

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, FEBRUARY 28, 2006

COMMISSIONERS PRESENT

Donald Hammang, Chair
Brett Carter, Vice Chair
Lisa Batey
Teresa Bresaw
Catherine Brinkman
Jeff Klein
Dick Newman

STAFF PRESENT

Alice Rouyer,
Acting Planning Director
Brett Kelter
Assistant Planner
Gary Firestone,
Legal Counsel
Shirley Richardson,
Hearings Reporter

COMMISSIONERS ABSENT

None

1.0 CALL TO ORDER

The meeting was called to order at 6:35 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 CONSENT AGENDA -- None.

4.0 INFORMATION ITEMS -- City Council Minutes

City Council minutes can be found on the City web site at www.cityofmilwaukie.org

5.0 PUBLIC COMMENT

Alice Rouyer announced that one of the City's Planners, Lindsey Nesbitt, will be leaving soon to work for the City of Happy Valley. The new Planning Director, Katie Mangle, will start on March 16, 2006.

6.0 PUBLIC HEARINGS

Chair Hammang announced that the Broken Arrow Archery, Inc. hearing would not be heard tonight; it has been withdrawn.

- 6.1 Applicant: Steve Smelser Homes, Inc.
 Owner: Ron and Judy Clark
 Location: 4001 SE Drake Street (1S 1E 25DD 07000)
 Proposal: Variance to reduce the side yard setback for a
 single-family detached house
 File Numbers: VR-05-05
 NDA: Llewelling

Chair Hammang opened the hearing on Variance Request VR-05-05 to consider approval of a variance authorizing a street-side yard setback of 10 feet where 20 feet are required. The criteria to be addressed can be found in the Milwaukie Zoning Ordinance Section 19.302 - Residential R-7 Zone; Section 19.412 - Lot Size Requirements, General Exceptions; 19.700 - Variances, Exceptions, and Home Improvement Exceptions; Section 19.1011.3 - Minor Quasi Judicial Review; 19.1400 - Transportation Planning, Design Standards and Procedures.

Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare. There were none.

Chair Hammang asked if any member of the Planning Commission visited the site; 5 hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the staff report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

STAFF REPORT

Brett Kelter reviewed the staff report with the Commission. The proposal is for a single-family detached residence and the variance is to reduce the street-side yard setback of 10 feet where 20 feet are required. Overheads were shown of the subject site and surrounding area.

The lot is undersized at 4100 sq. ft. for the zone, but it is a legal lot of record and therefore considered buildable according to the Zoning Ordinance. There are two important issues in this proposal; the legality of this lot and addressing the variance criteria.

This lot was created as part of the Marchbanks subdivision in 1891; lot 50 of block 7. Most of these lots were 25 feet wide by 100 feet deep; corner lots were 41 feet by 100 feet. This is the original configuration.

In 1988, two tax lots were created; tax lot 7,000 as a 55-foot-wide lot and tax lot 7,100 took the remainder of the original 25-foot-wide lot 49 of block 7. The subject lot was created by deed and not by the city's land division process. In 2005, the owner worked with the County assessor's office and re-established tax lot 7,000 to take the same boundary as the original lot 50 of the Marchbanks

subdivision. The Zoning Ordinance does allow residential development on lots that are nonconforming to current standards as long as the lots have a minimum lot size of 3,000 square feet; the subject lot is 4,100 square feet, which meets the requirements.

The applicant has the burden of proof of meeting the variance criteria:

- Does the property in question have unusual conditions over which the applicant has no control?

The setback requirements for front and rear yards are 10-20 feet. For corner lots in the R-7 zone the street-side corner setback is 20 feet and the other side is 5 feet. The unusual condition for this lot is the actual dimension. With the width of 41 feet, fronting a house on Drake and meeting the setbacks the house-building envelope would be 16 feet in width.

- Are there any feasible alternatives to the variance and is the variance the minimum variance necessary to allow the applicant use of his or her property in a manner substantially similar to the surrounding area?

If this site were to meet the current setback requirements there would be a building envelope with a width of about 16 feet. Staff believes that any width greater than 16 feet would be an improvement for this area. A 25-foot-wide house would fit better with the character of other homes in the area.

- The adverse effects on other properties that may be the result of this variance shall be mitigated to the extent feasible.

The Zoning Code does allow for development on legal lots of record as long as they are over 3,000 square feet. The impact of a 16-foot-wide house would be greater than that of a 25-foot-wide house.

Mr. Kelter stated that he received a petition with 45 signatures of residents in the area in opposition to granting the variance. The petition cited concerns about the impact of property values as well as visibility at the intersection. The language of the petition suggests some misconception that this variance would be creating a lot that is undersized. This is an existing legal lot of record; the Planning Commission would not be creating an undersized lot.

The Engineering Department prepared diagrams using code standards showing visibility concerns using three circles that each have a 20-foot radius; one from the lot corner and the intersection and one from each of the two edges of the driveway. These areas are to be kept clear. There is no conflict with clear vision. Another diagram was shown indicating a clear site triangle down Drake Street is maintained by allowing the variance.

Staff is recommending approval of the variance.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Bresaw noted that a legal lot does not mean buildable lot and asked how this undersized lot was in an R-7 zone. **Mr. Kelter** stated that Section 412 addresses lots that are nonconforming in size or those that have dimensions that require 3,000 square feet to allow residential development. This would prevent many original 25-foot-wide lots from being buildable. In this case, the lot is 41 feet by 100 feet, which exceeds the 3,000 square foot minimum. New lots created in this zone would have to be 7,000 square feet.

Commissioner Batey asked what happened in 1988 that changed the lot lines. **Gary Firestone** stated that a tax lot is not the same as a subdivision lot. Since 1979 it has not been legal to create a lot by deed or to change lot lines without city land use approval. When the owner tried to change lots by deed in 1988, the County allowed it, but it was contradictory to the City's codes. From the City's point of view, all original lots from that subdivision still exist until they are modified by consolidation or the City's approval land division process. A tax lot and a lot for zoning purposes are different; for zoning purposes this is an original subdivision lot.

Commissioner Batey stated that the house on the lot is clearly oriented towards 40th Avenue, making this subject lot the front yard of the existing house. She asked if there is a legal description of the land. **Mr. Firestone** stated that at that time all jurisdictions allowed owners to build over lot lines. The status of the lot did not change if a house was put on lot lines. Legally, these lots remained separate until there has been a city process to build on them by lot consolidation or a land use action.

Commissioner Batey asked if this house were to be built now, would it not meet code because the front door is facing the proposed house? **Mr. Firestone** stated that there is a current requirement that front doors face the street. The lot already exists. The house is already nonconforming because the lot it is on is not contiguous to the other street (40th Avenue). The nonconformity is not being created; it is there because of the existing laws.

CORRESPONDENCE

Chair Hammang asked if there had been any correspondence received since the mailing of the packet. **Mr. Kelter** stated that the petition from neighbors was received and he will make copies available to the Commission.

APPLICANT PRESENTATION

Speaking: Steve Smelser, Smelser Homes Inc., P.O. Box 1069, Clackamas OR

Mr. Smelser stated that he is asking for the variance based on the assumption that it is a buildable lot. He will not purchase the lot if it is not legal. He has agreed to purchase this lot from Mr. and Mrs. Clark who own the property. They purchased the house in 1987 and then purchased the lot in 1988. There were some lot line adjustments made which were not legal but have since been legally corrected.

The only option is to build facing Drake Street. The front and back yard setbacks are 20 feet. The current lot is buildable for a 16-foot wide house; he has done it before in other places but they are not pretty. When the lot was purchased he understood it was 40 feet wide. The variance would allow for a larger home.

The lot does have unusual conditions. The alternative is to not build a 16-foot wide house; a 25-foot-wide house fits more into the character of the neighborhood. In a survey of the neighborhood, it was found that there were 29 homes with an average of 45 feet; the smallest was 30 feet and the largest is at 70 feet in width. Even at 25 feet the proposed house will be narrower than others in the area. Also measured were the setbacks of other houses in the area. Directly across 40th Avenue the house has a side yard setback of 5-feet. On 38th and Drake the setback is 5 feet. The proposed variance is not out of line with other houses in the area.

The effects on the area having a 16-foot-wide house would be more detrimental than a 25-foot-wide house. The wider house would fit more into the area.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Klein stated that he looked at the houses that the applicant is referring to. He paced them off and found them to be 17 feet from the curb. The subject site property line is close to the street. Drake Street is not going to have near the amount of traffic as 40th Avenue. The existing houses face 40th Avenue and the proposed housing will face Drake Street. A six-foot fence along 40th Avenue would be too high and a cause for sight concerns. **Mr. Smelser** stated that a house couldn't be built to face 40th Avenue. He would have no problem with a condition that fencing not be built along 40th Avenue.

Commissioner Klein stated that this lot size is not compatible with the neighborhood; someone has been using it as his or her front yard since the adjacent house was built. He sees the subject lot as a front yard; now this front yard will change the nature of the house behind it.

Commissioner Klein stated that he does not feel this site is appropriate for a house; it is someone's front yard. **Mr. Smelser** stated that it is legal to build a house on this lot; he or someone else could build a 15-foot-wide house on the lot if this variance is not approved.

Commissioner Brinkman asked if what is before the Commission is not the question of whether this is a legal lot, it is the variance. **Mr. Firestone** stated that this is a legal buildable lot.

Commissioner Batey asked if this house would be closer to the curb. **Mr. Smelser** said "yes" this house would be closer to the curb than others on Drake. **Mr. Kelter** stated that there are no codes, conditions, or restrictions regarding the house being that close to the curb.

Commissioner Brinkman stated that the house on the adjacent property is for sale. Do the potential purchasers of the property for sale know that this proposed home would be very close to its front door? **Mr. Firestone** stated that the orientation of the existing house was done towards the lot not the street; that nonconformity already exists. The Commission could ask if the corner lot and existing lot are under common ownership. **Mr. Smelser** stated that both lots are currently for sale.

Commissioner Carter asked if the address of the existing house would change after the proposed house is in place. **Mr. Smelser** stated that the proposed house address would be 4001 SE Drake Street; the existing house will become 4003 SE Drake Street.

Commissioner Klein questioned why the previous owners who had been here since 1987 decided to develop this piece of property. **Mr. Smelser** stated that incentives come and you sell.

Chair Hammang asked if allowing the proposed development would pose a burden on the future buyer of the existing house. **Mr. Firestone** stated that the existing lot is on a series of lots that do not include the lot proposed for development; that is the way it has always been. The future owners are buying this lot; the documents of sale will clearly show that the lot is the corner lot.

Mr. Smelser stated that even if the people who owned the existing house had purchased the subject lot, it would still be a buildable lot. If the side yard variance is not allowed, a different house will be built. The owners of the adjacent house will still be looking at some ones' front door when they come out of their house, whether the new house is 15-feet-wide or 25-feet-wide.

TESTIMONY IN FAVOR -- None.

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION

Speaking: Cheryl Ausmann-Moreno, 10235 SE 40th Avenue, Milwaukie
(Co-Chair, Ardenwald NDA)

Ms. Ausmann-Moreno stated that people have been contacting her by phone, emails, and notes. The petition voices the concerns of the neighborhood. They have done ongoing traffic studies for speeding in the neighborhood and there have been recorded speeds of up to 70 mph on 40th Avenue. There have been 13-14 hit-and-runs around 40th and Harvey due to traffic problems in the area.

Other concerns were raised about removal of the trees and changing the character of the neighborhood. They would like to maintain the park-like area.

Speaking: Lisa Gunion-Rinker, 3012 SE Balfour Street, Milwaukie
(Co-Chair, Ardenwald NDA)

Ms. Gunion-Rinker stated that the Ardenwald/Johnson Creek Neighborhood meeting was held on February 14, 2006. Their neighborhood boundary runs along 40th Avenue with the Llewelling Neighborhood. She stated that their Land Use Chair did not get notification of this process. She was surprised when neighbors were talking to Cheryl about this issue, as the Ardenwald NDA had not heard about it. She submitted minutes of their meeting to the Planning staff.

Speaking: Arthur Ball, 4960 SE Harvey, Milwaukie

Mr. Ball stated that he is the Land Use Chair of the Llewelling Neighborhood Association. They have reviewed this request and have concerns. In 1988 this lot was deeded over and the City of Milwaukie wasn't notified, someone dropped the ball. This is a buildable lot, but he questions if this is a buildable lot that meets the criteria of the R-7 zone. According to the criteria the lot has to be 7,000 square feet and the lot width must be 60 feet wide; this is not met. This is a nonconforming lot.

The previous planning director indicated in the staff report that the lot did not conform back then and does not conform now to the zoning requirements of the R-7 zoning district. This lot is not legal for subdivision and zoning purposes; building permits for development cannot be issued until the matter is corrected. On page 15 it states that John says it would be illegal in land use terms to convey the property between this new tax lot line and line established by deed in 1988, which should be eliminated by deed. He asked if this line has been eliminated by deed. **Mr. Kelter** stated that the illegal lot line has been vacated; a re-plat is needed to remove the associated history line from the tax map. The line established by deed was not recognizable for planning and zoning purposes and it needs to go away. **Mr. Firestone** stated that the conveyance (deed) has been completed and legally changed back to a 41-foot lot.

Mr. Ball stated that it should be clarified whether this is a legal or illegal lot. He apologized to the Ardenwald Neighborhood for not getting involved with them on this issue; it is a border issue and concerns the Ardenwald neighborhood as well

as the Llewellyn neighborhood. A lot of the signatures on the petition are most likely from the Ardenwald neighborhood residents.

Mr. Ball does not understand how Mr. Smelser can say that there will be a house built on the ground. How can you do that if it is a nonconforming lot that does not meet the criteria of the R-7 zoned lot? They don't want to see a 15-foot house on that lot; they don't want to see the beautiful fir trees taken away. Neighbors have enjoyed this setting for 17 years and now it's going to be taken away. He is here tonight to speak against the variance.

If the 10-foot variance is allowed, there will be 10 feet of house that will obscure the vision of cars coming up and down 40th Avenue. You can't see through a house; you can see through a fence. This is detrimental to people's lives. **Mr. Kelter** stated that there is a clear vision standard that will not allow anything more than three feet high from the street grade of the property. However, the Commission has the authority to condition something lower than the three foot standard. He explained the city engineer's clear vision triangle to the audience.

Mr. Ball noted that the ground is elevated from the street level and asked if a potential fence consideration takes into account the two-foot elevation from the ground. **Chair Hammang** stated that if approved, there could be a condition not to allow anything in the line of site or only allow something very low on the corner.

Mr. Ball asked if this lot would be rezoned to R-3 to build this house for one lot. **Mr. Firestone** stated that the house was a buildable lot before 1978. There is a provision in the code that says if a lot was legally created originally and is at least 3,000 square feet and single-family homes are in the zone, then a single-family home can be built on the lot. An existing legal lot can be purchased that is only 3,000 square feet; however, a nonconforming lot cannot be created.

Mr. Ball stated that this is of deep concern of the Llewelling and Ardenwald neighborhoods. He encouraged the Commission to make the right decision. Either way it will have an adverse affect on their neighborhoods and they will be unhappy.

Commissioner Bresaw asked what the neighborhood's preference would be; a 15-foot house, or a 25-foot house? **Mr. Ball** stated that the 25-foot house would be much better than a 15-foot house; they don't want to see that at all.

Speaking: Leroy Hummel, 4813 SE King Road, Milwaukie

Mr. Hummel stated that he is a member of the Llewelling neighborhood association. He is dismayed about the things that have been brought up tonight. He cited an instance of a house that was built next to him on 49th Avenue. A duplex was built in front of a house facing King Road, five feet from the front

door of the existing house. This was approved in the 90's. This isn't something that hasn't been done before. At the time they were building the duplex, the builder came to him and requested a piece of his property to get the variances dismissed. Mr. Hummel refused the sale of his property. The duplex was built anyway. Parking was allowed on the side streets in front of the duplexes; now when school buses come by, they cannot see cars because of sight constraints. This was done with no questions asked; he wished that the Commission had supported him when he denied the sale of his property. There is precedence for this type of development.

It is his understanding that you have ownership of property that you have a deed for. At that time, it didn't make a difference if the city approved it or not. **Mr. Firestone** stated that up until 1979 people could record deeds without approval; since that time the code states that you cannot create a lot or change a property line without getting a subdivision approval or some approval from a jurisdiction or city. There are many deeds that were recorded in the county that never got city approval.

Everything that the Commission is considering has been done to him (Mr. Hummel). He has filed a Measure 37 claim. The applicant should not be able to build a house here; the city is losing tax revenues on such a small house. The value of a larger home would not be detrimental to the community.

Speaking: Colin Smith, 3915 SE Drake, Milwaukie

Mr. Smith asked if Milwaukie will turn into Portland with cardboard houses stuck in between established homes. He doesn't feel that anyone should live 15 feet from the sidewalk. The existing house looks like it was built to be there with the yard the size that it is, not with something 15-25 feet wide stuck alongside of it. When you start doing variances everybody wants to get in on it. He confirmed that this street is a drag strip; cars are zooming down this road as stated earlier as fast as 70 mph. **Chair Hammang** stated that the design code is not like Portland.

Speaking: Ray Bendick, 10014 SE 40th, Milwaukie

Mr. Bendick stated that his house is adjacent to the subject site. He moved here in 1973 and the subject site was all one lot. The owners at that time sold to the Carpenters. The Carpenters remodeled the house in 1985 and they broke the lot. Don purchased the house and a year later a contractor was going to build on the front; the wall was to be five feet from the front steps. He broke the line so no one could build there. Now he is moving and he doesn't care what happens to it.

Mr. Bendick stated that his driveway is along there; whether it is 15 or 25 feet it will impair his vision coming out of his driveway. He pointed out his property on

the site map. He gets a lot of foot traffic in front of his home and he feels that the vision of drivers will be impaired coming from the south.

Speaking: Mike Miller, 4206 SE Somewhere Drive, Milwaukie

Mr. Miller stated that he spent 6-1/2 years on the Planning Commission. The biggest question is what is going to be done in this city about the variances. To him the issue is not whether you build here or not, it is every time someone comes in and asks for a variance, are you going to grant it because they say if you don't give me the variance on this I will do something else. He feels that at some point the city has to say that variances are a last resort, not a first option. Variances normally impact the neighbors and the people who use that community. He believes that the Commission has to force people to live within the means that they purchase a piece of property on, unless there is no other resort. The fact remains that a 15-foot house or 25-foot house is all that there is to decide for a variance. He thinks the Commission should look at this variance as something that doesn't prohibit this lot from being used and then take up the other issue when it comes up. He feels the variance should not be granted if there is another way of dealing with the issue.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Batey voiced concern that if this variance were not granted a 15-foot house would be constructed. **Mr. Miller** stated that if a 15-foot house is legal and can be put there then that's what has to happen. The issue is not the size of the house. The issue is whether to grant a variance and allow a 25-foot house, or say "no", and deal with the issue of the lot itself, and what can be put there without a variance. He does not see this as a hardship. He does not believe a 15-foot house would be built there because it would not be economically feasible.

ADDITIONAL COMMENTS FROM STAFF

Brett Kelter stated that he did not note the neighborhood boundary of this site and did not take due diligence in terms of deciding it was appropriate to get the relevant information to the Ardenwald neighborhood. There were signs posted and information provided to the Llewelling neighborhood.

Commissioner Carter asked what the right-of-way width is on 40th Avenue. **Mr. Kelter** stated 60 feet.

QUESTIONS FROM THE COMMISSIONERS REGARDING CLARITY

Commissioner Brinkman asked if the original lot line from the 1800's had been changed. **Mr. Firestone** stated that there was an attempt to change a deed recorded, but as far as the City is concerned, it was not a legal lot line change. It was created as a subdivision and it has never been changed. There was a deed

that fixed the erroneous deed that did not get city approval (exhibit 5 and exhibit 6). Lots do not cease to exist unless there has been a land use process to change theirs. The deed attempted to and failed to make it clear that the recorded instrument did not meet city requirements for a lot change. The lot was created when the subdivision was created and was recorded in 1891. In this particular case it creates an awkward situation with the City because the legally recorded deed made it closer to conformity with the R-7 standards but was not a legal deed. Anything recorded since 1977 needs to be undone; it reverts back to the original plat.

APPLICANT'S CLOSING COMMENTS

Speaking: Steve Smelser, Smelser Homes Inc., PO Box 1069, Clackamas

Mr. Smelser stated that he is not demanding; he is sure that someone else will build a house on this property if he doesn't. He has no problem with a condition that there is no fence along the sight line along 40th Avenue. He offered a suggestion of taking the house and moving it back, making a 25-foot back yard and a 35-foot front yard. This will help with the other house having its front door on the side. There would be 30 feet between the two homes.

Chair Hammang asked if the tree in front will be retained. **Mr. Smelser** stated that if he can save the tree, he will. Builders do not want to take out trees if they don't have to; trees have value.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Klein asked if the sale is contingent on getting the variance. **Mr. Smelser** said "yes" it is.

Ms. Rouyer stated that the tree could present a problem being that close to the driveway.

DISCUSSION AMONG THE COMMISSIONERS

Chair Hammang closed the public testimony portion of the hearing and opened it up to discussion among the Commissioners.

Commissioner Bresaw stated she couldn't support the variance; she is supporting the neighbors. Whether the house is 15 feet or 25 feet wide it does not go with the neighborhood.

Commissioner Carter stated that if you tunnel vision the traffic, it will slow down the traffic. There are fir trees on I-205 coming east off of I-5 heading into Stafford Street. People slow down when they come to this section of the road. In Sellwood between 17th and 13th they have widened and narrowed the road in

certain areas to slow the traffic. In this situation, if trees are put on this site, people will slow down to see around the trees. Also, putting a fence up on the corner will make people slow down and become conscious of the sight distance. Safety and site distance concerns need not be a reason for declining the variance because these issues can be addressed by various traffic calming options.

Commissioner Klein said that he is not willing to drop Milwaukie's standards to accommodate something that is nonconforming. If a 25-foot house does not fit the neighborhood, a 15-foot house is not going to fit the neighborhood. He feels it is an entitlement for the Commission to give the applicant a variance to build a larger house. It is not a hardship by making the applicant stay within the 15-foot limitation; if they can build a 15-foot house, so be it. He is in opposition to granting this variance.

Commissioner Brinkman stated that she would have liked to see the owners here to explain if they purchased this property so no one could build a house on it. Now that they are selling their house, they want to sell this lot too. She feels this is an issue of interpretation. There is room to argue that this lot has been re-established after the R-7 zoning designation. She asked for the definition of the term "unusual conditions" and when a grandfathered nonconforming lot constitutes an "unusual condition." She does not feel that the requirements for a variance are met. In addition, she is convinced that the traffic issues could present a significant problem for the neighborhood and for the adjacent owner coming out of his driveway, pedestrians, and traffic. She is not in support of the variance.

Mr. Firestone stated that the provisions for "unusual conditions" indicate that such conditions relate to physical characteristics of the property lot or boundary configurations or prior existing structures.

Commissioner Batey stated that it is a risk whether someone will build a 15-foot-wide house or not; the resulting structure will really be out of character with the neighborhood. However, it will create less of a visibility problem with the neighborhood. She likes being tough on the no-variance policy.

Recess was taken at 8:40 p.m. and the meeting reconvened at 8:52 p.m.

Draft findings were read in support of the denial of a motion:

- Keep the first and third sentences of recommended finding #1
- Keep recommended finding #2
- Replace findings #3 and #4 with suggested language:
 - Finding #3 - "The property does not have unusual conditions. The applicant has argued that the size of the lot is an unusual condition. The Planning Commission finds that the lot is rectangular and is therefore not an unusual configuration. The fact

that it is a corner lot is not unusual.”

- Finding #4 - “There are feasible alternatives in that the property can be developed with a single-family home and meet applicable standards. The Planning Commission interprets “substantially similar” as used in Section 19.702.1 to mean that a similar use is allowed. In effect, the property can be put to a substantially similar use as other properties in the area, it can be used for a single-family residence.”

Commissioner Bresaw noted that there are other legal lots in the area that are used as front yards and are not built on. It is not practical to build on these lots; they detract from the neighborhood and detract from the lot the house sits on.

Commissioner Klein moved to deny Variance Request 05-05 for a street-side yard setback of 10 feet where 20 feet are required and adopt the recommended findings and conditions in support of denial as stated tonight by the City Attorney. Commissioner Newman seconded the motion.

Ayes: Batey, Bresaw, Brinkman, Klein, Newman, Hammang

Nays: None

Abstention: Carter

The motion carried 6-0 with 1 abstention

Discussion followed on possible amendments to the current codes that would provide clearer standards if similar situations arise in the future. There are two areas that the Planning Commission could consider changes for.

One provision to consider says, “...in any zone you have a legally existing 3,000 square foot lot you can build a single-family house on it.” The Planning Commission could have a sliding scale. Some zones could be 3,000 square feet and other zones could be 5,000 square feet.

This particular case pointed out one of the provisions in the Subdivision Ordinance that relates to the approval standards for re-plats and lot line adjustments: “...all lots created by re-plat and lot line adjustments must meet existing standards.” That is a little unusual and could put people in awkward situations. It is unusual particularly for lot line adjustment situations where there is a minimum 7,000 square foot lot and there are two lots side-by-side; 4,000 and 8,000, with a 12,000 square foot total. The current code would allow for a house to be built on the 4,000 square foot lot. It would be better to increase the size of the smaller lot, but the code does not allow for that. The Subdivision Ordinance could be amended to allow a lot line adjustment if the lot that is decreased in size still meets the current minimum for the zone and the lot that is increased has to come closer to meeting the standards.

Mr. Firestone suggested the following amendments:

- A sliding scale that applies to legally existing lots
- Approval standards for lot line adjustments and re-plats
- Add a provision that takes into consideration orientation of existing structures and whether or not to allow it

Commissioner Brinkman complimented Brett Kelter on a great job with this application; all commissioners agreed.

7.0 WORKSESSION ITEMS -- None.

8.0 DISCUSSION ITEMS

Commissioner Carter suggested that under Procedural Matters on the Agenda there should be a statement included that reminds the audience that the yellow testimony forms need to be filled out and turned in if people want to testify.

9.0 OLD BUSINESS -- None.

10.0 OTHER BUSINESS / UPDATES

10.1 Officers Nominations

Commissioner Bresaw moved to nominate Donald Hammang for the office of Chair. Commissioner Newman seconded.

Ayes: Carter, Batey, Bresaw, Brinkman, Klein, Newman

Nays: None

The motion to appoint Donald Hammang for the office of Chair carried 6-0.

Commissioner Brinkman moved to nominate Commissioner Klein for the office of Vice Chair. Commissioner Bresaw seconded the motion.

Ayes: Carter, Batey, Bresaw, Brinkman, Newman, Hammang

Nays: None

The motion to appoint Jeff Klein for the office of Vice Chair carried 6-0.

10.2 Matters from the Planning Director

- Transition Period **Alice Rouyer** stated that the department is in the state of transition with new staff hired and more staff to be hired. She will be working with Katie Mangle during this time.
- Joint Meeting with Council **Alice Rouyer** stated that there is

a staff report that gives a list of council priorities. **Commissioner Batey** stated that she would like to see the Mayor's list before they meet to discuss goals. **Alice Rouyer** encouraged all the Commissioners to attend the City Council meeting. Chair Hammang will lead the discussion.

- March 14th Commission Meeting **Alice Rouyer** noted that there are no hearings scheduled for the March 14th meeting. She suggested a joint meeting with the Design and Landmarks Committee. It was the consensus of the Commission to meet with the Design and Landmarks Committee on March 14th.

Alice Rouyer asked if there are things Katie Mangle should be made aware of in orientation. She asked the Commissioners let her know if there are issues that should be brought up.

- CSO Updates Staff has been is working on CSO updates and revising standards to address the Kellogg concerns. These standards should come before the Planning Commission in late March.
- Code Updates **Alice Rouyer** passed out the most recent copy of the code. She will make sure that all the Commissioners get code updates in the future.
- Annexations **Ms. Rouyer** stated that the Panattoni annexation created an island. There will be annexations as a result of this.

Coming to the Planning Commission soon will be a design review application to add some multifamily units onto the existing apartment complex. In order to annex, the developer will need to connect to the sewer. Other annexations will be coming forward; an annexation off Willow and Stanley Streets and properties in the Island Station neighborhood.

- Meeting Time Limit Policy **Alice Rouyer** submitted and read the draft time limit policy. She asked that the commissioners review the policy for comments and approval.

Discussion followed on the policy. It was decided to add a sentence on the end of the policy, "The decision whether to complete the agenda item before continuing the hearing shall be by motion." This item will be put on the back of the Agenda.

Commissioner Batey stated that she attended the Clearwater meeting. She saw in the newspaper that the North Industrial businesses were appealing the Tri-Met application. **Alice Rouyer** stated that the appeal deadline is Thursday, March 2 at 5:00 p.m.

11.0 NEXT MEETING -- March 14, 2005

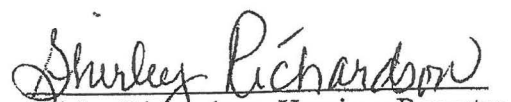
11.1 Joint Meeting with the Design and Landmarks Committee

Commissioner Klein moved to adjourn the meeting of February 28, 2006.
Commissioner Bresaw seconded the motion. MOTION PASSED UNANIMOUSLY.

The meeting adjourned at 9:55 p.m.



Donald Hammang, Past Chair
Jeff Klein, Current Chair



Shirley Richardson, Hearings Reporter

MILWAUKIE PLANNING COMMISSION

MILWAUKIE CITY HALL
10722 SE MAIN STREET

AGENDA TUESDAY, FEBRUARY 28, 2006 6:30 PM

		ACTION REQUIRED
1.0	Call to Order	
2.0	Procedural Matters Please turn off all personal communication devices during meeting. Thank You.	
3.0	Planning Commission Minutes No minutes available at this time. Approved PC Minutes can be found on the City web site at: www.cityofmilwaukie.org	Motion Needed
4.0	Information Items – City Council Minutes City Council Minutes can be found on the City web site at: www.cityofmilwaukie.org	Information Only
5.0	Public Comment This is an opportunity for the public to comment on any item not on the agenda	
6.0	Public Hearings	Discussion and Motion Needed For These Items
6.1	Type of Hearing: Minor Quasi-Judicial Applicant: Broken Arrow Archery, Inc. Owner: Shipley and Buchwalter Family Trust Location: 2044 SE Adams St. (1S 1E 36BC 03100) Proposal: Internally illuminated sign for a business in the Downtown Office Zone File Numbers: DR-05-01 NDA: Historic Milwaukie Staff Person: Brett Kelter	
6.2	Type of Hearing: Minor Quasi-Judicial Applicant: Steve Smelser Homes, Inc. Owner: Ron and Judy Clark Location: 4001 SE Drake St (1S 1E 25DD 07000) Proposal: Variance to construct a single-family detached house. File Numbers: VR-05-05 NDA: Lewelling Staff Person: Brett Kelter	
7.0	Worksession Items	
8.0	Discussion Items This is an opportunity for comment or discussion by the Planning Commission for items not on the agenda.	Review and Decision
9.0	Old Business	
10.0	Other Business/Updates	Information Only Review and Comment
10.1	Matters from the Planning Director	
10.2	Design and Landmark Committee Report	
11.0	Next Meeting: March 14, 2006 The above items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.	

Forecast for Future Meetings:

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

Public Hearing Procedure

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** The staff report is followed by any verbal or written correspondence that has been received since the Commission was presented with its packets.
3. **APPLICANT'S PRESENTATION.** We will then have the applicant make a presentation, followed by:
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **COMMENTS OR QUESTIONS.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** We will then take testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** When you testify, we will ask you to come to the front podium and give your name and address for the recorded minutes. Please remain at the podium until the Chairperson has asked if there are any questions for you from the Commissioners.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all testimony, we will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. We will then enter into deliberation among the Planning Commissioners. From this point in the hearing we will not receive any additional testimony from the audience, but we may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION/ACTION.** It is our intention to make a decision this evening on each issue before us. Decisions of the Planning Commission may be appealed to the City Council. If you desire to appeal a decision, please contact the Planning Department during normal office hours for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** The Planning Commission may, if requested by any party, allow a continuance or leave the record open for the presentation of additional evidence, testimony or argument. Any such continuance or extension requested by the applicant shall result in an extension of the 120-day time period for making a decision.

The Planning Commission's decision on these matters may be subject to further review or may be appealed to the City Council. For further information, contact the Milwaukie Planning Department office at 786-7600.

Milwaukie Planning Commission:

Donald Hammang, Chair
Brent Carter, Vice Chair
Lisa Batey
Teresa Bresaw
Catherine Brinkman
Jeff Klein
Dick Newman

Planning Department Staff:

Vacant, Planning Director
Lindsey Nesbitt, Associate Planner
Susan Shanks, Associate Planner
Brett Kelter, Assistant Planner
Jeanne Garst, Office Supervisor
Karin Gardner, Administrative Assistant
Marcia Hamley, Administrative Assistant
Shirley Richardson, Hearings Reporter



To: Planning Commission
Through: Alice Rouyer, Interim Planning Director
From: Brett Kelter, Assistant Planner
Date: February 28, 2006
Subject: File: DR-05-01
 Applicant: Broken Arrow Archery, Inc.
 Site Address: 2044 SE Adams St.
 (Tax Lot 1S1E36BC03100)
 NDA: Historic Milwaukie

Action Requested

Deny application DR-05-01 requesting an internally illuminated cabinet sign in the Downtown Office (DO) zone and adopt the recommended findings in support of denial.

Key Issue

1. How does this illuminated sign fit with the City's Downtown Design Guidelines?

Background Information / Site Characteristics

The applicant is seeking approval of an internally illuminated sign for a business in the Downtown Office (DO) zone. The property is located on the southeast corner of Main Street and Adams Street. The Shipley & Buchwalter Family Trust owns the building on the site, which is currently occupied by the U.S. Postal Service and Broken Arrow Archery, Inc (the applicant). The Post Office is in the western half of the building and Broken Arrow Archery is in the eastern half.

Broken Arrow Archery was previously located south of the Milwaukie city limits on McLoughlin Boulevard. In 2005, the applicant bought out the previous tenant at the subject property (On-Target Archery) and obtained a City Building Permit (#050525) for tenant improvements at the site. The improvements included an interior remodel to create an archery range, office space, and storage.

Details of the applicant's project to install new signage at the subject property are as follows:

- a. The applicant proposes installation of an existing, internally illuminated cabinet sign from the previous business location on McLoughlin Blvd. The sign is 19 feet long, three feet high, and approximately eight inches thick.
- b. The applicant proposes to install this sign on the Main Street side of the building at 2044 SE Adams Street.
- c. The proposed sign meets the area requirements for wall signs in downtown zones (sign area not to exceed 20 percent of building face) as per Section 14.16.060(B).



Photos: Existing sign (left); proposed sign location on Main Street side of 2044 SE Adams (right).

Analysis of Key Issue

(See Attachment 1 – Findings in Support of Denial.)

The applicant is seeking approval of an internally illuminated sign for a business in the Downtown Office (DO) zone. The applicant has elected to defer submission of a Sign Permit until a decision about sign illumination has been made. However, the proposed sign complies with all other relevant standards as set forth in Section 14.16.060.

Section 14.16.060(G) – Illumination for signs in Downtown Zones

In the City's Sign Ordinance, Section 14.16.060(G) sets standards for sign illumination in the downtown zones.

Internally illuminated cabinet signs are "discouraged" in the downtown zones but they may be permitted subject to design review approval. The process is a Minor Quasi-Judicial one, with the Design and Landmarks Committee as the initial reviewer. The Design and Landmarks Committee is not a "commission" with independent approval authority, so it reviews the application and makes a recommendation to the Planning Commission for a final decision.

A summary of the key issue follows:

1. **How does this illuminated sign fit with the City's Downtown Design Guidelines?**

Section 14.16.060(G) directs the Design and Landmarks Committee to use the downtown design guidelines as approval criteria. The downtown design guidelines note that sign lighting may provide interest not only during nighttime but also daytime. Sign lighting should be oriented toward pedestrians along adjacent streets and open spaces. The guidelines list different types of lighting as "recommended" or "not recommended" as follows:

Recommended:

- "Gooseneck" lighting that illuminates wall-applied signs.
- Sign silhouette backlighting.
- Incandescent or fluorescent bulb or low-voltage lighting.

Not Recommended:

- Backlight vinyl awning sign lighting.
- ***Interior plastic sign lighting.***
- Metal halide, neon or fluorescent tube sign lighting.
- Signs lit by lights containing exposed electrical conduit, junction boxes or other electrical infrastructure.

The downtown design guidelines also address wall signs. Signs should not overwhelm the building or its special architectural features, nor should they render the building a mere backdrop for advertising or building identification. (See Attachment 2 – Downtown Design Guidelines for Sign Lighting and Wall Signs.)

Applicant's response: (See Exhibit 1 – Applicant's Narrative.) This application is seeking approval to use an existing sign from the previous business location at 16600 SE McLoughlin Boulevard. The sign is well under the maximum size requirements for the new location. Its internal fluorescent-bulb lighting is not overly bright and the electrical conduit, junction boxes, and electrical infrastructure will be hidden. The sign will be located on the upper-level wall and does not overwhelm or adversely affect the building.

"I have walked through downtown Milwaukie and made a list of businesses (two blocks north and one block east of my building) with signs that do not comply with the Milwaukie Sign Ordinance. The Broken Arrow Archery sign wouldn't negatively impact my building or the downtown area. I only wish to make my business more visible and easier to locate for our customers." (See Exhibit 2 – Applicant's List of Nonconforming signs downtown.)

Broken Arrow Archery is working with local schools, North Clackamas Parks & Recreation, Scouting groups, and others to make this a valuable business in the downtown Milwaukie area.

Staff's response: The applicant is not creating a new sign but rather is seeking to use a pre-existing sign from the previous business location. In this respect, the sign represents a substantial asset for the business. The applicant has invested

additional financial resources in remodeling the interior of the building and has described plans to renovate the exterior as well.

While the proposed sign fits the downtown design guidelines for wall signs, it does not measure up as well to the guidelines for sign lighting. The proposed sign is an internally illuminated, plastic-faced cabinet sign and falls into the "not recommended" sign lighting category. The downtown design guidelines were created to ensure a degree of order, harmony, and quality within the built environment. They allow the development of buildings and projects that are attractive individually yet contribute to a downtown that is unified and distinctive as a whole. Unfortunately for the applicant, illuminated plastic cabinet signs do not fit that vision.

The applicant's argument that there are already many nonconforming signs downtown is a compelling one. It is true that the proposed sign is not prohibited by the Sign Ordinance, it is only "discouraged." And this is the first internally illuminated sign that has gone through the design review process since the downtown design guidelines were adopted in 2003. However, to allow the proposed internally illuminated sign is to set a precedent contrary to the direction of the downtown design guidelines.

Conclusion

The Design and Landmarks Committee finds that the proposed sign does not meet the recommended guidelines for sign lighting as presented in the downtown design guidelines. The Design and Landmarks Committee recommends that the Planning Commission deny the request for the reasons identified below:

1. As an internally illuminated, plastic-faced cabinet sign, the proposed sign falls into the "not recommended" category of design guidelines for sign lighting.
2. The proposed sign conforms to all other applicable criteria for signs in the downtown zones as specified in Section 14.16.060. The applicant has the option of installing the proposed sign without connecting it for internal illumination. The applicant could use another form of sign illumination more compatible to the design guidelines.
3. Denial of this request for approval upholds the intent of the downtown design guidelines, which were adopted by the City Council in 2003.

Code Authority and Decision-Making Process

Milwaukie Municipal Code:

1. Title 14, Section 14.16.060(G) – Illumination for signs in Downtown Zones
2. Title 19, Section 19.312.7(G) – Approval Criteria for Design Review in Downtown Zones
3. Title 19, Section 19.1011.3 – Minor Quasi-Judicial Review

Design review applications for internally illuminated signs in the downtown zones are subject to minor quasi-judicial review. The Design and Landmarks Committee conducts an initial hearing and makes a recommendation to the Planning Commission for a final decision. Both the Design and Landmarks Committee and the Planning Commission must consider whether the applicant has demonstrated substantial consistency with the code sections shown above. In quasi-judicial reviews the Planning Commission assesses the application against approval criteria and evaluates testimony received at the public hearing. The Planning Commission has three decision-making options as follows:

1. Deny the application upon a finding that it does not meet approval criteria.
2. Approve the application upon finding that all approval criteria have been met.
3. Approve the application subject to conditions when they are needed for compliance with approval criteria.

Design and Landmarks Committee Recommendation

This application was reviewed by the City of Milwaukie Design and Landmarks Committee on February 22, 2006. A summary of their recommendation will be available at the Planning Commission meeting on February 28, 2006.

Comments

Verbal comments from Ed Zumwalt, Chair of Historic Milwaukie NDA

- We should be sympathetic to the applicant's investment in the existing cabinet sign from the previous business location.
- We should also be mindful of the design vision for the future downtown and encourage a sign that is more compatible with the design guidelines.

Attachments & Exhibits

Attachment 1 Findings in Support of Denial

Attachment 2 Downtown Design Guidelines for Sign Lighting and Wall Signs

Exhibit 1 Applicant's Narrative

Exhibit 2 Applicant's List of Nonconforming signs downtown

Attachment 1

Recommended Findings in Support of Denial

1. The applicant has submitted a design review application for approval of an internally illuminated cabinet sign in the Downtown Office (DO) zone at 2044 SE Adams Street. The site is subject to the zoning regulations of Section 19.312 as well as the signage regulation of Section 14.16.060.
2. Application DR-05-01 has been processed and public notice has been provided in accordance with requirements of Zoning Ordinance Section 19.1011.3 Minor Quasi-Judicial Review.
3. As per Section 14.16.060(G) of the Sign Ordinance, a meeting of the Design and Landmarks Committee has been held to review of this application. The Design and Landmarks Committee recommends that the Planning Commission deny this application for illumination. The proposed sign is an internally illuminated, plastic-faced cabinet sign. As such, it falls into the "not recommended" category of design guidelines for sign lighting and is therefore inconsistent with the Downtown Design Guidelines.

Lighting Guidelines

Milwaukie Downtown Design Guidelines

Sign Lighting

Guideline

Sign lighting should be designed as an integral component of the building and sign composition.

Description

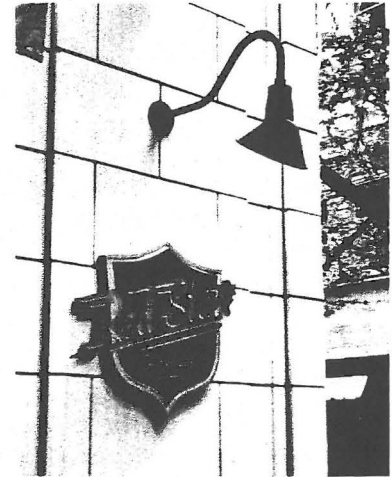
Sign lighting may provide interest not only during nighttime but also daytime. Sign lighting should be oriented toward pedestrians along adjacent streets and open spaces.

Recommended

- "Gooseneck" lighting that illuminates wall-applied signs.
- Sign silhouette backlighting.
- Incandescent or fluorescent bulb or low-voltage lighting.

Not Recommended

- Backlight vinyl awning sign lighting.
- Interior plastic sign lighting.
- Metal halide, neon or fluorescent tube sign lighting.
- Signs lit by lights containing exposed electrical conduit, junction boxes or other electrical infrastructure.



Recommended: Gooseneck lighting that illuminates a wall sign (SW 5th and Alder, Portland)



Not Recommended: Exposed utilitarian lighting (SW Salmon and 9th, Portland)

Sign Guidelines

Milwaukie Downtown Design Guidelines

(p. 2 of Attachment 2)

Wall Signs

Guideline

Signs should be sized and placed so that they are compatible with the building's architectural design.

Description

Signs should not overwhelm the building or its special architectural features. Signs should not render the building a mere backdrop for advertising or building identification.

Recommended

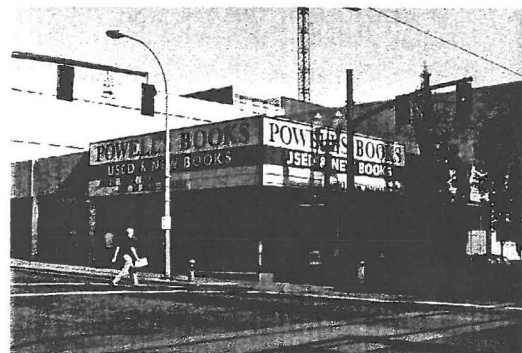
- Wall signs should be located along the top, middle or at the pedestrian level of buildings.
- Signs should be incorporated into the building architecture as embossing, low relief casting, or application to wall surfaces.
- Signs may be painted or made with applied metal lettering and graphics.
- Signs should be durable and long lasting.
- Signs may incorporate lighting as part of their design.
- Signs should be located as panels above storefronts, on columns, or on walls flanking doorways.

Not Recommended

- The material, size and shape of signs that overwhelm, contrast greatly or adversely impact the architectural quality of the building.



Recommended: Signs incorporated into architectural design (NW 23rd and Everett, Portland)



Not Recommended: Oversized sign (NW 10th and Burnside, Portland)



Not Recommended: Building facades designed primarily to serve as a sign (NW 20th and Burnside, Portland)

Exhibit 1

Dear DLC,

I would like to apply to use the sign I already own, from my previous business location, (16600 S.E. McLoughlin Blvd. Milwaukie, Or.). I relocated my business, Broken Arrow Archery, to 2044 S.E. Adams St. Milwaukie, Or. in October of 2005.

The sign is well under the size requirements for the location. Also, it has internal florescent bulb lighting that isn't overly bright. The electrical conduit, junction boxes, and electrical infrastructure are hidden. The sign will be located on the upper roof wall, and does not overwhelm or adversely affect the building.

I have walked thru the downtown Milwaukie area and made a list of businesses (2 blocks north and 1 block east of my building) with signs that do not comply with the Milwaukie Sign Ordinances. The Broken Arrow Archery sign wouldn't negatively affect my building or the downtown area. I only wish to make my business more visible and easier to locate for our customers. We are currently remodeling the interior and exterior of our building.

Broken Arrow Archery is working with the Schools, N. Clackamas Parks and Rec., Scouts, and other groups to add a valuable and prosperous business to the downtown Milwaukie area.

Sincerely,



Chuck Pedracini

President, Broken Arrow Archery Inc.

RECEIVED

DEC 13 2005

CITY OF MILWAUKIE
PLANNING DEPARTMENT

RECEIVED

RECEIVED

Exhibit 2

OCT 24 2005

DEC 13 2005

6.1 Page 10

CITY OF MILWAUKIE
PLANNING DEPARTMENTCITY OF MILWAUKIE
PLANNING DEPARTMENT

10-21-05

Bernard's Garage - Illum.	- above Roof Line
The Glass Shop - Illum.	- Above Roof Line
Bank of the West - "	"
Cosmetic & Family Dentistry	" "
ARCO - AM PM	" "
Astro Gas	" "
Libby's Restaurant	" "
Salon Demara	" - 2ft Deep Deep
Wunderland Wunderland	" 3 signs
Dark Horse Comics Dark Horse Comics	" "
The Brew	" "
Things	" 10ft. from Wall
Main Street	" 2ft From Wall
Key Bank	" "
Quik time Signs	" "
Main St. Cleaners	" "
Town Grocery & Deli	" "
Mil. Lumber	" "
Wash. Mutual	" "
Sully's Cafe	" Away from wall
Spark of Life	" Away from wall
Mil. Insurance	" "

List of businesses with illuminated wall signs. Some above roof line, too deep or away from the building.



To: Planning Commission
Through: Alice Rouyer, Interim Planning Director *ACR*
From: Brett Kelter, Assistant Planner
Date: February 28, 2006
Subject: File: VR-05-05
 Applicant: Steve Smelser Homes, Inc.
 Site Address: 4001 SE Drake St.
 (Tax Lot 1S1E25DD07000)
 NDA: Lewelling

Action Requested

Approve application VR-05-05 for a variance authorizing a street-side yard setback of 10 feet where 20 feet are required, and adopt the recommended findings and conditions in support of approval.

Key Issues

1. Is the subject parcel a legal lot of record?
2. Has the applicant demonstrated compliance with the variance criteria?

Background Information / Site Characteristics

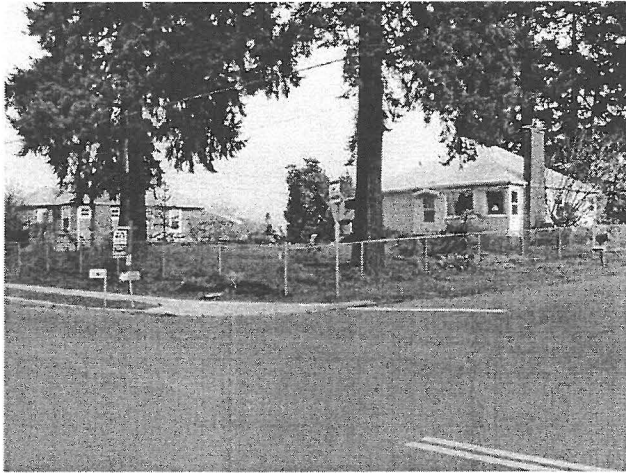
The property is located on the northeast corner of Drake Street and 40th Avenue in the residential R-7 Zone. The lot is 41 feet wide and 100 feet deep, approximately 4100 square feet in area. It is a legal lot of record that is nonconforming with respect to lot size and lot width. The lot was created as part of the Marchbanks subdivision in 1891, before the adoption of current residential R-7 zone standards.

This application proposes the approval of a variance for the purpose of constructing a single-family detached house on the subject lot. (See Exhibit 1 – Site Plan.) The project includes:

- a. Construction of a 1400-square-foot single-family residence on the vacant lot.
- b. As proposed on the site plan, the new house will face and take access from Drake Street. The street-side yard setback from 40th Avenue is

shown as 10 feet from the property line. The required street-side yard setback for the residential R-7 zone is 20 feet. The applicant is requesting a variance from this standard.

- c. Surrounding properties consist of one- and two-story single-family detached dwelling units with an average lot width of 75 feet.



Photos: Subject lot on NE corner of 40th Ave. & Drake St.

Analysis of Key Issues

This section addresses aspects of the project that require conditions be imposed to ensure compliance with zoning criteria or otherwise warrant discussion. (See Attachment 1 – Findings and Conditions in Support of Approval.)

Section 19.302 Residential R-7 Zone

Section 19.302 sets standards for the residential R-7 zone.

The proposal complies with all development standards for the residential R-7 zone except the street-side yard setback, for which the applicant is requesting a variance. (See Attachment 2 – R-7 Zoning Compliance Checklist.)

A summary of key zoning issues follows:

1. Is the subject parcel a legal lot of record?

Records show that the parcel was approved in 1891 as part of the Marchbanks subdivision (specifically, as Lot 50 of Block 7). The lot is approximately 41 feet wide and 100 feet deep.

In 1988, 14.06 feet from Lot 49 of the original subdivision were deeded with all of Lot 50 to form a separate tax lot that was 55 feet wide (a prior version of tax lot 7000). The abutting tax lot (a prior version of tax lot 7001) consisted of the remaining 10.94 feet of Lot 49 and all of Lots 46, 47, and 48—it was 86 feet wide. In 2005, a Director's Interpretation was issued that the creation of tax lots 7000 and 7001 by deed in 1988 did not produce legal lots of record. (See Exhibits 3

and 4 – Director's Interpretation Letters dated October 26, 2005, and December 6, 2005, respectively.)

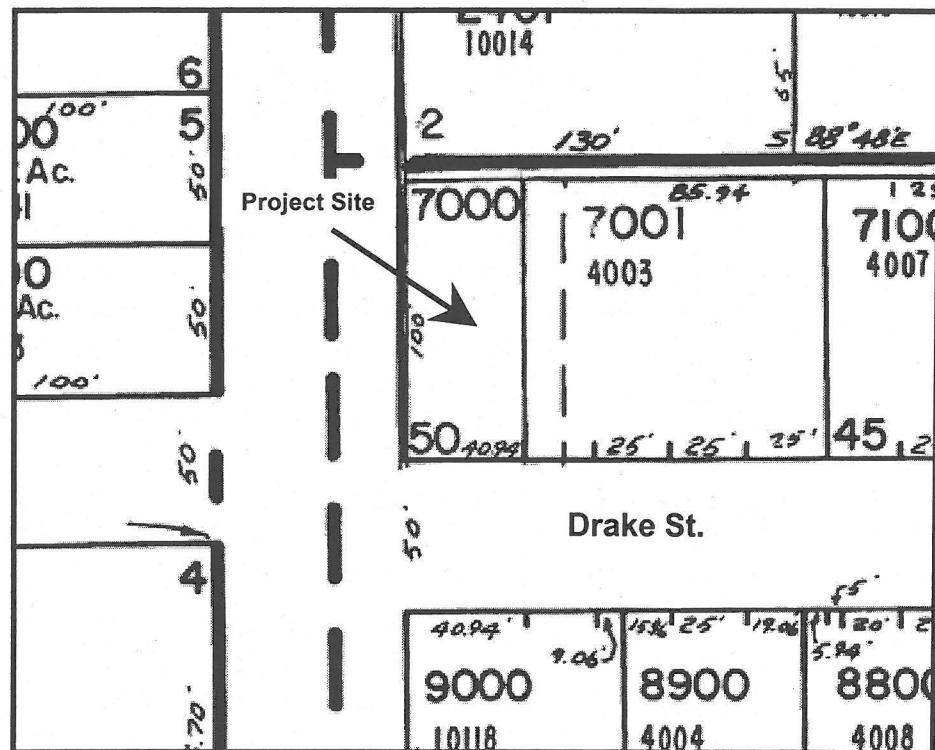
The property owners (Ron and Judy Clark) have taken the following actions to restore the original lot:

- They petitioned the County Assessor to amend the tax map so that tax lot 7000 has the same boundary as the original Lot 50 from the 1891 Marchbanks subdivision. (See Figure 1, below.)
- The owners have recorded Bargain and Sale Deeds with the County to re-draw the tax lot boundaries so they match with the underlying legal lots of record. (See Exhibits 5 and 6 – Bargain and Sale Deeds for Lot 50 and for Lots 46-49, respectively.)

Section 19.412 says that a residential lot created before the City's Zoning Ordinance went into effect and which has an area or dimension that does not meet the zoning requirements shall be considered "buildable" as long as it has a minimum area of 3000 square feet and frontage on a public street. Section 19.412 also requires that legal nonconforming lots have a minimum area of 3000 square feet to allow development. The subject parcel is 4100 square feet and meets this requirement, so it may be used for a single-family residential dwelling subject to the development standards of the underlying R-7 zone.

Figure 1

The current version of the Assessor's Map for 1s1e25DD shows Tax Lot 7000 with the same boundary as the original subdivision Lot 50. The dashed line shows the 1988 boundary of Tax Lot 7000 (created by deed) at 55 feet wide. The improper lot creation was corrected in late 2005.



2. Has the applicant demonstrated compliance criteria for granting variances as follows: (See Exhibit 2 – Applicant's Narrative.)

A. Does the property in question have unusual conditions over which the applicant has no control?

Applicant's response: The lot is a corner lot and is only 41 feet by 100 feet. Because of the 41-foot width, the corner setback requirement on the SE 40th street side of 20 feet, and the minimum setback on the east side yard of five feet, a home facing Drake Street could be no wider than 16 feet. A home could not be built that faced SE 40th because the front yard and rear yard setback would equal 40 feet, which is almost the entire width of the lot. We wish to build a home up to 25 feet wide but cannot do so under existing setback requirements.

Staff's Response: The 41-foot-wide lot does not meet the R-7 minimum standards for lot width and lot area.¹ However, as discussed above, the lot is a legal lot of record. The proposed house is a permitted use in the underlying zone and meets all of the requirements of that zone except the street-side yard setback. The unusual condition is that the subject parcel is a legal lot of record and does in fact meet the minimum lot area standard for development even as it does not conform to the two R-7 standards noted above. Given its location on a street corner, it is infeasible to build a single-family home on the property while still meeting the street-side yard setback.

B. Are there any feasible alternatives to the variance and is the variance the minimum variance necessary to allow the applicant use of his/her property in a manner substantially similar to the surrounding area?

Applicant's Response: While it is possible to build a 15-foot wide rowhouse-style home, this type of home is not compatible with the neighborhood. If the street-side side yard is reduced to 10 feet, we could build a home that is 25 feet wide and more typical of the area. The front façade of a 15-foot-wide home would be dominated by the garage, which would take up 11 feet of the front. Design alternatives are very limited with a home that is 15 feet wide. A home that is 25 feet wide would have many more design opportunities and would better fit the character of the area. (See Exhibit 7 – Applicant's "Attachment C" for examples of 15-foot and 25-foot-wide homes.)

We measured the widths of 29 homes within a one-block radius from our corner lot. The average width of the homes is 45 feet, with the narrowest being 30 feet wide and the widest being 70 feet wide (see Exhibit 8 – Applicant's "Attachment Map A"). A 15-foot-wide home would

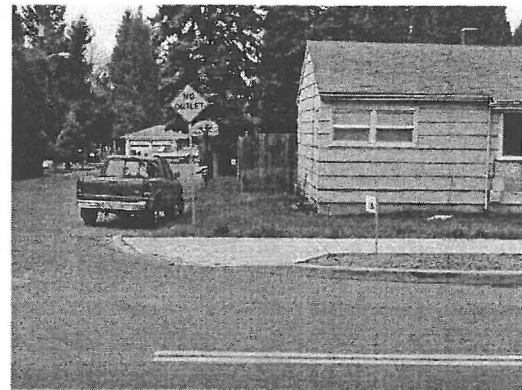
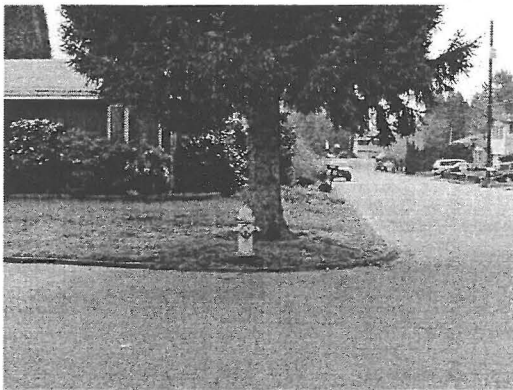
¹ In the R-7 zone, the minimum lot width is 60 feet and the minimum lot area is 7,000 square feet.

not even be close to the minimum width home in the area and would be very awkward-looking. By reducing the required setback on the SE 40th street-side yard to 10 feet, we could build a 25-foot-wide home that is more compatible with existing homes in the area.

Staff's Response: If all R-7 setbacks are met, the building envelope will be only 16 feet wide. A 15- or 16-foot-wide house could be constructed on this lot; however, staff believes such a house would be substantially smaller than other houses in the neighborhood. Staff believes that the proposal is the minimum variance necessary to allow the applicant to have a house of a size similar to others in the area.

C. That the adverse effects upon other properties that may be the result of this variance shall be mitigated to the extent feasible.

Applicant's response: This change of setback requirements will have no adverse impact upon other properties. There are already other homes in the area that have setbacks of only five feet on the street-side yard. We measured the setbacks of the nearby corner lot homes. Two within eyesight have street-side setbacks of only five feet. The home directly across 40th has a setback of only five feet on the Drake Street side. The home on the corner of Drake and 38th has a setback of only five feet on the 38th Street side (see "Attachment Map B" [Exhibit 9]). A 15-foot-wide rowhouse-type home will not be compatible with the area and would have a negative effect on the neighborhood. A 25-foot-wide home would be more compatible.



Photos: SE corner of 38th Ave. & Drake (left). NW corner of 40th & Drake (right).

Staff's Response: As noted by the applicant, there are several other corner lots in the area that have street-side yard setbacks of approximately five feet. The request to allow a 10-foot street-side yard setback on 40th Avenue will produce no more of an adverse impact on neighboring properties. Staff agrees with the applicant's assertion that enforcing the 20-foot setback requirement for street-side yards would produce more of an adverse impact on the neighborhood by constraining the width of the building footprint to only 15 or 16 feet. A wider footprint will allow a house plan that is more compatible with others in the neighborhood.

Conclusion

Staff believes that applicant has demonstrated compliance with the variance criteria and recommends the Commission approve the request for the reasons identified below:

1. The subject lot is a legal lot of record that is nonconforming with respect to lot size and lot width.
2. The applicant has demonstrated compliance with the variance criteria.
3. With approval of the variance, the proposal is consistent with development standards of the underlying Residential R-7 Zone.

Code Authority and Decision-Making Process

Milwaukie Municipal Code Title 19 Sections:

1. 19.302 – Residential Zone (R-7)
2. 19.412 – Lot size requirements, general exceptions
3. 19.700 – Variances, Exceptions, and Home Improvement Exceptions
4. 19.1011.3 – Minor Quasi-Judicial Review
5. 19.1400 – Transportation Planning, Design Standards, and Procedures

Variance applications are subject to minor quasi-judicial review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In quasi-judicial reviews the Commission assesses the application against approval criteria and evaluates testimony received at the public hearing. The Commission has three decision-making options as follows:

1. Approve the application upon finding that all approval criteria have been met.
2. Approve the application subject to conditions when they are needed for compliance with approval criteria.
3. Deny the application upon a finding that it does not meet approval criteria.

Concurrence

This application was reviewed by the Fire District, City Engineering Department, and City Building Department subject to conditions as needed to meet design standards or code requirements. (See Attachment 1 – Findings and Conditions in Support of Approval.)

Comments

Zach Weigel, Civil Engineer with City Engineering Department

- Engineering comments were not applicable to the variance decision but will be sent to the applicant as Advisory Notes under separate cover.

Ron Schumacher, Deputy Fire Marshal with Clackamas County Fire District #1

- This review is based upon the current version of the Oregon Fire Code (OFC), as adopted by the Oregon State Fire Marshal's Office. The scope of review is

typically limited to fire apparatus access and water supply, although the applicant must comply with all applicable OFC requirements. This proposal complies with fire apparatus access and water supply standards for CCFD#1.

Tom Larsen, Building Official with City Building Department

- All work shall conform to the Oregon Residential Specialty Code.

Verbal comments from Art Ball, Chair of Lewelling NDA Land Use Committee

- The submission materials did not clearly represent whether the subject parcel is 55 feet wide or 41 feet wide.
- It would seem more in character with the neighborhood to allow development on the earlier version of Tax Lot 7000, the one that was 55 feet wide.

LeRoy Hummel, Member of Lewelling NDA Land Use Committee

- The R-7 zone requires 7000 square feet of property, not 4000 square feet.
- The [older] Assessor's map shows the property size as 55 feet by 100 feet. No new survey of an approved land division was noted.
- If the prior lot configuration of 55 feet by 100 feet was used, the setbacks could probably be met without a variance.
- The property appears to be about two feet above 40th Street, which may cause drainage problems.
- The subject parcel and the adjacent lot to the east share a fence and appear to be in common ownership.

Staff has discussed these comments with both Mr. Bell and Mr. Hummel.

Attachments & Exhibits

Attachment 1 Findings and Conditions in Support of Approval

Attachment 2 Zoning Compliance Checklist

Exhibit 1 Site Plan

Exhibit 2 Applicant's Narrative

Exhibit 3 Director's Interpretation Letter (dated October 26, 2005)

Exhibit 4 Director's Interpretation Letter (dated December 6, 2005)

Exhibit 5 Bargain and Sale Deed for Lot 50 (tax lot 7000)

Exhibit 6 Bargain and Sale Deed for Lots 46-49 (tax lot 7001)

Exhibit 7 Applicant's "Attachment C"

Exhibit 8 Applicant's "Attachment Map A"

Exhibit 9 Applicant's "Attachment Map B"

Attachment 1

Recommended Findings in Support of Approval

1. The applicant has submitted a variance request to reduce the required 20-foot street-side yard setback to 10 feet for a parcel that is 41 feet wide and 100 feet deep. With approval of the variance the applicant will submit a building permit to construct a single-family detached dwelling at SE Drake and 40th Avenue. The site is zoned R-7 and is subject to the regulations of Section 19.302.
2. Application VR-05-05 has been processed and public notice has been provided in accordance with requirements of Zoning Ordinance Section 19.1011.3 Minor Quasi-Judicial Review.
3. **Milwaukie Municipal Code 19.700 (Variances)** – The Planning Commission authorizes reduction of the street-side yard setback from 20 feet to 10 feet and finds that the applicant has demonstrated compliance with applicable criteria as follows:
 - a. **Unusual Conditions** – The property is a legal lot of record that is nonconforming with respect to the lot area and lot width standards of the R-7 zone. The lot width is 41 feet and the lot area is approximately 4100 square feet. Applying the 20-foot street-side yard setback and five-foot side yard setback would allow for a 16-foot-wide dwelling. The lot meets the minimum area of 3000 square feet required to allow development as per Section 19.412. The property is located on a street corner, which makes it infeasible to build a single-family home on the property and still meet the street-side yard setback.
 - b. **No Feasible Alternatives** – The alternative to this variance results in a building footprint that is less than 25 feet wide and therefore out of character with existing homes in the neighborhood. The Planning Commission finds that the request for a 10-foot street-side yard setback is the minimum necessary to allow use of the property in a manner consistent with the surrounding area.
 - c. **Mitigation of Impacts** – At least two other corner lots in the vicinity have street-side yard setbacks of less than 20 feet. Allowing a 10-foot street-side yard setback on the 40th Avenue side of the subject lot will produce no more of an adverse impact on neighboring properties. A 20-foot street-side yard setback on the subject lot would constrain the width of the building footprint to only 16 feet, while a reduced setback will allow a house plan that is more compatible with others in the neighborhood.
4. Approval of the variance authorizes construction of a single-family residence with a 10-foot street-side yard setback. New single-family residential construction requires submission of a building permit and is subject to the requirements of Section 19.1400 (Transportation Planning, Design

Standards, and Procedures). These include standards for driveway access location and width, right-of-way dedication, and construction of public improvements.

5. Title 16 of the Milwaukie Municipal Code requires that the applicant obtain an erosion control permit prior to construction or commencement of any earth disturbing activities. As conditioned, the application complies with Title 16 (Erosion Control).

Recommended Conditions of Approval

1. Prior to construction of a new single-family residence on the subject lot, the applicant shall obtain a building permit from the City Building Department. Site plans submitted for the building permit shall be in substantial conformance with the site plans submitted for this variance application.
2. Prior to issuance of a building permit for the subject lot, the applicant shall submit an erosion control plan and obtain an erosion control permit.
3. As per Section 19.1013, authorization of this variance shall be void after six months, unless substantial construction has taken place in the meantime.²

² As per Section 19.1013, the Planning Commission may extend authorization for the variance for an additional period of one year upon request.

Attachment 2

R-7 Zoning Compliance Checklist

MMC 19.302.3 – Residential R-7 Development Standards. In a Residential R-7 Zone the following standards shall apply:

Standard	Requirement	Lot 50 (tax lot 7000)
Lot Size	7,000 square feet	4,100 sq. ft.
Front Yard Setback	20 feet	25 feet
Street-side Yard Setback	20 feet	10 feet *
Side Yard Setback	5 feet on non-street side	5 feet
Rear Yard Setback	20 feet	35 feet
Off-Street Parking	Two off-street spaces, one of which must be covered (dimensions as per Sec. 19.500)	One-car garage; proposed driveway is 12 feet by 30 feet
Height Restrictions	35 feet	Height restrictions will be addressed at time of building permit.
Lot Coverage	30 percent	1149 sq. ft. = 28%
Minimum Vegetation	30 percent	2621 sq. ft. open = 64% vegetation
Frontage Requirements	35 feet	41 feet of frontage on Drake St.
Lot Width	60 feet	41 feet **
Lot Depth	80 feet	100 feet

Notes:

* Applicant is applying for a Variance from this standard.

** Subject parcel is a legal lot of record that is nonconforming with respect to lot area and lot width.

#2

Exhibit 1

RECEIVED

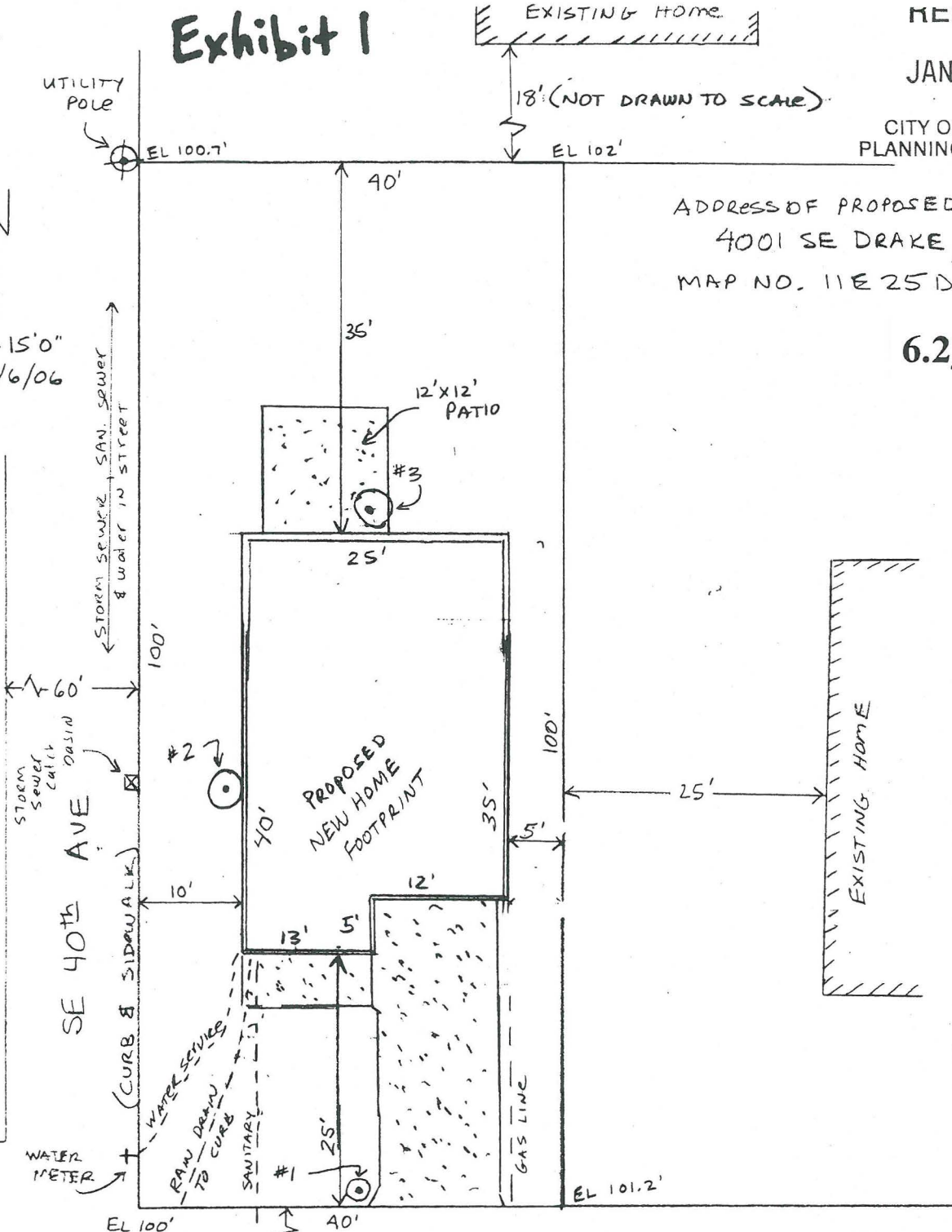
JAN 11 2006

CITY OF MILWAUKIE
PLANNING DEPARTMENT

ADDRESS OF PROPOSED NEW HOME:
4001 SE DRAKE, milwaukie
MAP NO. 11E25DD07000

6.2 Page 11

SCALE: 1" = 15'0"
Revised 1/6/06



STEVE SMELSER
STEVE SMELSER HOMES, INC.
PO BOX 1069, CLACKAMAS, ORE. 97015
503-803-4068 503-760-4233 (fax)

KEY

- ⊙ = TREE
- ⊕ = UTILITY POLE
- ⊗ = FIRE HYDRANT
- ⊠ = STORM SEWER catch basin

TREES = ⊙

#1 = 40" DIA. DOUGLAS FIR TO BE REMOVED

#2 = 29" DIA. DOUGLAS FIR TO BE REMOVED

#3 = 36" DIA. DOUGLAS FIR TO BE REMOVED

RECEIVED

JAN 11 2006

CRITERIA FOR GRANTING VARIANCES

Address: 4001 SE Drake St., Milwaukie, Ore. 97222

CITY OF MILWAUKIE
PLANNING DEPARTMENT

Map No.: 11E25DD07000

Request: reduce street side yard setback (SE 40th Ave.) from 20' to 10'

- A. The lot is a corner lot and is only 40' x 100'. Because of the 40 foot width and the corner setback requirement on the SE 40th street side of 20' and the minimum setback on the east side yard of 5' we could only build a home that is 15' wide that must face SE Drake St.. A home could not be built that faced SE 40th, because the front yard and rear yard setback would equal 40', which is the width of the lot. We wish to build a home up to 25' wide, but cannot do so under existing setback requirements.
- B. While it is possible to build a 15' wide rowhouse style home, this type of home is not compatible with the neighborhood. If the street-side side yard is reduced to 10', we could build a home that is 25' wide and more typical of the area. The front façade of a 15' wide home would be dominated by the garage which would take up 11' of the front. Design alternatives are very limited with a home that is 15' wide. A home that is 25' wide, would have many more design opportunities and would fit the character of the area much better. (see attachment "C" for some examples of 15' and 25' wide homes.)
- We measured the widths of 29 homes in about a one block distance each direction from our corner lot. The average width of the homes is 45', with the narrowest being 30' wide and the widest being 70' wide (see attachment "map A"). A 15' wide home that would be allowed under normal setback requirements, would not even be close to the minimum width home in the area. It would appear very awkward looking. By reducing the required setback on the SE 40th street side yard to 10', we could build a home that is 25' wide and more compatible to the existing homes in the area.
- C. This change of setback requirements will have no adverse impact upon other properties as there are already other homes in the area that have setbacks of only 5' on the street side yard. We measured the setbacks of some of the corner lot homes and two, within eye-sight, have setbacks on the street side of only 5'. The home directly across 40th has a setback of only 5' on the Drake street side yard. Also the home on the corner of Drake & 38th has a setback of only 5' on the 38th Street side yard (see attachment "map B"). A 15' wide rowhouse type home will not be compatible with the area and would have a negative effect on the neighborhood. A 25' wide home would be more compatible by being closer to the average width of the area.



October 26, 2005

Ron & Judy Clark
4003 SE Drake St.
Milwaukie, OR 97222

Re: Director's Interpretation on legal lot question

Dear Mr. and Mrs. Clark:

This letter is in response to your request that the Planning Department confirm that the lot just west of your property at 4003 SE Drake Street in Milwaukie is "buildable." There is no legal definition of zoning. Nonetheless, we are able to advise you as to whether the lot is legal for purposes of city zoning and land division law as follows.

The parcel in question is designated as County Assessor's map 1S 1E 25DD, tax lot 7000 and measures approximately fifty five feet (55') wide by one hundred feet (100') deep, for a total area of 5,500 square feet. Located at the corner of SE Drake Street and SE 40th Avenue, the lot is in the City's R-7 zone. We have concluded that tax lot 7000 did not receive city approval at the time it was created and is therefore not legal as described below.

The lot was created by deed in 1988, at which time city regulations required approval of property line changes and lot creation. The lot did not then, and does not now, conform to zoning requirements of the R-7 zoning district. This means the lot is not legal for subdivision and zoning purposes. Consequently, building permits for development cannot be issued until the matter is corrected. You should check with your attorney to identify any other potential liabilities should you wish to sell the property.

I have enclosed a copy of the R-7 zoning regulations for your convenience; see in particular the requirements for lot area, yards, minimum vegetation, and maximum building coverage which must be met for both the parent lot (now tax lot 7001) and the lot created (tax lot 7000).

There are two options to remedy the improper lot creation as follows:

1. Vacate the property line established under the 1988 deed, thereby restoring the original subdivision lots. This option results in one lot of 40 feet in width

Roy and Judy Clark
October 26, 2005
Page 2 of 2

(lot 50) and the adjoining 25-foot wide lot (lot 49). The Milwaukie Zoning Ordinance allows development of the original lot 50 without any property line changes. The adjoining 25-foot lot can be combined with lot 50 for development purposes, provided that all zoning standards on the parent lot (lot 7001) can be met.

2. Adjust the property line dividing lots 7000 and 7001 to create a new lot 7000 of not less than 7,000 square feet. This option would require a "subdivision replat" application and also requires that all zoning standards on the parent lot (lot 7001) can be met.

I strongly encourage you to consult with an attorney to review this determination and your options before you take action. Our determination that tax lot 7000 is not legal has been made under Milwaukie Zoning Ordinance Section 1000. Accordingly, it may be appealed to the Planning Commission by providing written notice of appeal within fourteen (14) days of this letter and the \$505.00 appeal fee.

Please contact me if you have any questions. We are happy to meet with you and/or your attorney to assist in resolving this matter.

Sincerely,



John Gessner
Planning Director

copy: Address File
Brett Kelter, Assistant Planner

Enclosures: Application for Property Boundary Change
Copy of Zoning Ordinance Sections 19.302 (R-7 zone), 17.12.030
(Approval criteria for Replat), 17.16 (Application requirements), and
19.1011 (Type II application procedures)

Exhibit 4



December 6, 2005

Ron & Judy Clark
4003 SE Drake St.
Milwaukie, OR 97222

Re: Director's Interpretation on establishment of legal lot

Dear Mr. and Mrs. Clark:

This letter follows a Director's Interpretation that was issued on October 26, 2005, regarding the legal status of your property at 4003 SE Drake Street in Milwaukie. In that earlier letter, we concluded that the lot in question was established by deed and not through the city-approved land use process. This means the lot is not legal for subdivision and zoning purposes and that building permits for development cannot be issued until the matter is corrected. We outlined two options for you to remedy the improper lot creation.

You recently returned to the Planning office to demonstrate that you have exercised one of those options. Upon reviewing the new information presented, I can only confirm that you have established a new tax-account line on top of the original subdivision line (lot 50, block 7 of the Marchbanks subdivision). It is possible to sell that new tax lot separately and plans may be submitted to build on it. However, you should be aware that it would be "illegal" in land-use terms to convey the property between this new tax lot line and the line established by deed in 1988, which should be eliminated by deed. I recommend that you consult with your attorney on this matter.

I hope this letter will serve your needs. Please contact Brett Kelter at 503-786-7657 if you have any questions.

Sincerely,

John Gessner
Planning Director

copy: Address File
Brett Kelter, Assistant Planner

Exhibit 5

RECEIVED

JAN 20 2006

After recording return to:

Ronald E. Clark & Judy L. Hryciw-Clark
4003 SE Drake St.
Milwaukie, OR 97222

CITY OF MILWAUKIE
PLANNING DEPARTMENT
Clackamas County Official Records
Sherry Hall, County Clerk
2006-004917

Until a change is requested all tax statements
Shall be sent to the following address:

Ronald E. Clark & Judy L. Hryciw-Clark
4003 SE Drake St.
Milwaukie, OR 97222



\$31.00

00932005200600049170020021

01/18/2006 10:51:26 AM

D-D Cnt=1 Str=5 BEV L
\$10.00 \$11.00 \$10.00

BARGAIN AND SALE DEED TO CORRECT LEGAL DESCRIPTION

WHEREAS, Ronald E. Clark and Judy L. Hryciw-Clark are owners of the following described property by virtue of Deeds recorded June 1, 1994 as Document No. 94-45498 and Document No. 94-45499, Records of Clackamas County, Oregon:

PARCEL 1 - The West 14.06 feet of Lot 49 and all of Lot 50, Block 7, MARCHBANKS, in the City of Milwaukie, County of Clackamas and State of Oregon, and

WHEREAS, Ronald E. Clark and Judy L. Hryciw-Clark are also owners of the following described property by virtue of Deed recorded August 13, 1987 as Document No. 87-36990, Re-recorded August 18, 1987 as Document No. 87-37712, and Deed recorded January 14, 1994 as Document No. 94-04004, Records of Clackamas County, Oregon:

PARCEL 2 - Lots 46, 47, 48, and the East 10.94 feet of Lot 49, Block 7, MARCHBANKS, in the City of Milwaukie, County of Clackamas and State of Oregon, and

WHEREAS, the above described parcels were established improperly by deed and not through the City of Milwaukie-approved land use process and are not legal for subdivision and zoning purposes, and

WHEREAS, Ronald E. Clark and Judy L. Hryciw-Clark wish to remedy the improper parcel descriptions created in the above referenced deeds

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Ronald E. Clark and Judy L. Hryciw-Clark, husband and wife with rights of survivorship, hereinafter called Grantor, in consideration of correcting the legal description of the hereinafter described property, do hereby convey to Ronald E. Clark and Judy L. Hryciw-Clark, husband and wife with rights of survivorship, hereinafter called Grantee, the following described real property:

Lot 50, Block 7, MARCHBANKS, in the City of Milwaukie, County of Clackamas and State of Oregon.

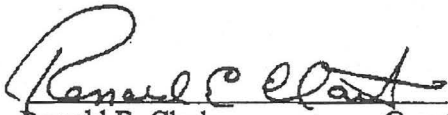
The True and actual consideration for this conveyance is: \$

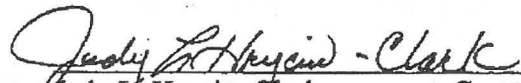
FATCO. 731374-SS

To have and to hold unto Grantee and Grantee's assigns and personal representatives forever.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

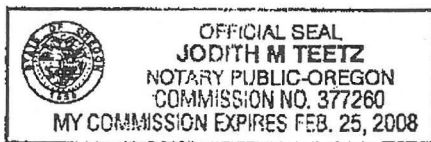
IN WITNESS WHEREOF, the undersigned have hereunder set their hand and seal this 16th day of January, 2006.

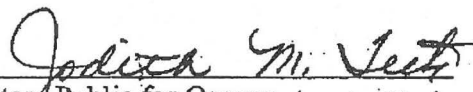

Ronald E. Clark Grantor


Judy L. Hryciw-Clark Grantor

STATE OF OREGON)
COUNTY OF CLACKAMAS)

This instrument was acknowledged before me on this 16th day of January, 2006 by Ronald E. Clark and Judy L. Hryciw-Clark.




Notary Public for Oregon



STATE OF OREGON
COUNTY OF CLACKAMAS } ss.

I, SHERRY HALL, County Clerk of the
State of Oregon for the County of Clackamas,
do hereby certify that the foregoing copy of

Dead Record
2005-4917
has been by me compared with the original, and
that it is a correct transcript therefrom, and the
whole of such original, as the same appears on the
file and record in my office and under my care,
custody and control.

IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed my official seal

this 18th day of

January, 2006
By: Sherry Hall County Clerk
Deputy



Exhibit 6

RECEIVED

6.2 Page 19

JAN 20 2006

After recording return to:

Ronald E. Clark & Judy L. Hryciw-Clark
4003 SE Drake St.
Milwaukie, OR 97222

CITY OF MILWAUKIE
PLANNING DEPARTMENT

Clackamas County Official Records
Sherry Hall, County Clerk

2006-004918

Until a change is requested all tax statements

Shall be sent to the following address:

Ronald E. Clark & Judy L. Hryciw-Clark
4003 SE Drake St.
Milwaukie, OR 97222



\$31.00

00932006200600049180020028

01/18/2006 10:51:26 AM

D-D Cnt=1 Stn=5 BEV L.
\$10.00 \$11.00 \$10.00

BARGAIN AND SALE DEED TO CORRECT LEGAL DESCRIPTION

WHEREAS, Ronald E. Clark and Judy L. Hryciw-Clark are owners of the following described property by virtue of Deeds recorded June 1, 1994 as Document No. 94-45498 and Document No. 94-45499, Records of Clackamas County, Oregon:

PARCEL 1 - The West 14.06 feet of Lot 49 and all of Lot 50, Block 7, MARCHBANKS, in the City of Milwaukie, County of Clackamas and State of Oregon, and

WHEREAS, Ronald E. Clark and Judy L. Hryciw-Clark are also owners of the following described property by virtue of Deed recorded August 13, 1987 as Document No. 87-36990, Re-recorded August 18, 1987 as Document No. 87-37712, and Deed recorded January 14, 1994 as Document No. 94-04004, Records of Clackamas County, Oregon:

PARCEL 2 - Lots 46, 47, 48, and the East 10.94 feet of Lot 49, Block 7, MARCHBANKS, in the City of Milwaukie, County of Clackamas and State of Oregon, and

WHEREAS, the above described parcels were established improperly by deed and not through the City of Milwaukie-approved land use process and are not legal for subdivision and zoning purposes, and

WHEREAS, Ronald E. Clark and Judy L. Hryciw-Clark wish to remedy the improper parcel descriptions created in the above referenced deeds

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Ronald E. Clark and Judy L. Hryciw-Clark, husband and wife with rights of survivorship, hereinafter called Grantor, in consideration of correcting the legal description of the hereinafter described property, do hereby convey to Ronald E. Clark and Judy L. Hryciw-Clark, husband and wife with rights of survivorship, hereinafter called Grantee, the following described real property:

Lots 46, 47, 48 and 49, Block 7, MARCHBANKS, in the City of Milwaukie, County of Clackamas and State of Oregon.

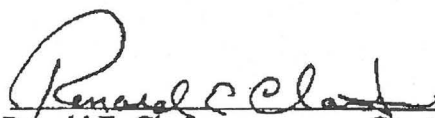
The True and actual Consideration for this conveyance is: \$

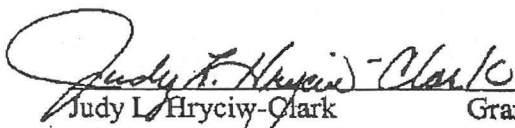
FATCO. No. 731374-SS

To have and to hold unto Grantee and Grantee's assigns and personal representatives forever.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

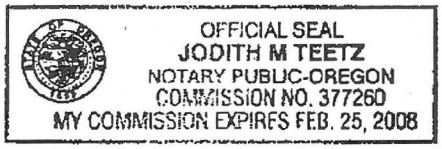
IN WITNESS WHEREOF, the undersigned have hereunder set their hand and seal this 16th day of January, 2006.

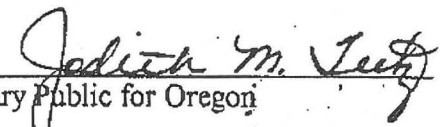

Ronald E. Clark Grantor


Judy L. Hryciw-Clark Grantor

STATE OF OREGON)
COUNTY OF CLACKAMAS)

This instrument was acknowledged before me on this 16th day of January, 2006 by Ronald E. Clark and Judy L. Hryciw-Clark.




Notary Public for Oregon



2

STATE OF OREGON }
COUNTY OF CLACKAMAS } ss.

I, SHERRY HALL, County Clerk of the
State of Oregon for the County of Clackamas,
do hereby certify that the foregoing copy of

Deed Record
2005-4918

has been by me compared with the original, and
that it is a correct transcript therefrom, and the
whole of such original, as the same appears on the
file and record in my office and under my care,
custody and control.

IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed my official seal

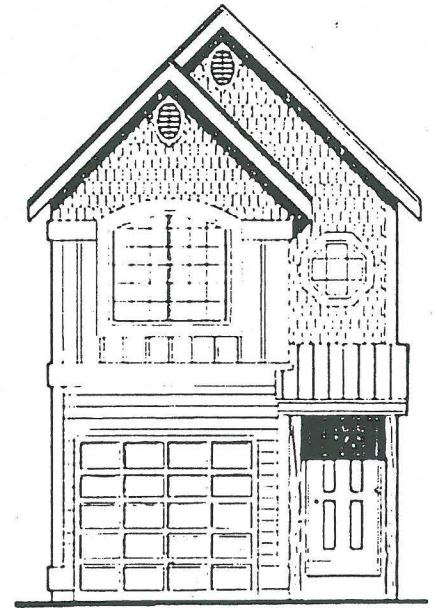
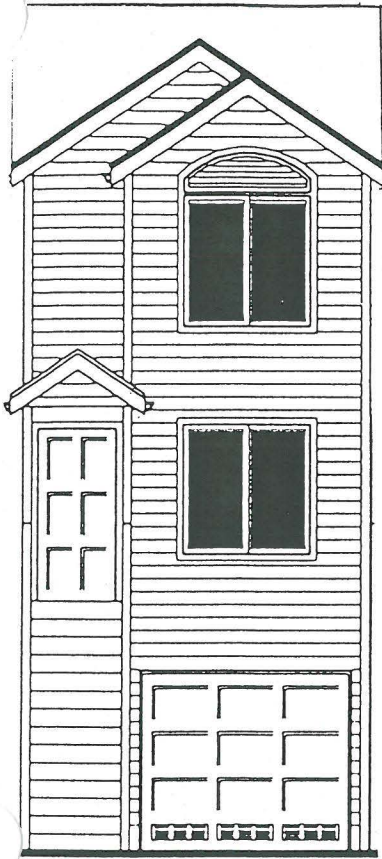
this 18th day of

January, 2006

By: Sherry Hall County Clerk
Deputy



Exhibit 7



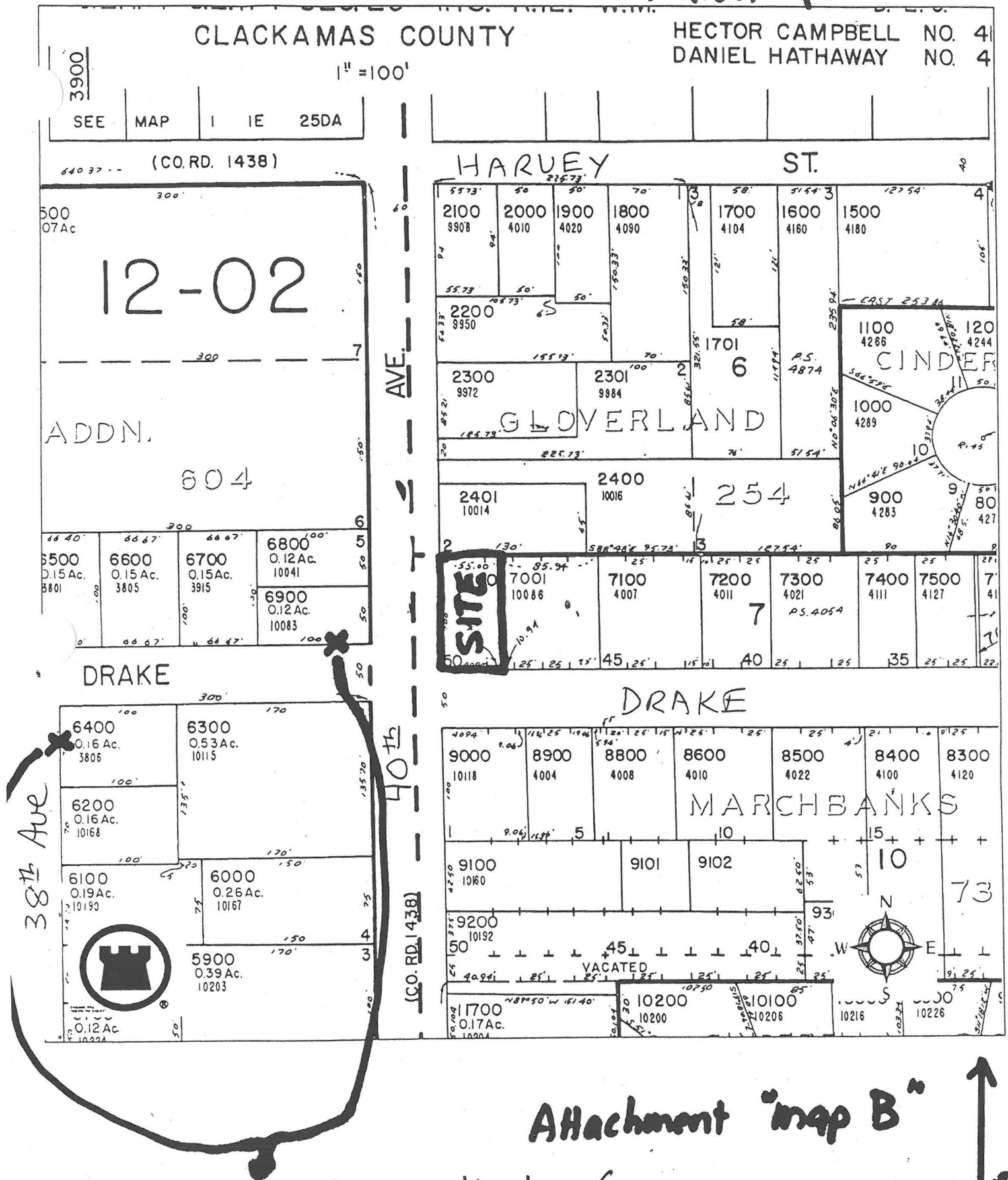
3 EXAMPLES OF 15' wide homes

Attachment "C"

3 EXAMPLES OF 25' wide homes



↑
2024



Attachment "map B"

These two homes have setbacks of only 5' from the street side property line.