#)
 - c. [February 21, 2024 Meeting Notes](#)
 - d. [February 21, 2024 Video](#)
9. Historic Review Board Meeting Notes and Recordings
 - a. [June 13, 2023 Meeting Notes](#)
 - b. [June 13, 2023 Recording](#)
 - c. [November 14, 2023 Meeting Notes](#)
 - d. [November 14, 2024 Video](#)

ATTACHMENT 1 - APPELLANT APPLICATION

DEVELOPMENT REVIEW APPLICATION

For Office Use Only		
STAFF CONTACT J. Floyd	PROJECT NO(S). AP-23-01/DR-23-01	PRE-APPLICATION NO. n/a
NON-REFUNDABLE FEE(S) \$400	REFUNDABLE DEPOSIT(S) n/a	TOTAL \$400

Type of Review (Please check all that apply):

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

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

Site Location/Address: 1919/1949 Willamette Falls Dr West Linn OR 97068	Assessor's Map No.:
	Tax Lot(s):
	Total Land Area:

Brief Description of Proposal:

appeal of Planning Commission decision approving DR-23-01

Applicant Name*: Ian Brown; Audra Brown Address: 1968 6th Ave City State Zip: West Linn OR 97068	Phone: (503) 780-1982 Email: brownwestlinn@gmail.com itb@ianbrown.org
Owner Name (required): Ian Brown; Audra Brown Address: 1968 6th Ave City State Zip: West Linn OR 97068	Phone: (503) 780-1982 Email: brownwestlinn@gmail.com itb@ianbrown.org
Consultant Name: Carrie Richter Address: 1000 SW Broadway, Suite 1900 City State Zip: Portland OR 97205	Phone: (503) 972-9903 Email: crichter@batemanseidel.com

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

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

Applicant's signature

Date

3/11/24

Owner's signature (required)

Date

3/11/24

NOTICE OF APPEAL

Appeal of Class II Design Review at 1919 and 1949 Willamette Falls Drive

Appellants: Ian and Audra Brown
1968 6th Ave
West Linn OR 97068

Appellants' Representative: Carrie Richter
Bateman Seidel
1000 SW Broadway #1910
Portland, Oregon 97205

West Linn File No: DR-23-01

Standing: Appellants Ian and Audra Brown testified orally and in writing before the Historic Review Board and the Planning Commission regarding this decision. They were provided notice of the Planning Commission's decision and have standing under CDC 99.140 to seek review by the City Council.

Grounds for Appeal: Acknowledging that Appellants do not have to identify all appeal issues in a de novo review, this appeal is likely to focus on the following:

- 1) The elevator lobby and the enclosed rooftop stairwell comprise a 3rd story in violation of CDC 58.080(C)(3). These areas will be used for "human occupancy" and as such, are not "projections" subject to the CDC 41.030 exception to the height limit. These elements need to be removed from the proposal.
- 2) The condition imposed by the Planning Commission to address noise buffering requirements in CDC 55.100(C) and (D) lacks clarity and is insufficient. The adopted condition triggering completion of a noise study at 50% occupancy of the building and not requiring any occupancy of the rooftop patio at the time of the study will not ensure that noise from the patio is buffered. Further, imposing a condition prohibiting use of the rooftop patio by commercial customers for the consumption of food or beverages is feasible and could be enforced.

Appellants believe that these concerns can be resolved through revision of the conditions of approval.

ATTACHMENT 2 – DR-23-01 PLANNING COMMISSION FINAL DECISION
AND ORDER

**WEST LINN PLANNING COMMISSION
FINAL DECISION AND ORDER
FILE NO. DR-23-01**

**IN THE MATTER OF A PROPOSAL FOR A CLASS II DESIGN REVIEW AT
1919 & 1949 WILLAMETTE FALLS DRIVE.**

I. Overview

At its meeting on February 21, 2024, the West Linn Planning Commission (“Commission”) held a public hearing to consider a request by Icon Construction & Development to approve a Class II Design review at 1919 & 1949 Willamette Falls Drive. The approval criteria are found in Chapters 19, 41, 46, 48, 55, 58, and 99 of the Community Development Code (CDC). The hearing was conducted pursuant to the provisions of CDC Chapter 99.

As documented in the staff report and project record, the first evidentiary hearing was held by the Historic Review Board (“HRB”) on June 13, 2023. At that hearing, the issue of building height was a central point of deliberation, including the definition of “story” and whether a proposed rooftop lounge and restroom constituted a mezzanine or a third-story. The definition of story was significant as the Willamette Falls Drive Commercial Design District (WFDCDD) limits new construction to no more than two stories (CDC 58.080.B.3). After considering testimony and deliberations, the HRB could not come to a decision regarding the project’s compliance with the two-story height limit. It therefore chose to defer the matter to the Commission, and voted 3 to 2 to recommend approval of the project, subject to five conditions of approval and a recommendation of “further analysis” of the mezzanine area (aka third-story) by the Commission.

On August 15 and September 13, 2023, the applicant submitted revised plans and findings that reduced the size of the third story and requested a Design Exception to exceed the two-story height limit. These materials were later withdrawn and superseded by materials provided by the applicant on January 29, 2024.

On October 4, 2023, the Commission opened its first Public Hearing on the project, but testimony was not received, nor deliberations begun at the recommendation of staff and the City Attorney. As noted by Ian and Audra Brown in their written testimony, only the HRB may approve a Design Exception to the WFDCDD Standards, and a new Design Exception had been introduced after the HRB made their recommendation on June 13th. Therefore, the Planning Commission voted to remand the new design exception back to the HRB so they could render a decision on the Design Exception to exceed the two-story limit.

On November 14, 2023, the HRB took up the matter of the added Design Exception to exceed the two-story height limit in the WFDCDD. After receiving testimony and deliberation, the HRB denied the Design Exception on grounds it failed to satisfy the approval criteria.

On January 29, 2024, the applicant submitted a letter rescinding their request for a Design Exception to exceed the two-story height limit, including associated materials submitted after the first HRB hearing on June 13th, and stated an intent to move forward with a revised design that directly responded to feedback provided by the HRB and commenting parties at the June 13th HRB hearing and associated recommendation.

On February 21, 2024, the Commission hearing commenced with a staff report presented by John Floyd, Senior Planner. The presentation included a procedural history of the project, the HRB recommendations, an explanation of the design changes, and a summary and staff response to written testimony received after publication of the staff report. Written testimony included comments by the Oregon Department of Transportation, Ian and Audra Brown, and Yarrow Currie. These comments were conveyed to the Planning Commission in two separate transmittal memorandums dated February 16 and February 21, 2024.

Licensed Architect Scot Sutton presented on behalf of the applicant. Oral testimony in opposition to the proposal was submitted by Audra Brown, Ian Brown, Yarrow Currie, Maria Blanc-Gonnet, James Estes, and Danny Schreiber.

Some of the community concerns raised at the public hearing included:

1. Height of the structure, including concerns that the proposed elevator and stairwell for rooftop access were not in compliance with the two-story height standard, and whether they qualified for a height exemption as unoccupied space per CDC Chapter 41.020.
2. The indeterminate future use of the rooftop deck, and potential noise impacts generated by use of this space.
3. Potential light impacts associated with rooftop lighting and the bright conditions created by the existing building next door, whose design closely matches the proposed application.
4. Preserving the structure located at 1919 Willamette Falls Drive, to be demolished as part of the project, due to its age and association with figures of local historical significance.
5. Whether the process standards of CDC Chapters 58 and 99 had been met in regards to compliance with the WFDCDD, and whether the HRB had been provided adequate opportunity to provide a recommendation on the revised plans submitted on January 29, 2024.

Scot Sutton provided applicant rebuttal. John Floyd and City Attorney Bill Monaghan provided staff rebuttal and answered questions from the commission.

The public hearing was closed and the Commission entered into deliberations. The Commission re-opened the public hearing for the purpose of considering additional conditions of approval to address noise and light impacts. The applicant was invited to comment on the proposed conditions and Scot Sutton requested clarification of the lighting condition by replacing the word “features” with “fixtures.” Sutton indicated the applicant had no objections to the noise condition. The Commission invited the public to speak on the new conditions, whereupon Ian

Brown and Audra Brown gave additional testimony. The hearing was then closed and deliberations resumed.

After deliberations a motion was made by Commissioner Walvatne and seconded by Commissioner Bonnington to approve the application with a total of ten condition of approvals. These included the eight recommended by Staff in the February 21, 2024 Staff Report, and two additional conditions pertaining to light impacts and noise impacts. The motion passed 4-0. (Commissioners Jones, Walvatne, Bonnington, and Metlen), with Watton recused and Carr and Boggess absent.

II. The Record

The record was finalized at the February 21st, 2024, hearing. The record includes the entire file from DR-23-01.

III. Findings of Fact

- 1) The Overview set forth above is true and correct.
- 2) The applicant is Icon Construction and Development.
- 3) The Commission finds that it has received all information necessary to make a decision based on the Staff Report and attached findings; public comment, if any; and the evidence in the whole record, including any exhibits received at the hearing.

IV. Additional Planning Commission Findings

After review of the entire record of the proceedings, including the applicant submittal, HRB recommendation, staff report and findings, both oral and written public testimony, applicant rebuttal, staff rebuttal, and responses to Commission question by Planning staff and the City Attorney, the Planning Commission found the application to meet the applicable review criteria with ten (10) conditions of approval. Findings for conditions of approval one through eight are contained in the staff report for February 21, 2022. The Commission added two additional conditions of approval as part of the motion to approve, after receiving verbal confirmation from the applicant agreeing to the conditions. The two conditions and associated findings are:

1. Condition of Approval 9, Lighting Plan. The Commission found that the application did not meet the requirements of CDC 55.070.D.2(g) and 55.100.J(6) based upon the written and verbal testimony of Ian and Audra Brown and the lack of a lighting plan that included the rooftop area. The Commission found that with the imposition of this condition, the requirements of CDC 55.079.D.2(g) and 55.100.J(6) are met.
2. Condition of Approval 10, Noise Study for Rooftop Deck. The Commission found that the application did not meet the requirements of 55.100.D.4, which requires the preparation of a noise study when there are businesses that can reasonably be expected to generate noise in violation of Municipal Code Chapter 5.487. As the applicant could not confirm the ultimate tenant mix or future use of the rooftop deck, the Commission

found the future provision of noise studies as stipulated in the condition, would result in compliance with CDC 55.100.D.4.

V. Order

The Commission orders that DR-23-01 is approved based on the Record, Findings of Fact, and Findings above.

1. Approved Plans. All alterations and improvements shall substantially conform to all submitted tentative plan sheets and supporting materials contained in Exhibit PC-01.
2. Engineering Standards. All public improvements and facilities associated with the approved site design, including but not limited to street improvements, driveway approaches, curb cuts, utilities, grading, onsite and offsite stormwater, street lighting, easements, easement locations, and connections for future extension of utilities are subject to conformance with the City Municipal Code and Community Development Code. These must be designed, constructed, and completed prior to final building certificate of occupancy. The City may partner with the applicant to fund additional improvements as part of the project.
3. Joint Access. Prior to final building certificate of occupancy, the applicant shall present an easement or other legal evidence of continued joint access and egress between the project site and 11th street through the existing underground parking garage and driveway onto 11th street to the east (1969 & 1993 Willamette Falls Drive), in compliance with CDC 48.020.E and 48.025.
4. Street Improvements. Prior to final building certificate of occupancy, the applicant shall mitigate any impacts to existing right-of-way improvements along Willamette Falls Drive, 12th Street, and Knapps Alley. The mitigation will include replacement of impacted pavement, curbs, planter strips, street trees, street lights, sidewalks, pedestrian crossings, and street storm drainage.
5. Knapps Alley. The applicant shall improve, including repaving, the portion of Knapps Alley adjacent to the site. This must be completed prior to the issuance of the final building certificate of occupancy.
6. Vertical Breaks. Prior to issuance of building permits, the applicant shall submit building permit plans with revised western and southern elevations that demonstrate compliance with CDC 58.080.C.7 that requires strong vertical breaks or lines regularly spaced every 25 to 50 feet.
7. Entry Doors & Pedestrian Level Windows. Prior to issuance of building permits, the applicant shall submit building permit plans with revised elevations and door details that

demonstrate compliance the glazing and panel ratios for entry doors in CDC 58.080.C.13, and minimum pedestrian level window sill heights within CDC 58.080.C.15.

8. Awning. Prior to issuance of building permits, the applicant shall submit building permit plans that demonstrate compliance with the 5-foot minimum awning depth as required in CDC 58.080.C.11.
9. Lighting Plan. The applicants lighting plan shall be revised to show: (1) the location and type of lights to be used to illuminate the rooftop deck, and no part of these fixtures will be visible from neighboring properties;(2) the use of full cutoff fixtures on the rooftop deck and the rear elevation that are directed down with an luminescence area that does not reach beyond the edge of Knapp's alley and includes glare guards that block glare from the sides; and (3) that a qualified lighting designer has reviewed the revised plan and concluded that, overall, the exterior lighting scheme will be less bright than the companion 1969 building.
10. Noise Study. The applicant shall submit a noise study upon 50% of the total floor area of the building being occupied. Subsequent to the first noise study the applicant shall submit a new noise study, not more than once per year, in response to a noise complaint associated with the rooftop deck. The noise study must address the provisions of West Linn Municipal Code Chapters 5.487(3) and be conducted in July or August.

Joel Metlen
Digitally signed by Joel Metlen
Date: 2024.02.29 08:47:55 -08'00'

2/29/2024

JOEL METLEN, VICE-CHAIR
WEST LINN PLANNING COMMISSION

DATE

This decision may be appealed to the City Council pursuant to the provisions of Chapter 99 of the Community Development Code and any other applicable rules and statutes. This decision will become effective 14 days from the date of mailing of this final decision as identified below.

Mailed this 29 day of February, 2024.

Therefore, this decision becomes effective at 5 p.m., March 14, 2024.

ATTACHMENT 3 – DR-23-01 PLANNING COMMISSION MEETING NOTES
FEBRUARY 21, 2024



PLANNING COMMISSION
Meeting Notes of February 21, 2024

<u>Commissioners present:</u>	Gary Walvatne, Kevin Bonnington, Joel Metlen, David D. Jones, and Bayley Boggess (left early)
<u>Commissioners absent:</u>	John Carr and Tom Watton
<u>Applicant present:</u>	Scott Sutton, SGR Architecture
<u>Public Present:</u>	Audra Brown, Ian Brown, Yarrow Currie, Maria Blanc-Gonnet, James Estes, and Danny Schreiber
<u>Staff present:</u>	Planning Manager Darren Wyss, City Attorney Bill Monahan, Senior Planner John Floyd, and Administrative Assistant Lynn Schroder

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

Pre-Meeting Work Session

Senior Planner Floyd provided a brief procedural overview of DR-23-01 and answered process questions. Commissioner Walvatne asked about subsequent permit approvals. Commissioner Jones asked about process of the HRB's recommendation to the Planning Commission related the change in the application.

1. Call To Order and Roll Call

Vice Chair Metlen called the meeting to order at 6:30 pm. Planning Manager Wyss took roll.

2. Public Comment related to Land Use Items not on the Agenda

None.

3. Public Hearing (Quasi-Judicial): [DR-23-01, Class II Design Review for a proposed commercial building at 1919/1949 Willamette Falls Drive](#)

Vice Chair Metlen introduced DR-23-01, a Class II Design Review to construct a new commercial building at 1919 & 1949 Willamette Falls Drive. Metlen explained the hearing procedures and opened the public hearing.

City Attorney Monahan addressed legal standards and appeal rights. The substantive criteria that apply to the application are Community Development Code (CDC) Chapters 19, General Commercial, Chapter 41, Building Height, Chapter 46, Off-Street Parking, Chapter 48, Access, Egress and Circulation, Chapter 55, Design Review, Chapter 58, Willamette Falls Drive Commercial Design District; and Chapter 99, Procedures for Decision Making: Quasi-Judicial.

City Attorney Monahan addressed Planning Commission (PC) conflicts of interest, ex-parte contacts, jurisdiction, and bias challenges. No member declared conflicts of interest or bias. Commissioner Jones declared that he had a conversation about the application with Danny Schreiber, a member of the Historic Review Board (HRB). Jones asked Schrieber for clarity about the November 2023 HRB hearing on the application. Jones stated that he did not learn anything that was not in the hearing record. Monahan asked if any audience member wished to challenge the PC's jurisdiction, impartiality, or ex-parte disclosures of any members of the PC. No challenges were made.

Senior Planner John Floyd presented the staff report. The applicant requests approval for the demolition of two existing structures, to be replaced with a two-story commercial building with underground parking and a

rooftop deck at 1919 and 1949 Willamette Falls Drive. The site is zoned General Commercial and is within the boundaries of the Willamette Falls Drive Commercial Design District Overlay (WFDCDD). The project backs up to R-7 zoning. The existing buildings to be demolished are not located within the Willamette Historic District, listed as a local historic resource, or listed on the National Register and are not historically protected under CDC 25.020(A).

The current scope of the project, as amended by the applicant on January 29, 2024, includes:

- Demolition of two existing commercial structures;
- Construction of a two-story commercial building with approximately 26,215 square feet of speculative commercial space. No specific uses or tenants are proposed, but they could eventually be tenanted with office, service, retail, and/or restaurant uses;
- Underground parking for 33 automobiles and 14 bicycles will be constructed at 1993/1969 Willamette Falls Drive, which will be accessed through an adjacent underground parking garage. Vehicular access would occur through the existing driveway fronting 11th Street to the east;
- An approximately 745 SF rooftop deck screened with decorative planters, a 5.5-foot-tall screening wall, and an approximately 605 SF mechanical screening room in the approximate roof center for sound attenuation. The deck and rooftop area would be accessed from a stairwell and elevator;
- Frontage improvements along 12th Street and Knapps Alley, to include four parallel parking spaces along Knapps Alley;
- Two Design Exceptions as approved by the Historic Review Board:
 - Use of James Hardie fiber cement instead of wood siding and trim; and
 - Brick masonry is used in lieu of wood siding along selected portions of the façade.

Design features proposed in the original application that have been removed or replaced include the following:

- A Design Exception to allow support columns for an extended metal awning over the public sidewalk has been withdrawn, and the canopy has been redesigned to be fully cantilevered from the building;
- A 2,235 SF lounge on the roof, described by the applicant as a “mezzanine” and defined in the CDC as a third story. This area has been replaced by a 605 SF mechanical equipment space for screening and noise reduction located in the center of the rooftop to reduce visual impact; and
- Rooftop access has been reduced from an elevator and two stairwells to an elevator and a single stairwell.

Floyd presented the procedural history of the project, the HRB recommendations, an explanation of the design changes, and a summary and staff response to written testimony received after publication of the staff report.

The HRB held the first evidentiary hearing on June 13, 2023. At that hearing, the building height issue was a central point of deliberation, including the definition of “story” and whether a proposed rooftop lounge and restroom constituted a mezzanine or a third story. The definition of story was significant as the Willamette Falls Drive Commercial Design District (WFDCDD) limits new construction to no more than two stories (CDC 58.080.B.3). After considering testimony and deliberations, the HRB could not decide on the project’s compliance with the two-story height limit. The HRB chose to defer the matter to the PC and voted 3 to 2 to recommend approval of the project, subject to five conditions of approval and a recommendation of further analysis of the mezzanine area (aka third-story) by the PC.

On August 15 and September 13, 2023, the applicant submitted revised plans and findings that reduced the size of the third story and requested a new design exception to exceed the two-story height limit. These materials were later withdrawn and superseded by materials provided by the applicant on January 29, 2024.

On October 4, 2023, the PC opened its first hearing on the project but did not take testimony. It was determined that only the HRB has authority to decide design exceptions in the WFDCDD. Because a new design exception was introduced after the HRB made its recommendation on June 13, the PC voted to remand the new design exception back to the HRB so they could decide on exceeding the two-story limit.

On November 14, 2023, the HRB considered the new design exception to exceed the two-story height limit in the WFDCDD. After receiving testimony and deliberation, the HRB denied the design exception because it failed to satisfy the approval criteria.

On January 29, 2024, the applicant rescinded their request for a design exception to exceed the two-story height limit, including associated materials submitted after the first HRB hearing on June 13, and stated their intent to move forward with a revised application that directly responded to feedback provided by the HRB and commenting parties at the June 13 HRB hearing and associated recommendation. Floyd noted that CDC lacks clear guidance on how to process modifications between HRB Recommendation and PC Decision.

Licensed Architect Scot Sutton presented on behalf of the applicant. In response to comments about the proposed building at previous hearings, the applicant made the following revisions:

- The ultimate tenant mix for the building has not been determined;
- Eliminate the roof level windows on 12th Street;
- Eliminate the rooftop lounge, second elevator and stair, and restrooms;
- Enclose the HVAC units to minimize noise from the units;
- Redesign the windows along Knapps Alley to reduce their size and match the size and spacing of those same windows from the 1969 building;
- Eliminate the canopy support columns at the request of the Engineering Department;
- Reduce the height of parapets to fall fully beneath the 35' height maximum in the zone; and
- the outdoor roof deck will be for general use by tenants and guests and will have a 5'-6" tall screen surround to reduce potential noise and light issues.

Vice Chair Metlen open public testimony. Audra Brown, Ian Brown, Yarrow Currie, Maria Blanc-Gonnet, James Estes, and Danny Schreiber testified in opposition to the proposed application. Some of the community concerns included:

- Height of the structure, including concerns that the proposed elevator and stairwell for rooftop access were not in compliance with the two-story height standard, and whether they qualified for a height exemption as unoccupied space per CDC Chapter 41.020.
- The indeterminate future use of the rooftop deck, and potential noise impacts generated by use of this space.
- Potential light impacts associated with rooftop lighting and the bright conditions created by the existing building next door, whose design closely matches the proposed application.
- Preserving the structure located at 1919 Willamette Falls Drive, to be demolished as part of the project, due to its age and association with figures of local historical significance.
- Whether the process standards of CDC Chapters 58 and 99 had been met in regard to compliance with the WFDCDD, and whether the HRB had been provided adequate opportunity to provide a recommendation on the revised plans submitted on January 29, 2024.

Scot Sutton provided applicant rebuttal. John Floyd and City Attorney Bill Monahan provided staff rebuttal and answered questions from the PC.

There were no requests for continuances.

Vice Chair Metlen closed the public hearing. Deliberations were opened. The PC found that the application did

not meet the requirements of CDC 55.070.D.2(g) and 55.100.J(6) based upon the written and verbal testimony of Ian and Audra Brown and the lack of a lighting plan that included the rooftop area. Additionally, the PC found that the application did not meet the requirements of 55.100.D.4, which requires the preparation of a noise study when there are businesses that can reasonably be expected to generate noise in violation of Municipal Code Chapter 5.487. The PC considered additional conditions of approval to mitigate their new findings.

Vice Chair Metlen re-opened the public hearing to consider additional conditions of approval to address noise and light impacts. Scot Sutton, applicant representative, requested clarification of the lighting condition by replacing the word “features” with “fixtures.” Sutton indicated the applicant had no objections to the noise condition. Ian Brown noted his concerns replacing the word “features” with “fixtures” because he is concerned about the glow from the rooftop deck. Audra Brown noted that she did not have adequate time to consider and respond to the proposed new conditions of approval.

Vice Chair Metlen closed the public hearing and re-opened deliberations. The PC found that with the imposition of a required lighting plan, the requirements of CDC 55.079.D.2(g) and 55.100.J(6) could be met. As the applicant could not confirm the ultimate tenant mix or future use of the rooftop deck, the PC found the future provision for noise studies would result in compliance with CDC 55.100.D.4.

Commissioner Walvatne moved to approve DR-23-01 with the eight conditions of approval recommended in the February 21, 2024 staff report and two additional conditions pertaining to light impacts and noise impacts:

1. Condition of Approval 9, Revised Lighting Plan showing: (1) the location and type of lights to be used to illuminate the rooftop deck, and no part of these fixtures will be visible from neighboring properties;(2) the use of full cutoff fixtures on the rooftop deck and the rear elevation that are directed down with an luminescence area that does not reach beyond the edge of Knapp’s alley and includes glare guards that block glare from the sides; and (3) that a qualified lighting designer has reviewed the revised plan and concluded that, overall, the exterior lighting scheme will be less bright than the companion 1969 building. The plan shall be submitted prior to building permits.
2. Condition of Approval 10, Required Noise Study for Rooftop Deck. The applicant shall submit a noise study upon 50% of the total floor area of the building being occupied. Subsequent to the first noise study the applicant shall submit a new noise study, not more than once per year, in response to a noise complaint associated with the rooftop deck. The noise study must address the provisions of West Linn Municipal Code Chapters 5.487(3) and be conducted in July or August.

Staff were directed to prepare a Final Decision and Order based on the findings in the February 21, 2024, hearing staff report and the February 21, 2024 PC hearing. Commissioner Bonnington seconded. **Ayes: Jones, Walvatne, Bonnington, and Metlen. Nays: None. Abstentions: None. The motion passed 4-0-0.** (Commissioner Boggess had left the hearing before consideration of approval).

4. Planning Commission Announcements

None.

5. Staff Announcements

Planning Manager Wyss reviewed the upcoming Planning Commission schedule.

6. Adjourn

Vice Chair Metlen adjourned the meeting at 10:08 pm.



CITY OF
**West
Linn**

Historic Review Board

Planning Commission

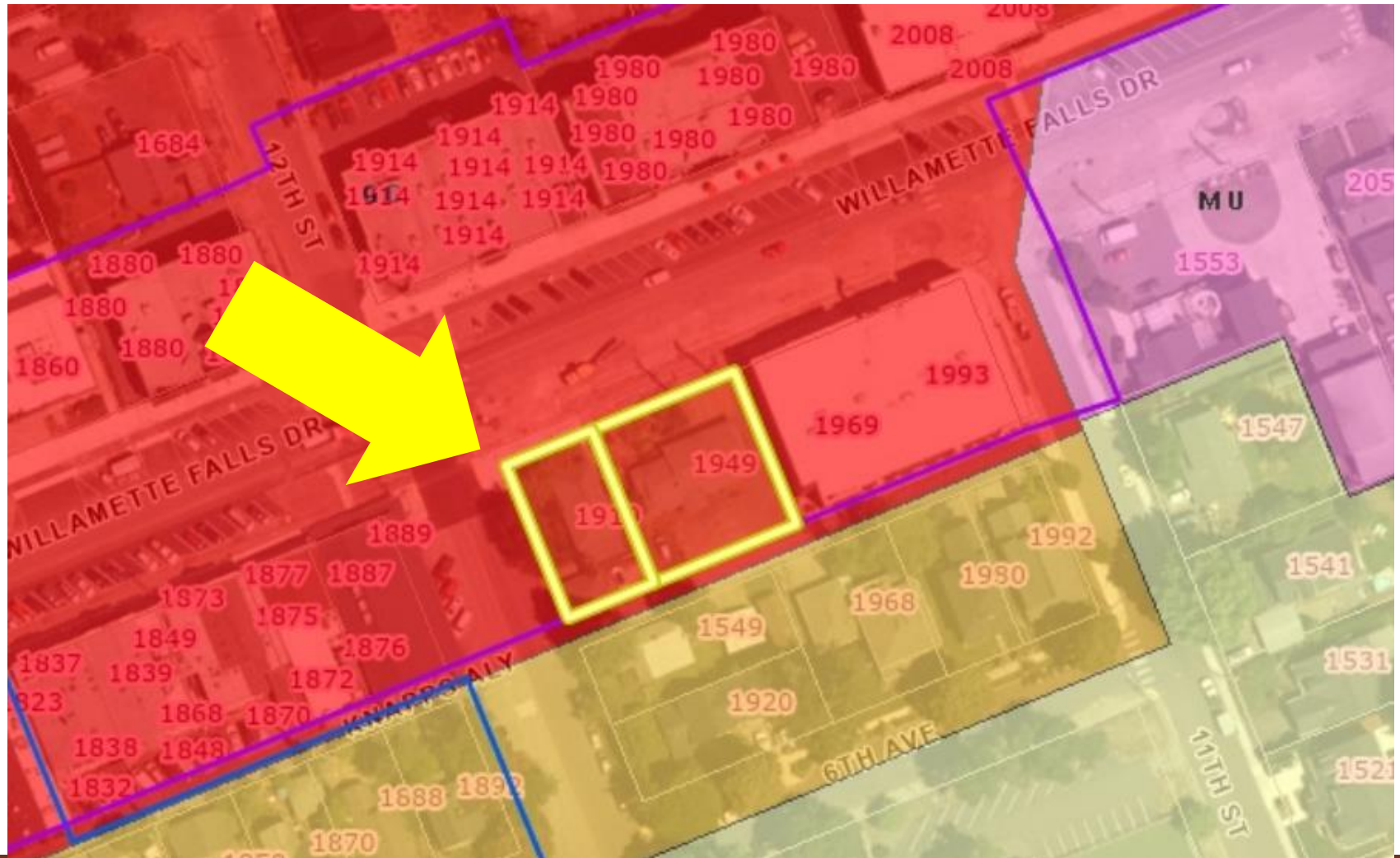
Icon Commercial Building
1919/1949 Willamette Falls Drive
DR-23-01

February 21, 2024

Project Site



Zoning: General Commercial

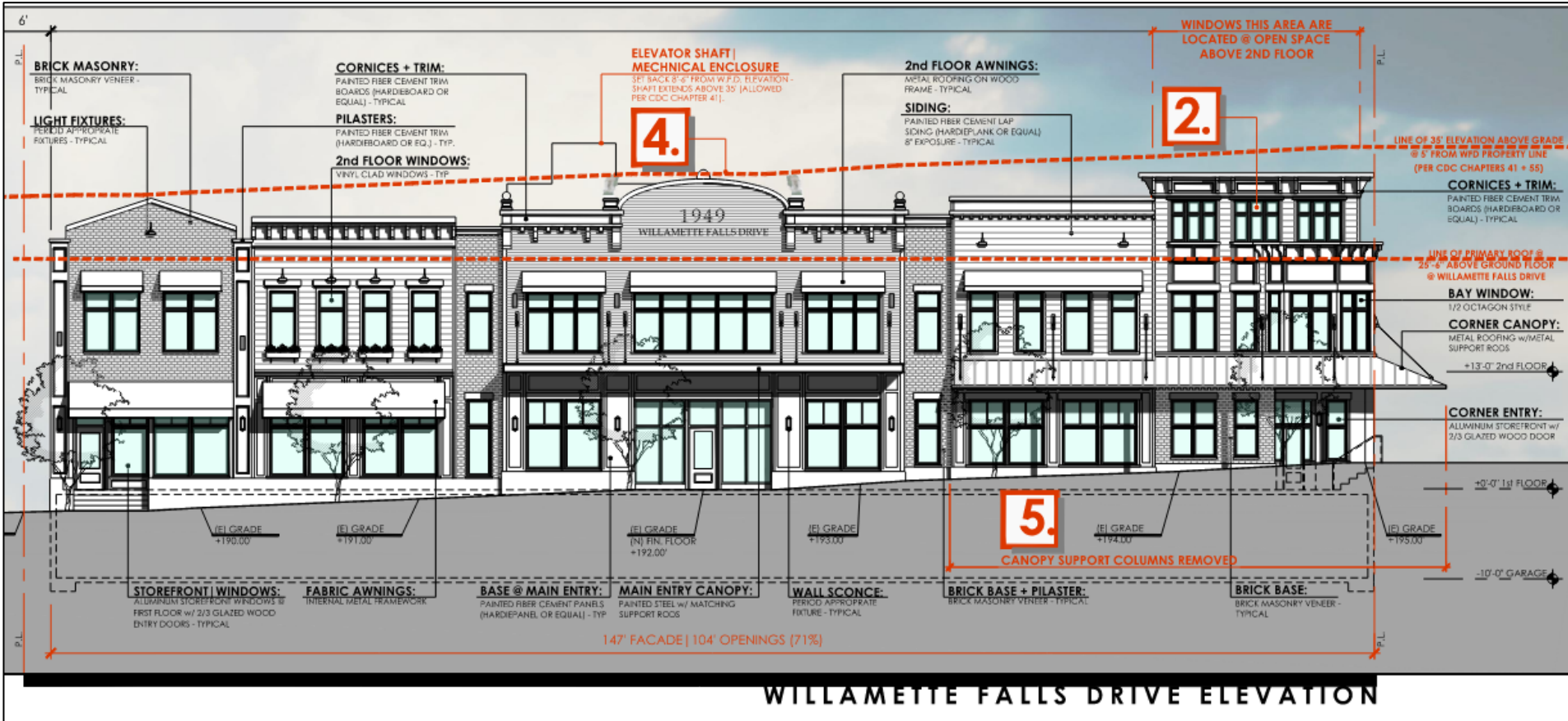


Proposal

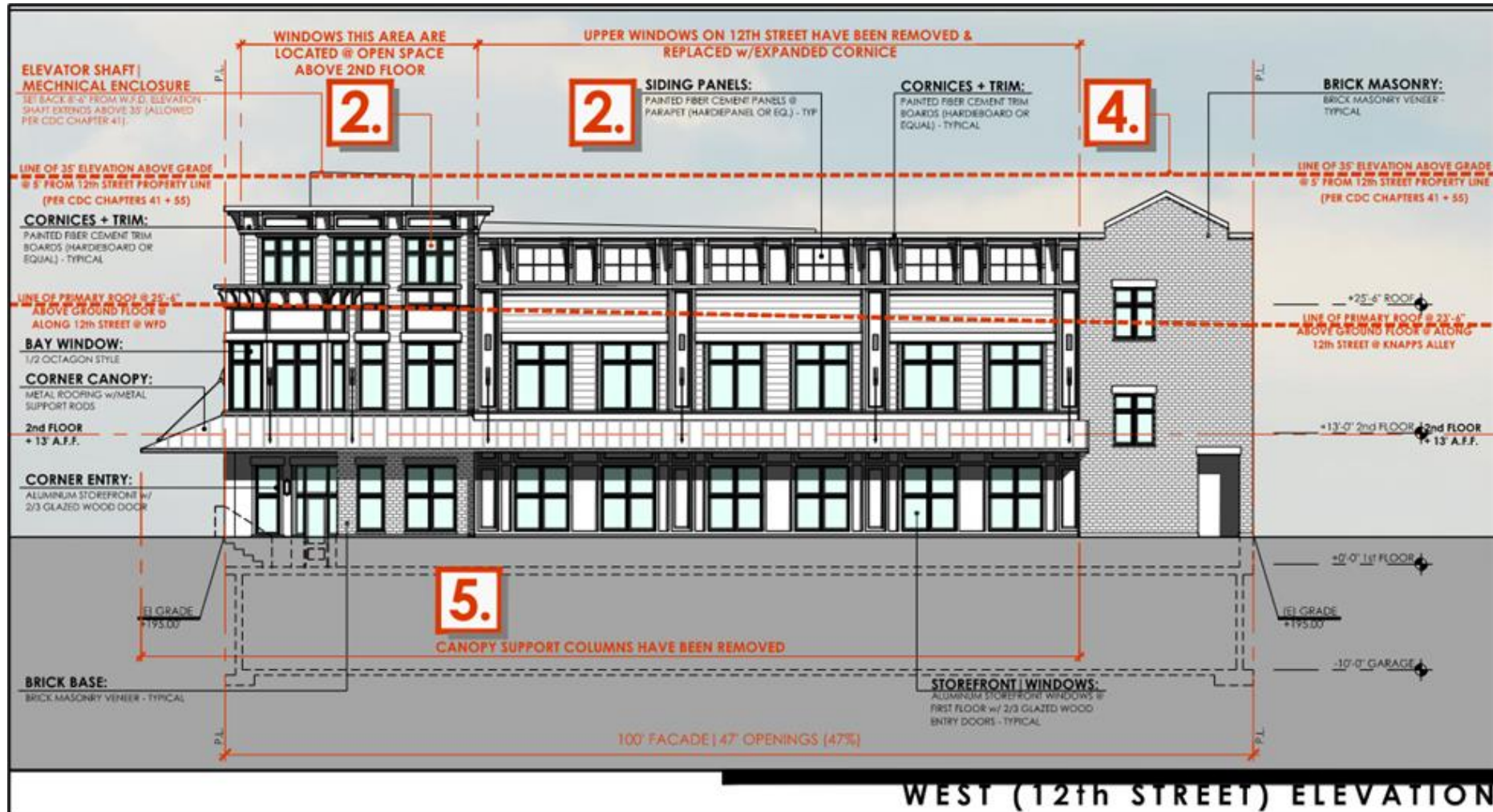


- 🍃 Demolition of two existing buildings
- 🍃 New 29,000 SF Commercial Building
 - Restaurant / Service / Retail
 - Rooftop Deck
- 🍃 Alley & Underground Parking (voluntary)
 - Access from existing garage on 11th Street
 - 33 automobiles / 14 bicycles

Façade from Willamette Falls Drive



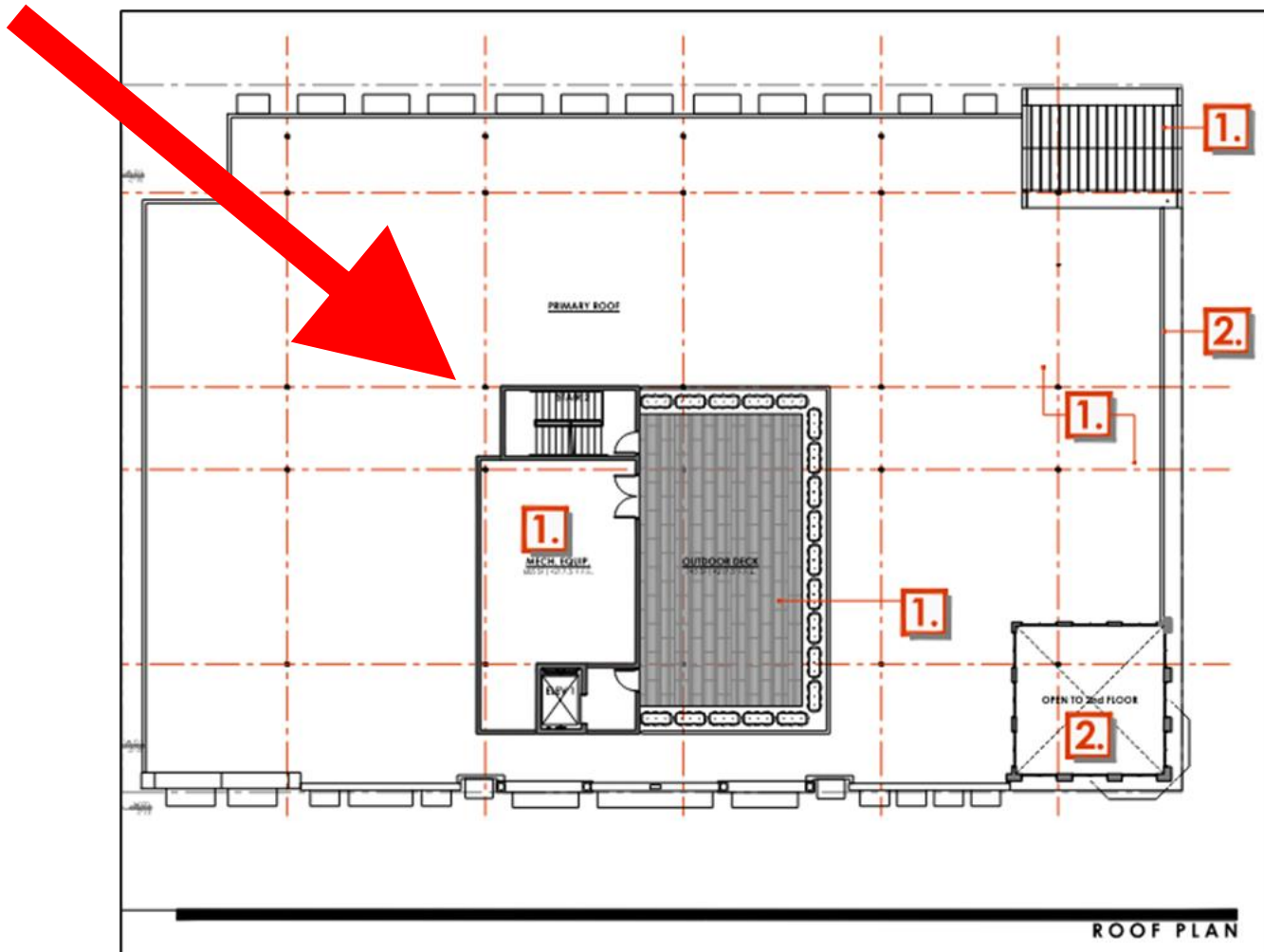
Façade from 12th Street



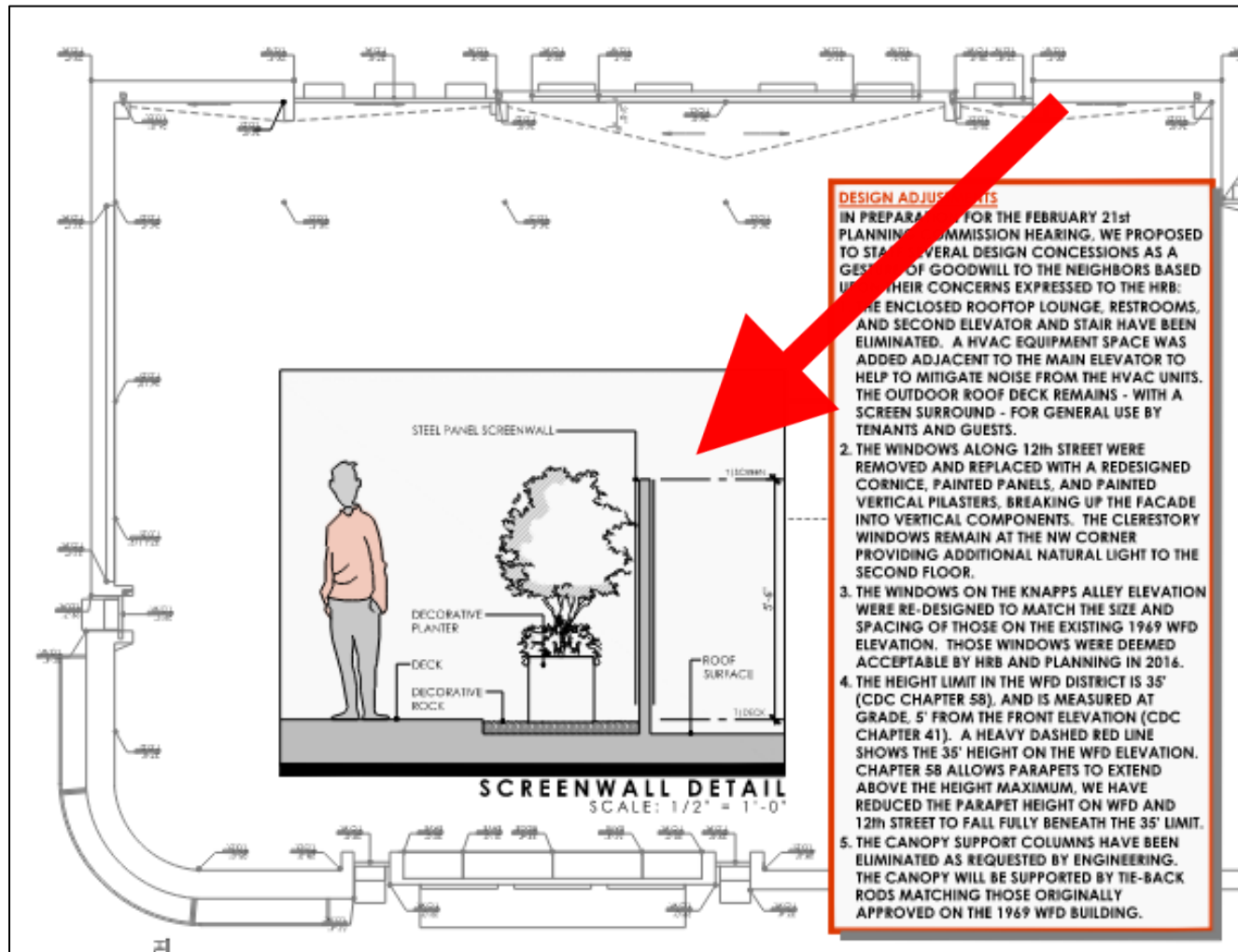




Current Proposal for Rooftop



Deck Screenwall



Knapps Alley from 11th Street



Procedural Requirements



🌿 Class II Design Review

🌿 Historic Review Board (HRB)

- Provide recommendation to Planning Commission for Class II Design Reviews within WFDCDD (99.060.D)
- Final Authority for Design Exceptions in WFDCDD

🌿 Planning Commission (PC)

- Approval Authority (99.060.B.2)

Core CDC Standards



- 🍃 **Chapter 19:** General Commercial
- 🍃 **Chapter 41:** Building Height
- 🍃 **Chapter 55:** Design Review
- 🍃 **Chapter 58:** Willamette Falls Drive Commercial Design District
 - Two-Story height limit (CDC 58.080B.3)

Iterative Design Modifications



- ✦ Three Prior Hearings / Three Supplemental Applications
 - **June 13** – Historic Review Board
 - **Aug 15 / Sep 13** – First Applicant Revision
 - **Oct 4** – Planning Commission
 - **October 23** – Supplemental Materials from Applicant
 - **Nov 14** – Historic Review Board
 - **Jan 29** – Second Applicant Revision

CDC Silence



- ❖ CDC lacks clear guidance on how to process modifications between HRB Recommendation and PC Decision
- ❖ Guidance limited to modification of approved projects (CDC 55.030, 55.050, 99.120)
- ❖ Planning Staff encouraged applicant to withdraw and resubmit to simplify the record



HRB Recommendation - 6.21.23

- Deliberations focused on definition of story vs mezzanine, rear window design, and the use of support columns for awnings
- Recommendation defers height issue to Planning Commission
 - “Recommend Approval of DR-23-01, as presented, with a recommendation of further analysis of the ‘mezzanine area’ by the Planning Commission.”
- Approval on 3-2 Vote (Watton recused)

First Applicant Modifications



- Plans revised in response to HRB feedback:
 - Modification of rear window design
 - Removal of support pillars in sidewalk
 - New Design Exception to exceed two-story limitation
 - Replacement of third-story lounge & restrooms with two rooms for building storage / mechanical equipment
 - Replacement of third-story windows with opaque panels

Planning Commission – 10.4.23



- Application remanded back to Historic Review Board in response to written testimony
- CDC grants sole approval authority to HRB

HRB Denial – 11.14.23



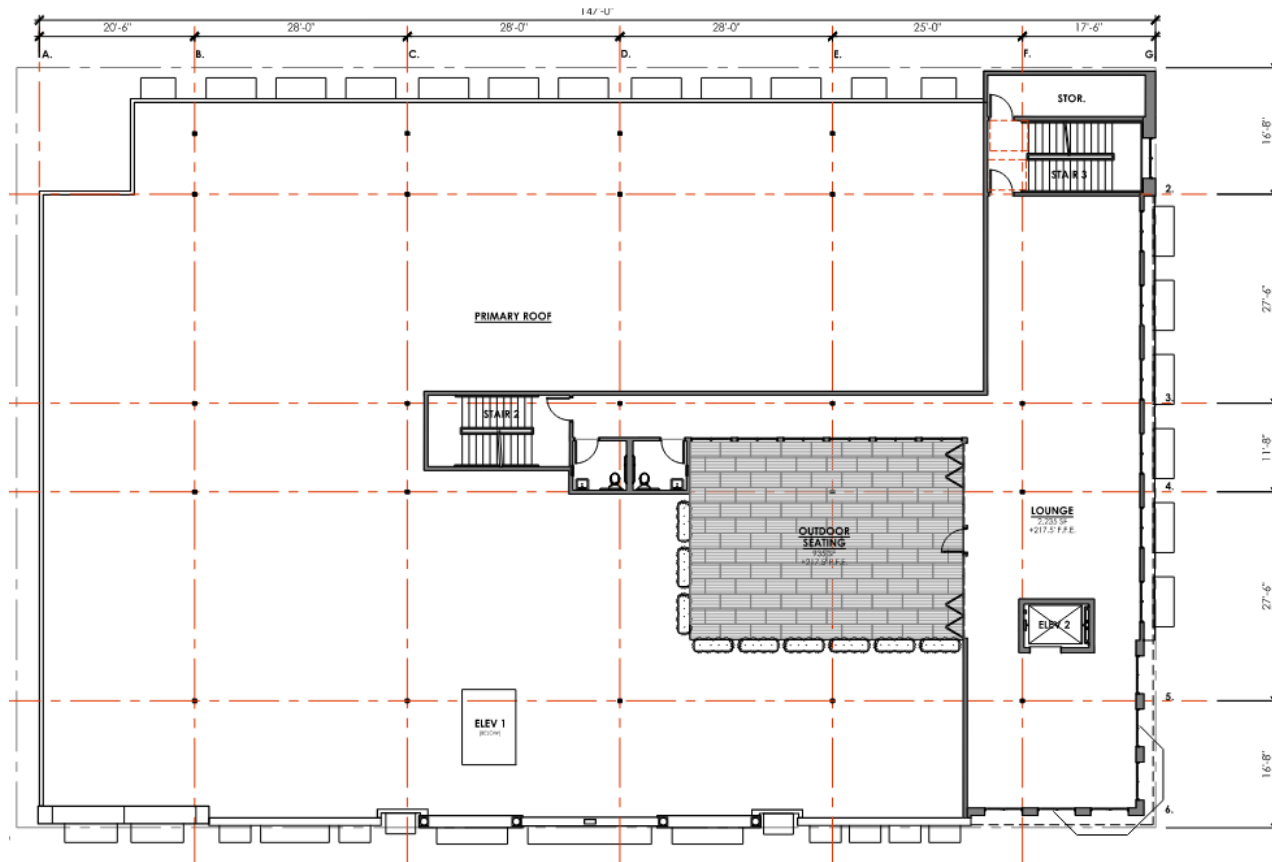
- ✦ HRB considered revised design and denied Design Exception to exceed two stories:
 - Approval criterion 58.090.A not satisfied - historical precedence had not been demonstrated for the proposed deviation.
 - Approval Criterion 58.090.B not satisfied - the proposed design did not incorporate exceptional 1880-1915 architecture that demonstrated superior design, detail, or workmanship to a degree that overcompensated for the height deviation.



Modifications of 01.29.24

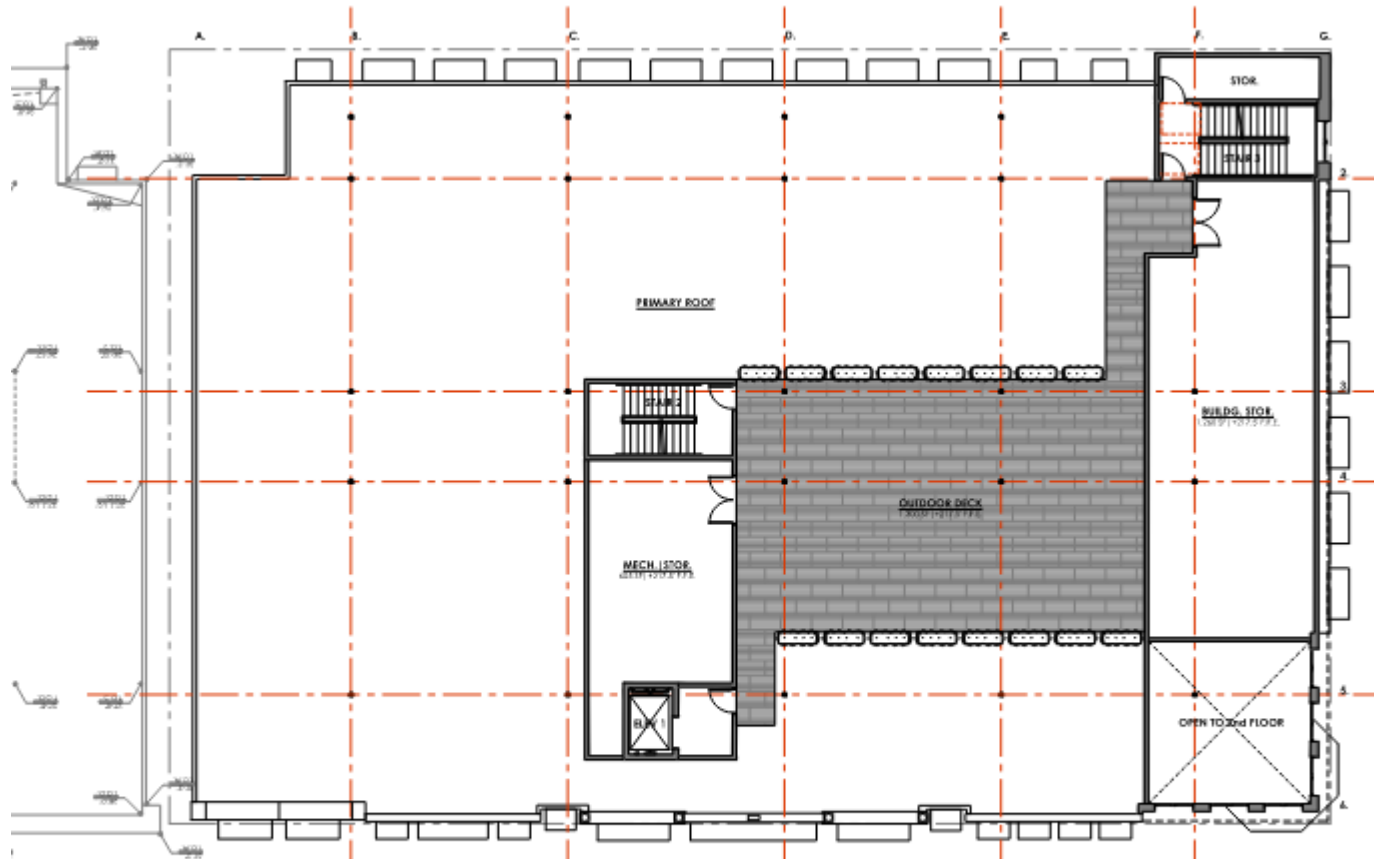
- ✦ Applicant withdraws Design Exception to exceed two-stories
- ✦ Additional Revisions:
 - Elimination of Lounge/Storage Rooms (third story)
 - Rooftop deck is reduced and relocated away from homes
 - Enclosed Mechanical Equipment Area remains
 - Access reduced to a single stairwell and elevator with lobby

Original Rooftop Proposal



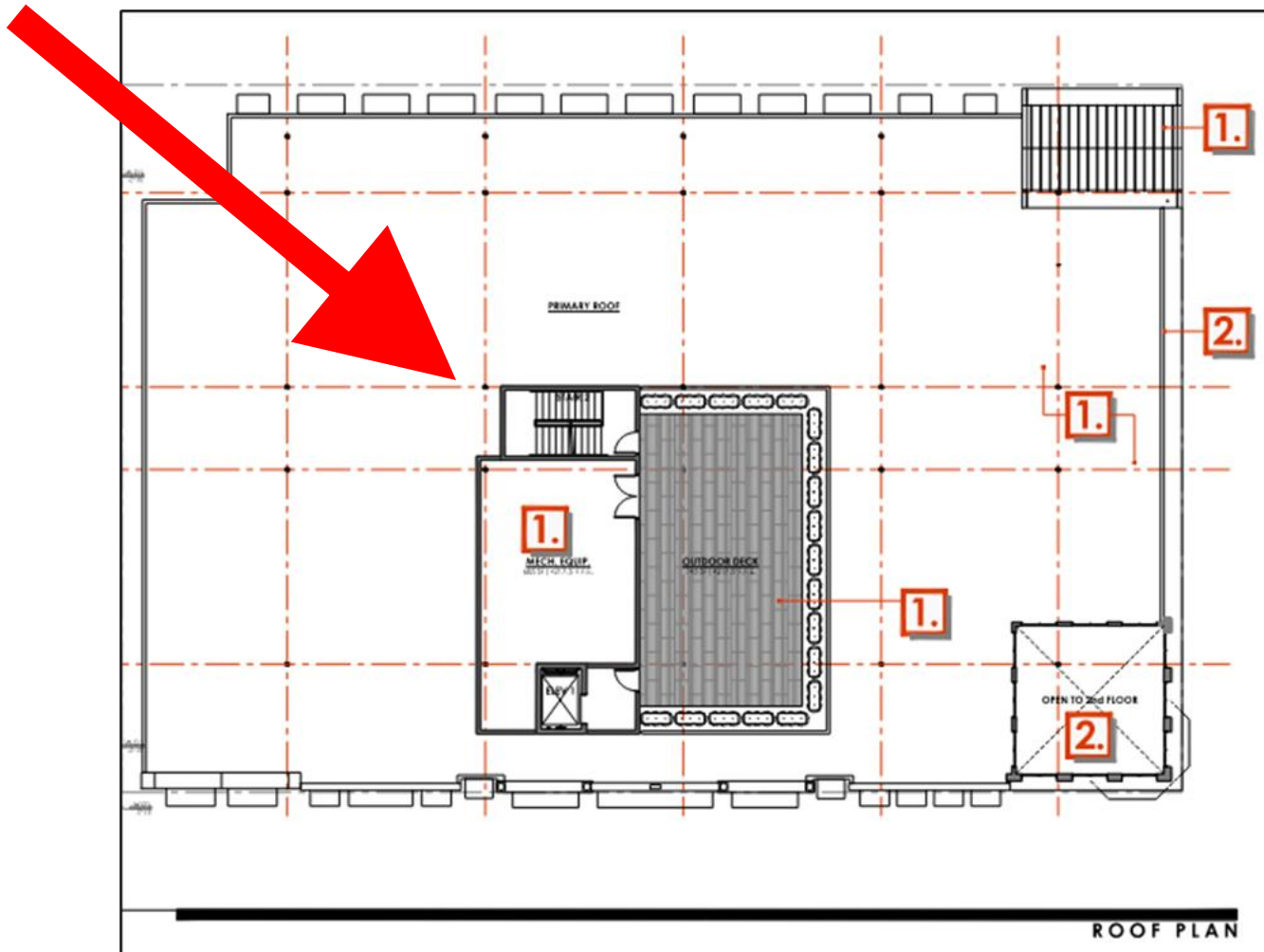
MEZZANINE | ROOF PLAN

Revised Proposal Denied by HRB



ROOF PLAN

Current Proposal for Rooftop



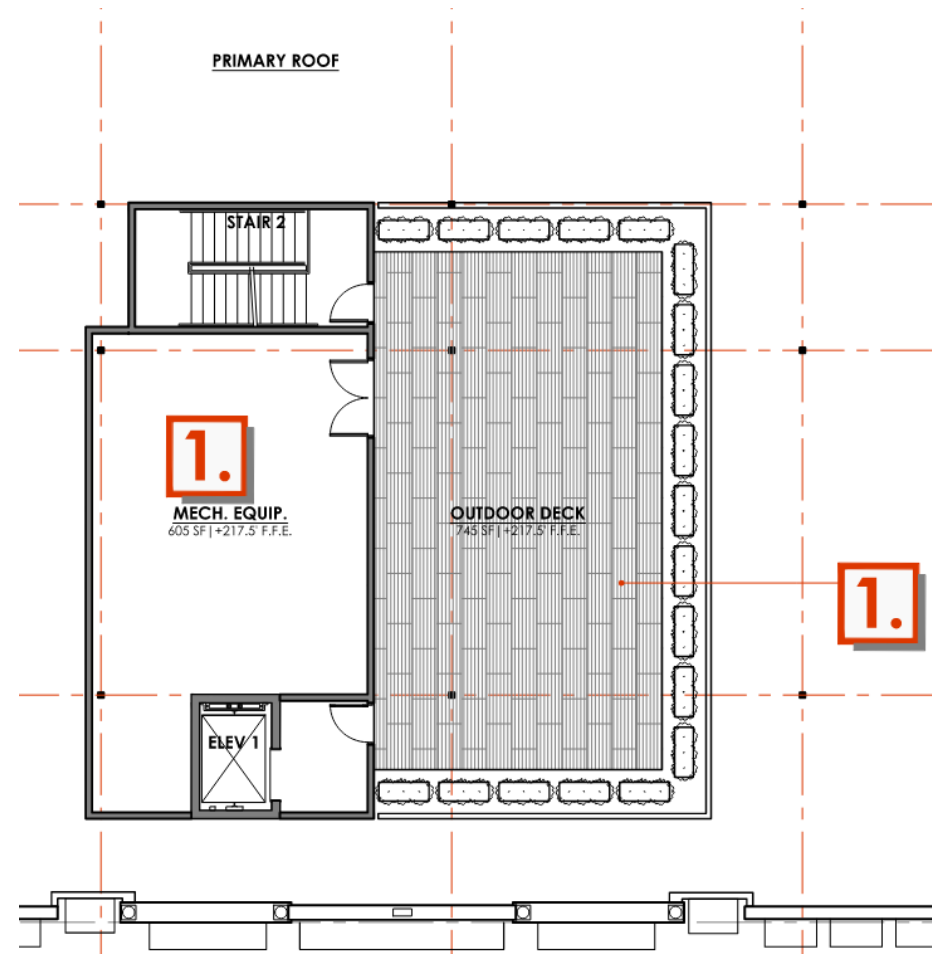
Modifications of 01.29.24



DESIGN ADJUSTMENTS

IN PREPARATION FOR THE FEBRUARY 21st PLANNING COMMISSION HEARING, WE PROPOSED TO STAFF SEVERAL DESIGN CONCESSIONS AS A GESTURE OF GOODWILL TO THE NEIGHBORS BASED UPON THEIR CONCERNS EXPRESSED TO THE HRB:

1. THE ENCLOSED ROOFTOP LOUNGE, RESTROOMS, AND SECOND ELEVATOR AND STAIR HAVE BEEN ELIMINATED. A HVAC EQUIPMENT SPACE WAS ADDED ADJACENT TO THE MAIN ELEVATOR TO HELP TO MITIGATE NOISE FROM THE HVAC UNITS. THE OUTDOOR ROOF DECK REMAINS - WITH A SCREEN SURROUND - FOR GENERAL USE BY TENANTS AND GUESTS.





Projections not for human habitation

- 41.030 PROJECTIONS NOT USED FOR HUMAN HABITATION

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

- “Human Occupancy” not defined in CDC

- Staff Finding 4 (page 16)

Public Comments



🍃 ODOT

- No Significant Impacts to State highway facilities

🍃 Yarrow Currie

- Opposes three stories and rooftop deck for noise

🍃 Ian & Audra Brown

- Proposed six conditions of approval to address height, noise, and light



Brown Proposed Conditions - Height

- Disagrees with Staff Finding 4 (building height)
- Proposes following conditions:

To ensure conformance with CDC 50.080.B.3, we request the following conditions of approval:

- (1) The elevator lobby shall be removed.
- (2) Except for that portion of the elevator shaft housing housing cables and motorized equipment, no portion of the stairwell, parapet, or other portion of the building may exceed 35 feet above grade.



Brown Comments - Noise

- Disagrees with Staff Finding 23 (Privacy and Noise)
- Outdoor seating generally permitted in WFDCDD
- Effective setback of 61 feet from residential properties (20' alley + 3' building setback + 38' deck setback from parapet)
- 55.100.D.4 authorizes Planning Commission to require noise study in first year of operation



Brown Proposed Conditions - Noise

- (3) The rooftop deck will be used solely for the use by tenants and their guests and in no case will the deck be used by the general public in furtherance of any commercial retail, service or restaurant uses.
- (4) Sometime during the first summer that the building is fully occupied by tenants, the owner must supply a professional noise study conducted when the deck is fully occupied and if that study shows that the City's noise standards are not satisfied, make modifications, including modifying the screen wall to include additional noise baffling measures, to mitigate any excessive noise.



Brown Proposed Condition - Light

- States the application does not include a plan for rooftop lighting

- Proposes following condition:

(5) The applicants lighting plan shall be revised to show: (1) the location and type of lights to be used to illuminate the rooftop deck, and no part of these features will be visible from neighboring properties; (2) the use of full cut off fixtures on the rooftop deck and the rear elevation that are directed down with an luminescence area that does not reach beyond the edge of knapp's alley and includes glare guards that block glare from the sides; and (3) that a qualified lighting designer has reviewed the revised plan and concluded that, overall, the exterior lighting scheme will be less bright than the companion 1969 building.

Additional Staff Recommendations



- 🍃 Staff Report recommends 8 Conditions of Approval
- 🍃 Staff recommends one additional for a total of 9
 - “Prior to final inspection and occupancy of the building, the applicant shall consolidate the multiple lots on the project site into a single lot.”

Conclusion



🍃 Questions?

Definition of Story



- CDC Definition is expansive:

“Story. *That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above...”*

Design Exception Language



58.090 DESIGN EXCEPTION PROCEDURES

In those circumstances where a design proposal cannot meet the standards, or proposes an alternative to the standard, the Historic Review Board may grant a design exception in those cases where one of the following criteria is met:

- A. The applicant can demonstrate by review of historical records or photographs that the alternative is correct and appropriate to architecture in the region, and especially West Linn, in 1880 – 1915.*
- B. The applicant is incorporating exceptional 1880 – 1915 architecture into the building which overcompensates for an omission, deviation, or use of non-period materials. The emphasis is upon superior design, detail, or workmanship.*

Design Exception Precedents



1949 Willamette Falls Drive Proposed Commercial Mixed Use Building

Willamette Falls Drive & 12th Street, West Linn, Oregon



NAME:
L. ADAMS DEPARTMENT STORE

LOCATION:
OREGON CITY

DATE OF CONSTRUCTION:
1912

USE:
DEPARTMENT STORE

PRIMARY MATERIALS IN SUPPORT OF EXCEPTION:
BRICK MASONRY



NAME:
WENHARD BUILDING

LOCATION:
802 MAIN STREET, OREGON CITY

DATE OF CONSTRUCTION:
1895

USE:
DEPARTMENT STORE

PRIMARY MATERIALS IN SUPPORT OF EXCEPTION:
BRICK MASONRY



NAME:
TWR STATION NO. 59

LOCATION:
1840 WILLAMETTE FALLS DRIVE

DATE OF CONSTRUCTION:
2010

USE:
FIRE STATION

PRIMARY MATERIALS IN SUPPORT OF EXCEPTION:
BRICK MASONRY



NAME:
WILLAMETTE CENTER IV

LOCATION:
1949 WILLAMETTE FALLS DRIVE, WEST LINN

DATE OF CONSTRUCTION:
2019

USE:
MIXED USE COMMERCIAL

PRIMARY MATERIALS IN SUPPORT OF EXCEPTION:
BRICK MASONRY

DESIGN EXCEPTION | BRICK

December 2022 | Design Review Application | Section 58.090 Design Exceptions

Page 248 of 261

SGA
SG ARCHITECTURE, LLC

1949 Willamette Falls Drive Proposed Commercial Mixed Use Building

Willamette Falls Drive & 12th Street, West Linn, Oregon



NAME:
MSR & FRANK ORIGINAL STORE

LOCATION:
SW FRONT & SW AMHILL STREETS, PORTLAND

DATE OF CONSTRUCTION:
1897

USE:
DEPARTMENT STORE

PRIMARY MATERIALS IN SUPPORT OF EXCEPTION:
DECORATIVE CANOPY COLUMNS



NAME:
OAK & STARK SALOON

LOCATION:
OAK & STARK STREETS, PORTLAND

DATE OF CONSTRUCTION:
1876

USE:
SALOON

PRIMARY MATERIALS IN SUPPORT OF EXCEPTION:
DECORATIVE CANOPY COLUMNS



NAME:
COMMUNITY OF FAITH CHURCH

LOCATION:
1889 WILLAMETTE FALLS DRIVE, WEST LINN

DATE OF CONSTRUCTION:
UNKNOWN

USE:
CHURCH

PRIMARY MATERIALS IN SUPPORT OF EXCEPTION:
DECORATIVE CANOPY COLUMNS



NAME:
U.I. COOPERTOWN GRILL

LOCATION:
1817 WILLAMETTE FALLS DRIVE, WEST LINN

DATE OF CONSTRUCTION:
UNKNOWN

USE:
RESTAURANT

PRIMARY MATERIALS IN SUPPORT OF EXCEPTION:
DECORATIVE CANOPY COLUMNS

DESIGN EXCEPTION | CANOPY COLUMNS

December 2022 | Design Review Application | Section 58.090 Design Exceptions

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SG ARCHITECTURE, LLC

Design Exception Precedents



EX
01

1949 WILLAMETTE FALLS DRIVE
WEST LINCOLN, OREGON



01 WILLAMETTE FALLS DRIVE - ROOFSCAPE

Proposed Colors/Materials



1949 Willamette Falls Drive
DR-23-01
Color and Materials Board
(Physical Samples Delivered to Planning Office)



Page 280 of 281

Proposed Colors/Materials



1949 Willamette Falls Drive Proposed Commercial Mixed Use Building

Willamette Falls Drive & 12th Street, West Linn, Oregon

NOTE: THE COLOR PALETTES SHOWN BELOW ARE REPRESENTATIVE ONLY. SELECTED FROM THE AMERICA'S HERITAGE HISTORICAL COLORS COLLECTION BY SHERWIN WILLIAMS. ACTUAL BUILDING COLORS WILL BE SELECTED FROM THE FULL LINE OF THIS COLLECTION.

			PALETTE: ANTIQUE WHITE BODY: SW 9119 ANTIQUE WHITE TRIM: SW 2842 ROYLCROFT SUEDE ACCENT 1: SW 7012 CREAMY ACCENT 2: SW 0048 BUNGLEHOUSE BLUE
			PALETTE: COLONIAL REVIVAL GREEN STONE BODY: SW 2826 COLONIAL REVIVAL GREEN STONE TRIM: SW 2842 ROYLCROFT SUEDE ACCENT 1: SW 7012 CREAMY ACCENT 2: SW 0048 BUNGLEHOUSE BLUE
			PALETTE: COLONIAL REVIVAL STONE BODY: SW 2827 COLONIAL REVIVAL STONE TRIM: SW 2829 CLASSICAL WHITE ACCENT 1: SW 6158 WICKEN BLACK ACCENT 2: SW 2802 ROCKWOOD RED
			PALETTE: DOWNING SLATE BODY: SW 2819 DOWNING SLATE TRIM: SW 2814 ROCKWOOD AND QUE GOLD ACCENT 2: SW 2807 ROCKWOOD MEDIUM BROWN
			PALETTE: DOWNING STONE BODY: SW 2801 DOWNING STONE TRIM: SW 2851 SAGE GREEN LIGHT ACCENT 1: SW 2846 ROYLCROFT BRONZE GREEN ACCENT 2: SW 0030 CLASSIC LIGHT BUFF
			PALETTE: NEEDLEPOINT NAVY BODY: SW 0032 NEEDLEPOINT NAVY TRIM: SW 0030 CLASSIC LIGHT BUFF ACCENT 1: SW 0033 NEW COLONIAL YELLOW ACCENT 2: SW 0045 ANTIQUARIAN BROWN
			PALETTE: RENWICK ROSE BEIGE BODY: SW 2804 RENWICK ROSE BEIGE TRIM: SW 2805 RENWICK BEIGE ACCENT 1: SW 0023 PEWTER TANKARD ACCENT 2: SW 2838 POLISHED MAN-OF-WAR
			PALETTE: ROYLCROFT MIST BEIGE BODY: SW 2844 ROYLCROFT MIST BEIGE TRIM: SW 2801 DOWNING STONE ACCENT 1: SW 7004 EXTRA WHITE ACCENT 2: SW 2801 ROCKWOOD DARK RED
			PALETTE: SHERATON SAGE BODY: SW 0014 SHERATON SAGE TRIM: SW 2802 DOWNING SAND ACCENT 1: SW 2814 ROCKWOOD ANTIQUE GOLD ACCENT 2: SW 2836 TANKARD BROWN

COLOR & MATERIAL SCHEDULE | PAINT

December 2022 | Design Review Application | Section 55.080.25

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SGA
SG ARCHITECTURE, LLC

1949 Willamette Falls Drive Proposed Commercial Mixed Use Building

Willamette Falls Drive & 12th Street, West Linn, Oregon

NOTE: THE BRICK BLENDS & AWNING FABRICS SHOWN BELOW ARE REPRESENTATIVE ONLY. THEY ARE DRAWN FROM MUTUAL MATERIALS' HISTORICAL BLEND SELECTIONS, AND FROM THE SUNBRELLA FABRIC CATALOG. BRICK BLENDS FOR THE BUILDING WILL BE SELECTED FROM THE FULL RANGE OF HISTORICAL BLENDS AVAILABLE FROM MUTUAL MATERIALS. AWNING FABRIC COLORS WILL BE SELECTED FROM THE FULL RANGE OF SUNBRELLA SELECTIONS.

BRICK BLENDS:



BRICK BLEND:
CEDAR SPRINGS



BRICK BLEND:
CLASSIC USED



BRICK BLEND:
HOMESTEAD USED



BRICK BLEND:
MADRONA SPRINGS



BRICK BLEND:
MUTUAL USED



BRICK BLEND:
OLD UNIVERSITY



BRICK BLEND:
PACIFIC HANDMOLD



BRICK BLEND:
VANCOUVER USED

AWNING FABRICS:



AWNING FABRIC:
SLATE



AWNING FABRIC:
FERN



AWNING FABRIC:
MAHOGANY



AWNING FABRIC:
MANHATTAN DUNE

COLOR & MATERIAL SCHEDULE | BRICKS & AWNING FABRICS

December 2022 | Design Review Application | Section 55.080.25

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SGA
SG ARCHITECTURE, LLC



CITY OF
West Linn

Planning Commission Request to Speak

Any information provided may be considered public record and subject to disclosure.
Each agenda item requires a separate testimony form.

☐ I request to speak during **General Public Comments** – (3 minutes/5 minutes for Neighborhood Association):
Please specify topic (required):

☐ I request to testify on **DR-23-01, a Class II Design Review for the construction of a new commercial building within both the General Commercial Zone and Willamette Falls Drive Commercial Design District.** (5 minutes for all speakers).

☐ In Support

☐ Neither for nor against

☒ In Opposition

Failure to raise an issue by written comment or at the hearing, or failure to provide sufficient specificity to respond to the issue, precludes raising the issue on appeal before the Land Use Board of Appeals. Parties with standing may appeal this decision to the West Linn City Council pursuant to the provisions of Chapter 99 of the Community Development Code and any other applicable rules and statutes. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the city or its designee to respond to the issue precludes an action for damages in circuit court.

☒ I do not wish to speak however; I would like to **have standing on DR-23-01.**

☐ In Support

☐ Neither for nor against

☒ In Opposition

REQUIRED INFORMATION TO HAVE STANDING FOR DR-23-01. PLEASE PRINT:

Name: Yarrow Currie

Name of Organization (if applicable): _____

Address: 1541 11th ST

City: West Linn State OR Zip 97068

Email (optional): yarrowcurrie@yahoo.com



CITY OF

West Linn

Planning Commission Request to Speak

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☐ In Support

☐ Neither for nor against

☐ In Opposition

REQUIRED INFORMATION TO HAVE STANDING FOR **DR-23-01.** PLEASE PRINT:

Name: Andra Brown

Name of Organization (if applicable): neighbor

Address: 1968 6th Ave

City: WL State OR Zip 97068

Email (optional): andra.brown@comcast.net



CITY OF
West Linn

Planning Commission Request to Speak

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☐ I do not wish to speak however; I would like to **have standing on DR-23-01.**

☐ In Support

☐ Neither for nor against

☐ In Opposition

REQUIRED INFORMATION TO HAVE STANDING FOR **DR-23-01**. PLEASE PRINT:

Name: Ian Brown

Name of Organization (if applicable): _____

Address: 1968 6th Ave

City: West Linn State: OR Zip: 97068

Email (optional): itb@ianbrown.org



CITY OF

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Planning Commission Request to Speak

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Please specify topic (*required*):

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☐ I do not wish to speak however; I would like to **have standing on DR-23-01.**

☐ In Support

☐ Neither for nor against

☐ In Opposition

REQUIRED INFORMATION TO HAVE STANDING FOR **DR-23-01**. PLEASE PRINT:

Name: BLANC-GOWNET, MARIE

Name of Organization (if applicable): _____

Address: 2057 WILLAMETTE FALLS DR.

City: WEST LINN State OR Zip 97068

Email (optional): LUISABLANC3@YAHOO.COM



CITY OF

West Linn

Planning Commission Request to Speak

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☒ I request to speak during **General Public Comments** – (3 minutes/5 minutes for Neighborhood Association):

Please specify topic (required):

DR-23-01

☒ I request to testify on **DR-23-01, a Class II Design Review for the construction of a new commercial building within both the General Commercial Zone and Willamette Falls Drive Commercial Design District.** (5 minutes for all speakers).

☐ In Support

☐ Neither for nor against

☒ In Opposition

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☐ I do not wish to speak however; I would like to **have standing on DR-23-01.**

☐ In Support

☐ Neither for nor against

☐ In Opposition

REQUIRED INFORMATION TO HAVE STANDING FOR DR-23-01. PLEASE PRINT:

Name: Danny Schreiber

Name of Organization (if applicable): _____

Address: 1870 6th Ave

City: West Linn State OR Zip 97068

Email (optional): danny nicole schreiber @ gmail.com



CITY OF
West Linn

Planning Commission Request to Speak

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☐ Neither for nor against

☒ In Opposition

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☐ I do not wish to speak however; I would like to **have standing on DR-23-01.**

☐ In Support

☐ Neither for nor against

☐ In Opposition

REQUIRED INFORMATION TO HAVE STANDING FOR **DR-23-01**. PLEASE PRINT:

Name: James Ester

Name of Organization (if applicable): _____

Address: 1992 6th Ave

City: West Linn State OR Zip 97068

Email (optional): jimmyester@outlook.com

ATTACHMENT 4 – AP-24-01 PUBLIC COMMENTS

Wyss, Darren

From: Mollusky, Kathy
Sent: Tuesday, April 2, 2024 3:29 PM
To: Wyss, Darren; Floyd, John
Subject: FW: New Icon building.

-----Original Message-----

From: Katie Hunter <[REDACTED]>
Sent: Tuesday, April 2, 2024 3:01 PM
To: Mollusky, Kathy <kmollusky@westlinnoregon.gov>
Subject: New Icon building.

[You don't often get email from [REDACTED]. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

CAUTION: This email originated from an External source. Do not click links, open attachments, or follow instructions from this sender unless you recognize the sender and know the content is safe. If you are unsure, please contact the Help Desk immediately for further assistance.

I object to the proposed 3 story building that Icon is planning. I love the "Old" historic feel of old Willamette. The exception to the standing restrictions will be just the first step in changes that could destroy the heart of West Linn.

Thanks,
Katherine Hunter
Resident of West Linn for 26 years.

Kathy Mollusky
City Recorder
Administration

#6013<ciscotel://6013>

[https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwestlinnoregon.gov%2Fsites%2Fall%2Fthemes%2Faha_responsive_2016%2Flogo.png&data=05%7C02%7Cdwys%40westlinnoregon.gov%7C060b1f0781f14cfcef7908dc53644ffe%7C10a0cb315f98400fbaf49eb21e6a413f%7C0%7C0%7C638476937543937538%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=Q1JbFnq%2BeM672HIJDIGSY%2Fs4kRJ6RmP1HHaxKkd0Yzg%3D&reserved=0]<[https://gcc02.safelinks.protection.outlook.com/?url=htt](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwestlinnoregon.gov%2F&data=05%7C02%7Cdwys%40westlinnoregon.gov%7C060b1f0781f14cfcef7908dc53644ffe%7C10a0cb315f98400fbaf49eb21e6a413f%7C0%7C0%7C638476937543944724%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=MF0orJ2FBI6jtXDhp1k6ATIK7k7mkaWmouiGo%2FSdagM%3D&reserved=0)

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This e-mail is subject to the State Retention Schedule and may be made available to the public

Wyss, Darren

From: Mollusky, Kathy
Sent: Tuesday, April 2, 2024 3:43 PM
To: Wyss, Darren; Floyd, John
Subject: FW: Written Testimony in Support of Class II Design Appeal of DR-23-01 (1919 and 1948 Willamette Falls Dr

From: Roberta Schwarz <[REDACTED]>
Sent: Tuesday, April 2, 2024 3:29 PM
To: City Council <citycouncil@westlinnoregon.gov>; Mollusky, Kathy <kmollusky@westlinnoregon.gov>
Cc: Schwarz, Ed <[REDACTED]>
Subject: Written Testimony in Support of Class II Design Appeal of DR-23-01 (1919 and 1948 Willamette Falls Dr

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Appeal of Class II Design Review at 1919 and 1949 Willamette Falls Drive DR-23-01

Please enter this into the Public Record for the City Council hearing on April 15, 2024, as written testimony in Support of the Appeal of the Planning Commission's Class II Design Review of 1919 and 1949 Willamette Falls Dr.

1) The elevator lobby and the enclosed rooftop stairwell comprise a 3rd story in violation of CDC 58.080(C)(3). These areas will be used for "human occupancy" and as such, are not "projections" subject to the CDC 41.030 exception to the height limit. These elements need to be removed from the proposal.

2) The condition imposed by the Planning Commission to address noise buffering requirements in CDC 55.100(C) and (D) lacks clarity and is insufficient. The adopted condition triggering completion of a noise study at 50% occupancy of the building, and not requiring any occupancy of the rooftop patio at the time of the study, will not ensure that noise from the patio is buffered. Further, imposing a condition prohibiting use of the rooftop patio by commercial customers for the consumption of food or beverages is feasible and could be enforced.

Please uphold the appeal and send the application back to the Historic Review Board and Planning Commission for further consideration.

Submitted by Ed and Roberta Schwarz

Kathy Mollusky
City Recorder
Administration

[#6013](#)



Please consider the impact on the environment before printing a paper copy of this email.
This e-mail is subject to the State Retention Schedule and may be made available to the public

ATTACHMENT 5 – AP-24-01 AFFIDAVIT AND NOTICE PACKET



**AFFIDAVIT OF NOTICE
CITY COUNCIL DECISION**

We, the undersigned, certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

PROJECT

File No.: **AP-24-01**

Applicant's Name: **Ian & Audra Brown**

Development Address: **1919/1949 Willamette Falls Drive**

City Council Hearing Date: **April 15, 2024**

MAILED NOTICE

Notice of Upcoming CC Hearing was mailed at least 20 days before the hearing, per Section 99.080 of the CDC to:

Ian & Audra Brown, applicant	3/26/24	<i>Lynn Schroder</i>
Carrie Richter, applicant representative	3/26/24	<i>Lynn Schroder</i>
Icon Construction, property owner	3/26/24	<i>Lynn Schroder</i>
Property owners within 500ft of the site perimeter	3/26/24	<i>Lynn Schroder</i>
Willamette Neighborhood Association	3/26/24	<i>Lynn Schroder</i>

EMAILED NOTICE

Notice of Upcoming CC Hearing was emailed at least 20 days before the hearing date to:

All Neighborhood Associations	3/26/24	<i>Lynn Schroder</i>
Ian & Audra Brown, applicant	3/26/24	<i>Lynn Schroder</i>
Carrie Richter, applicant consultant	3/26/24	<i>Lynn Schroder</i>

WEBSITE

Notice of Upcoming CC Hearing was posted on the City's website at least 20 days before the hearing.

3/26/24	<i>Lynn Schroder</i>
---------	----------------------

TIDINGS

Notice of Upcoming CC Hearing was posted in the West Linn Tidings at least 10 days before the hearing, per Section 99.080 of the CDC.

4/3/24	<i>Lynn Schroder</i>
--------	----------------------

SIGN

A sign for the Upcoming CC Hearing was posted on the property at least 10 days before the hearing, per Section 99.080 of the CDC.

4/4/24	<i>Darren S. Wyss</i>
--------	-----------------------

STAFF REPORT

The staff report was posted on the website and provided to the applicant and City Councilors at least 10 days before the hearing, per Section 99.040 of the CDC.

	<i>Lynn Schroder</i>
--	----------------------

FINAL DECISION

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

--	--

**CITY OF WEST LINN CITY COUNCIL
PUBLIC HEARING NOTICE
FILE NO. AP-24-01**

The West Linn City Council will hold a hybrid public hearing on **Monday, April 15, 2024 at 6:00 pm** in the Council Chambers of City Hall, 22500 Salamo Road, West Linn, to consider an appeal by Ian and Audra Brown of DR-23-01, a Planning Commission decision to approve a Class II Design Review for the construction of a new commercial building at 1919 & 1949 Willamette Falls Drive.

The appellant stated grounds for appeal pertain to height standards in the Willamette Falls Drive Commercial Design District (CDC Chapter 58) and a condition of approval intended to mitigate potential noise impacts.

The City Council will decide the appeal based on applicable criteria in Community Development Code (CDC) Chapters 19, 41, 46, 55, 58, and 99. The CDC approval criteria are available for review on the City website <http://www.westlinnoregon.gov/cdc> or at City Hall and the library.

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

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

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

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

Anyone wishing to present written testimony for consideration shall submit all material before 12:00 pm on April 15, 2024. Written comments may be submitted to dwyss@westlinnoregon.gov or mailed to City Hall.

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

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

For additional information, please contact Darren Wyss, Planning Manager, City Hall, 22500 Salamo Rd., West Linn, OR 97068, 503-742-6064 or dwyss@westlinnoregon.gov.



Scan this QR Code to go to Project Web Page:

Mailed: March 26, 2024



**NOTICE OF UPCOMING
CITY COUNCIL PUBLIC HEARING**

**PROJECT # AP-24-01
MAIL: 3/26/2024 TIDINGS: 4/3/2024**

CITIZEN CONTACT INFORMATION

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



CITY OF West Linn

Memorandum

Date: April 12, 2024

To: Mayor Bialostosky, Mayor
West Linn City Council

From: Darren Wyss, Planning Manager

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

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

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

As always, please contact me with any questions at dwyss@westlinnoregon.gov or 503-742-6064.



April 12, 2024

VIA E-MAIL

Garrett H. Stephenson
Admitted in Oregon
D: 503-796-2893
C: 503-320-3715
gstephenson@schwabe.com

Hon. Rory Bialostosky, Mayor
City of West Linn
22500 Salamo Road
West Linn, OR 97068

RE: Agenda Bill 2024-04-15-01: Appeal of approval of a Class II Design Review (DR-23-01); Applicant's Response to Appellant's Letter
Our File No.: 132873-285017

Dear Mayor Bialostosky and City Councilors:

This office represents ICON Construction and Development ("ICON") in the above-captioned appeal, which concerns a new commercial building (the "Building") in the Willamette Falls Commercial Design District (the "Design District") at 1919/1949 Willamette Falls Drive, which application (the "Application") was approved by the Planning Commission after a nine-month hearing process. Appellant Ian and Audra Brown (collectively, "Appellant") engaged an attorney who submitted a letter dated April 10, 2024. This letter is respectfully submitted in response to Appellant's letter. As explained below, the Council should reject Appellant's arguments.

1. The City Council should reject Appellant's proposed additional conditions concerning noise and potential uses of the roof deck.

Appellant seeks to impose three additional conditions, two of which would restrict otherwise permitted uses of the roof deck. It requests this based on speculative concerns that noisy activities will take place on the roof deck. As explained in detail below, the Council should not impose these additional conditions.

As it regards the Building, the City regulates noise in two primary ways, but neither of those mechanisms allow for denial of the Application or prospective prohibitions on otherwise allowed uses of the Building.

First, there are provisions in the Design Review criteria that allow the City to require a noise study and buffering between the potential noise sources and surrounding areas. These provisions are as follows:

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- CDC 55.070.D.2.h: “If staff determines before or during the pre-application conference that the land use is expected to generate noise that may exceed DEQ standards, the application shall include a noise study conducted by a licensed acoustical engineer that demonstrates that the application and associated noise sources will meet DEQ standards. Typical noise sources of concern include, but are not limited to, vehicle drive-throughs, parking lots, HVAC units, and public address systems.”
- CDC 55.100.D.3: “Structures or on-site activity areas which generate noise, lights, or glare shall be buffered from adjoining residential uses in accordance with the standards in subsection C of this section where applicable.”
- CDC 55.100.D.4: “Businesses or activities that can reasonably be expected to generate noise in excess of the noise standards contained in West Linn Municipal Code Section 5.487 shall undertake and submit appropriate noise studies and mitigate as necessary to comply with the code. If the decision-making authority reasonably believes a proposed use may generate noise exceeding the standards specified in the municipal code, then the authority may require the applicant to supply professional noise studies from time to time during the user’s first year of operation to monitor compliance with City standards and permit requirements.”

As is appropriate for a commercial development project, the City’s Design Review standards provide no basis for denial based on the mere possibility or certain noises. As noted above, the standards allow, but do not compel, the City to require certain buffering between the potentially noise producing use and the noise sensitive location, and to require noise studies in certain instances.

As for this Application, there is no evidence in the record supporting an assumption that the mere existence of a roof-top deck and the stairs and elevator needed to access it will result in “noise in excess of the noise standards contained in [WLMC] 5.487.” The improvements originally proposed that would have allowed (if a future tenant wished) use of the roof as a fully-functional lounge or entertainment area have been removed from the Application, and the Application includes metal buffering between the roof deck and adjacent properties, as well as shrubs and planters that will make the buffer more effective.

In this regard, the Planning Commission found that the Application will satisfy these criteria as proposed or with conditions of approval. With regard to noise, the Planning Commission imposed the following condition of approval:

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“10. Noise Study. The applicant shall submit a noise study upon 50% of the total floor area of the building being occupied. Subsequent to the first noise study the applicant shall submit a new noise study, not more than once per year, in response to a noise complaint associated with the rooftop deck. The noise study must address the provisions of West Linn Municipal Code Chapters 5.487(3) and be conducted in July or August.”

The Application includes no proposal for a restaurant or other use that could conceivably violate the standards in WLMC 5.487, discussed further below. Rather, Appellant wrongly urges the City Council to prospectively prohibit uses allowed by right in the CDC because they could conceivably produce such a noise before such use is conducted or even proposed. There is simply no basis in the CDC for the Council to do what Appellant asks.

Rather, the primary tool the City has for addressing loud noises is the City’s noise ordinance, WLMC 5.487, which applies to every use and activity in the City. As is relevant here, the noise ordinance includes the following limits:

- WLMC 5.487(2) General Prohibition. No person shall make, continue, assist in making, or allow:
 - (a) Any unreasonably loud, disturbing, or raucous noise;
 - (b) Any noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, safety, or peace of reasonable persons of ordinary sensitivity, within the jurisdictional limits of the City; or
 - (c) Any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.
- WLMC 5.487(4) Prohibited Noises. The following acts are declared to be per se violations of this chapter. This enumeration does not constitute an exclusive list. It shall be unlawful for any person to commit, create, assist in creating, permit, continue, or permit the continuance of any of the following:
 - (a) Radios, Televisions, Stereos, Musical Instruments and Similar Devices. The use or operation of any device designed for sound production or reproduction,

including, but not limited to, any radio, musical instrument, television set, stereophonic equipment, or similar device that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs the peace, quiet, and comfort of neighbors in residential areas, including multi-family or single-family dwellings.

(e) Yelling, Shouting, and Similar Activities. Yelling, shouting, hooting, whistling, singing, or creation of noise in residential areas or in public places, between the hours of 9:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities, unless a special permit is granted by the City Manager. This section is to be applied only to those situations where the disturbance is not a result of the content of the communication but due to the volume, duration, location, timing or other factors not based on content.

(f) Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices. The unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound is prohibited without a permit from the City Manager. The City Manager may grant a special permit to responsible persons or organizations for the broadcast or amplification of sound as a part of a national, State, or City event, public festival, or special events of a noncommercial nature. This permit shall not be required for any public performance, gathering, or parade for which a permit authorizing the event has been obtained from the City.

(6) Penalties. A violation of this section is a Class A violation and a public nuisance.

The regulations above authorize the City to stop any noises in violation of the limits stated in WLMC 5.487(2). However, not only are Appellant's proposed conditions *not* supported by the CDC, they are not supported by the noise ordinance either. For example, there is no *ban* on the outdoor use of "Radios, Televisions, Stereos, Musical Instruments and Similar Devices" and "Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices." Rather, their use is limited to a level below that is "plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably

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disturbs the peace, quiet, and comfort of neighbors in residential areas,” and “the unreasonably loud and raucous use or operation” of these devices.

All of the regulations above, both in the CDC and WLMC, amount to a restrictive but ultimately common sense approach to noise. On the one hand, the CDC allows the City to require reasonable buffering and a noise study, both of which are already part of Planning Commission’s decision. On the other hand, the City is in a position to enforce against unreasonable or bothersome noise levels, particularly between the hours of 9:00 AM and 7:00 PM. Given this regulatory scheme and the fact that no particular use of the rooftop deck is proposed, there is simply no codified basis whatsoever to prohibit otherwise permissible land uses on the roof deck. Doing so could also amount to a de-facto zone change.

Stated simply, Design Review is about just that: design. While building design is required to take into account surrounding uses, the Design Review process cannot and should not be used to restrict otherwise permitted uses in the way Appellant is suggesting. ICON understands the Browns’ fears that there could occasionally be loud noises emanating from the roof deck. The additional restrictions they request is neither justified nor legally sustainable.

Nonetheless, ICON wants to be a good neighbor and is generally amenable to performing a noise study if one is reasonably justified and is capable of measuring actual ongoing noise from the roof deck. However, ICON has significant concerns that the condition adopted by the Planning Commission automatically requiring a noise study regardless of the use of the roof deck, while well-intentioned, is neither easily enforced nor reasonable.

This is for three reasons. First, it is not clear how a simple complaint to code enforcement would, as an administrative matter, trigger City planning staff to require a noise study. Second, until the building is occupied by tenants who might make regular use of the roof deck, any noise objectionable to neighbors would be based on isolated incidences that cannot be easily captured in a noise study. Third, it is fundamentally unfair and contrary to the City’s nuisance ordinances to require ICON to conduct a noise study (which can cost several thousand dollars) on the mere complaint by a neighbor. Rather, such a complaint should be well-founded. WLMC 5.495–5.535 prescribe the rights and responsibilities for all parties to a nuisance, and requiring ICON to submit a noise study without any due process right to contest the mere accusation of a nuisance would be a significant deprivation of ICON’s due process rights. Finally, given that the City retains the authority to require abatement of any nuisance under WLMC 5.5056, which

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abatement could include a noise study, the City Council can find that such a condition need not be imposed at all. For all of the above reasons, ICON recommends that Condition 10 be eliminated.

Should the Council decide that the Planning Commission's noise condition is necessary, ICON recommends that the City revise Condition 10 to provide as follows:

“10. Noise Study. The applicant shall submit a noise study after the City's issuance of a business license for the building allowing an “eating and drinking establishment,” as defined by the CDC. The noise study must address the provisions of West Linn Municipal Code Chapters 5.487(3). The noise study shall be conducted in the first July or August after the business license issues, and when customers are present on the roof deck. The City may order ICON to provide additional noise studies if it receives one or more well-founded complaints related to use of the roof deck, but may not order more than one per year after the first noise study is submitted.”

2. The Building will not exceed 35 feet.

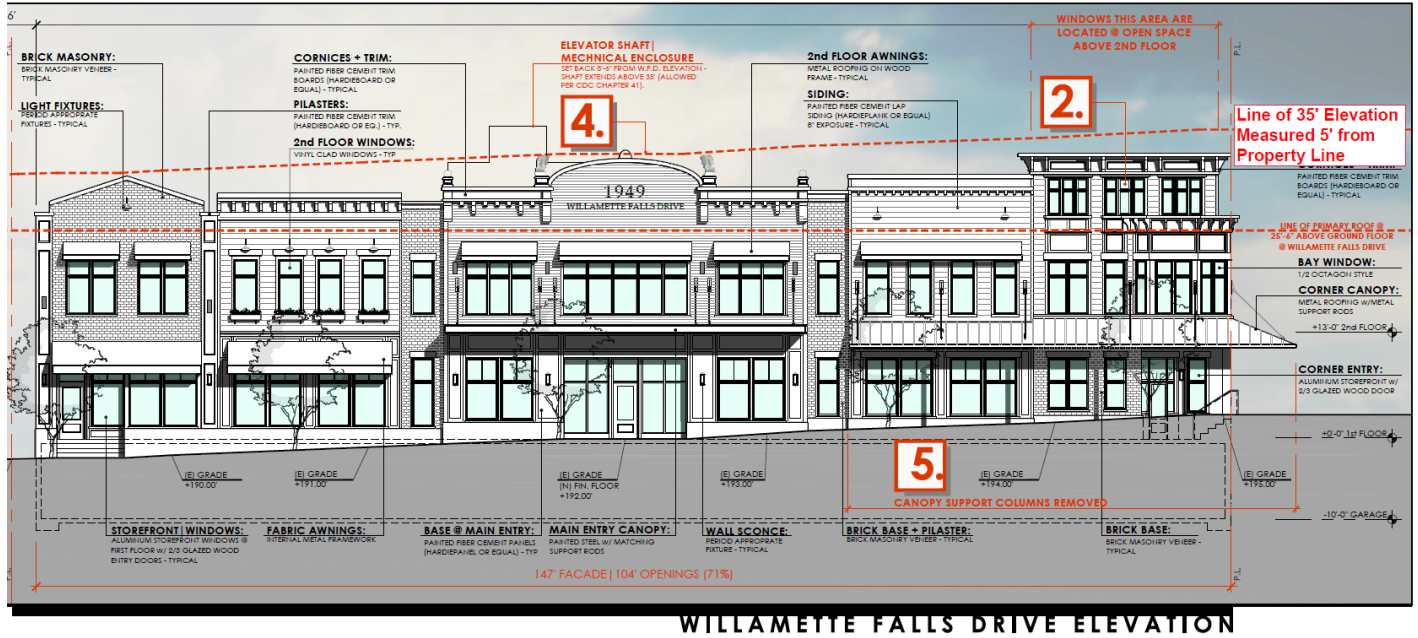
CDC 41.005.A regulates how building height is measured in West Linn:

“A. For all zoning districts, building height shall be the vertical distance above a reference datum measured to the highest point of a flat roof or to the deck line of a mansard roof or to the highest gable, ridgeline or peak of a pitched or hipped roof, not including projections not used for human habitation, as provided in CDC 41.030. The reference datum shall be selected by either of the following, whichever yields a greater height of building.

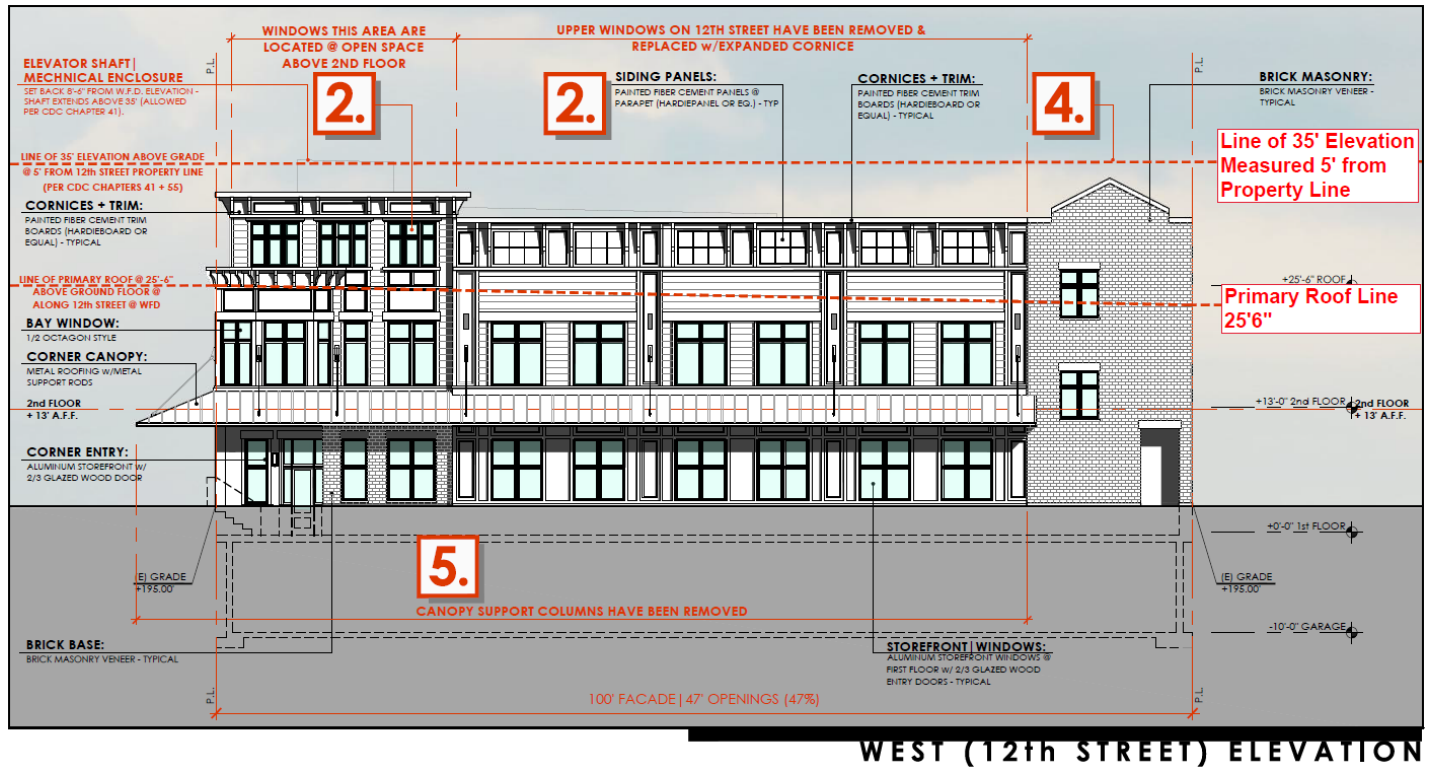
1. For relatively flat sites where there is less than a 10-foot difference in grade between the front and rear of the building, the height of the building shall be measured from the proposed finished grade five feet out from the exterior wall at the front of the building (Figure 1).”

On January 29, 2024, the Applicant submitted a revised set of plans, which illustrate the Building's proposed height in extreme detail. These are excerpted below:

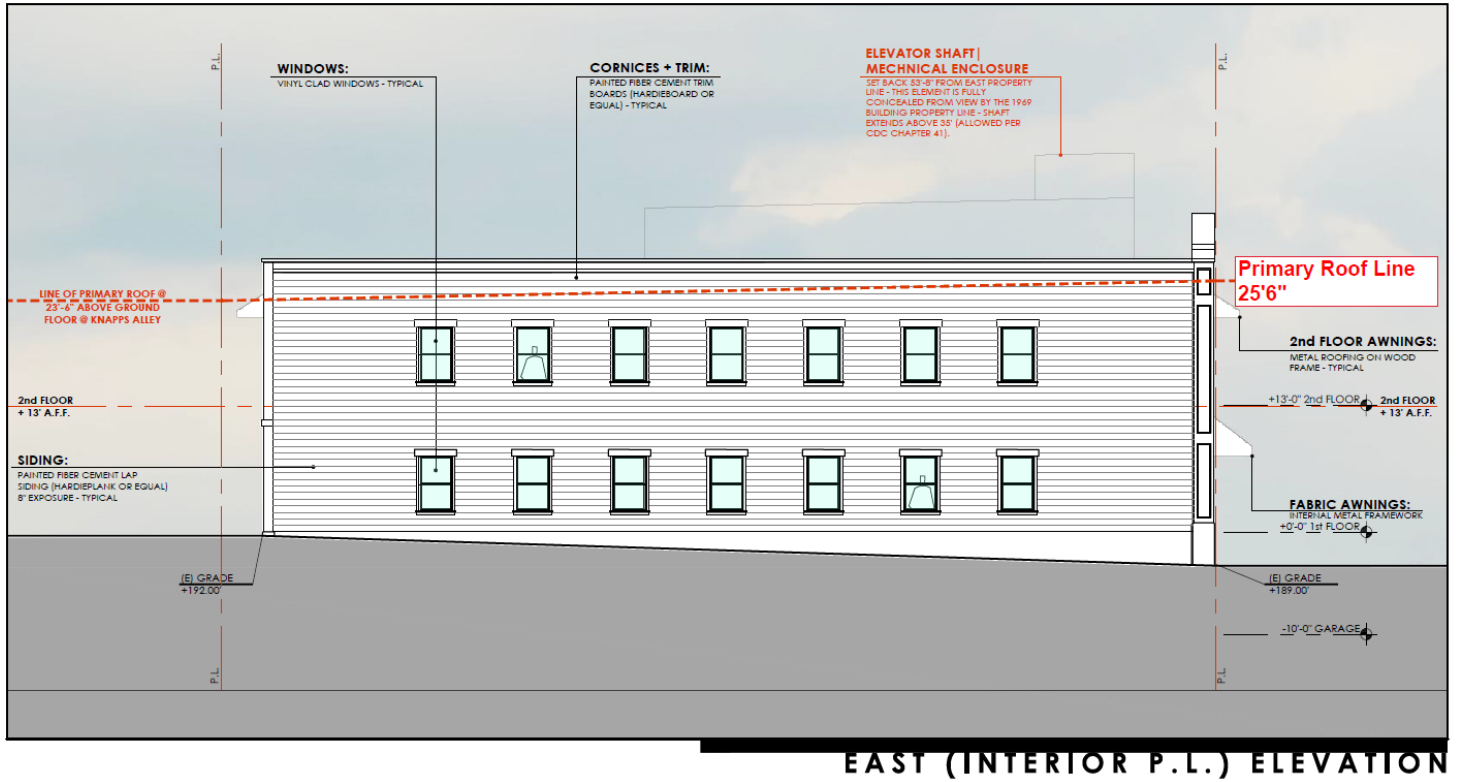
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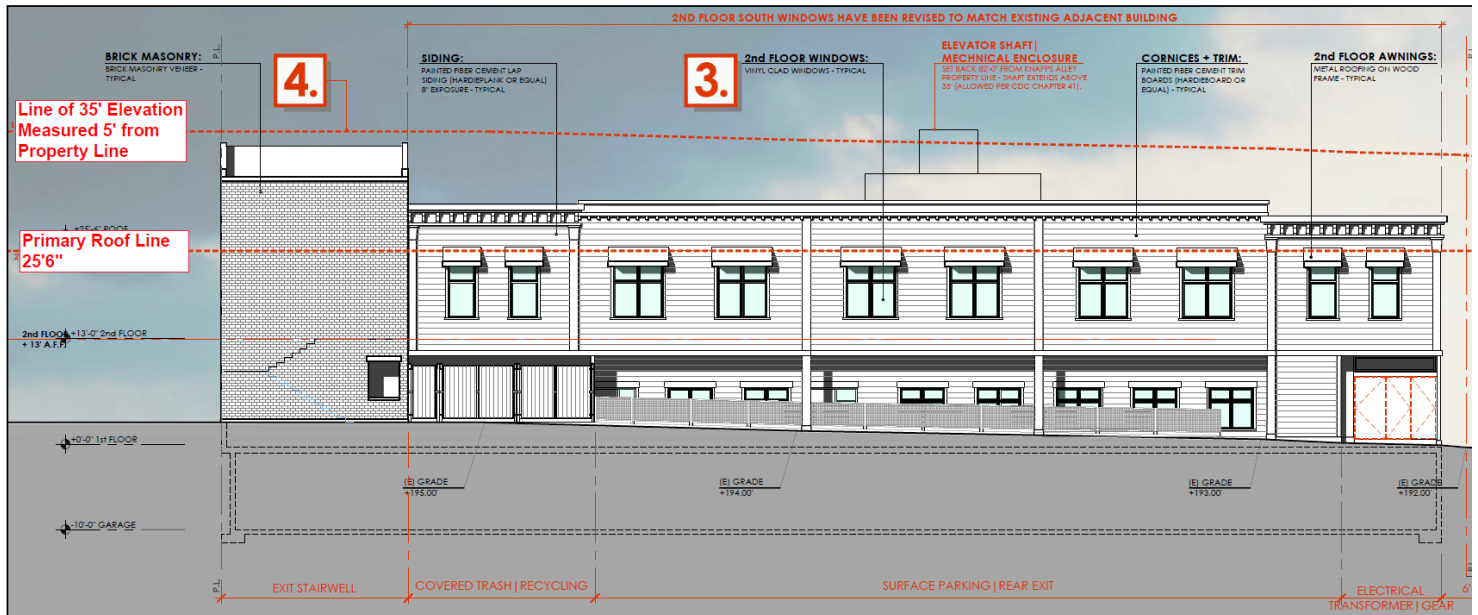
Honorable Rory Bialostosky
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Honorable Rory Bialostosky
April 12, 2024



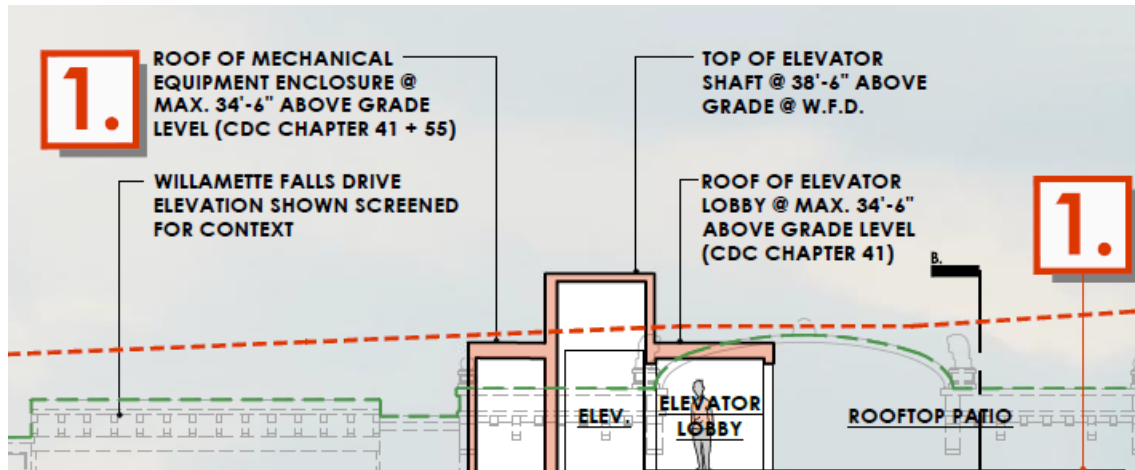
Honorable Rory Bialostosky
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3 ROOF PLAN + KNAPPS ALLEY ELEVATION

In each of the above images, the top dashed red line shows where the 35-foot elevation is in relation to the proposed building. The bottom dashed red line shows the roof height, which is roughly 25 feet above grade.

The proposed features above 35 feet in height are permitted. CDC 41.030 "Projections Not Used for Human Habitation" provides as follows: Projections such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flag poles, and other similar objects not used for human occupancy are not subject to the building height limitations of this code. The only architectural features exceeding 35 feet in height are the tops of certain decorative architectural features and the top of the elevator shaft. This is shown in the Applicant's January 29, 2024 designs, as excerpted below:



Appellant makes no attempt to explain how decorative architectural features or the top of an elevator shaft are “used for human habitation,” and there is no question that humans are not intended to occupy the space above the elevator car.

Even if humans could occupy these spaces, the Oregon Structural Specialty Code (OSSC) does not *regulate* them as occupancy spaces. Particularly with respect to elevator shafts, “elevators and related machinery, stairways or vertical shaft openings, [...] including ancillary spaces used to access elevators and stairways” are considered non-occupancy penthouses, similar to mechanical equipment. OSSC 1511.2.2. The OSSC considers these spaces to be part of the floor beneath, in this case, the Building’s second floor. OSSC 1511.2. Finally, the OSSC allows such facilities to extend 18 feet above the rooftop. *Id.* Here, the top of the elevator shaft extends only 13 feet, 6 inches above the rooftop, and only 3 feet, 6 inches above the 35-foot height limit.

Elevator housings are utterly common in commercial construction, as are vestibules to protect elevators doors from the rain and wind. While there is no definition of “occupancy” in the CDC, in this instance the Council should interpret its height limitations consistent with the state’s commercial building code. A contrary interpretation would make it effectively impossible to provide elevator access to commercial buildings that are at or near their height limitations.

Finally, Appellant is incorrect that the panels, vertical pilasters, and cornices are subject to the standard in CDC 50.080.B.3, which provides that “a false front shall be considered as the peak of the building if it exceeds the gable roof ridgeline.” This standard does not apply because the

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April 12, 2024

Building does not have a gable roof, and therefore no “gable roof ridgeline.”¹ Regardless, as Appellant concedes in its letter, many buildings in the Design District have flat roofs and parapets consistent with ICON’s proposed design.

For the above reasons, the Building meets the Design District’s height standard.

3. The proposed Building consists of two stories, not three.

The building is proposed to be two stories. City’s codified definition of “story” is as follows:

“That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling above. If the finished floor level directly above a basement or unused under floor space is more than six feet above grade as defined herein for more than 50 percent of the total perimeter, or is more than 12 feet above grade as defined herein at any point, such basement or unused under floor space shall be considered as a story.”

This definition plainly means that the top floor must have a ceiling. The space enclosed by the building’s cornice, painted panels, and painted vertical pilasters does not constitute a third story because they are placed above the Building’s roof, and they *lack* a ceiling. The Building plainly meets the Design District’s limitation of building to two stories.

4. The City Council need not and should not remand the application to the HRB.

As explained in the Staff Report, the Application has undergone four hearing processes. On June 13, 2023, the HRB held its initial hearing, after which it referred the Application to the Planning Commission. On October 4, the Planning Commission remanded the application back to the HRB. On November 14, the HRB held a second hearing. On February 21, 2024, the Planning Commission considered design changes to eliminate the third story that concerned the HRB, and approved the Application. Appellant’s final argument asserts that the HRB should hold yet another hearing. The City Council should reject this argument.

¹ A gable roof is “double-sloping roof that forms a gable at each end.” Webster’s Third Int’l Dictionary, Unabridged (1993)

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Stated plainly, this Application has been put through enough public review. While it is true that the HRB is empowered to “make *recommendations* to the approval authority” on a Class I or II Design Review in the Design District, the HRB is not the approval authority for these applications; the Planning Commission is. CDC 99.060.B. There is no provision in the CDC that requires HRB review of every design adjustment proposed to the Planning Commission. The Applicant has already adequately responded to the recommendation by the HRB that a third story not be allowed by eliminating the third story. Appellant apparently participated in all of these hearings, so there is no question that their concerns about rooftop activities were considered.

Appellant is not looking for a better or more comprehensive public process. Rather, the Browns simply do not like the idea of an accessible roof deck and even though that deck is plainly allowed by the CDC, they want another opportunity to further delay a public review process that has been ongoing now for more than nine months. There is no question that the “false front” (as defined by Appellant) is not, in fact, a third story and does not exceed the height limit, thus an additional Design Exception is not required. Otherwise, the building meets all “clear and objective” standards related to building height and its roof deck in CDC 58. There is simply nothing substantive to be gained by a further remand to the HRB, and the Council should refuse such a request.

5. Conclusion

For the above reasons, the Council should reject Appellant’s arguments, and affirm the Planning Commission’s decision with a modification of that decision to eliminate or revise Condition 10, as explained above.

Best regards,



Garrett H. Stephenson

GST:jmhi

cc: Darren Gusdorf
Mark Handris
Scot Sutton
Kevin Godwin



11 April, 2024

DESIGN REVIEW APPLICATION | CITY COUNCIL MEETING

CITY COUNCIL

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

PROJECT NO. 20-119

Design Review Application **DR-23-01**

COUNCILORS,

Thank you for this opportunity to present our response to the neighbor's appeal of the Planning Commission's approval of our proposed 1949 Willamette Falls Drive building.

My name is Scot Sutton, I am a partner at SG Architecture, 10940 SW Barnes Rd #364, Portland 97225.

In January of 2022 we began designing this multi-tenant, multi-use building, with the intention that it will ultimately house any business use allowed in the zone, which could include retail, office, service, or restaurant. The design includes a total of 40,300 square feet, with 26,200 square feet on two floors and a 14,100 square foot underground garage. As required under Chapter 58 of the CDC, the façades along Willamette Falls Drive and 12th Street are designed in a western false front style similar to the historical styles found in 1880-1915 architecture in the region. In early 2023 we twice presented it to the Willamette neighborhood association.

In our Design Review application, we requested three exceptions to the Chapter 58 requirements: substitution of cementitious siding for the required wood siding, the inclusion of brick masonry as an allowed façade material, and to be allowed to use decorative iron columns to support a large canopy at the intersection of Willamette Falls Drive and 12th Street. In June of 2023 We presented our design review application to the Historic Review Board.

At that time our proposal included an enclosed rooftop mezzanine, which was intended to be part of the leased space beneath it on the second floor. Whether that rooftop space would become office or conference space to serve a service business, or a lounge attached to a restaurant was unknown, as no tenant had been selected for the second-floor space. Currently, there are still no tenants committed to the project.

While the Oregon Structural Specialty Code classifies a mezzanine as a part of the floor below, and not a separate floor, the CDC defines a floor as, essentially, a space with both a floor and a ceiling or roof. The HRB conditionally approved that first application, including the requested exceptions, and with a condition that the proposed canopy column locations be approved by the City's Engineering Department. The HRB declined to make a determination as to whether the enclosed mezzanine was allowed in the zone and recommended that the Planning Commission decide.

In preparation for our Planning Commission hearing in October 2023, we elected to make some adjustments to the building design to address the neighbors' and board's concerns. Those adjustments included changing the mezzanine space from business occupancy to unoccupied storage, deleting rooftop restrooms, deleting the decorative columns at the corner canopy, resizing the windows facing the neighbors along Knapps Alley, and eliminating the mezzanine level windows along 12th Street – essentially doing everything that the City and the neighbors had requested.

In a gesture of good will, we added an enclosed mechanical equipment room to house HVAC units, to help reduce their noise as compared to locating them individually above their respective tenant spaces. Unfortunately, when we appeared for the October 2023 Planning Commission hearing we were advised that – due to an objection raised by the neighbors - we would need to return to the HRB to present the revised rooftop storage as a “design exception” under chapter 58. In late October of 2023 the HRB denied our request for a design exception.

We elected to rescind our request for design exception so that we could present our updated proposal to the Planning Commission for their review February of this year. For this meeting, we determined to go as far as we could reasonably go in changing the design to attempt to make the neighbors happy. We eliminated the rooftop storage entirely, reduced the size of the outdoor deck and moved it as far away from the neighbors as we could to lessen any noise that might occasionally emanate from the deck while in use. In addition, we have included a full screen of shrubs in front of steel panels around the entire perimeter of the deck to further reduce the chance of noise reaching the neighbors. By reducing the size of the deck, we were able to eliminate the need for a second stairwell, which allowed us to reduce the impact of the stair closest to the neighbors. The Planning commission approved our proposal with the conditions that are before you in the neighbor's appeal.

As to the neighbors' other concern: that the building exceeds the 35' height restriction in the zone, this complaint is a mystery. Even a cursory glance at the drawing exhibits shows that every part of the building falls comfortably below the height limit - the lone exception being the top of the elevator shaft *which is expressly permitted* under Chapter 41. While the HRB saw fit to impose noise and light conditions on the proposal, those conditions merely restate what is already in the Code, while leaving the adjudication of those items open to interpretation in ways that the Code does not, and presumably does not intend.

In sum, we have made multiple major adjustments and concessions to our proposal in an effort to ameliorate the neighbors' concerns – despite our position that most of what we have given up was in fact permitted under the CDC and OSSC. The neighbors continue to push the same noise concern that they have pressed since the original HRB hearing, despite having no evidence to show that this concern has merit. They have also suggested, without evidence, that the lighting for the deck will fail to comply with the City's regulations. There are currently both noise and lighting ordinances in Chapter 5 of the municipal and Chapter 55 of the CDC respectively to which we must conform, which restrict noise and light levels and spread.

At this point we have invested an extraordinary amount of time and money, making concession after concession to neighbor's whose motive appears to be simple: prevent the project from happening. Everything in the design of our proposal fits squarely and unquestionably within the letter of the regulations, and with this appeal the neighbors are continuing to obstruct our pursuit of a fully compliant commercial building in a commercial zone. We respectfully ask that the Council remove the Planning Commission's conditions that make up the basis of this appeal, and approve the proposal as submitted.

Councilors, thank you for your time and consideration, we are happy to answer any comments or questions you may have, and look forward to your decision.

Sincerely,

A handwritten signature in red ink, appearing to read 'SCOT SUTTON', with a long horizontal line extending to the right.

SCOT SUTTON | SG Architecture, LLC
503-347-4685 | ssutton@sg-arch.net



CITY OF West Linn

Memorandum

Date: April 12, 2024

To: Mayor Bialostosky, Mayor
West Linn City Council

From: Darren Wyss, Planning Manager

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

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

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

As always, please contact me with any questions at dwyss@westlinnoregon.gov or 503-742-6064.

April 10, 2024

VIA EMAIL (jfloyd@westlinnoregon.gov)

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

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

Dear Mayor Bialostosky and City Council,

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

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

Lack of Evaluation and Buffering for the Rooftop Deck Noise

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

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

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

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

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

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

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

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

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

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

The Building Height Exceeds 35 Feet and Two Stories

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

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

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

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

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

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

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

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

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

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

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

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

HRB Review of the January 2024 Modifications is Required

CDC 99.060(D) provides that the:

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

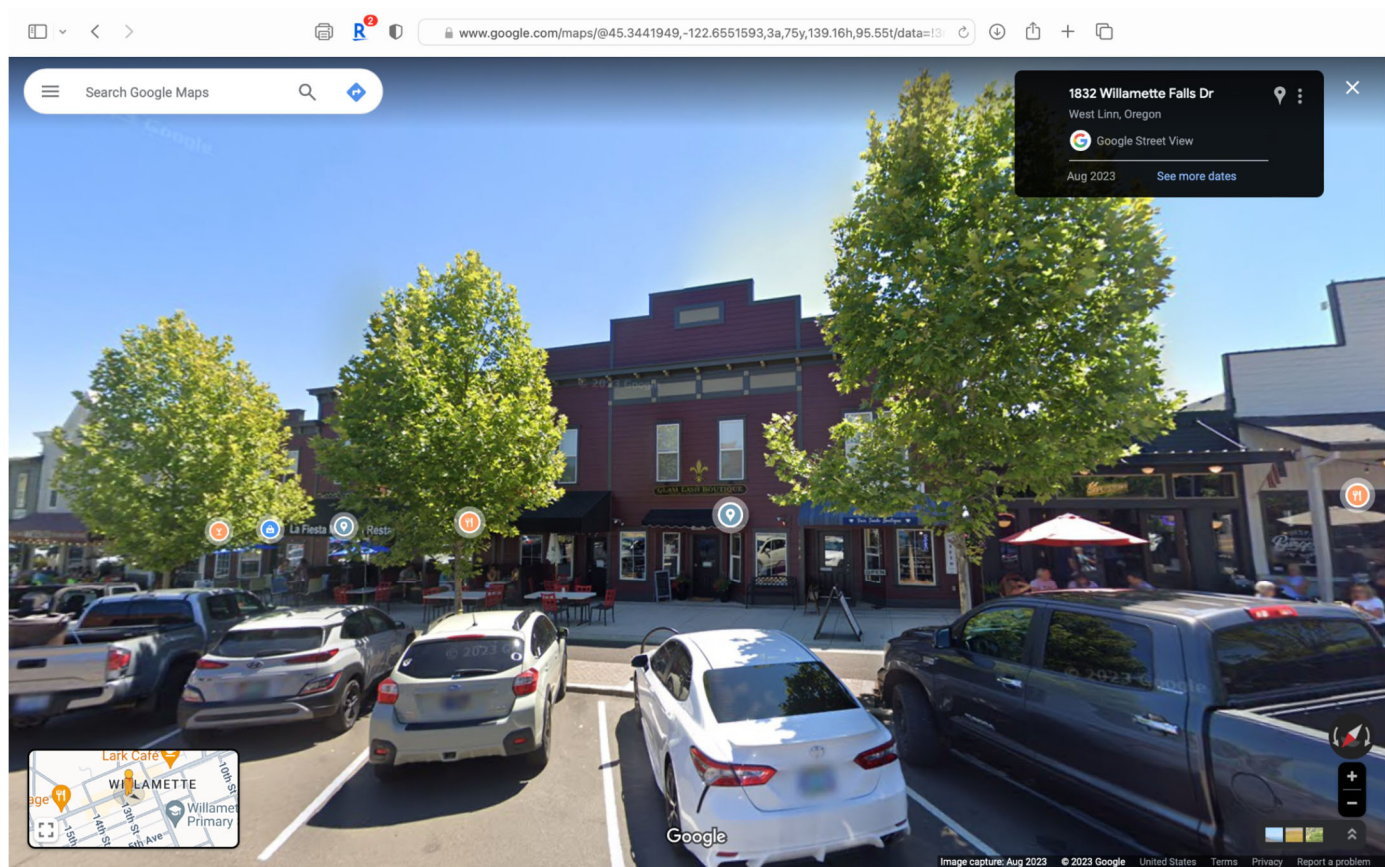
Very truly yours,



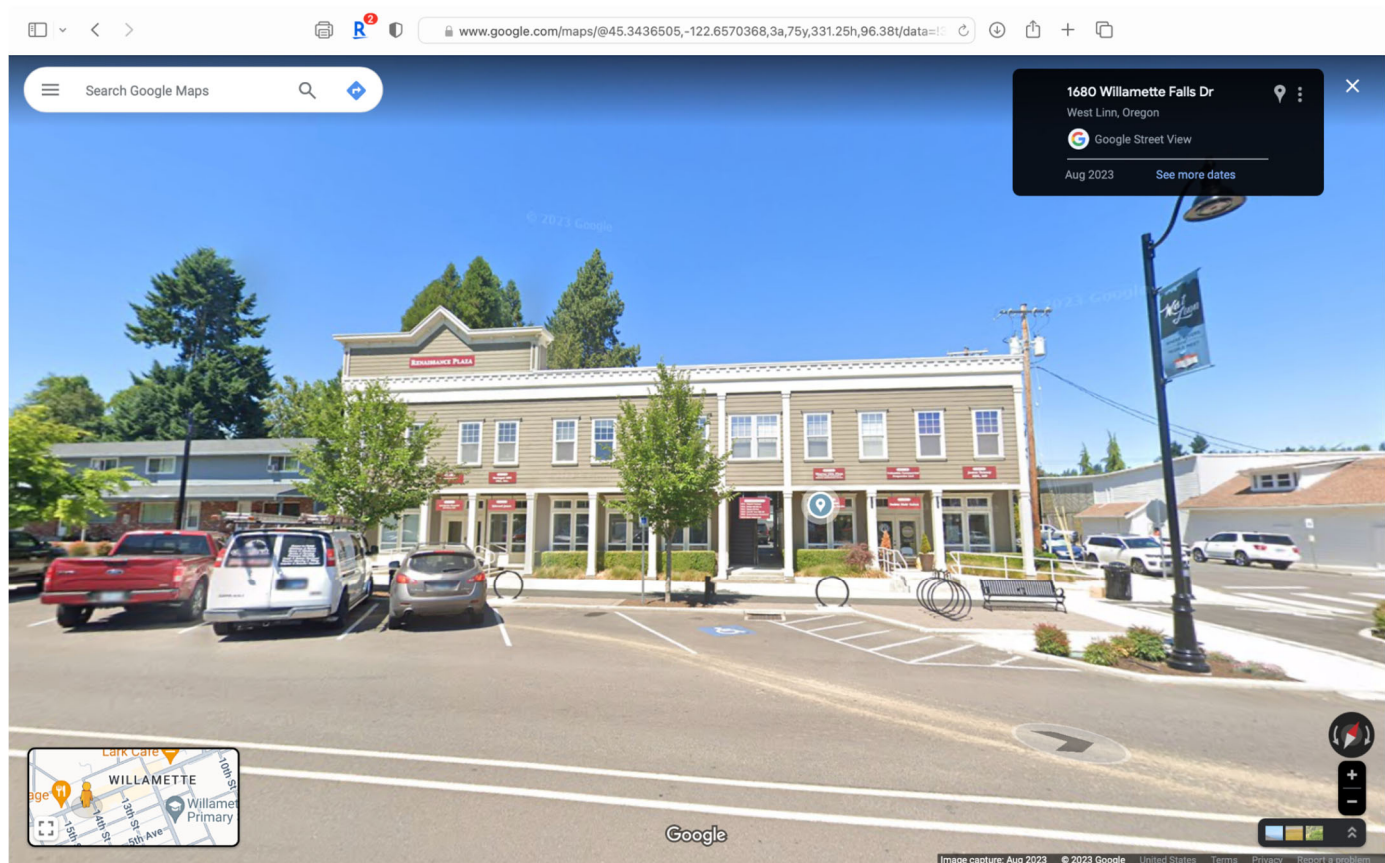
Carrie A. Richter

Enclosures
cc: Clients

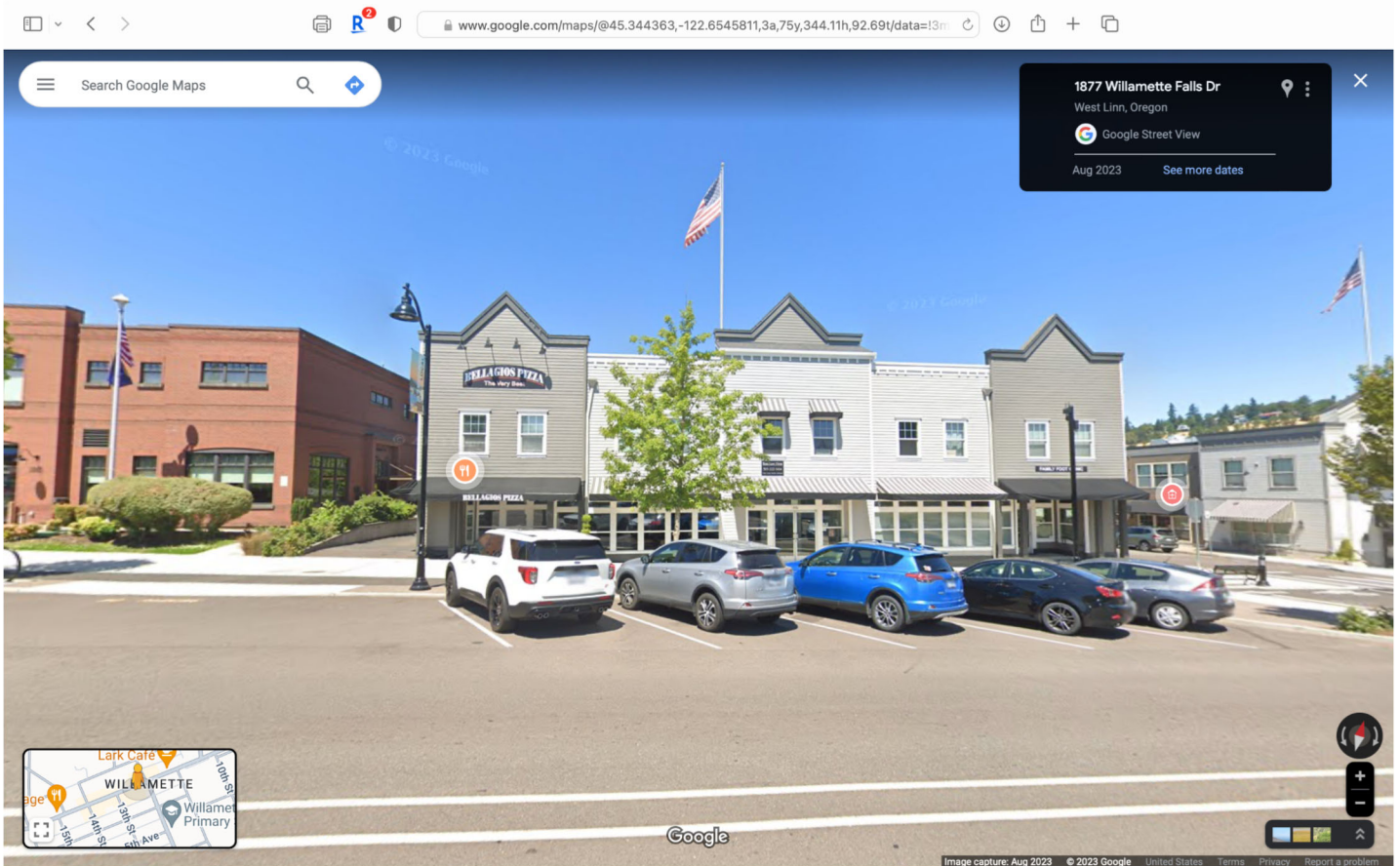
SURVEY OF OTHER FALSE FRONT BUILDINGS ALONG WILLAMETTE FALLS DRIVE



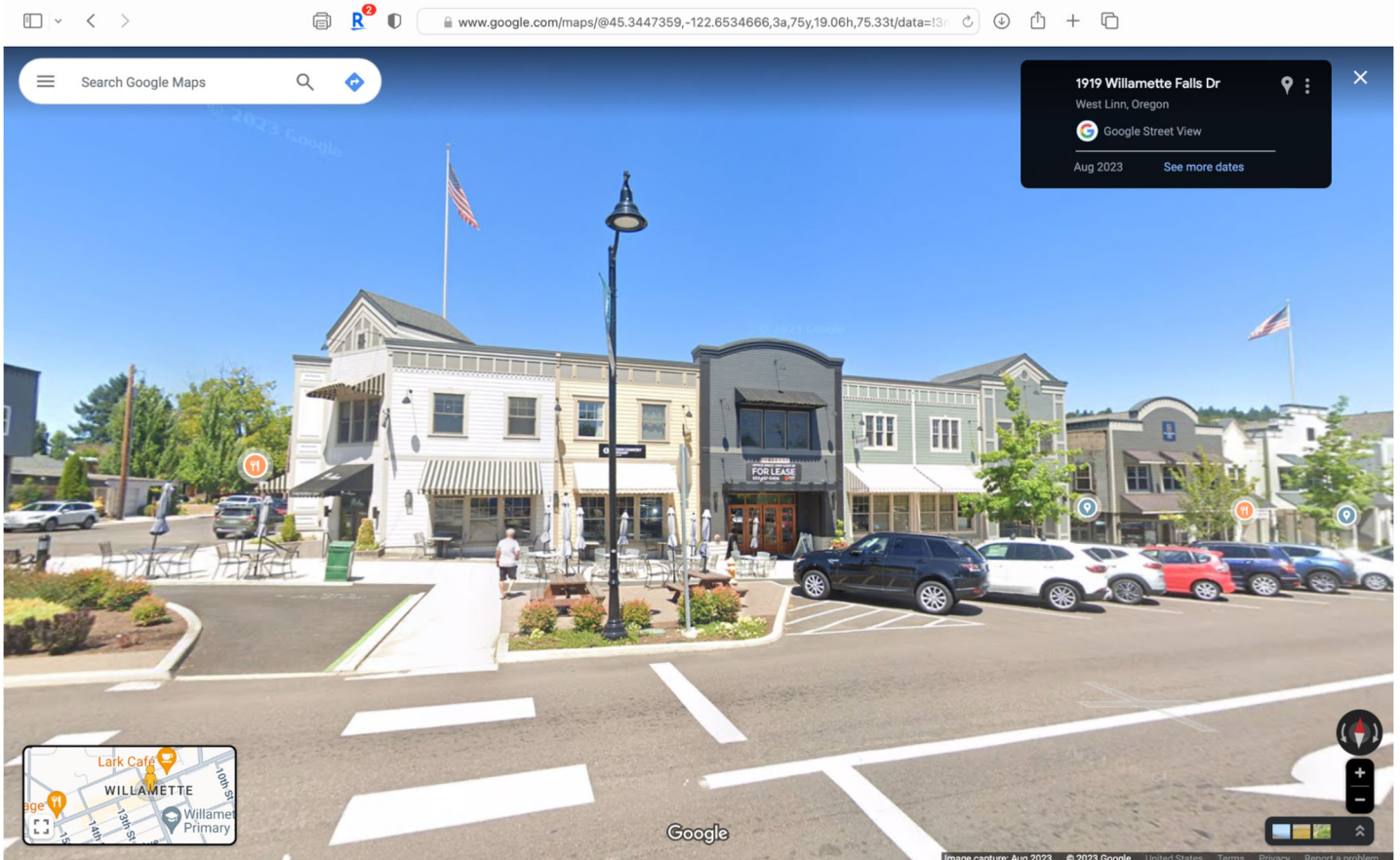
1849 Willamette Falls Drive – conventional “half-story” configuration, making use of the space under a gable roof which is hidden by the pediment. No windows in the pediment.



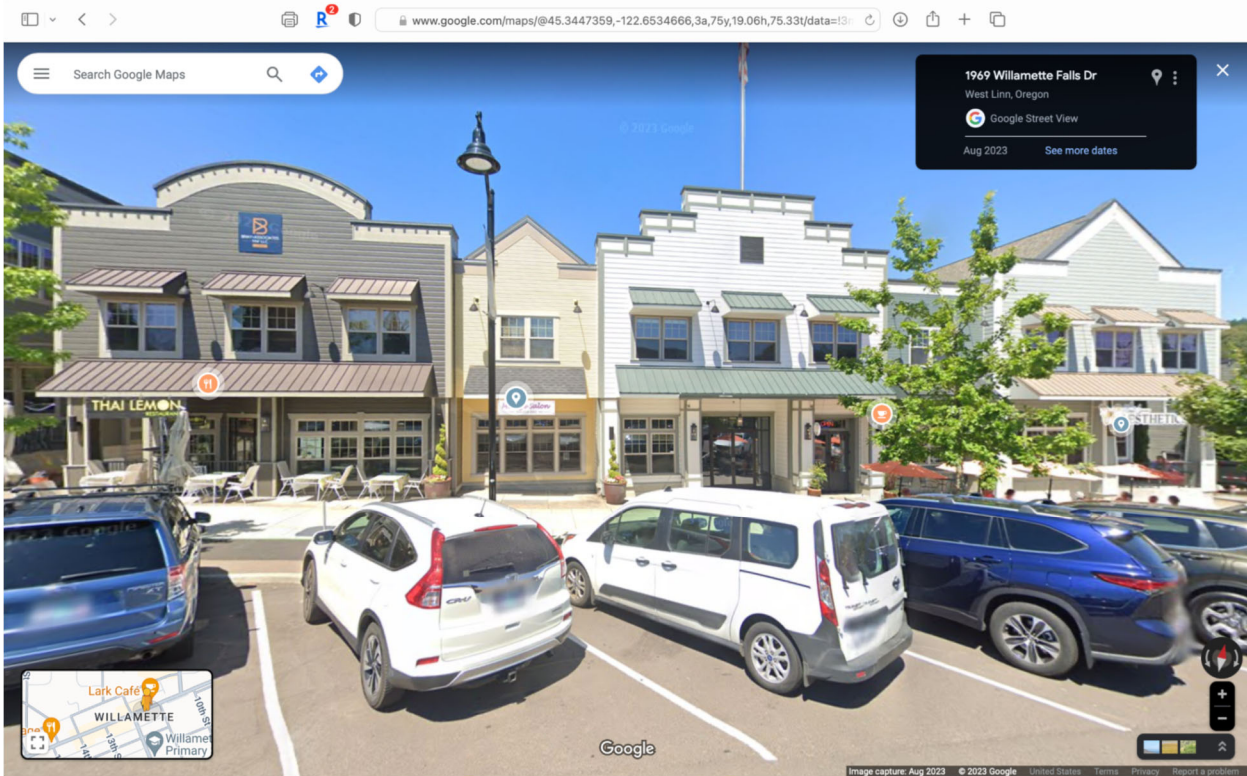
1672 Willamette Falls Drive – built in 1990. False front hides a gabled half-story with no pediment windows.



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



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



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

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



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



CITY OF West Linn

Memorandum

Date: April 12, 2024

To: Mayor Bialostosky, Mayor
West Linn City Council

From: Darren Wyss, Planning Manager

Subject: Public Comments Received for AP-24-01 (Icon Commercial Building)

Between the publishing of the AP-24-01 Appeal Hearing Packet on April 4, 2024, which included two public comments as Attachment 4, and today at 5:00pm, the City received two additional written comments. The comments are attached.

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

As always, please contact me with any questions at dwyss@westlinnoregon.gov or 503-742-6064.

Please accept this testimony for the record. Let me know if the pictures don't come through. I tried to send the word file but it said it was too large to attach with the pictures.

Dear City Council:

Please accept my testimony for AP-24-01. I am writing on behalf of myself, not any affiliated group or organization. I am writing in support of the application, in opposition of the appeal.

The main issues cited are the "3rd story" concern and the potential noise issues.

First let's look at the code's definition of a "story" (CDC Chapter 2) it states:

"Story. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above..."

The key here is the "ceiling or roof". The topmost story ends at the roof. Our code does not have a "roof" definition, so we go to Websters:

"Roof: The cover of a building"

There will be an entire roof that covers that topmost floor (2nd floor), and the patio is on top of that "roof". Thus, a rooftop patio does not meet the definition of a "story" per code our code definition. There is no "ceiling" or "roof" closing off the patioed area to make it a "story". It has side walls, but side walls do not make it a story. The "roof" or "ceiling" is what makes it a story per our code. There is no ceiling or roof above the patio. Thus, it is not a "story".

Also, just because there are storage areas that may have roofs does not make it a story. I walked the street. There are several buildings on Willamette Falls Dr. that have "storage" areas on top of the 2nd floor roof. These were not considered to be "stories" when they were built. So why are we arbitrarily calling this a "story" now? The fire station was a more recent building. You can see in this picture it clearly has a storage area on top of the 2nd story.



One thing our code is not clear about is whether an “attic” is a story or not. An “attic” space has a roof over it so it could be considered a story. Our code does not define an attic space. However, in the past, attic space has not been considered to be a third story as several buildings on the street have habitable attic spaces, and they were allowed to be built per the two-story code.

Take for instance the building across the street from the Ale and Cider house. This has occupied attic space which could be considered a 3rd story by the definition of a story. They have stairs that go up to that attic space and it is occupied by a business, so it is indeed a “habitable” space.



I also walked the alley and the building next to Cooperstown also shows a potential 3rd story attic area. The “3rd story” has a window so I’m assuming it is being used as a habitable space.



If neither storage spaces nor attic spaces were considered a “story” in past building applications, why would an open “roof top patio” with no “ceiling” be a “story” in this case? If it is not a story, then this building meets the two-story code.

Likewise, if there was just the storage space with no proposed patio, we would not be having this discussion. The simple fact that there people will be able to use it make it a story? This is just not a good interpretation of the code.

HRB (Historic Review Board) argued that because there was an elevator and stairs to the roof made it a “story”. Again, the buildings shown above have access and enclosed habitable space, yet the HRB did not interpret them to be a 3rd story when they were built. This is just an inconsistent interpretation of the code.

There is also the building next to Cooperstown. There is a door that goes out to a small patio. While technically on the 2nd story, you can see that “outdoor patios” can come in all shapes and sizes.



Which begs the question, if the proposal had just a patio this large (say 5x5 space), would it be a “story”? If the answer is “no”, then it is not a story.

This is the back of another building (I think it is the back of the Saloon):



You can see they have a door that goes on to the roof of that little accessory structure. Is that accessory building two stories? Under the HRB's interpretation of the code, if it has stairs and access to it, it must be a “story”. You can hopefully see that just because there is “access” to the roof, doesn’t make it a story. If you added patio furniture on top of this roof, it likewise wouldn’t make it “habitable” space. It would still just be a “rooftop”.

Let’s look at “habitable”. Again, I’ll go back to our code. It says this:

“Habitable floor. Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a habitable floor.”

This is not a “habitable” floor. Nor are the storage buildings on top “habitable” space. It is not “habitable” space, I would also argue it is not a story. In the appellant’s brief, they didn’t use the word “habitable”. They used “human occupancy”. Going back to our code, all the definitions in our code that reference “human occupancy” refer to living spaces. Accessory Dwelling Unit (ADU), Dwelling Unit, Manufactured Home, Group Residential, Mobile Home, all these that mention “occupancy” have the “working, sleeping, eating, cooking” areas. Again, a rooftop patio with no place for sleeping, eating, or cooking is not fit for “human occupancy”. Perhaps the appellant may be confusing “occupancy” as it relates to fire code (how many people can occupy a space at one time). Our building code in referencing whether something is a story has to do with “living space” (whether it is fit for someone to live there). It does not have to do with whether someone can “access” a space and “occupy” it temporarily. Again, my examples of the patios above, no one would consider these to be “living” or “habitable” spaces. This is why I can’t understand the interpretation of the code with this building.

To think of this another way, if this was a home, and you had a “rooftop patio” on top of the house (you see this a lot at the coast), you cannot count that patio in the square footage of the home. The way homes are appraised, only the “habitable” square footage is allowed to be considered when you buy a home. If you built on a “screened in patio” on your house, this likewise, per real estate appraisal guidelines cannot be included in the square footage (unless it has heat going to it). Likewise, a garage is not considered “habitable” space (again unless it is built with heat to it). So even a fully enclosed space (which this is not) is not considered to be “habitable” unless it is “livable”. So, in all these real-world examples, this rooftop patio as being proposed would never be considered included in square footage of the building so why should it be considered a “story” in this case?

To look at it another way, what if the applicant was proposing a rooftop garden instead of a patio? It would still have elevator access, “structures” in the form of a “greenhouse” and presumably a chair or two to sit down and take a break. Would that be approved? I’m sure if it was a rooftop garden, there would be less pushback from the neighbors. But does the simple fact that it will have patio furniture with people sitting and socializing instead of having plants make it a story?

Moving on to the appellant’s concern about the Conditions of Approval. As staff mentioned in the Planning Commission hearing, outdoor seating is allowed by the code. If a restaurant went into the building, for instance, it could have outdoor seating on the side or even the backside of the building right next to these neighbor’s driveways. Why would we regulate a rooftop patio based on noise if we don’t regulate the street level outdoor patio seating noise? (Side note: I don’t believe we ever implemented that “sidewalk café” code EDC helped work on. That could regulate things like noise and shielding of noise for outdoor dining. If rooftop patio noise needs regulation, it should be done via the sidewalk café code, not the building code).

Similarly, we don’t consider outdoor patio space that all the restaurants have now “habitable” space? So why does the simple fact that the outdoor patio space is placed on top of a roof

suddenly make it “habitable” space as the neighbors are implying and need additional conditions for noise? The uses proposed for the building are allowable “outright” per the code. They are not proposing any use that requires a “conditional use” permit. While I feel like the Planning Commission’s conditions were reasonable, I do also feel that it wasn’t their purview to impose this since the uses being considered for this property are uses that are allowed outright in the code, and there are no proposed tenants right now.

The applicant has tried really hard to accommodate the neighbors. The applicant has made the patio in the center of the building, away from the neighbors. Originally the outdoor space was to be possibly used for a restaurant. I personally feel this is a great use of the space. We need more commercial space in the city. Most cities have 40% or more of their land dedicated to commercial uses. We have something like 4%. We desperately need this building to bring more businesses and local jobs to the city. Likewise, something like a rooftop patio would bring additional customers to the area, which is important for all the downtown area business. Having more customers makes it better for all types of businesses. I’m sad this is no longer being considered but appreciate that the owners are willing to compromise with the neighbors. The current proposed use is passive, with people working in the building wanting to get some sunshine or an occasional gathering may be possible. I don’t know how this could possibly be any louder than again having outdoor dining on the back or side of the building which is allowable whether there is a rooftop patio or not.

We also have noise ordinances that will limit the noise to a reasonable decibel level, and within certain hours. (or again sidewalk café code could further restrict this). If the building tenants start to surpass that noise level or hours, the city has recourse to control this with the municipal code. But you cannot restrict the applicant from building simply because you are worried there will be noise without proof there will be noise. If they were building a factory, for instance, you would then have proof there will be noise that exceeds a certain decibel level. In that case it would be reasonable to add conditions of approval regarding noise. But without any known tenants for the building, there is no reason to assume that the uses of this building will be any louder than it is currently with outdoor dining already going on in the zone. Also, as mentioned, our zoning code has the “outright uses” allowed because they create a reasonable amount of noise. Things that create more noise would have to go through the “conditional use” process. But right now, there are no tenants. The applicant has stated that the patio won’t be used for a restaurant. So having people that work in the building go up to the patio to get some Vitamin D and mingle can’t possibly be enough noise to warrant denying a property owner the right to build.

I will also point out that the neighbors appealed this application on their own. There was not enough support I’m assuming with the Willamette Neighborhood Association to warrant the WNA filing an appeal at no charge. Thus, the issues lie solely with the few neighbors who decided to build a home that backs up to a commercial district. Those homes were built recently or added on to recently. I remember when there were nice large lots with small homes and beautiful trees there before. I did not complain when they destroyed the beauty of my neighborhood with their gigantic homes with no yards. Likewise, they cannot take away another

property owner's rights simply because they don't want a big building there. If you decide to build a home that backs to a commercial district, you must expect there will be some level of noise associated with living there. I live across the street from a school and a block from a park. I expected when I purchased my home that noise would be part of my daily life.

My business is also located directly across the street from the building this will be attached to. When the applicant built the last building, they knocked out my internet several times. The building of the underground parking lot shook my building and knocked down some of my displays breaking things in the process. However, I still want this building to be built knowing that I will probably experience the same issues during construction. Overall, we need more places for businesses. It is a minor inconvenience to spur economic development of the area.

I urge you to deny the appeal and approve this building application. There is just no good interpretation of the code to warrant denial of this application, and it would be unfair considering the precedence set by other buildings in the area that have attic or storage spaces already existing on the top of their two-story buildings.

Thank you as always for your service.

Shannen Knight
West Linn resident and Business Owner

Wyss, Darren

From: A Sight for Sport Eyes [REDACTED]
Sent: Thursday, April 11, 2024 6:10 PM
To: Wyss, Darren
Subject: Additional testimony for AP-24-01

CAUTION: This email originated from an External source. Do not click links, open attachments, or follow instructions from this sender unless you recognize the sender and know the content is safe. If you are unsure, please contact the Help Desk immediately for further assistance.

Darren, did you get my first testimony? I got an auto response that you were out of the office. Please add this to the record as well.

I apologize for submitting additional testimony. I just read the appellant's attorney's testimony and felt compelled to respond to this.

First, the inefficiency of the proposed screening is conjecture by the attorney. A quick Google search shows that steel screening is a good sound barrier. (more on the science [here](#))

Steel sound barrier walls are excellent products for outdoor applications. They are very effective at blocking noise from equipment of processes that need ventilation and/or cover a large area.



eNoise Control

<https://www.enoisecontrol.com> · effective-modular-abso...

[Steel Sound Barrier Walls - eNoiseControl](#)

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I would also argue that the patio in the center of the building is away from the neighbors to some extent and that in and of itself is "screening". I will also add that the original design included storage areas which would have provided extra screening that the neighbors are requesting. However, the storage sheds were removed after neighbor concerns.

The attorney also mentions CDC 55.110(D)(4):

"Businesses or activities that can reasonably be expected to generate noise in excess of the noise standards"

The key phrase here is "reasonably be expected". Again, there is no tenant and thus no "business or activity" that is "expected to generate" noise.

While we don't know how much noise an outdoor patio will create, sound travels in all directions. It is possible with the common upwind we have that the sidewalk cafe noise would actually be greater than a rooftop patio for those neighbors. The attorney is again conjecturing that the noise will be beyond municipal code limits without any proof.

For that reason I would disagree with the proposed condition #1 by the attorney. You could modify this to "any proposed tenant that wants to use the rooftop for a lounge or restaurant must have a sound study done before issuing an occupancy permit." If the rooftop lounge doesn't surpass any noise standards, then it should be allowed. But again, cross that bridge if and when it happens. Denying a building application because you are "afraid" of what may go in it is not a clear and objective standard.

Condition #2 is also an unwarranted condition. Right now their neighbor can have a party and blast speakers as long as they don't again violate the noise code. To ask that no one can use any speakers, again, when there is no proposed occupant, is just not a justifiable request. No other neighbor or business has this restriction so why would you place this restriction on a building with no proposed tenant when you don't know if it is even going to be a problem?

#3 is similar to what the Planning Commission asked for, but the additional condition of "every year" is excessive again because the city has ways to regulate with the municipal code if there are violations. Making a business have to pay for an expensive sound study every year when there are no violations is a financial burden for a business owner. It is not something you make any of the other businesses who have sidewalk cafe's do which makes it inherently unfair.

Again, the best way to deal with these kind of "what if" scenarios would be in the sidewalk café code as mentioned in my previous testimony.

As to CDC 58.080.B.3, the code does not state the building should not "look like" 3 stories. It states it cannot BE more than 2 stories. Whether or not it looks like 3 stories is irrelevant. The code does not state that the façade cannot have windows. However, I did show in my pictures examples of buildings that have actual 3rd stories and windows as well.

Going back to my first testimony, an elevator is not fit for human occupancy. As the staff found, the elevator itself is similar to the shaft and other parts that make it an elevator, not habitable space. This is a mis-understanding of what human occupancy is.

Lastly to the HRB issue. I watched all those meetings. If the applicant would have stuck with that first design that was approved by HRB, and in between the HRB and PC meeting decided that they didn't need those storage sheds and that the patio could be smaller to appease neighbors, and they could reduce the height to get it under the 35', I'm sure HRB would have not felt that they needed to re-review this application. The HRB approved essentially this same application with minor changes unrelated to historic preservation so it does not need to go back to the HRB.

Lastly, this is the attorney that represented the school district on the Athey Creek school build. I find it interesting that during the Athey Creek hearings, Ms. Richter argued that the concerns of the neighbors were irrelevant as they did not pertain to code. Somehow, though, in this application, Ms. Richter wants Council to ignore code and put incredibly harsh restrictions on this property owner and future business tenants due to neighbor concerns. Athey Creek project was a "conditional use" permit so the voices actually did matter in that application as part of a conditional use permit is that you have to fit the needs of the community. This application is a "permitted outright" use being

proposed. The code trumps neighborhood concerns as outright uses are not subjective like the condition uses are.

I will agree with one thing with the neighbors. The lighting from the current building is excessively bright. The property owner could generate some goodwill by reducing the wattage of bulbs or the number of lights on the backside of the building, or turning the lights off completely after 2am.

Thank you again for letting me submit additional testimony.

Shannen Knight

A Sight for Sport Eyes 1553 11th St. West Linn, OR 97068 www.sporteyes.com 888-223-2669



CITY OF West Linn

Memorandum

Date: April 15, 2024

To: Mayor Bialostosky, Mayor
West Linn City Council

From: Darren Wyss, Planning Manager

Subject: Public Comments Received for AP-24-01 (Icon Commercial Building)

Between 5:00pm on Friday, April 12, 2024, and the written comment deadline of noon on Monday, April 15, 2024, the City received one additional public comment. The comment is attached.

Public comment and testimony already received by Council includes:

1. Two public comments included in the [Council Public Hearing Agenda Packet \(Attachment 4\)](#).
2. [Appellant Testimony](#) (emailed to Council on 04.12.2024)
3. [Applicant Testimony](#) (emailed to Council on 04.12.2024)
4. [Public Comment Memo with two comments](#) (emailed to Council on 04.12.2024)

As always, please contact me with any questions at dwyss@westlinnoregon.gov or 503-742-6064.

Wyss, Darren

From: Mollusky, Kathy
Sent: Monday, April 15, 2024 8:22 AM
To: Floyd, John; Wyss, Darren
Cc: Schroder, Lynn
Subject: FW: Please include this email in the testimonies 4/15

From: [REDACTED]
Sent: Sunday, April 14, 2024 6:18 PM
To: City Council <citycouncil@westlinnoregon.gov>; Mollusky, Kathy <kmollusky@westlinnoregon.gov>
Subject: Please include this email in the testimonies 4/15

CAUTION: This email originated from an External source. Do not click links, open attachments, or follow instructions from this sender unless you recognize the sender and know the content is safe. If you are unsure, please contact the Help Desk immediately for further assistance.

PLEASE DO NOT ALLOW A 3RD STORY BUILDING IN DOWNTOWN

I received this information tonight.

The Historic Review Board (HRB), which is responsible for ensuring that designs follow the Design District's requirements, denied the request for a third story. But the developer kept the rooftop deck and features that constitute a third story, including stairwell access, an elevator stop, and a lobby. Additionally, the design includes three tiers of windows instead of using the "Western False Front" architecture that is required by code. The developer never submitted this design to the HRB, despite the HRB's responsibility for design review.

After learning this information I can only surmise the developer is trying to pull a fast one! Shame on THEM!!

The HRB said no. No means NO.

Don't let them now come to you and try to get a yes. The codes are there for a reason.

Thank you for protecting our town.

Sincerely,
Debbie Spellecy

Kathy Mollusky
City Recorder
Administration

[#6013](#)



Please consider the impact on the environment before printing a paper copy of this email.
This e-mail is subject to the State Retention Schedule and may be made available to the public



CITY OF
**West
Linn**

City Council

Appeal of DR-23-01 (Icon Commercial Building)
1919/1949 Willamette Falls Drive
AP-24-01

April 15, 2024

Appeal of DR-23-01



- ✦ Appeal of Planning Commission approval of a new commercial building at 1919/1949 Willamette Falls Drive
- ✦ Basis of Appeal:
 - Facilities for rooftop access (Elevator lobby and enclosed stairwell) exceed the two-story height limit
 - Insufficiency of Condition of Approval No. 10 (Noise Study)
 - Council should remand to Historic Review Board



DR-23-01: Project Description

- 🍃 Demolition of two existing commercial buildings
- 🍃 New 29,000 SF commercial building
 - No specific uses proposed in the application
 - Rooftop Deck
- 🍃 Alley & underground Parking (voluntary)
 - Access from existing garage on 11th Street
 - 33 automobiles / 14 bicycles





Procedural Requirements



- 🍃 Class II Design Review
- 🍃 Historic Review Board (HRB)
 - Provides recommendation to Planning Commission for Class II Design Reviews within WFDCDD (99.060.D)
 - Final Authority for Design Exceptions in WFDCDD
- 🍃 Planning Commission (PC)
 - Approval Authority (99.060.B.2)

Procedural History



- 🍃 **June 13** – HRB Recommends Approval / Defers to PC on Building Height
- 🍃 **Aug 15 / Sep 13** – First Applicant Revision - Removes Design Exception for support posts in sidewalk / Proposes new Design Exception to exceed two-story height limit
- 🍃 **Oct 4** – PC Remands to HRB
- 🍃 **October 23** – Second Applicant Revision
- 🍃 **Nov 14** – HRB Denies Design Exception for Height
- 🍃 **Jan 29** – Applicant withdraws Design Exception for Height / Third Design Revision
- 🍃 **Feb 21** – Planning Commission Approval

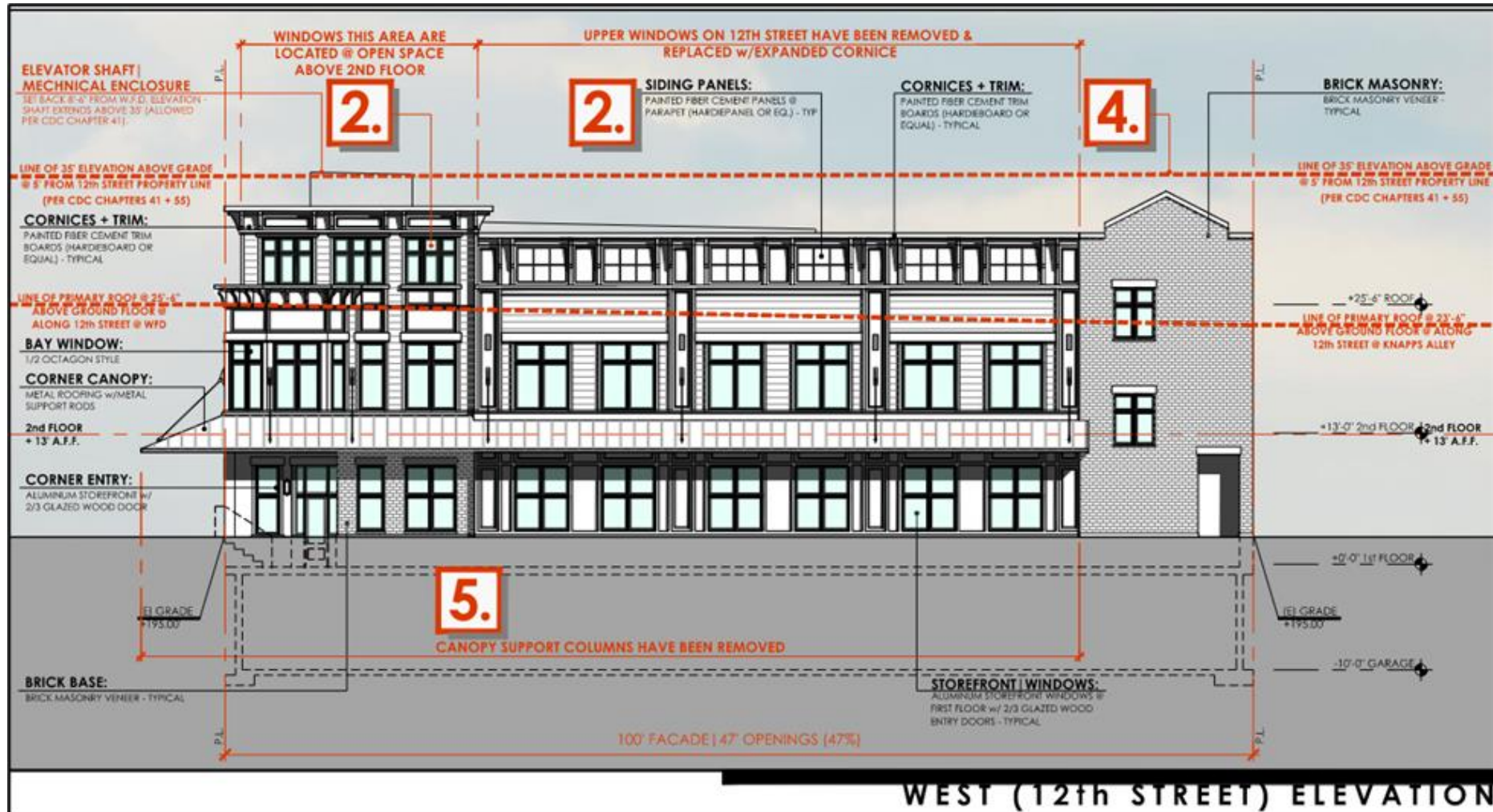
Planning Commission Approval



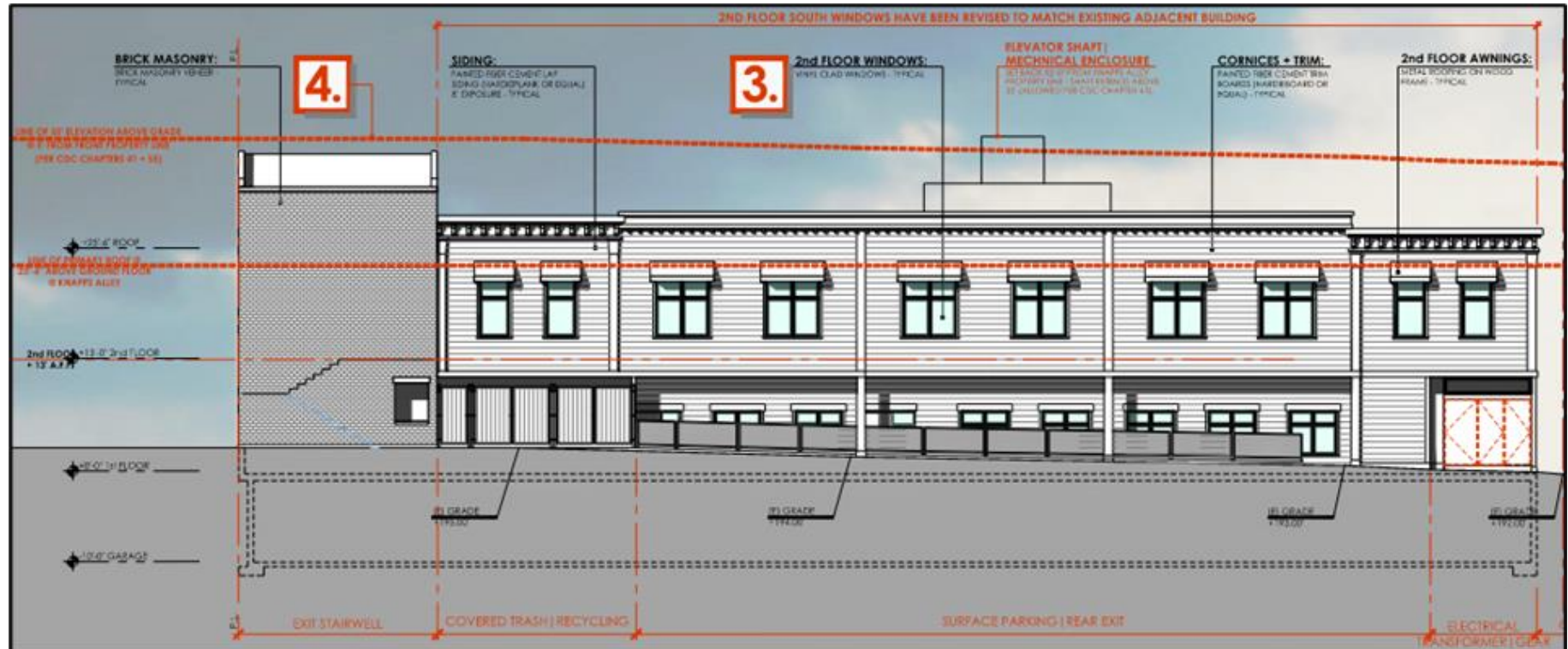
- ✦ Planning Commission approved with a 4-0 vote
- ✦ Deliberations focused on building height and potential noise/light impacts
- ✦ Conditions of Approval include mitigations for potential light and noise impacts



Façade from 12th Street



Façade from Knapps Alley

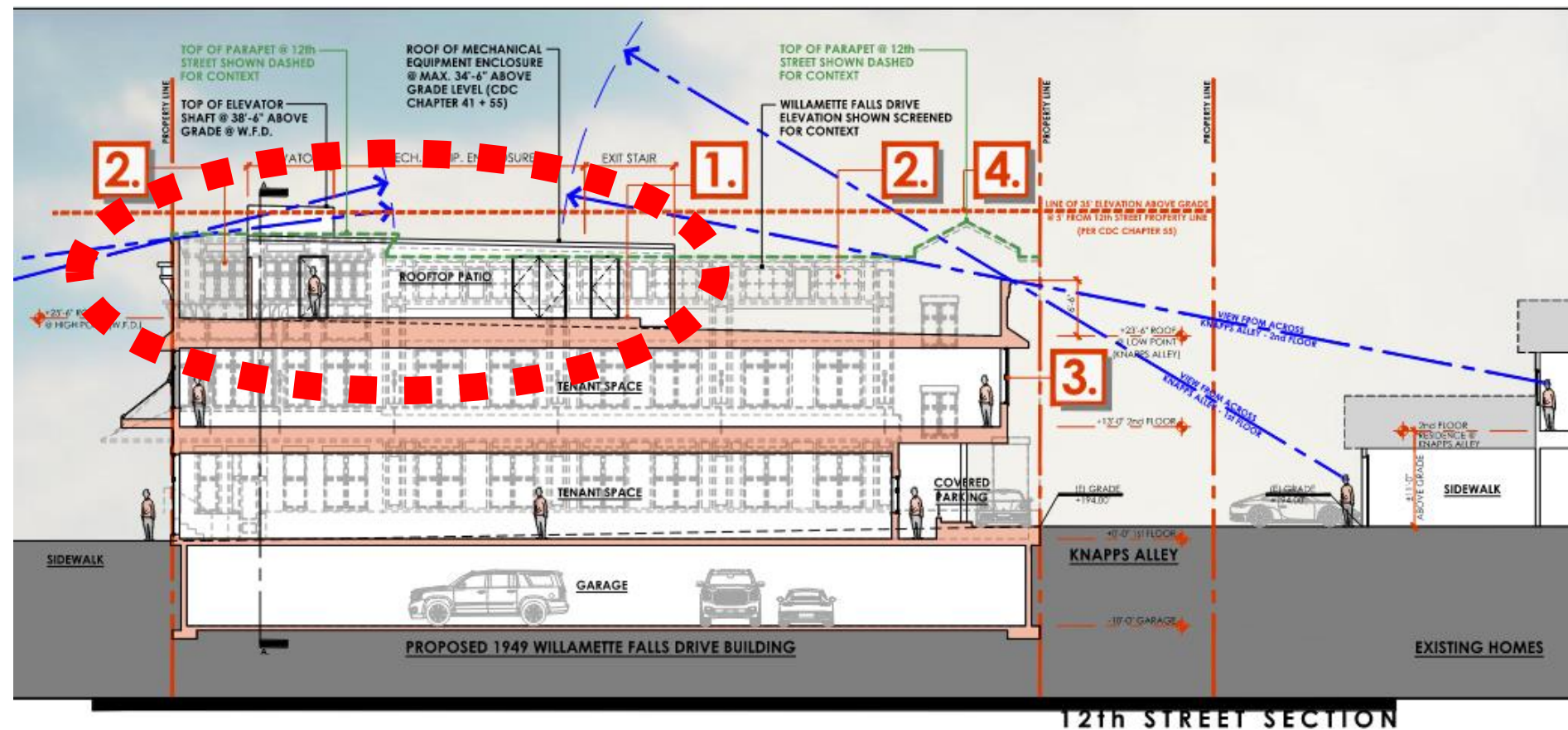


3

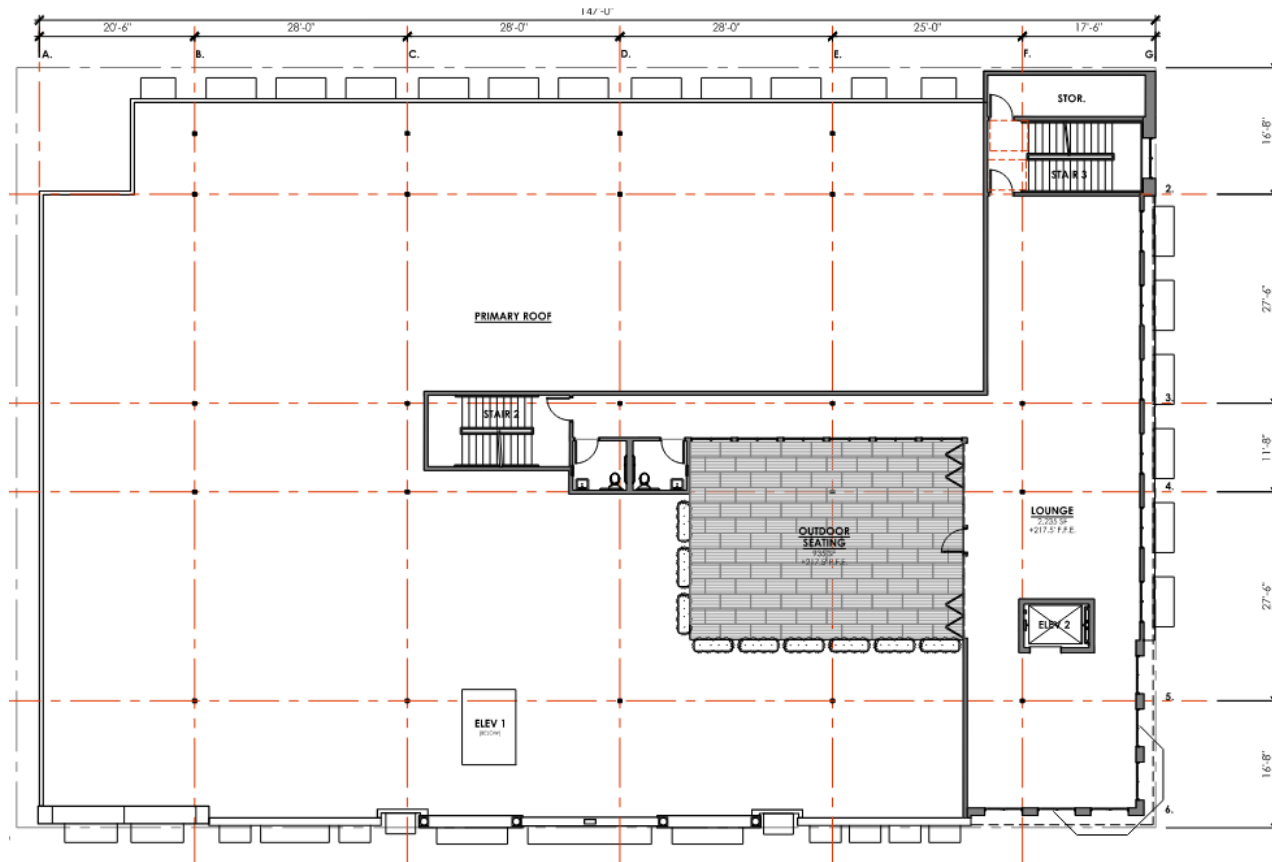
ROOF PLAN + KNAPPS ALLEY ELEVATION

CONCEPTUAL PLANS + ELEVATIONS

Building Cross Section

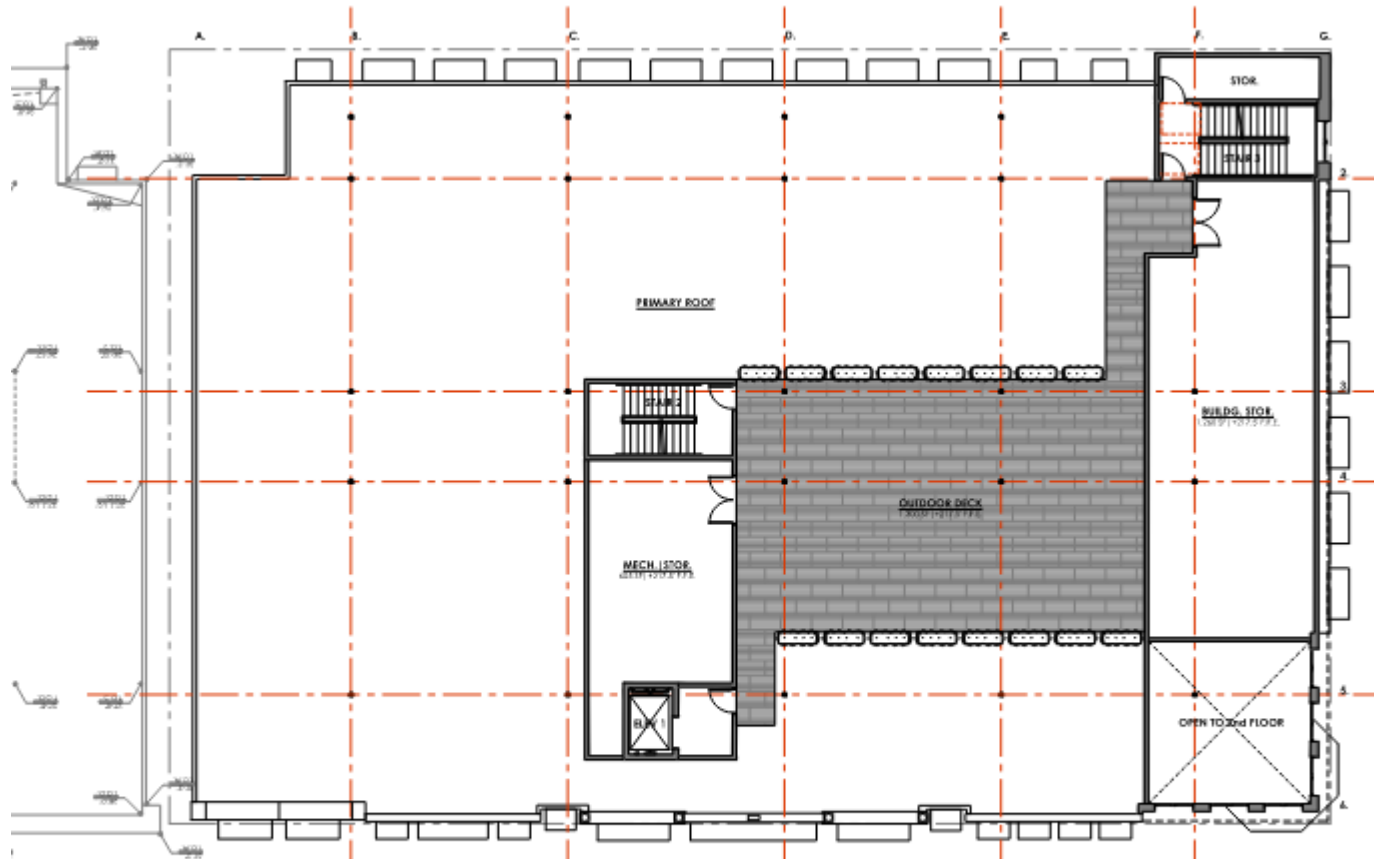


Original Rooftop Proposal



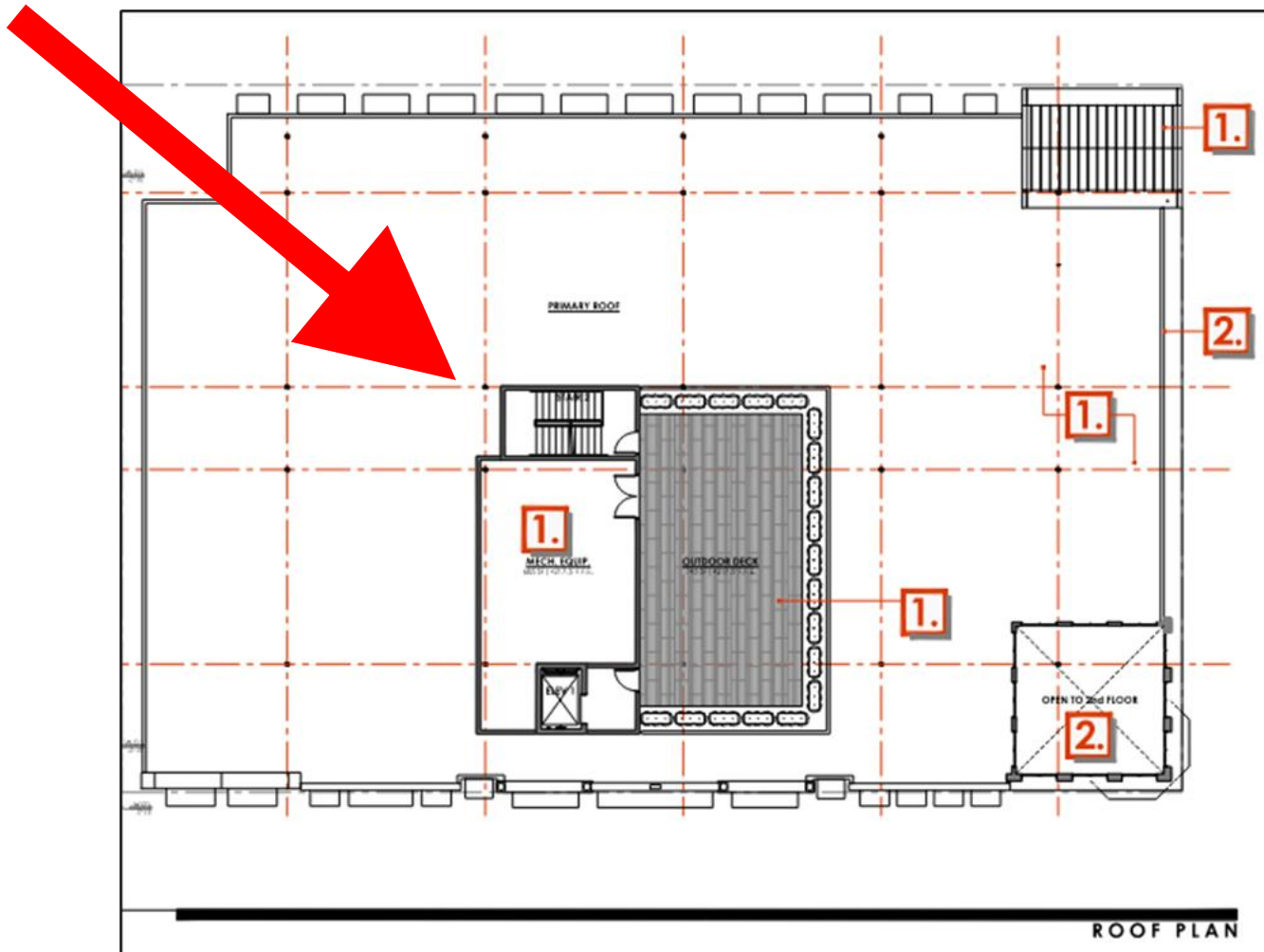
MEZZANINE | ROOF PLAN

Revised Proposal Denied by HRB

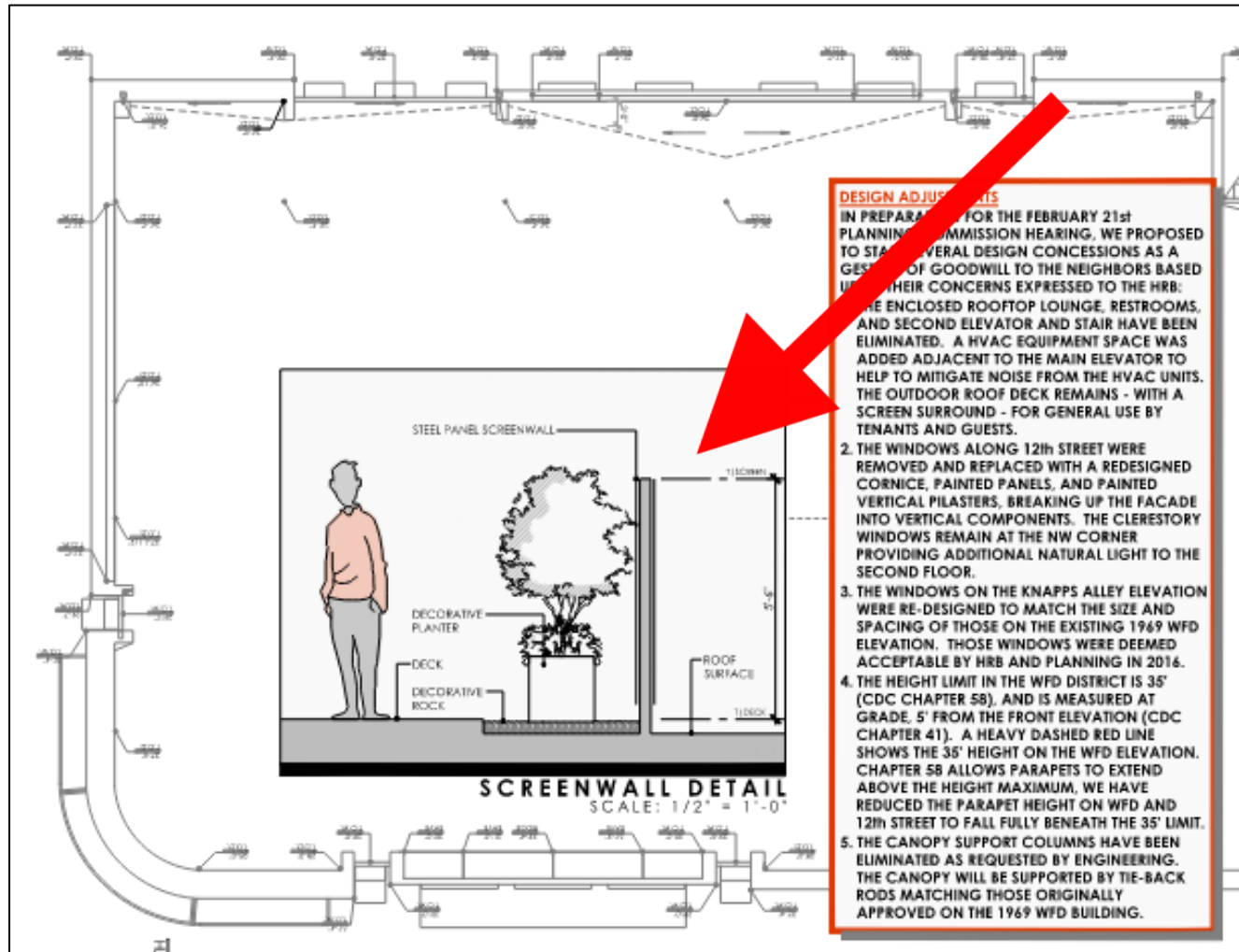


ROOF PLAN

Approved Rooftop Deck Design



Deck Screenwall





Basis of Appeal 1: Height Limit

- Appellant requests the following changes:
 - *“The upper story windows and panels shall be removed and replaced with a true false front pediment. If any windows are included, they shall be significantly smaller than the double hung windows below and resemble historic attic vents.”*
 - *“The elevator lobby and enclosed stairwell shall be removed.”*
 - *“Except for that portion of the elevator housing the cables and motorized equipment, no portion of the stairwell, parapet, or other portion of the building may exceed 35 feet above grade.”*



Basis of Appeal 1: Height Limit

- ✦ *“41.030 PROJECTIONS NOT USED FOR HUMAN HABITATION
Projections such as chimneys, spires, domes, elevator shaft
 housings, towers, aerials, flag poles, and other similar objects
not used for human occupancy are not subject to the building
height limitations of this code.”*
- ✦ *“Human Occupancy” is not defined in CDC*



Basis of Appeal 2: Noise Condition

- ◆ ***Condition of Approval 10 - Noise Study.*** *The applicant shall submit a noise study upon 50% of the total floor area of the building being occupied. Subsequent to the first noise study the applicant shall submit a new noise study, not more than once per year, in response to a noise complaint associated with the rooftop deck. The noise study must address the provisions of West Linn Municipal Code Chapters 5.487(3) and be conducted in July or August.*



Basis of Appeal 2: Noise Condition

🌿 ***Requested Revisions by Appellant:***

- *“Rooftop lounge shall not be used by retail customers for the consumption of food or beverages purchased onsite.”*
- *“Except for small, handheld, blue tooth speakers, no amplification of sound within the rooftop lounge is permitted.”*
- *“When the total building occupancy reaches 50% and the rooftop lounge is fully improved for occupancy, the applicant shall submit an acoustic study completed by a licensed, professional engineer evaluating the noise levels for compliance with [WLMC] 5.487(3) when deck is fully occupied on a date and time that occupancy is reasonably expected to occur...”*



Basis of Appeal 2: Noise Condition

🍃 CDC 55.100.D.4:

“If the decision-making authority reasonably believes a proposed use may generate noise exceeding the standards specified in the municipal code, then the authority may require the applicant to supply professional noise studies from time to time during the user’s first year of operation to monitor compliance with City standards and permit requirements.”



Basis of Appeal 3: Remand to HRB

- Four Hearings / Three Revisions to Application
- Approved design included modifications not subject to review by the Historic Review Board (HRB)
- Appellant requests remand to HRB for their review and recommendation



Basis of Appeal 3: Remand to HRB

- ❖ CDC lacks clear guidance on how to process modifications between HRB Recommendation and PC Decision
- ❖ CDC guidance limited to modification of approved projects (CDC 55.030, 55.050, 99.120)
- ❖ Planning Staff encouraged applicant to withdraw and resubmit to simplify the record
- ❖ 120 Day limit expires May 1, 2024 – Council must take final action by April 29.

Public Comments



- 🍃 Katie Hunter
- 🍃 Ed & Roberta Schwarz
- 🍃 Shannen Knight
- 🍃 Debbie Spellecy

Conclusion



🍃 Questions?

Definition of Story



🍃 CDC Definition:

“Story. *That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above...”*



HRB Recommendation - 6.21.23

- Deliberations focused on definition of story vs mezzanine, rear window design, and the use of support columns for awnings
- Recommendation defers height issue to Planning Commission
 - “Recommend Approval of DR-23-01, as presented, with a recommendation of further analysis of the ‘mezzanine area’ by the Planning Commission.”
- Approval on 3-2 Vote (Watton recused)

First Applicant Modifications



- Plans revised in response to HRB feedback:
 - Modification of rear window design
 - Removal of support pillars in sidewalk
 - New Design Exception to exceed two-story limitation
 - Replacement of third-story lounge & restrooms with two rooms for building storage / mechanical equipment
 - Replacement of third-story windows with opaque panels

Planning Commission – 10.4.23



- Application remanded back to Historic Review Board in response to written testimony
- CDC grants sole approval authority to HRB

HRB Denial – 11.14.23



- ✦ HRB considered revised design and denied Design Exception to exceed two stories:
 - Approval criterion 58.090.A not satisfied - historical precedence had not been demonstrated for the proposed deviation.
 - Approval Criterion 58.090.B not satisfied - the proposed design did not incorporate exceptional 1880-1915 architecture that demonstrated superior design, detail, or workmanship to a degree that overcompensated for the height deviation.

Modifications of 01.29.24



- ✦ Applicant withdraws Design Exception to exceed two-stories
- ✦ Additional Revisions:
 - Elimination of Lounge/Storage Rooms (third story)
 - Rooftop deck is reduced and relocated away from homes
 - Enclosed Mechanical Equipment Area remains
 - Access reduced to a single stairwell and elevator with lobby

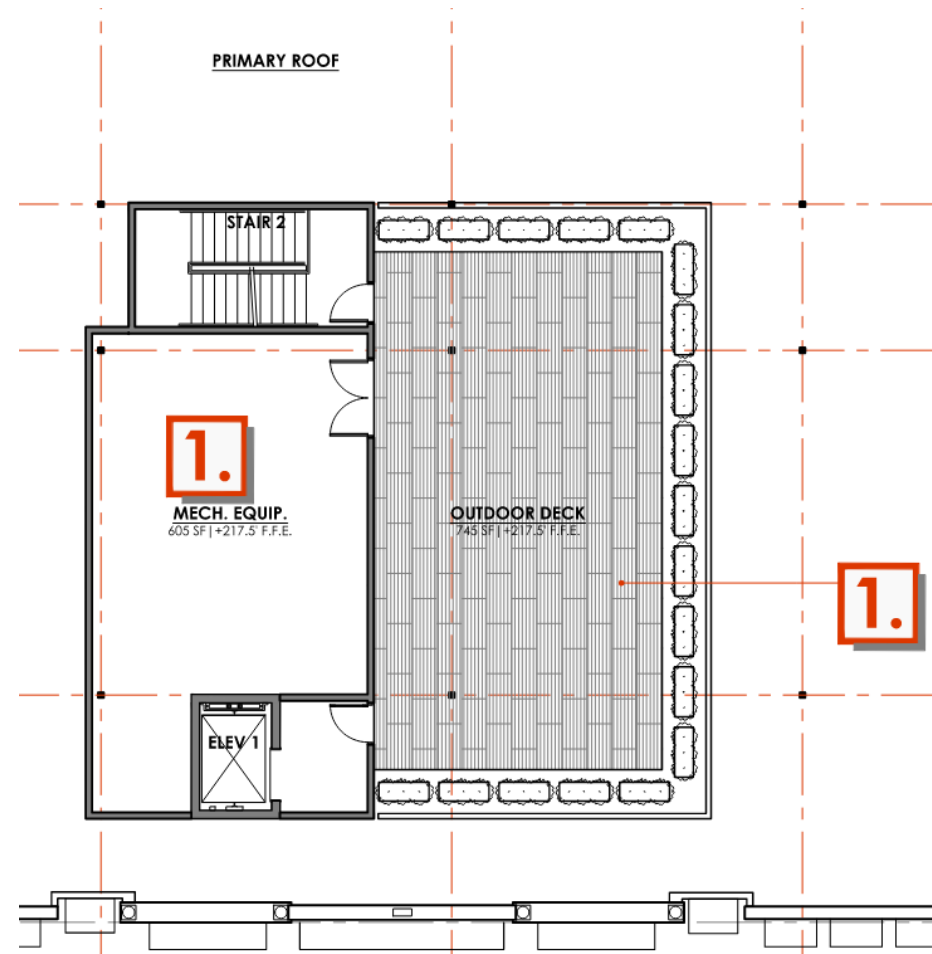
Modifications of 01.29.24



DESIGN ADJUSTMENTS

IN PREPARATION FOR THE FEBRUARY 21st PLANNING COMMISSION HEARING, WE PROPOSED TO STAFF SEVERAL DESIGN CONCESSIONS AS A GESTURE OF GOODWILL TO THE NEIGHBORS BASED UPON THEIR CONCERNS EXPRESSED TO THE HRB:

1. THE ENCLOSED ROOFTOP LOUNGE, RESTROOMS, AND SECOND ELEVATOR AND STAIR HAVE BEEN ELIMINATED. A HVAC EQUIPMENT SPACE WAS ADDED ADJACENT TO THE MAIN ELEVATOR TO HELP TO MITIGATE NOISE FROM THE HVAC UNITS. THE OUTDOOR ROOF DECK REMAINS - WITH A SCREEN SURROUND - FOR GENERAL USE BY TENANTS AND GUESTS.



Design Exception Language



58.090 DESIGN EXCEPTION PROCEDURES

In those circumstances where a design proposal cannot meet the standards, or proposes an alternative to the standard, the Historic Review Board may grant a design exception in those cases where one of the following criteria is met:

- A. The applicant can demonstrate by review of historical records or photographs that the alternative is correct and appropriate to architecture in the region, and especially West Linn, in 1880 – 1915.*
- B. The applicant is incorporating exceptional 1880 – 1915 architecture into the building which overcompensates for an omission, deviation, or use of non-period materials. The emphasis is upon superior design, detail, or workmanship.*

Proposed Colors/Materials



1949 Willamette Falls Drive
DR-23-01
Color and Materials Board
(Physical Samples Delivered to Planning Office)



Proposed Colors/Materials



1949 Willamette Falls Drive Proposed Commercial Mixed Use Building

Willamette Falls Drive & 12th Street, West Linn, Oregon

NOTE: THE COLOR PALETTE SHOWN BELOW ARE REPRESENTATIVE ONLY. SELECTED FROM THE AMERICA'S HERITAGE HISTORICAL COLORS COLLECTION BY SHERWIN WILLIAMS. ACTUAL BUILDING COLORS WILL BE SELECTED FROM THE FULL LINE OF THIS COLLECTION.

			PALETTE: ANTIQUE WHITE BODY: SW 9119 ANTIQUE WHITE TRIM: SW 2842 ROYLCROFT SUEDE ACCENT 1: SW 7012 CREAMY ACCENT 2: SW 0048 BUNGLEHOUSE BLUE
			PALETTE: COLONIAL REVIVAL GREEN STONE BODY: SW 2826 COLONIAL REVIVAL GREEN STONE TRIM: SW 2842 ROYLCROFT SUEDE ACCENT 1: SW 7012 CREAMY ACCENT 2: SW 0048 BUNGLEHOUSE BLUE
			PALETTE: COLONIAL REVIVAL STONE BODY: SW 2827 COLONIAL REVIVAL STONE TRIM: SW 2829 CLASSICAL WHITE ACCENT 1: SW 6158 WICKEN BLACK ACCENT 2: SW 2802 ROCKWOOD RED
			PALETTE: DOWNING SLATE BODY: SW 2819 DOWNING SLATE TRIM: SW 2814 ROCKWOOD AND QUE GOLD ACCENT 2: SW 2807 ROCKWOOD MEDIUM BROWN
			PALETTE: DOWNING STONE BODY: SW 2801 DOWNING STONE TRIM: SW 2851 SAGE GREEN LIGHT ACCENT 1: SW 2846 ROYLCROFT BRONZE GREEN ACCENT 2: SW 0030 CLASSIC LIGHT BUFF
			PALETTE: NEEDLEPOINT NAVY BODY: SW 0032 NEEDLEPOINT NAVY TRIM: SW 0030 CLASSIC LIGHT BUFF ACCENT 1: SW 0033 NEW COLONIAL YELLOW ACCENT 2: SW 0045 ANTIQUARIAN BROWN
			PALETTE: RENWICK ROSE BEIGE BODY: SW 2804 RENWICK ROSE BEIGE TRIM: SW 2805 RENWICK BEIGE ACCENT 1: SW 0023 PEWTER TANKARD ACCENT 2: SW 2838 POLISHED MAN-OF-WAR
			PALETTE: ROYLCROFT MIST BEIGE BODY: SW 2844 ROYLCROFT MIST BEIGE TRIM: SW 2801 DOWNING STONE ACCENT 1: SW 7004 EXTRA WHITE ACCENT 2: SW 2801 ROCKWOOD DARK RED
			PALETTE: SHERATON SAGE BODY: SW 0014 SHERATON SAGE TRIM: SW 2802 DOWNING SAND ACCENT 1: SW 2814 ROCKWOOD ANTIQUE GOLD ACCENT 2: SW 2836 TANKARD BROWN

COLOR & MATERIAL SCHEDULE | PAINT

December 2022 | Design Review Application | Section 55.080.25

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SGA
SG ARCHITECTURE, LLC

1949 Willamette Falls Drive Proposed Commercial Mixed Use Building

Willamette Falls Drive & 12th Street, West Linn, Oregon

NOTE: THE BRICK BLENDS & AWNING FABRICS SHOWN BELOW ARE REPRESENTATIVE ONLY. THEY ARE DRAWN FROM MUTUAL MATERIALS' HISTORICAL BLEND SELECTIONS, AND FROM THE SUNBRELLA FABRIC CATALOG. BRICK BLENDS FOR THE BUILDING WILL BE SELECTED FROM THE FULL RANGE OF HISTORICAL BLENDS AVAILABLE FROM MUTUAL MATERIALS. AWNING FABRIC COLORS WILL BE SELECTED FROM THE FULL RANGE OF SUNBRELLA SELECTIONS.

BRICK BLENDS:



BRICK BLEND:
CEDAR SPRINGS



BRICK BLEND:
CLASSIC USED



BRICK BLEND:
HOMESTEAD USED



BRICK BLEND:
MADRONA SPRINGS



BRICK BLEND:
MUTUAL USED



BRICK BLEND:
OLD UNIVERSITY



BRICK BLEND:
PACIFIC HANDMOLD



BRICK BLEND:
VANCOUVER USED

AWNING FABRICS:



AWNING FABRIC:
SLATE



AWNING FABRIC:
FERN



AWNING FABRIC:
MAHOGANY



AWNING FABRIC:
MANHATTAN DUNE

COLOR & MATERIAL SCHEDULE | BRICKS & AWNING FABRICS

December 2022 | Design Review Application | Section 55.080.25

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SGA
SG ARCHITECTURE, LLC

Knapps Alley from 11th Street





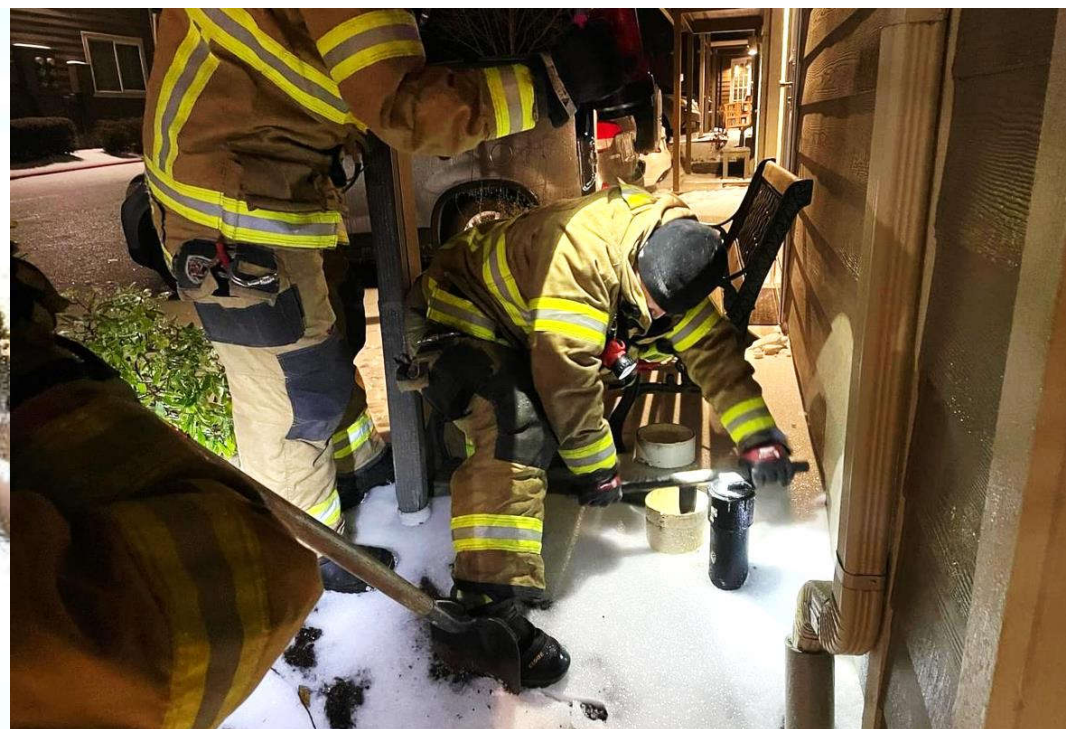
2024 STATE OF THE DISTRICT

TOPICS FOR TONIGHT

- Year in Review
- Major Emergency Operations
- EMS Update
- Bond: Training Center
- Measure 34-332







MAJOR EMERGENCY OPERATIONS

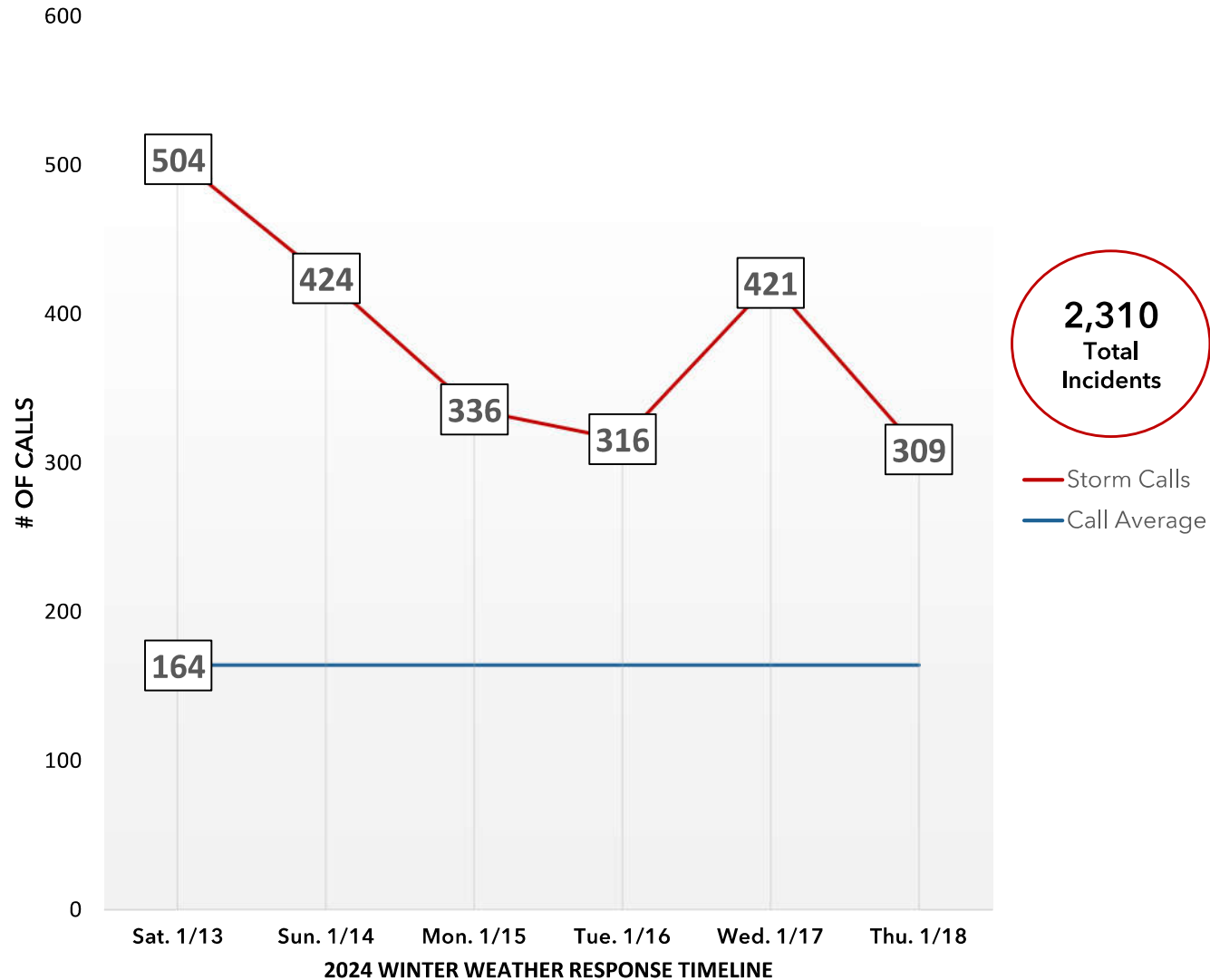
PEAK VOLUME

January 13 – 18
(Saturday to Thursday)

Top 3 Dispatch Types:

Comm. Fire Alarm (361)
Public Assist (227)
Service (198)

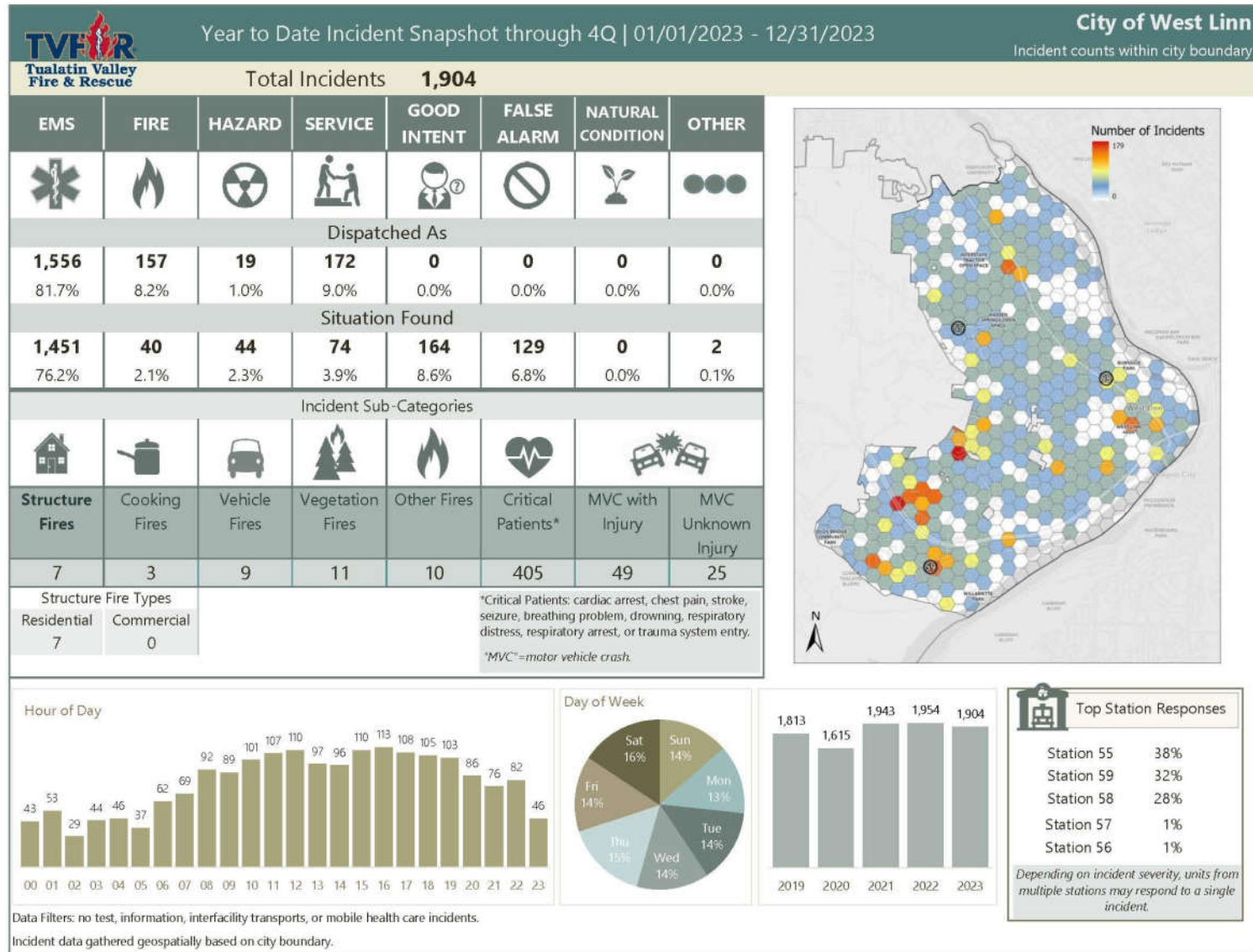
Storm Response Calls vs. 2023 Average Daily Calls



WEST LINN

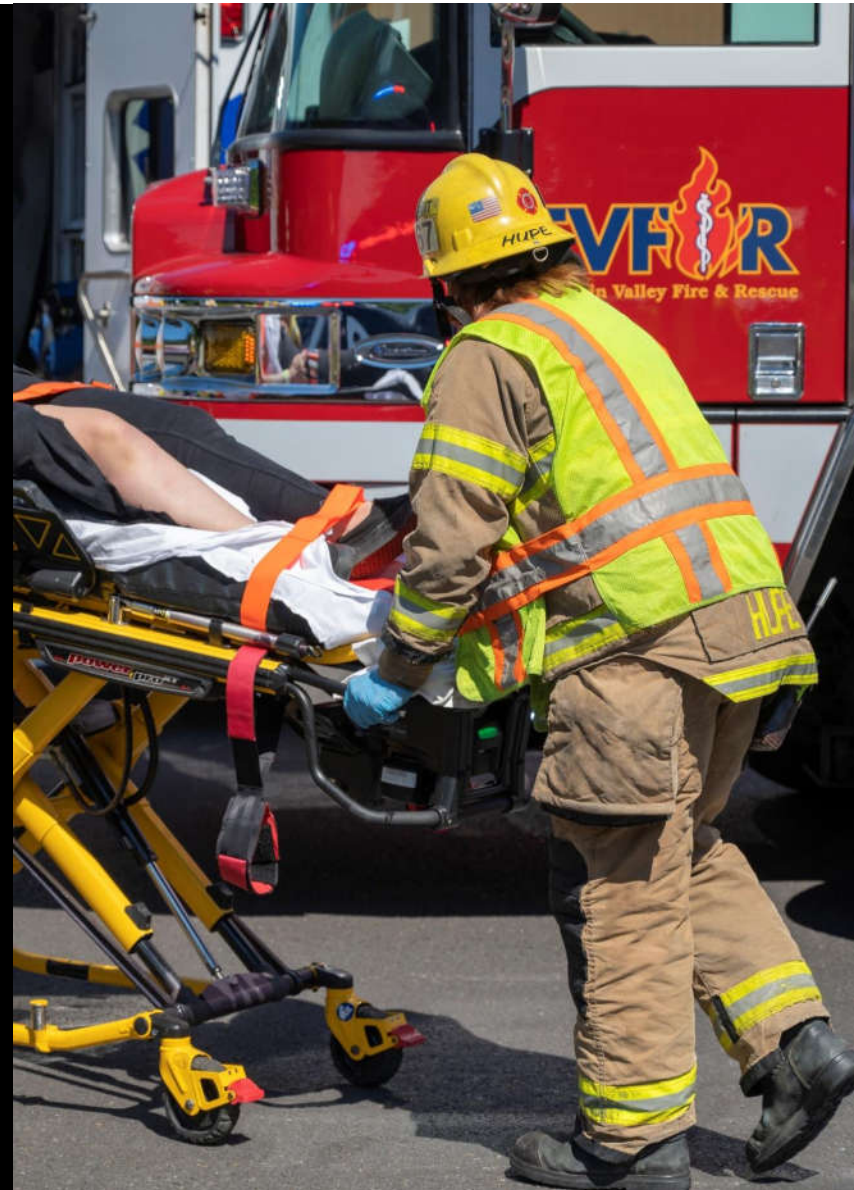
2023 Total Incidents:

1,904





EMS UPDATE





BOND UPDATE

TRAINING CENTER: RECRUIT VILLAGE





LOCAL
OPTION
LEVY

MEASURE 34-332

A group of firefighters in brown turnout gear and yellow helmets are gathered outdoors. One firefighter's back is visible with 'O'REARDON' on the vest. Another has 'TVF&R' and 'RODRIGUEZ' on the back. A third has '51' on the helmet. The background is a dense green forest.

MEASURE 34-332 LEVY AT A GLANCE

TVF&R is seeking a five-year levy for \$0.69 per \$1,000 of assessed valuation.

IF PASSED, LEVY FUNDS WILL:

- Retain existing first responders and add 36 more.
- Purchase specialized medical equipment such as cardiac monitors and defibrillators and fund critical firefighting tools.
- Purchase vehicles used to fight wildfires, shuttle water, and transport patients.

IF THE LEVY DOES NOT PASS:

- Funding for at least 92 of 450 firefighters and paramedics would be lost and staffing reductions would be required.

QUESTIONS?



Agenda Bill

Date Prepared: 4-7-2024

For Meeting Date: 4-15-2024

To: Rory Bialostosky, Mayor
West Linn City Council

Through: John Williams, City Manager *JRW*

From: Megan Big John, Parks and Recreation Director (MBJ)

Subject: Community Recreation Center Feasibility Study Phase 2 Update

Purpose:

To provide a project status and public engagement update for the Community Recreation Center Feasibility Study Phase 2.

Question(s) for Council:

None. Presentation only.

Public Hearing Required:

None Required.

Background & Discussion:

Phase 2 of the feasibility process Community Recreation Center expands on the qualitative discussion of Phase 1 by incorporating statistically representative probabilistic polling of voters as well as a participatory design process to refine the concept of a recreation center in West Linn. This phase will progress on two coordinated tracks: one focused on community engagement and the other on technical analysis. These two tracks will come together at key points, specifically for Steering Committee Workshops and Community Open House Meetings where information on the technical work will be shared and influenced through guided exercises that keep the priorities of the community as a whole and the fiscal responsibility of the City Council in mind.

Together with MIG, Inc. and OPSIS, the lead consultants for the project, 2 Steering Committee meetings and one open house have occurred to date. An overview of these events, feedback received, and ongoing schedule will be discussed.

- **Steering Committee Meetings – 6:00 PM City Council Chambers- In person**
 - Workshop 1: Program & Site Analysis – March 7th Completed
 - Workshop 2: Initial Design Options – March 21st Completed
 - Workshop 3: Preferred Design Option – April 25th
 - Workshop 4: Cost Estimate & Final Design – May 16th

- **Open House Events – 6:00 PM location Adult Community Center- In person**
 - Open House 1: Program, Site, Initial Concept Design Options – April 4th Completed
 - Open House 2: Refined Design & Cost Estimate – May 23rd
- **PRAB and then City Council Formal Presentations**
 - Presentation 1 – PRAB April 11th & Council April 15th
 - Presentation 2 – PRAB May 30th & Council June 10th
- **Polling (Statistically Valid)**
- **Online Questionnaire**
- **Next outreach meeting scheduled:**
 - Youth Action Council (YAC) April 16th

Budget Impact:

Project status and engagement presentation only.

Sustainability Impact:

N/A for this portion of the project.

Council Options:

None. Presentation only.

Staff Recommendation:

None. Presentation only.

Potential Motion:

None. Presentation only.

Attachments:

N/A

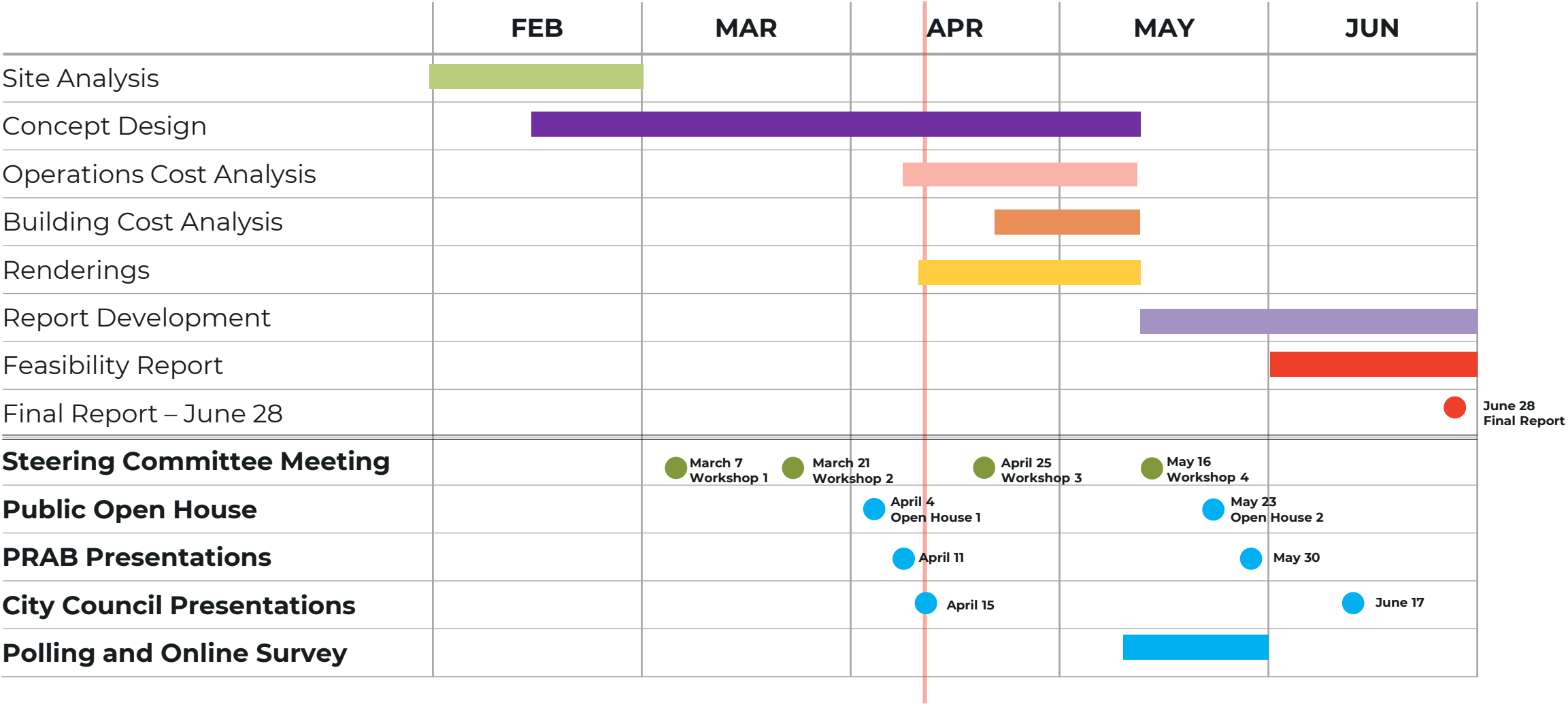


West Linn Community Recreation Center Phase 2

City Council Update 1
April 15, 2024



Schedule Overview



Agenda

- 01** Project Goals
- 02** Building Program & Site
- 03** Concept Design
- 04** Community Open House Feedback
- 05** Next Steps

01

Project Goals

Project Goals

Multi-generational facility accessible to all and welcoming year-round

Flexible, sustainable, and operationally efficient

Maximize revenue and cost recovery

Plan for future aquatic addition and associated parking

Integrate into the park setting, including programmable outdoor space

Support existing community/recreation amenities

Compelling vision with public support

Building Program & Site

02

Community Activities



Music Performances



Arts/Crafts Classes



Community Meeting



Hang Out Space



Gaming



Continuing Education

Recreation Activities



Cardio Workout



Strength Training



Basketball



Running/Jogging



Yoga/Pilates



Aerobic Exercise

Informal Activities



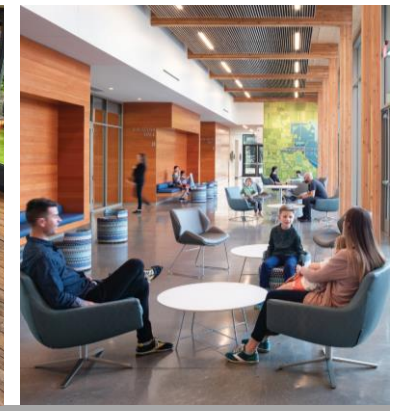
Classroom



Meeting/Birthday



Multi-Generational Lounge



Community Room



Outdoor Classroom

Building Program

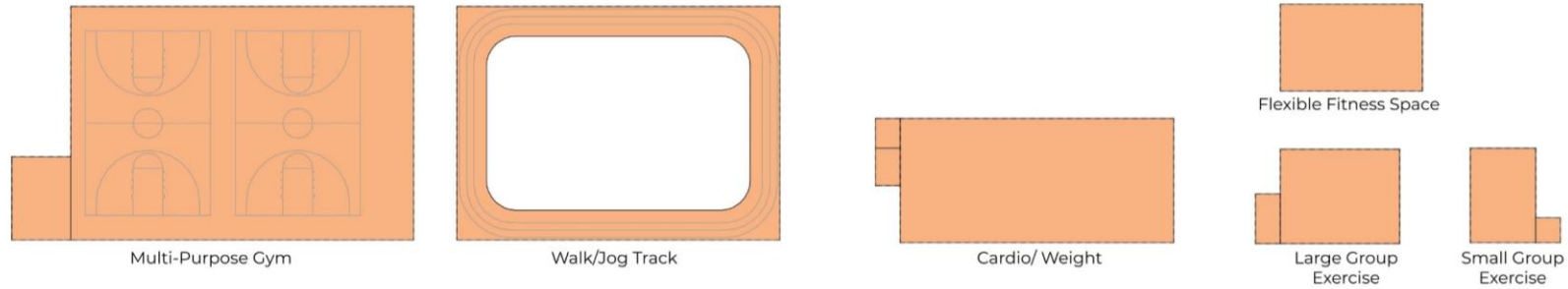
Recreation Space	29,740 sf
Multi-Purpose Gym (2 court 50' x 74')	12,970 sf
Gymnasium Storage	800 sf
Elevated Walk/Jog Track	5600 sf
Cardio/Weight + Storage	5,150 sf
Fitness Assessment/ Health Screen Room	120 sf
Multi-Purpose Large Group Exercise + Storage	2,000 sf
Multi-Purpose Small Group Exercise + Storage	1,100 sf
Multi-Purpose Fitness Space	2,000 SF
Community Space	8,880 sf
Community Room (Divisible)	3,600 sf
Commercial/Teaching Kitchen	800 sf
Multi-Purpose Classroom/Meeting/Art	1,300 sf
Multi-Generational Lounge	1,300 sf
Entrance/Lobby	900 sf
Flexible Party Room	980 sf

Operations	1,920 sf
Reception/Registration	500 sf
Rec Facility Offices (3 @ 120sf)	360 sf
Rec Program Staff Offices (4 @ 80sf)	320 sf
Rec Staff Breakroom	300 sf
Rec Staff Workroom/Copy/Mail	240 sf
Conference Room	200 sf
Support Space	4,320 sf
Concessions/Vending	200 sf
General Locker Rooms	2,000 sf
Universal Changing Rooms (3 @ 90sf) + Vestibule	470 sf
Restrooms - Lobby	700 sf
Restrooms - Unisex (2)	150 sf
Lactation Room	100 sf
Maintenance /Storage	700 sf
Grossing Factor	10,790 sf
TOTAL	55,650 sf

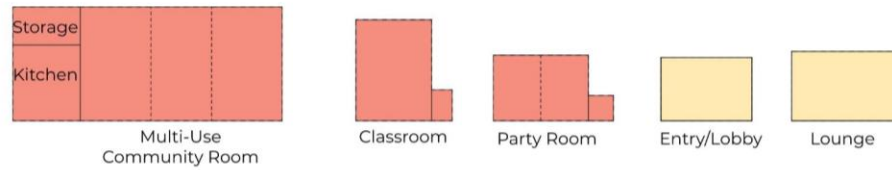
Future Aquatics Expansion	18,540 sf
Grossing Factor	4,635 sf
TOTAL WITH AQUATICS	78,825 sf

BUILDING PROGRAM

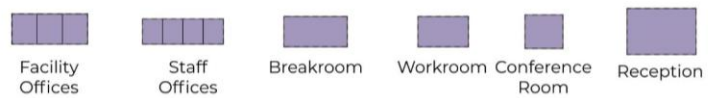
Recreation Space: 29,740 sf



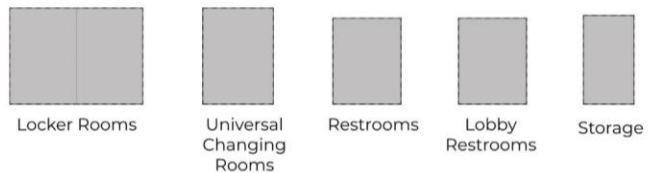
Community Space: 8,880 sf



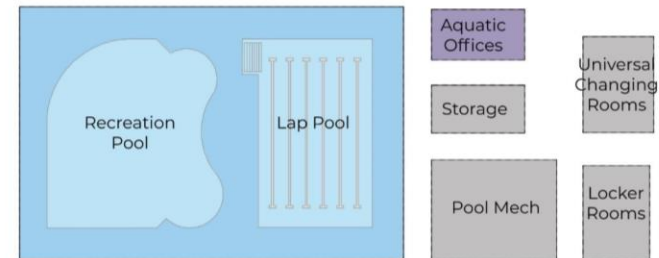
Administration Space: 1,920 sf



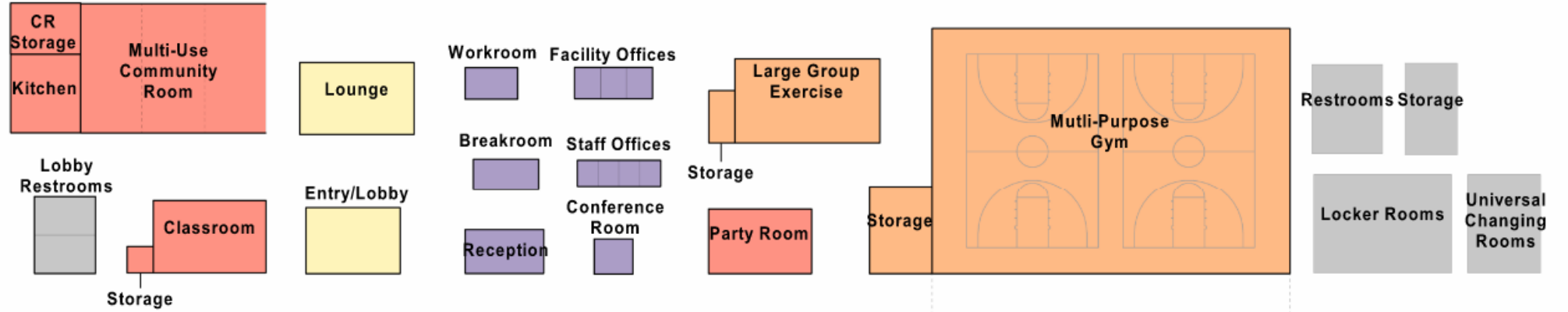
Support Space: 4,320 sf



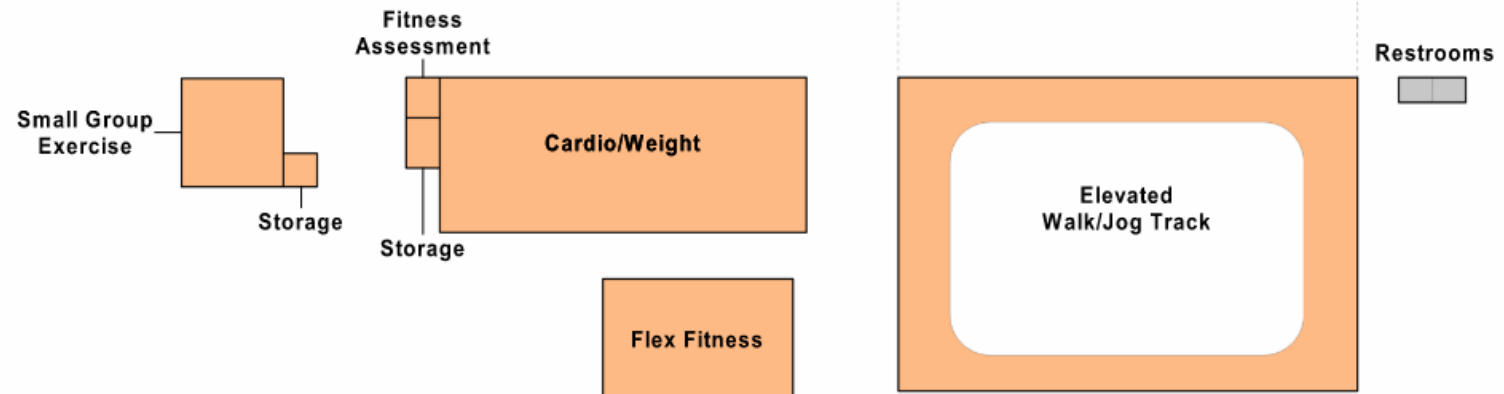
Future Aquatics: 18,540 sf



Level 01



Level 02



Site Context

Adjacent Amenities:

Tanner Creek riparian zone

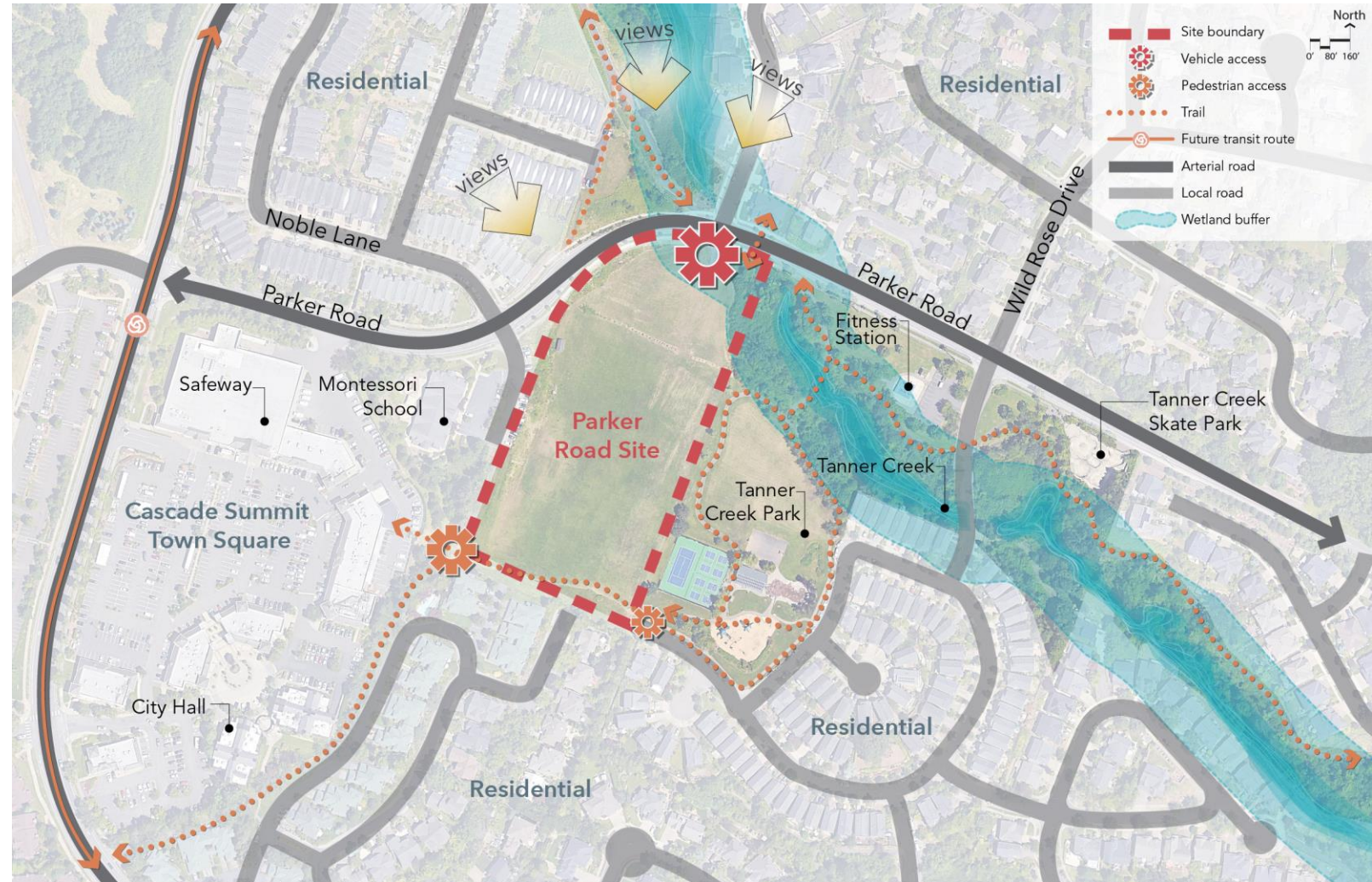
Park infrastructure

Multi-Modal Access:

Trail network

Road frontage

Future Trimet route



Site Analysis

Wide range of park amenities

Steep slopes on westside

Unimproved field

Road Frontage

Views east toward foothills



Existing Site



Natural Systems



Trails



Pathways



Vehicular Access



Pedestrian Access



Views Out & In

Existing Site Amenities



Open Green



Covered Shelter



Fitness



Basketball



Splash Pad



Skatepark

New Site Amenities



Landscaped Parking



Trails and Pathways



Artistic Features



Indoor Outdoor Connections



Hangout Space



Gathering Space

Concept Design

03

Steering Committee Workshop 2



Steering Committee Workshop 2

Common Themes:

- Parking to the West
- Future Pool to South
- Open-up to Park
- Outdoor Spaces
- Food Carts!



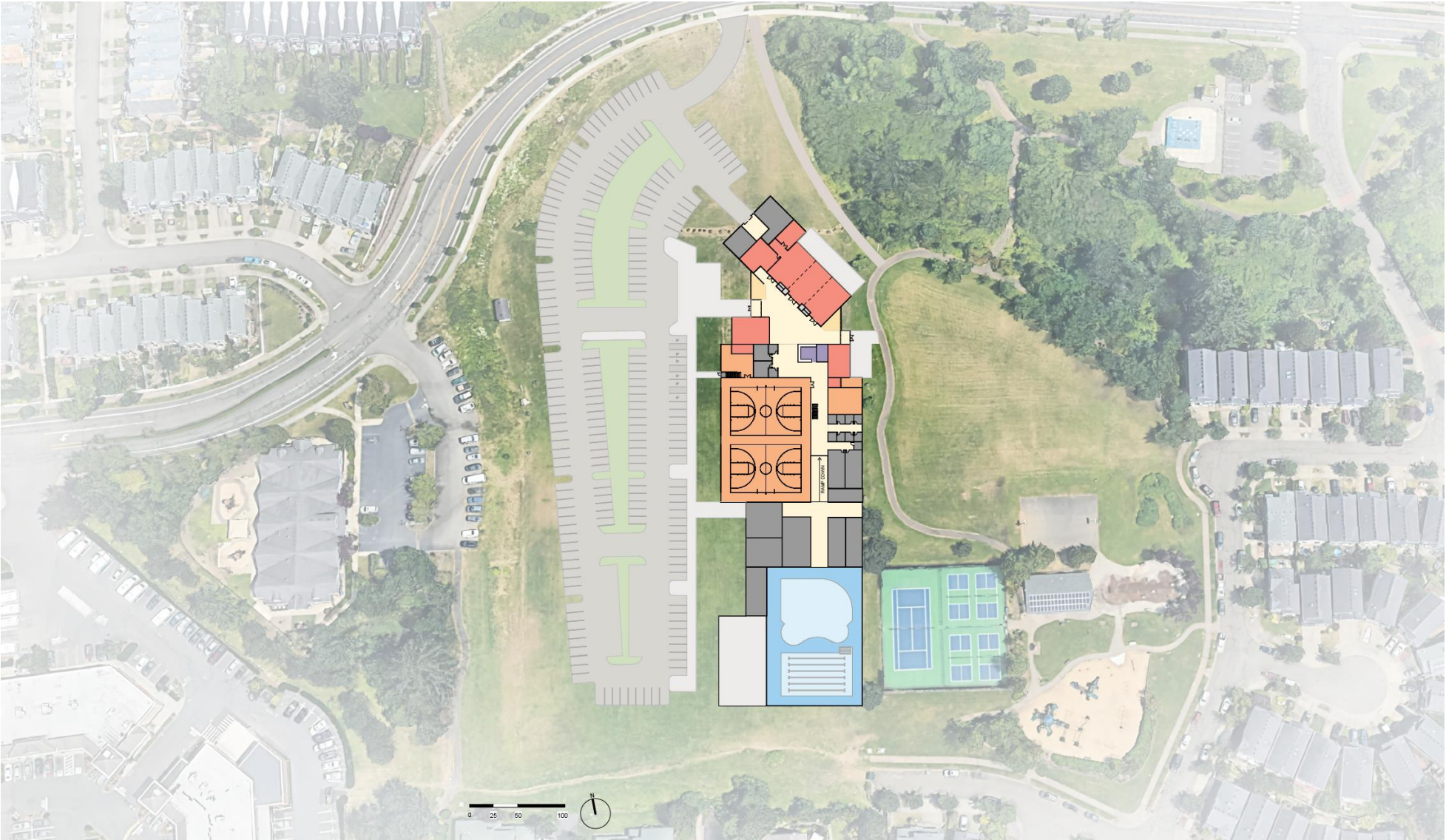
Design Concept



- ADMINISTRATION
- COMMONS
- RECREATION
- COMMUNITY
- SUPPORT

Site Plan

Design Concept Pool Addition



- ADMINISTRATION
- COMMONS
- RECREATION
- COMMUNITY
- SUPPORT

Site Plan

Design Concept



First Floor Plan



- ADMINISTRATION
- COMMONS
- RECREATION
- COMMUNITY
- SUPPORT

Second Floor Plan

Community Open House Feedback

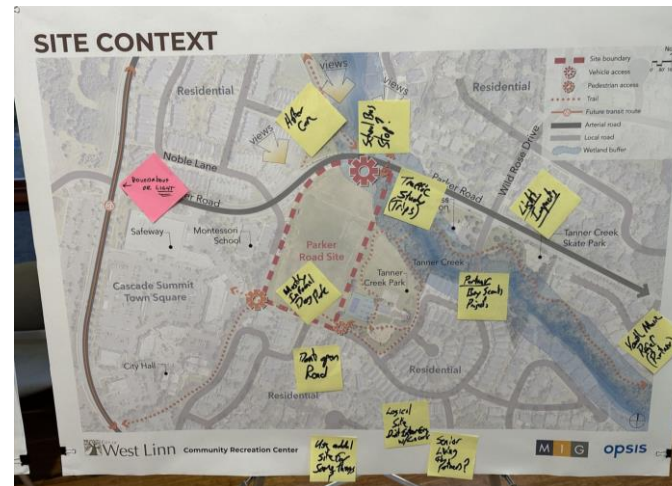
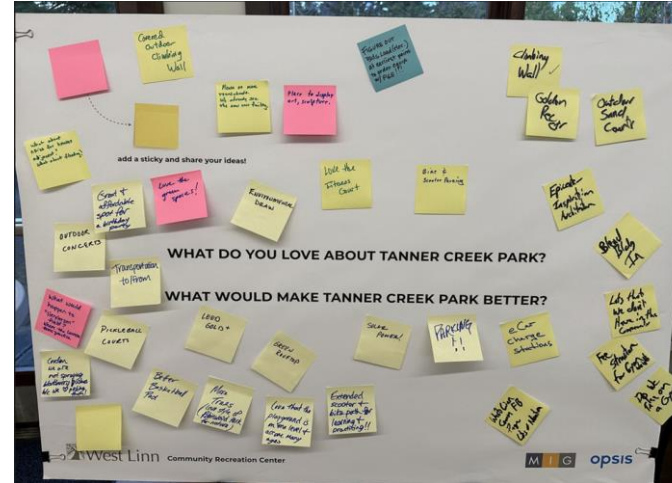
04



Community Feedback

Key Themes

- High Attendance & Participation
- Support for Concept Design
- Liked Strategy for Aquatic Addition
- Liked Multi-Generational Program
- Liked Community & Education Focus
- Several Suggestions for Add-ons
- Liked Integration into Park
- Good Indoor / Outdoor Connections
- Integration of Sustainable Design



Next Steps

05

Next Steps

- Plan Refinement & 3-D Studies
- Develop Cost Estimate & Operational Cost
- Tour Hidden Creek Community Center
- Polling & Community Survey – May 20 - June 3
- Public Open House 2 – May 23
- PRAB Update 2 – May 30
- City Council Presentation 2 – June 17
- Final Report – June 28



To: West Linn City Council

From: Bill Monahan, City Attorney's Office

Date: March 25, 2024

RE: Potential Amendments to the City Charter

During the City Council meeting of March 4, 2024, the Council discussed the need to review Section 10. Terms of Office. of the 1994 West Linn Charter. The starting and ending dates of terms of office were the subject of debate at the January 4, 2021 City Council meeting when three individuals elected to positions in November of 2020 were sworn in. The beginning of that meeting featured some procedural issues that may have been avoided if clearer language had been stated in the Charter.

The City Attorney was directed to suggest language for council discussion at the April 8, 2024 meeting. When given this direction, I suggested that as Council considers whether to place a measure before the voters to modify Section 10, it also has the opportunity to determine whether to place a measure with other proposed changes to address confusing, misunderstood, or outdated Charter language. If the Council determines that a fuller review beyond Section 10 is warranted, it could consider appointing a Charter Review committee tasked with recommending potential changes.

This memo presents an analysis of the Section 10 issue requested by Council and highlights a few other sections which could merit review.

Section 10. of the 1994 West Linn Charter

"Section 10. Terms of Office.

The term of office of an elective officer who is elected at a general election begins at the first Council meeting of the year immediately after the election, unless otherwise specified, and continues until the successor to the office assumes the office. (Amended 11-04-97)"

The League of Oregon Cities (LOC) prepared a model charter which it has made available to its member cities. The language that it proposes addressing terms is found in its Section 7.6:

"The term of an officer elected at a general election begins at the first council meeting of the year immediately after the election, and continues until the successor qualifies and assumes the office."

A comparison of the language in West Linn's Charter to that of LOC shows West Linn's additional language in Red and LOC's in Blue below:

The term of office of an elective officer who is elected at a general election begins at the first Council meeting of the year immediately after the election, unless otherwise specified, and continues until the successor to the office (qualifies and) assumes the office.

The City's and LOC's language is similar and does not provide for a specific time when a person assumes office. So, a better means to clarify the Charter term may be to consider using language from another city's charter. A review of neighboring city charters yielded some examples with common language:

Lake Oswego's Charter has language that appears to address the issue. Lake Oswego's Charter Section 28. Commencement of terms of Office, Oath of Office. reads:

"The term of office of a person elected at a general election commences the first day of the year immediately following the election. Each elected officer, prior to entering office, shall take an oath or make an affirmation to support the constitutions and laws of the United States and Oregon and to faithfully perform his or her official duties."

The Lake Oswego language does not state when a term ends, instead the language must be read with the understanding that since all terms have a fixed number of years, at the end of the period of four years from January 1, when a person's term starts, the term ends.

Other cities have language saying their terms start "the first of the year" (Oregon City, Tigard), or "at the first council meeting" (Gresham, Hillsboro, Salem), or "on the first Monday in January" following an election (Beaverton, Eugene).

The Lake Oswego language appears preferable as it is most specific clearly stating a date that does not change. But, for a person taking office to be able to carry out their official duties, this language seems to imply that a person should be sworn in on that day, a holiday. Such a ceremony can take place anytime that day.

It is recommended that the City Council review and consider proposing a change to the Charter like the Lake Oswego language.

Other Charter Sections that Could Merit Review

Through our review of the Charter, we identified the following sections for Council review to determine if clarifying language may be appropriate:

1. Section 8. Councilors. Here subsections (a) through (c) each state a date that allowed a transition after Charter amendments were made by the voters. The adoption of a new Charter could remove these transition instructions by replacing the section with a clear statement of which council seats are up for election.
2. Section 1. Title of Charter. If a new Charter were adopted, Section 1. Title of Charter. could also be revised to make this the "2024 West Linn Charter" which would eliminate the need to list thirteen dates when the Charter was amended by a vote of the people.
3. Section 12. Qualifications. Subsection (c) states that: "An elected officer may be employed in a City position that is substantially volunteer in nature. Whether the position is so may be decided by the Municipal Court or in some other manner, whichever the Council prescribes." The LOC Model Charter language in 7.4. c reads: "Neither the mayor nor a councilor may be employed by the city." According to the associated footnote in the Model Charter, this language is "intended to avoid certain conflicts of interest in city service. It bars full-time or part-time employees from serving as mayor or councilor. It does not, however, prevent the mayor or a

councilor from receiving reimbursement of expenses for services.” Issues identified with the West Linn language include:

- a. What is a position of employment with the city is substantially volunteer in nature? There do not appear to be any so perhaps the language is not needed.
- b. Any determination of which positions fall under the category of “substantially volunteer in nature” are to be decided by the Municipal Court “or in some other manner, whichever the Council prescribes.” There are no known examples of how this language has been applied in the city. If a candidate’s eligibility is challenged under this section, the Municipal Court has no experience or guidelines to use to decide eligibility. In addition, the Charter language allows the Council to prescribe another method to determine eligibility. Should a Council utilize this authority, it could be subjected to a challenge for its reasons not to leave the matter to the Municipal Court. It too has no experience or guidelines to use to assure compliance with Charter intent or to demonstrate impartiality.

There may be other Charter sections which members of the Council or staff identify which could benefit from review and amendment. The Charter does not have more modern gender-neutral language in such places as Section 23. where “his or her” is used. Within a full review of the Charter, this language could be updated.

APRIL 04 2024

Noise dynamics in city nightlife: Assessing impact and potential solutions for residential proximity to pubs and bars



Wai Ming To  ; Andy W.L. Chung



Check for updates

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*Acoustics 2023 Sydney***185th Meeting of the Acoustical Society of America**

Sydney, Australia

4-8 December 2023

Noise: Paper 3aNSb6**Noise dynamics in city nightlife: Assessing impact and potential solutions for residential proximity to pubs and bars****Wai Ming To***Faculty of Business, Macao Polytechnic University, Macao SAR, CHINA; wmt@mpu.edu.mo***Andy W.L. Chung***Smart City Maker Ltd., Hong Kong SAR, CHINA; ac@smartcitymaker.com*

While people enjoy some drinks, meeting old friends and new people, and socializing in pubs and bars, they are exposed to noise from different sources such as service activities, nearby conversations, background music, televisions, and ventilation system. Additionally, people are also sources of noise when they talk loudly, scream, cheer, laugh, etc. Yet, how noisy is it in a pub and how does noise from the pub affect nearby residents? In this particular article, we provide an overview about the social functioning of pubs and bars and review some research findings of noise levels in and from pubs and bars. It was found that in many developed economies the number of pubs and bars per 100,000 people ranges between 75 and 150 while in China including Hong Kong the number of pubs and bars per 100,000 ranges between 4 and 14. Previous research showed that the average measured noise level in Hong Kong's pubs and bars was 80 dBA in peak hours (with peak measured value up to 97 dBA) and 75 dBA in happy hours. Similar findings were observed in some other cities and countries. Noise from pubs and bars affects nearby residents. Implications are given.

1. INTRODUCTION

Pubs (a short form of public houses) and bars are an integral part of cities across the globe. They serve important social functions and are recognized as a tourist attraction in many places.¹ There are over 1 million pubs and bars in the world. According to the World Cities Culture Forum, there are around 30,000 pubs and bars each in São Paulo and Tokyo, followed by Seoul with over 15,000 pubs and bars, Bogotá with over 12,000 pubs and bars, and Buenos Aires with around 11,000 pubs and bars.² Figure 1 shows the top 12 cities with the highest number of pubs and bars per 100,000 people. Among these cities, 7 of them are European cities (blue color), 3 South American cities (green color), and 2 Asian cities (red color).

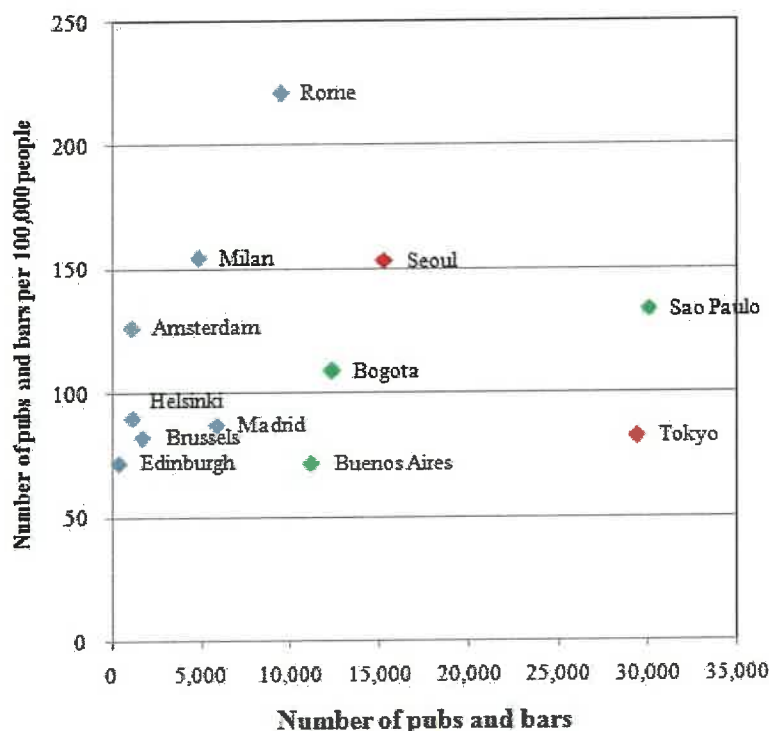


Figure 1. Number of pubs and bars vs. pubs and bars per 100,000 people among cities.

In the United Kingdom (UK), the number of pubs was over 47,200 in 2019, meaning that there were 71 pubs per 100,000 people. As a whole, they employed around 457,000 employees and generated over US\$ 29 billion in revenue.^{1,3} London has over 3,500 pubs and bars while China's cities such as Shanghai, Chengdu, Shenzhen, and Hong Kong have over 2,600, 2,000, 1,500, and 1,000 pubs and bars, respectively.^{1,2} As such, there are about 8~14 pubs and bars per 100,000 people in China's major cities. Additionally, the number of pubs and bars (or pubs and bar per 100,000 people) increased by around 40% during the period 2015-2021 in Hong Kong. It was estimated that Hong Kong pubs and bars would have revenue of around US\$ 0.6 billion a year.

As a place for drinks and social gathering, it is inevitable that sounds from different sources, i.e., people, service activities, ventilation systems, televisions, musical instruments, and loudspeakers would mix together and produce high sound pressure level (or noise level). It is not unusual that pub and bar operators would switch on televisions, and musicians would tune up their instruments and speakers to create vibrant environments. Additionally, research has shown that when more people gather together in indoor or outdoor environments, noise level tends to increase, known as the Lombard effect.⁴⁻⁸ Besides, a prolonged exposure in an environment with high noise level may cause adverse physiological and psychological effects.^{9,10} However, how high noise levels are people exposed to in pubs and bars and how much noises are emitted from pubs and bars influencing their neighborhoods? This paper aims at addressing these two important research questions.

Additionally, the paper describes a good practice guide published by the Hong Kong Environmental Protection Department for controlling noise from liquor licensing establishments.

More specifically, this paper provides a review on the measured noise levels in and from pubs and bars that were reported in the past research studies. It also identifies the extent to which noise complaints were received in the UK, New York in the United States (US), and Shanghai and Hong Kong in China. The rest of the paper is given as follows. Section 2 presents a review of noise levels in and from pubs and bars. Section 3 presents the number of noise complaints in the UK, New York, Shanghai, and Hong Kong. Section 4 describes a good practices guide for controlling noise from liquor licensed establishments published by the Hong Kong Environmental Protection Department. The paper ends with discussion and conclusions.

2. NOISE LEVELS IN AND FROM PUBS AND BARS

To and his associates explored noise levels in Hong Kong pubs and bars.^{11,12} They performed 10-minute noise measurements in six pubs and bars in three different districts.¹² The measured noise levels in $L_{eq,10-min}$ were between 66.5 and 79.9 dBA in happy hours (17:00 to 21:00) while they were between 69.5 and 97 dBA in peak hours (22:00 to 23:00). Specifically, the average measured noise levels in $L_{eq,10-min}$ were 75 dBA in happy hours and 80 dBA in peak hours, respectively. To and Chung suggested that noisiness in a pub (or bar) could be characterized by its background noise using the L_{90} value.¹² In their study, noisiness of the sampled pubs and bars was between 61.5 and 75 dBA (average = 69.3 dBA) in happy hours while noisiness was between 64.4 and 82.2 dBA (average = 73.8 dBA) in peak hours. Researchers in the US also performed noise measurements in bars, clubs, lounges, and restaurants.^{13,14} Spira-Cohen et al. carried out 20- to 162-minute noise measurements in restaurants, bars, clubs, and lounges during peak hours in evenings.¹³ They reported that the median and mean noise levels in L_{eq} were both 92 dBA among 52 venues, and the mean noise level in clubs and lounges was found to be 6 dBA higher ($L_{eq} = 97$ dBA) than that of bars and restaurants ($L_{eq} = 91$ dBA). Spira-Cohen et al. observed higher noise level in L_{eq} to be associated with a larger number of patrons.¹³ This finding was consistent with the findings of To and Chung's studies about noise in restaurants.^{6,7} Scott reported the findings of a large-scale study of noise in New York bars and restaurants.¹⁴ Specifically, 588 noise measurements were conducted in New York bars. 60% of the measured noise levels were 81 dBA or above, 30% were 76-80 dBA, 8% were 71-75 dBA, and 2% were <71 dBA. Thus, the average measured noise level in New York bars was found to be 81.3 dBA, slightly higher than that reported by To and Chung in Hong Kong bars at 80 dBA.¹²

Noise levels from a pub or bar depend on the pub's (or bar's) indoor noise level, whether doors and windows of the pub or bar are open, and how far the distances are between the pub or bar and the affected residents. To et al. indicated that very few noise measurements from entertainment venues were reported in literature.¹¹ They mentioned that a UK consultant carried out noise measurements at residential premises located not too far (about 35-65 m) from a nightclub in Bournemouth.¹¹ The measured noise levels at a bedroom exterior wall in L_{eq} were between 57 and 65 dBA and occasionally exceeded 70 dBA during night time from 23:00 to 03:00. Domazetovska et al. performed noise assessment in urban area of Skopje in North Macedonia.¹⁵ They indicated that people in Skopje are exposed to high noise levels due to high intensity of traffic and a large number of restaurants and bars near residential buildings. Domazetovska et al. reported that noise levels at 6 monitoring locations in L_{eq} were between 62.1 and 72 dBA (average = 67.4 dBA) during evening time (19:00 to 23:00) and between 57.6 and 70.3 dBA (average = 65.8 dBA) during night time (23:00 to 07:00).¹⁵ The measured noise levels were much higher than noise limits of 60 dBA for evening time and 55 dBA for night time, respectively. Domazetovska et al. also carried out a questionnaire survey on a sample of 96 residents.¹⁵ The survey results showed that 41% of respondents suffered from anxiety while 35% of respondents suffered from disturbed sleep due to noise. Additionally, about 28% of respondents indicated the most influential noise-causing sounds to be noise from loud music and people talking from bars and cafes with terraces. Gallo and Shtrept performed long term noise monitoring during the period 25 October – 31 December 2018 in social gathering places in Torino, Italy.⁸ They reported that noise from people speaking in social gathering places such as in front of bars affects nearby residents in the evenings and at nights. They used WiFi scanners to identify the number of media access control (MAC) addresses anonymously in an area and the duration of people's stay. As expected, noise level increased when the number of people in a particular gathering place increased.⁸ Gallo and Shtrept suggested that Rindel's⁵ noise equation for indoor social gathering places (see Equation 1) can be adapted to predict noise (or background noise) for outdoor social gathering places.⁸

$$L = \frac{1}{1-c} (69 - 45c - 10 \log \left(g \left(\frac{0.16V}{T \cdot N} + A_p \right) \right)) \quad (1)$$

where c is the Lombard slope, $g (=N/N_s)$ is group size (or the average number of people per speaking person), A_p is the equivalent absorption area of each person, V is the room volume and T is the reverberation time. The Lombard slope varies between 0.2 and 0.7 dB/dB, A_p varies from 0.2 to 1.0 m², and g can be set to 3.5, i.e., 29% of the people talk. Gallo and Shtrept showed that the measured noise level could reach 80 dBA or above during Friday and Saturday evenings.⁸ They also identified three clusters of noises; cluster 1 including Sunday, Monday, and Tuesday, cluster 2 including Wednesday and Thursday, and cluster 3 including Friday and Saturday. Specifically, noise levels in cluster 3 were significantly higher than noise levels in clusters 1 and 2 with the same crowd density. For example, a crowd density of 0.3 people per m² on a Friday or Saturday could produce a background level at around 70 dBA while the same crowd density on a Wednesday or Thursday would produce a background noise level at around 65 dBA. Anecdotal evidence shows that people tend to talk louder when they consume more alcohol, particularly on Fridays and Saturdays.

3. NOISE COMPLAINTS DUE TO NOISE IN AND FROM PUBS AND BARS

In the UK, pubs and clubs were identified as the most common cause of complaints about noise in over half of local authorities.¹⁶ Between 2017 and 2019, the total number of noise complaints amounted to 1.2 million in the UK. Most of them were antisocial noise including music and parties (365,000 complaints), general domestic noise (183,000 complaints), and animal noise (161,000 complaints) from neighbors while noise from pubs and clubs ranked 8 with 27,000 complaints, which is 2.1% of the total number of noise complaints.¹⁷ In the US, the number of noise complaints about bars and clubs increased by over 100 percent from 38,000 in 2010 to 93,000 in 2015 in New York City.¹⁸ In China, the number of noise complaints continued to increase over the past decades. Between 2017 and 2019, the number of noise complaints reached a level of 0.20 to 0.25 million a year. About a quarter of noise complaints (50,000-62,500) were classified as social and community noise including noises from bars, pubs, karaoke, etc.¹⁹ In fact, it was reported that people called the police 2.4 million times and about 40 percent of calls were made in the evenings in Shanghai including noise nuisances. In one evening, residents called the police 6 times within a 5-minute period about noise nuisance from a specific bar.²⁰ To and Chung reported that the number of noise complaints caused by activities in and around bars and pubs at Central and Western District filed to the Hong Kong Police were doubled from 250 in 2010 to almost 500 in 2015.¹² In 2019, the total number of noise complaints was over 5000. It ranked second after air pollution issues in Hong Kong with 10904 complaints.²¹ More specifically, the number of noise complaints about noise from bars and pubs was in the hundreds. According to news reports, quite a number of noise complaints were filed due to pub/bar patrons drinking and talking loudly outside the premises.^{22,23}

4. GOOD PRACTICES FOR CONTROLLING NOISE IN AND FROM BARS AND PUBS

The Hong Kong Environmental Protection Department published a small booklet entitled “Good Practices on the Control of Noise from Liquor Licensed Establishments” in 2016.²⁴ This booklet aims to provide simple recommendations to potential and existing liquor licenses in Hong Kong about the noise problems associated with the construction and operations of the licensed premises.

Specifically, the construction, decoration, and renovation works will generate construction noise. The use of heating, ventilation, air conditioning, and pumping systems will generate mechanical noise while the use of musical instruments, loudspeakers, televisions, patrons cheering and talking in and outside the licensed premise, and services will generate activities-related noises during the operation of a licensed premise. As such, the booklet advises potential and existing owners of liquor licensed establishments to consult acoustical experts about the selection of proper locations for liquor licensed premises, the assessment of the noise impact on nearby sensitive receivers from the construction and operations of premises, and the implementation of

noise mitigation measures from the noise control engineering and operations perspectives. The booklet includes six sections, namely Introduction, Noise Criteria and Noise Limit Level, Good Design during Planning State, Good Practices on Managing Noise for Liquor Licensing Premises, Recommended Good Practices for Different Noise Sources, and Examples of Practical Noise Control Measures. It also contains a checklist on noise control measures as an Appendix.²⁴

More importantly, noise and vibration have to be dealt with strategically at sources. Depending on the pub (or bar) design, an innovative axial fan can move a large volume of air in and out from the pub efficiently and it can produce less noise than a traditional centrifugal fan. Nevertheless, it should be noted that the fan should not be placed near a sharp opening, a sharp bend, or a barrier such as a damper. Additionally, its vibration can be efficiently isolated by selecting proper vibration isolators such as spring isolators/mounts. For example, if an air supply fan runs at 600 rpm (i.e., 10 Hz) and one wants to achieve an isolation efficiency of 90%, the transmissibility of the fan-isolator system ($T=1/((f_d/f_n)^2-1)$) should be 10% (or 0.1). In this case, (f_d/f_n) should be 3.317 ($=\sqrt{11}$). As f_d (i.e., the running speed of fan) is 10 Hz, the fan-isolator system should have a natural frequency (i.e., f_n) at 3.015Hz. Since $f_n=(1/2\pi)\times(g/\delta)^{0.5}$ where g is 9.81 m/s, and δ is static deflection in meter, one can calculate the required static deflection of the isolator system, which should be around 27 mm. For a pub having live music or playing recorded music, their loudspeakers should not be placed outdoors. Additionally, the pub (or bar) owner should ensure that their external walls should be a minimum of 100 mm concrete precast panels, and double glazed windows and doors (say 8 mm to 10 mm laminated glasses with a 75 mm to 100 mm air gap) should be closed.²⁵ This type of design can have an acoustic insulation of around 40 dB. As always, noise from mechanical systems and with the premises is relatively easy to deal with. However, when noises are created when pub/bar patrons talk loudly outside the premises, how to control these unwanted sounds is also a challenge to pub/bar owners and regulatory bodies, even though the booklet advises pub/bar owners to post notices in reminding patrons to be considerate and exhibit good manners.²⁴

A. NOISE CRITERIA AND LIMITS IN HONG KONG

As mentioned above, sources of noise annoyance due to the operations of pubs and bars may include loudspeakers, musical instruments, singing, and even variety shows. In Hong Kong, noise from a pub or bar is controlled under the Noise Abatement Notice (NAN) system as stipulated in the Noise Control Ordinance. For example, if noise from a pub or bar exceeds the noise criteria as indicated in Table 1 when it is assessed at a domestic premise, which is referred to as a noise sensitive receiver, a NAN will be sent to the pub/bar operator and its management staff requiring them to abate the noise within a specified time period. Otherwise, the operator and its management staff are liable to prosecution. It should be noted that noise annoyance from pubs and bars may partly explain why outdoor noise levels were found at or above the Acceptable Noise Levels in many urban areas at night in Hong Kong.²⁶

Table 1. Acceptable Noise Level (ANL) in dBA [measured in $L_{eq,15-min}$].

District	Noise Measurement Location			
	1m from exterior building facade		Internal location	
	Day and evening (7:00 to 23:00)	Night (23:00 to 7:00)	Day and evening (7:00 to 23:00)	Night (23:00 to 7:00)
Urban area	65 – 70	Not applicable	55 – 60	Not audible
Rural area	60 – 65		50 – 55	

5. DISCUSSION AND CONCLUSIONS

Like restaurants, pubs and bars serve important social functions as city dwellers need to relax after a hectic day (or week). Additionally, people meet old friends and new people there so as to expand their social networks in such an informal and casual environment. In the past decades, pubs and bars have also become a nightlife tourist attraction in many cities. Nevertheless, people such as consumers, service employees, disc jockeys, and freelance musicians are inevitably exposed to high noise level in pubs and bars while nearby residents may suffer nuisance due to noise from pubs and bars or pub/bar patrons who talk loudly outside the premise. According to noise measurements in pubs and bars in Hong Kong, pub/bar noise levels in $L_{eq,10-min}$ were between 66.5 and 79.9 dBA in happy hours (17:00 to 21:00) while they were between 69.5 and 97 dBA

in peak hours (22:00 to 23:00). As a properly designed double glazed sliding door or double glazed window can achieve an acoustic insulation R_w of 40 dB, it is possible to achieve an acceptable noise level of 65-70 dBA in $L_{eq,15-min}$ during the day and evening time (07:00 to 23:00) in urban area that is measured at 1 m from the exterior building façade at sensitive receivers. Yet, human behavior is hard to predict and control. Noise complaints and measurements in many places such as Torino in Italy⁸ and Hong Kong^{22,23} revealed that pub/bar patrons may drink and talk outside the premise, particularly in late night when some of them get really drunk, making all kinds of noise and adversely affecting the nearby residents who want to sleep in a quiet environment. Therefore, pubs and bars shall be situated far from old residential premises that normally require natural ventilation at night and the old-aged citizens who may have a hard time falling asleep at night.

A. REFLECTIONS

Reflecting on the review of noise management strategies worldwide, it is evident that efforts to harmonize the lively atmosphere of urban nightlife with the quiet needed in residential areas are in place. Yet, there is a significant need for enhancement. Regulatory initiatives often lead to basic compliance, not necessarily to an ongoing improvement in noise management approaches.

At here, the authors advocate that the Future-Fit Business Framework shall be deployed as an initial step to gauge progress and steer towards more sustainable practices. This framework goes beyond just meeting regulatory limits; it is about fostering a nighttime acoustic environment that contributes to the serenity of the community. Specifically, for pubs and bars to evolve into Future-Fit Businesses, all stakeholders including pub (or bar) owners and management teams must equally weigh business development, good environment, vibrant social engagement, and community well-being. Achievable measures include:

- Implementing noise reduction technologies and operational changes to reduce their sound impact.
- Incorporating Future-Fit principles into urban planning, shaping spaces that respect the acoustic environment, thereby fostering sustainable business practices and enhancing community health.
- Carrying out materiality assessments to pinpoint critical impact areas and establishing bold noise reduction goals.

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☒ I wish to speak during Public Comments on a non-agenda related item (limited to three minutes):

Please specify topic (required):

open land plan, Lights Late Late Late
into the night Atsuy Creek.

☐ I wish to speak on the appeal of the 1919/1949 Willamette Falls Dr (limited to five minutes):

The appeal is a de novo hearing, which means new facts or evidence may be submitted. The City is only accepting testimony that is related to the following criteria: CDC Chapter 19, General Commercial Zoning; Chapter 41, Building Height, Structures on Steep Lots, Exceptions; Chapter 46, Off-Street Parking, Loading and Reservoir Areas; Chapter 55, Design Review; Chapter 58, Willamette Falls Drive Commercial Design District; Chapter 99, Procedures for Decision-Making: Quasi-Judicial. Testimony on other issues will not be accepted.

☐ I do not wish to speak however; I would like to have standing on this land use item.

Issue:

Failure to raise an issue during the City's hearing on this matter precludes an appeal to the Land Use Board of Appeals based on that issue. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board.

☐ In Support

☐ Neither for nor against

☐ In Opposition

Please print:

Name: John McCabe

Address:

City: West Linn State: Oregon Zip: 97068

Email (optional): Phone (Optional):



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Please specify topic (required):

Questionable investigation of WLPD compliance with Oregon Law
and WLPD Policies

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☒ In Support

☐ Neither for nor against

☐ In Opposition

Please print:

Name: Teri Cummings

Address: 2190 Valley Ct

City: WL State _____ Zip _____

Email (optional): _____ Phone (Optional): _____



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Please specify topic (required):

decision ~~for~~
Questions about the process to select the investigator
and scope of the investigation of the

☐ I wish to speak on the appeal of the 1919/1949 Willamette Falls Dr (limited to five minutes):

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☐ In Support

☐ Neither for nor against

☐ In Opposition

P l e a s e p r i n t :

Name: *Karie Oakes*

Address: *1125 Marylhurst DR*

City: *West Linn* State _____ Zip *97068*

Email (optional): _____ Phone (Optional): _____



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☒ In Support ☐ Neither for nor against ☐ In Opposition

Please print:

Name: JAMES MANNING

Address: 14277 S. Donovan

City: OC State OR Zip 97045

Email (optional): _____ Phone (Optional): _____



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☐ In Support

☐ Neither for nor against

☒ In Opposition

Please print:

Name: Danny Schreiber

Address: 1870 6th Ave

City: West Linn State OR Zip 97068

Email (optional): _____ Phone (Optional): _____



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☒ In Support

☐ Neither for nor against

☐ In Opposition

P l e a s e p r i n t :

Name: Kathie Halicki WNT President

Address: on Site

City: _____ State _____ Zip _____

Email (optional): _____ Phone (Optional): _____



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☐ Neither for nor against

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P l e a s e p r i n t :

Name: Karie Oakes

Address: 1125 Marylhurst DR

City: West Linn State _____ Zip 97068

Email (optional): _____ Phone (Optional): _____