

Appeal

Staff Report for City Council Public Hearing on June 13, 2022

Case File APP 2022-01

Date: June 2, 2022

Case File: APP 2022-01 Appeal of Denial of VAR 2022-01

Appellant: 3 G's Construction, Inc.
Salem, OR

Situs Address: 6604 NE Logan Rd

Location: Northeast corner of the NE Logan Rd/NE 66th St intersection

Tax Map and Lot: 06-11-34-AA-03200-00

**Comprehensive
Plan Designation:** Single-Family Residential District (R-5)

Zoning District: Single-Family Residential, Roads End (R-1-RE) Zone

Site Size: 0.10 acre

Proposal: Vary the allowed street side setback from 16.38 feet to 10 feet

**Surrounding
Land Uses
and Zones:** North: Residential; R-1-RE
South: Residential; R-1-RE
East: Residential; R-1-RE
West: Residential; R-1-RE

Authority: Lincoln City Municipal Code (LCMC) 17.76.050.G states that Table 17.76.020-1 identifies the decision authority for each Type III application. Table 17.76.020-1 of LCMC Chapter 17.76 identifies the appeal of a Planning Commission decision as a Type III application with the decision authority given to the City Council.

Procedure: The application was received on May 5, 2022. The application was deemed complete on May 5, 2022. On May 23, 2022, pursuant to LCMC 17.76.050.E, the Planning and Community Development Department mailed a notice of public hearing to property owners within 250 feet of the subject property. The *News Guard* published the public hearing notice on May 31, 2022.



Applicable	LCMC Chapter 17.17 Single-Family Residential, Roads End (R-1-RE) Zone
Substantive	LCMC 17.76.050 Type III Procedures
Criteria:	LCMC 17.77.030 Appeal
	LCMC 17.77.140 Variance

BACKGROUND

The subject property (site) is addressed as 6604 NE Logan Rd and contains a newly-constructed detached dwelling. The application for a structural (building) permit for the new construction was submitted on March 10, 2021. The review of the site plan by the former senior planner, David Mattison, took place on March 25, 2021, with subsequent approval. Public Works and Building staff completed their reviews and the permit was issued on April 28, 2021.

With the issued permit, the applicant proceeded to site preparation. This included clearing and grading, as well as setting the footings for the pouring of the foundation. The applicant requested the required setback inspection, which was subsequently performed on May 17, 2021, by David Mattison. David Mattison approved the setback inspection. Both the site plan and the setback inspection approved by David Mattison showed a street side setback of 10 feet, rather than the required 16.38 feet.

A citizen complaint was filed in January 2022 regarding a possible street side setback encroachment. The complaint was verified and a code violation case was created on January 20, 2022. A courtesy notice was issued to the property owner of the site requesting that, no later than January 30, 2022, one of three actions take place: remove all setback encroachments; apply for a zoning code text amendment to LCMC 17.17.070; or apply for a variance for the street side setback. The applicant chose to apply for a variance and subsequently submitted the required application and fee. The variance request was set up as file number VAR 2022-01.

Lincoln City Municipal Code (LCMC) 17.76.050.G states that Table 17.76.020-1 identifies the decision authority for each Type III application. Table 17.76.020-1 of LCMC Chapter 17.76 identifies a variance as a Type III application with the decision authority given to the Planning Commission. The required public hearing with the Planning Commission was held on March 15, 2022. Deliberations and the decision to deny the variance request was made on April 5, 2022. The written final order was adopted on April 19, 2022. The notice of the decision was mailed to the parties with standing with an appeal period ending on May 5, 2022, at 5:00 PM. The complete record of VAR 2022-01 is on file in the Planning and Community Development Department and is available for review, paper copies at reasonable cost, or electronic copies at no cost upon request.

The appellant, Roger Griswold with 3 G's Construction, Inc., submitted an appeal request on May 5, 2022, at 11:06 AM. This is an appeal from a decision of the Planning Commission denying the requested variance for a 6.38-foot street side setback encroachment. The City Council will conduct a *de novo* hearing on the matter. Since it is a *de novo* hearing, the issue is not whether the Planning Commission made a correct decision, but whether the applicant's proposal meets the applicable ordinance requirements.

COMMENTS

No comments were received for APP 2022-01.

ANALYSIS

17.08 Definitions

“Setback” means the minimum or maximum distance required between a specified object and another point. Typically, a setback refers to the minimum or maximum distance from a building or structure to a specified property line. “Street side setback” means the required distance from the street side property line and a specified object.

*17.17.070 Lot requirements.**Lot requirements shall be as follows:*

- D. The minimum front yard shall be 20 feet. Except that the minimum setbacks from Logan Road need not exceed the average setback of buildings on all lots within 100 feet of the lot on which the proposed building is to be located and that abut Logan Road.*

Finding: The average setback of buildings on all lots within 100 feet of the site and that abut Logan Rd calculates to 12.77 feet. Accordingly, the minimum front setback for the site is 12.77 feet. All portions of the structure, including porches, stairs, decks, and balconies that are over 30 inches from the ground, must meet the minimum 12.77-foot-front setback requirement. In this case, the front of the main wall of the house is set back 34.4 feet from the front property line, and the upper stairs and deck that are over 30 inches from the ground are set back 20 feet from the front property line. The front setback requirement is not only met, but is exceeded by 7.32 feet.

- F. The minimum street side yard shall be 20 feet, except that it may be one foot less for each two feet of front yard setback over the minimum, but not to less than 10 feet.*

Finding: Using the averaging option, the front setback for the site is 12.77 feet. The front of the main wall of the house is set back 34.4 feet from the front property line. However, the upper stairs and deck on the front of the house that are over 30 inches from the ground are only set back 20 feet from the front property line. Accordingly, the provided front setback is 7.32 feet over the minimum of that which is required (required 12.77 feet, provided 20 feet – 20-12.77 = 7.32). That number of 7.32 is then divided by 2, which equals 3.62.

3.62 is then subtracted from the minimum street side setback of 20 feet to give the required street side setback for this site at 16.38 feet. The provided street side setback is 10 feet, which means that the house encroaches 6.38 feet into the required street side setback.

17.77.140 Variance

C. Approval Criteria. To approve a variance, the planning commission shall make findings of fact, based on evidence provided, that all of the following circumstances exist:

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

Finding: This criterion requires evidence of an exceptional or extraordinary circumstance that applies to this site, which does not apply to other properties in the vicinity, over which the applicant has no control. The applicant feels this criterion is met with the extraordinary circumstance being the city's inaccurate review and approval of the site plan showing the 10-foot street side setback, followed by the city's inaccurate passing of the setback inspection, both over which the applicant has no control. The applicant's contention that the staff error is the exceptional or extraordinary circumstance does not meet the criterion since it doesn't apply to the property, staff error is not an exceptional or extraordinary circumstance, and the applicant does have control over this particular circumstance. It is the responsibility of the applicant to read the code and ascertain for themselves the requirements. In this case, the applicant was responsible to read LCMC 17.17.070 and see that the minimum required street side setback is 20 feet (except that it may be one foot less for each two feet of front setback over the minimum but not to less than 10 feet), not the 10 feet that the applicant used.

2. *The variance is necessary for the preservation of a property right of the applicant which is substantially the same as owners of other property in the same zone or vicinity possess;*

Finding: The submitted materials did not provide any evidence that a property right is being lost if the variance request is not approved. A detached dwelling is an allowed use in the R-1-RE zone, per LCMC Chapter 17.17. The required building permit was obtained, and a detached dwelling was constructed. The fact that the detached dwelling was not placed in accordance with the required street side setback is not loss of a property right. No evidence was provided in the submitted materials showing that violating that required street side setback is a property right.

3. *The variance should not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city planning policy;*

Finding: The site is in the R-1-RE zone. The site is surrounded on all sides by properties also in the R-1-RE zone. Surrounding properties either already contain detached dwellings or are planned for the future construction of detached dwellings. The existing dwelling on the southeast corner of the NE Logan Rd/NE 66th St exceeds the required 20-foot street side setback at approximately 27'-1 ¾". However, houses at 1830 NE 66th St, 1918 NE 66th St, 6555 NE Neptune Dr, and 2030 NE 66th St do not meet the required 20-foot street side setback at 18'-10 ½", 16'-1 ¾", 14'-1/4", and 8'-8 ¼", respectively. Having one more house not meeting a required setback in amongst the houses in the vicinity that also don't meet a required setback will not be materially detrimental to the vicinity.

4. *The variance requested is the minimum variance which would alleviate the hardship.*

Finding: The claimed hardship is a house constructed in the required street side setback. With the upper stairs and deck being set back 20 feet from the front property line, and using the averaging option for the front setback requirement, the required street side setback is 16.38 feet. With removal of the upper stairs and deck, though, the front of the house is 34.4 feet from the front property line. The increase in the provided front setback decreases the required street side setback to 10 feet.

34.4' provided minus 12.77' required = 21.63' overage

The amount of overage of provided front setback (21.63') is divided by 2, which equals 10.8'. 10.8' is then subtracted from the street side setback of 20 feet to give the required street side setback for this site of 9.2 feet, or 10 feet since the street side setback cannot be less than 10 feet. Accordingly, with removal of the upper stairs and deck there would be no street side setback encroachment and no need for a variance, which means that the requested 6.38-foot variance is not the minimum required to alleviate the hardship.