



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

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Community Development Dept.

AGENDA CITY OF THE DALLES PLANNING COMMISSION

CITY HALL COUNCIL CHAMBERS
313 COURT SREET
THE DALLES, OREGON 97058
CONDUCTED IN A HANDICAP ACCESSIBLE MEETING ROOM

THURSDAY, JULY 6, 2006

6:30 P.M.

- I. **Call to Order**
- II. **Roll Call**
- III. **Approval of Agenda**
- IV. **Approval of Minutes: June 1, 2006**
- V. **Public Comment – Items not on the Agenda**
- VI. **Quasi-Judicial Public Hearings**
 - A. **Variance No. 109-06, Adjustment No. 06-006, Minor Partition No. 258-06, Site Plan Review No. 339-06 of Keef Morgan** to build three townhouse units on one lot with a total width of 75 feet. The variance is requested to allow lots less than 28 feet in width, the adjustment is requested for a reduction in the front yard setback, the minor partition is to create three lots out of one, and the site plan review is required by the Land Use and Development Ordinance (LUDO) when single family attached dwellings are proposed in the RH zone.
- VII. **Resolution**
- VIII. **Commissioner Comments/Questions**
- IX. **Staff Comments**
- X. **Next meeting date: July 20, 2006**
- XI. **Adjournment**



CITY OF THE DALLES PLANNING COMMISSION MINUTES

Thursday, June 1, 2006

City Hall Council Chambers

313 Court Streets

The Dalles, OR 97058

Conducted in a handicap accessible room

CALL TO ORDER:

Chair Lavier called the meeting of The Dalles Planning Commission to order at 6:35 P.M.

ROLL CALL:

Present: Bruce Lavier, Ted Bryant, Dean Wilcox, Ron Ahlberg, Mark Poppoff and Jo Ann Wixon

Absent: Derek Hiser

Staff: Gene Parker, City Attorney, Dan Durow, Community Development Director, Dale McCabe, City Engineer, Dick Gassman, Senior Planner; and Denise Ball, Admin. Secretary

AGENDA: Commissioner Bryant moved to approve the agenda as submitted and Commissioner Wilcox seconded. The motion carried unanimously, Hiser absent.

MINUTES: There were no corrections to the minutes of May 18, 2006. Commissioner Bryant moved to approve the minutes and Commission Wixon seconded. The motion carried with Lavier, Poppoff, Bryant, Wixon, and Wilcox voting for, Ahlberg abstaining, and Hiser absent.

PUBLIC COMMENT: None

PUBLIC HEARING – QUASI JUDICIAL: Continuation of Zoning Ordinance Amendment 71-06 and Comprehensive Plan Amendment 32-06. WM3 and Northwest Aluminum Co. are making application to change the zoning and amend the Comprehensive Plan map of the City of The Dalles for a parcel located on the southwest end of River Road and further described as 2N 13E 28 tax lot 700, approximately 67.2 acres of a 247.9 acre parcel. This Zoning change will remove the Industrial zone and replace it with Commercial Light Industrial. The change in authorized uses is from industrial to commercial and light industrial. City Ordinance 98-1222 includes a comprehensive list of specific use types. Review criteria for this zone are contained in City Ordinance 98-1222.

Chair Lavier read the rules for conducting a public hearing. He asked the Commissioners if they had any bias, ex-parte contact, or conflict of interest to declare. There was none and there were no challenges from the audience.

Chair Lavier declared the public hearing open and asked Senior Planner Gassman for the supplemental Staff Report.

Senior Planner Gassman explained to the Commission that the Department of Land Conservation Development (DLCD) had no additional comments. Oregon Department of Transportation (ODOT) voiced concerns with the application after reviewing the applicants worst case scenario traffic study. ODOT has requested that the City Council adopt the Transportation System Plan before final approval of this Zone Change and Comprehensive Plan Amendment. City Council will be holding the final hearing for the Transportation System Plan on June 26, 2006. Gassman said there are additional conditions of approval as well as detailed in the supplemental Staff Report numbers 2 through 5.

Ahlberg asked what ODOT has a problem with. Director Durow said the bottom line is that ODOT does not want their new interchange to become dysfunctional due to a use that would carry a lot of traffic. If there are failures in some of the movements, then something must be done to modify and correct that.

Senior Planner Gassman said the applicant is aware that the City will require the applicant to fund any necessary changes created by development of the property.

Commissioner Ahlberg if the interchange was under-designed or under-engineered. He asked if the changes would be traffic signals and Director Durow said yes. Ahlberg said he can't imagine that ODOT would build an interchange that they don't want used. Director Durow said the interchange will carry a lot of traffic but the important thing is control of that traffic. City Engineer McCabe added that there would also need to be some ramp modifications and lighting changes.

Proponents: Dan Meader, Land Use Planner, Tenneson Engineering, 409 Lincoln, spoke in favor of the application. Mr. Meader said he and the applicant concur with the Staff Report and agree with conditions of approval. He urged the Commission to make a positive recommendation to the City Council.

Opponent Testimony: None

Rebuttal Testimony: None

Chair Lavier closed the public testimony portion of the hearing.

Deliberation:

Commissioner Bryant said his concerns were addressed with the new conditions numbers 2 through 5. Bryant asked that condition number 2 have the words "including subdivision" added after the word development.

Poppoff said he would like to see a concept of what is proposed for development.

Ahlberg said he has some reservations about removing the industrial zoning. The statements from the Port and the applicant that the parcel does not lend itself very well for true industrial use help him to support the zone change to Commercial Light Industrial.

Wixon said her concern is trading land inventory and how that may affect job creation. The fact that the property is better suited to commercial or light industrial development makes this application acceptable to her.

Wilcox said he has concerns with the easement access crossing the railroad tracks. This would be too dangerous in his estimation. Director Durow said access issues will be addressed during Site Plan Review. McCabe said ODOT Rail and UP Rail would be involved in the approval process as well. Access could possibly be limited to emergency, secondary use only. Again, that will be an issue for Site Plan Review.

Wilcox moved to recommend that the City Council approve Zoning Ordinance Amendment 71-06 and Comprehensive Plan Amendment 32-06 of WM3 and Northwest Aluminum Co. with conditions as modified. Ahlberg seconded the motion and it carried with Lavier, Bryant, Ahlberg, Wixon, and Wilcox voting aye, Poppoff voting nay, and Hiser absent.

PUBLIC HEARING – QUASI JUDICIAL: Variance No. 108-06, Adjustment No. 06-003, Minor Partition No. 246-06, Property Line Adjustment No. 150-06, Site Plan Review No. 335-06 of Kase Limmeroth to build three townhouse units on two lots with a total width of 75 feet. The variance is requested to allow lots less than 28 feet in width, the adjustment is requested for a reduction in the front yard setback, the minor partition is to create three lots out of two, the property line adjustment is to move an existing property line, and the site plan review is required by the Land Use and Development Ordinance (LUDO) when single family attached dwellings are proposed in the RH zone.

Chair Lavier did not re-read the rules for conducting a public hearing as there were no new members in the audience. He asked the Commissioners if they had any bias, ex-parte contact, or conflict of interest to declare. Bryant said he had visited the site discovered nothing that would affect his decision. There were no challenges from the audience.

Chair Lavier declared the public hearing open and asked for the Staff Report.

Senior Planner Gassman told the Commission that the Adjustment Application has been withdrawn. The applicant has indicated that they will follow the provisions in the LUDO for steeply sloping lots so a hearing is not necessary for the set back. Gassman summarized the Staff Report. The applicant is trying to utilize the property as best he can. The application is well within the allowable density. The Variance request will make smaller lots to allow each town home to have its own tax lot for selling purposes.

Lavier asked if they will have garages and Gassman said the proposal is for a double deep garage allowing for two parking spaces one behind the other.

Ahlberg asked if there is on-street parking now. McCabe said there is limited parking in front of the development and no parking on the opposite side of the street.

Wixon asked if there would be room for parking in front of the garage. Gassman said small cars may fit. That will need to be determined when the actual front yard setback is determined.

Poppoff asked if there is an ordinance that would require the applicant to replant any street trees that will be removed from the planter trees. Gassman said there is no ordinance but it could be a condition of approval.

Staff and Commissioners briefly discussed the off-street and on-street parking situation.

Proponent Testimony:

Kase Limmeroth, the applicant, 215 Court Street, The Dalles, handed out copies of conceptual building and landscape plans. Mr. Limmeroth said the townhouses will be hitting the market with a price range somewhere just under \$300,000. There will be a lot of deluxe features. The goal is to provide a full 20 foot parking space in front of the garage and his intention is to follow the language of the LUDO regarding set backs for steeply sloping lots.

Aaron Amick, 414 E. 13th Street, The Dalles, explained that the lot being discussed was his home, which burned down. Amick explained that there are currently two curb cuts for this property; a 24-foot and a 12-foot. There is only one on-street parking space as it stands now. The new proposal will provide a longer on-street parking area.

Opponent: None

Rebuttal: None

Discussion: City Attorney Parker said he wanted to address Commissioner Poppoff issue regarding street trees and attaching a condition that would require the applicant to replace street trees. The language in the Variance section refers to reasonable conditions that would have merit for allowing a lesser width of the lot.

Poppoff said the trees are in the planter strip so they would be City property. Director Durow said it is property owners' responsibility to maintain the trees. Poppoff said if the property owner is removing the trees he feels it would be reasonable to ask the owner to replace them in some fashion.

Aaron Amick, 414 E. 13th Street, asked to speak regarding the street tree discussion. Mr. Amick said he personally purchased and planted the trees himself. Also, Amick went on to say, he understands that the City has plans for future widening of E. 14th which would eliminate the parking strip. Mr. Amick said he is a landscaper by trade and intends to do plantings on the driveway side of the sidewalk. Replanting street trees just to have them removed once again does not make very much sense to him.

Commissioner Poppoff asked Staff if E. 14th Street is going to be widened. City Engineer McCabe said it has been discussed but is not scheduled. It will happen as funds allow at some point in the future.

Chair Lavier closed the public testimony portion of the hearing.

DELIBERATION: Commissioners and Staff discussed the changes needed in the conditions of approval due to the removal of the Adjustment 06-003 application.

Wixon asked if a geohazard study will be required and Gassman said it will be required prior to issuing a building permit.

Ahlberg moved to approve **Variance No. 108-06, Minor Partition No. 246-06, Property Line Adjustment No. 150-06, and Site Plan Review No. 335-06 of Kase Limmeroth** to build three townhouse units on two lots with a total width of 75 feet with conditions as amended based upon findings of fact. Bryant seconded the motion and it carried unanimously, Hiser absent.

RESOLUTION: Bryant moved to adopt Resolution 460-06 adopting Variance 108-06, Minor Partition 246-06, Property Line Adjustment 150-06, and Site Plan Review 335-06 with conditions of approval as amended based upon findings of fact in the Staff Report. Wixon seconded the motion and it carried unanimously, Hiser absent.

COMMISSIONER COMMENTS: Poppoff, who missed the previous meetings tree ordinance discussion, said he feels some type of tree ordinance should be discussed. He feels the City should take over maintenance of trees in the planter strips for liability reasons. Poppoff would like to see significant trees saved and/or replaced. Chair Lavier asked Ahlberg to weigh in also. Ahlberg said he would like to encourage people to maintain the street trees we have. However, sometimes the trees in the strips have become large visual obstacles.

STAFF COMMENTS; Director Durow said he received word today that The Dalles has been selected to receive another RARE (Resource Assistance for Rural Environments) Planner. The next step is for Durow to write a final application. The first week of August, candidates, who are graduate students, will be interviewed and if one is suitable for our City they will start work in October.

Ahlberg asked about the status of the 19th Street Right-of-Way project. City Engineer McCabe said it is on hold until ROW dedication can be obtained from the private property owners.

NEXT MEETING: The next scheduled meeting is June 15, 2006 but there is currently no business for that date.

ADJOURNMENT: The regular Planning Commission meeting was adjourned at 8:15 p.m.

Respectfully submitted by Denise Ball, Secretary.


~~Bruce Lavier, Planning Commission Chair~~
Ted Bryant, Vice Chair

**City of The Dalles
Supplemental Staff Report**

**COMPREHENSIVE PLAN AMENDMENT NO. 32-06
ZONE CHANGE AMENDMENT NO. 71-06
WM3**

Prepared by: Dick Gassman, Senior Planner *DG*

Procedure Type: Quasi-Judicial

Hearing Date: May 18, 2006

Assessor's Map: Township 2 North, Range 13 East, Section 28, tax lot 700

Address: Vacant, located at west end of River Road _____

Comprehensive Plan
Designation: "I" Industrial

Zoning District: "I" Industrial

City Limits: Outside

Request: To change the Comprehensive Plan Map and Zoning Ordinance Map from I – Industrial to CLI – Commercial/Light Industrial.

BACKGROUND INFORMATION

A public hearing was held by the Planning Commission on May 18, 2006. In comments received prior to the hearing, a request had been made to hold the record open for additional comments. The Planning Commission moved to hold the record open until May 26 at 5 p.m.

COMMENTS

On May 26 one written comment and a copy of a memorandum were submitted by the Oregon Department of Transportation (ODOT). Copies of those documents are attached. James Bryant of ODOT states generally that if a zone change request will have a significant affect on a transportation facility, the local government must adopt measures that demonstrate the change will be consistent with the available facilities. The Memorandum from Kathryn A. Lincoln, Assistant Attorney General for the State of Oregon, indicates that the local government may defer compliance with the transportation analysis under certain limited conditions.

Response to comment: There is no doubt that under OAR 660-012-0060, this rezone meets the definition of having a significant effect on a transportation facility. When this occurs, the local jurisdiction has a variety of options. City staff prefer to defer a full analysis until a specific development proposal is submitted. A study at that time will offer recommendations for solutions to any traffic related problems identified in the study.

The Memorandum from Kathryn Lincoln suggests a method to defer compliance with the TPR. That option contains two parts. First, the local government must not allow any development until the applicant shows compliance with the TPR. Second, the local government provides notice for the later review. Staff believe that with additional conditions of approval, these requirements can be met.

ADDITIONAL FINDING

FINDING B-4: A traffic impact study submitted by the Applicant to determine the traffic impacts on the Chenowith Interchange associated with a potential shopping center development upon the subject property shows the traffic generated by such a proposed use would overwhelm the existing intersections. The traffic impact study indicates the potential use would lower the existing level of service for the Eastbound and Westbound Interchanges for Interstate 84 from a "B" to "F" by the year 2027.

Under the State's Transportation Planning Rule (OAR 660-012-0060) it appears that the proposed Comprehensive Plan and Zone Change Amendment has the potential to significantly affect an existing transportation facility, as it may allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing facility, or reduce the performance of an existing transportation facility below the minimum acceptable performance standard identified in a transportation system plan or a comprehensive plan.

The City is in the process of completing an updated version of a Transportation System Plan, and the updated Plan is tentatively scheduled for adoption by the City Council on June 26, 2006. The Planning Commission finds and concludes it would be appropriate to

recommend to the City Council that no development be allowed to occur upon the subject property until the recommended conditions of approval have been satisfied.

RECOMMENDED CONDITIONS OF APPROVAL:

1. Annexation of the property will be required.
2. Any development of the subject property will require an application for site plan approval, to be heard by the Planning Commission as a quasi-judicial hearing.
3. As part of the site plan review process, ODOT will be given notice of the hearing.
4. The City Council should adopt the pending Transportation System Plan prior to making a final decision upon this rezone request.
5. As part of the site plan review process, the applicant will be required to comply with the provisions of the Statewide Transportation Planning Rule (OAR 660-012-0060), including proof that appropriate measures have been taken to assure that allowed land uses are consistent with the identified function, capacity, and performance standards of any significantly affected existing or planned transportation facility.

RECOMMENDATION

Staff recommends that the Planning Commission make a recommendation to the City Council supporting this request with conditions as listed or added by the Commission.



Oregon

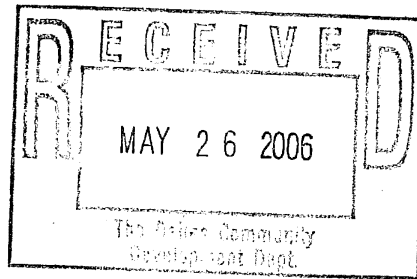
Theodore R. Kulongoski, Governor

Department of Transportation

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May 26, 2006

Mr. Dick Gassman
Senior Planner
City of The Dalles
313 Court St.
The Dalles, OR 97058



SUBJECT: WM3 Comprehensive Plan Amendment #32-06/Zone Change Amendment #71-06

Dear Dick:

The Oregon Department of Transportation (ODOT) has reviewed the May 14, 2006 Traffic Impact Study prepared for the WM3 project by NWS Traffic Engineering.

While the traffic study in its current form does not provide the analysis necessary to determine compliance with State Planning Goal 12 and the Transportation Planning Rule (TPR),¹ it does show that the proposed land use action would have a significant affect on the Chenoweth Interchange. The Chenoweth Interchange is a recently constructed facility designed to provide access to the Gorge Discovery Center, the Port of the Dalles and the north part of The Dalles.²

When a proposed amendment to a comprehensive plan or a land use regulation significantly affects a transportation facility, local governments must put in place measures to assure that allowed land uses are consistent with the function, capacity and performance standards of the facility. I have attached the portion of the TPR that pertains to plan and land use regulations (OAR 660-012-0060). It details the steps necessary for a local government to amend their comprehensive plan or land use regulations.

Broadly, if the proposed amendment would have a significant affect on a transportation facility, the local government must adopt measures that demonstrate the amendment will be consistent with the function, capacity and performance standards of the facility or amend

¹ The analysis needs to cover all transportation systems affected by the land use proposal not just the Chenoweth interchange. The analysis needs to compare the impacts of development under the current industrial zone to the proposed commercial zone and identify the improvements and costs necessary to maintain the performance standards of the affected facilities.


² Purpose and Need, Final Environmental Impact Statement, Port of The Dalles Chenoweth Interchange

their transportation system plan (TSP) to provide the facilities necessary to support the proposed amendment including a funding plan and/or mechanism to assure the transportation improvement is provided by the end of the planning period. (The Dalles, of course, does not yet have an adopted and acknowledged TSP.)

With respect to the subject land use proposal, one way for The Dalles to be able to allow development of the site is to limit the land use action to an intensity that does not have a significant affect on the transportation system. For example, The Dalles could reduce the acreage to be rezoned or limit the development that can occur on the property to a level that does not adversely impact the transportation system. Rather than rezone the entire 67 acres, some lesser area could be rezoned that would not have a significant affect upon the transportation system. Another option would be a trip cap that limits the number of trips from the property to a level that, again, wouldn't have an adverse impact on the transportation system. Traffic analysis would be necessary to determine what that lesser level of development would be.

ODOT will continue to work with The Dalles and the applicant to develop a successful project in conformance with Oregon and The Dalles land use requirements. If you have any questions about these comments or require further information, please feel free to contact me at (541) 388-6437 or at james.r.bryant@odot.state.or.us.

Sincerely,



James R. Bryant
ODOT Region 4 Planner

Attachment: OAR 660-012-0060

Cc: Mark McCavic, Applicant
Brad DeHart, ODOT District 9
Matt Crall, DLCD

660-012-0060

Plan and Land Use Regulation Amendments

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

(2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:

(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

(d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

(a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;

(b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

(c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

(d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

(e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section.

(4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

(a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.

(b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:

(A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.

(B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.

(C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.

(D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.

(E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.

(c) Within interstate interchange areas, the improvements included in (b)(A)-(C) are considered planned facilities, improvements and services, except where:

(A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or

(B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.

(d) As used in this section and section (3):

(A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;

(B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and

(C) Interstate interchange area means:

(i) Property within one-half mile of an existing or planned interchange on an Interstate Highway as measured from the center point of the interchange; or

(ii) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.

(e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)-(C) to determine whether there is a significant effect that requires application of the remedies in section (2).

(5) The presence of a transportation facility or improvement shall not be a basis for an exception to allow residential, commercial, institutional or industrial development on rural lands under this division or OAR 660-004-0022 and 660-004-0028.

(6) In determining whether proposed land uses would affect or be consistent with planned transportation facilities as provided in 0060(1) and (2), local governments shall give full credit for potential reduction in vehicle trips for uses located in mixed-use, pedestrian-friendly centers, and neighborhoods as provided in (a)-(d) below;

660-012-0060

Plan and Land Use Regulation Amendments

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

(2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:

(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

(d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

(a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;

(b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

(c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

(d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

(e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section.

(4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

(a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.

(b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:

(A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.

(B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.

(C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.

(D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.

(E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.

(c) Within interstate interchange areas, the improvements included in (b)(A)-(C) are considered planned facilities, improvements and services, except where:

(A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or

(B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.

(d) As used in this section and section (3):

(A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;

(B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and

(C) Interstate interchange area means:

(i) Property within one-half mile of an existing or planned interchange on an Interstate Highway as measured from the center point of the interchange; or

(ii) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.

(e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)-(C) to determine whether there is a significant effect that requires application of the remedies in section (2).

(5) The presence of a transportation facility or improvement shall not be a basis for an exception to allow residential, commercial, institutional or industrial development on rural lands under this division or OAR 660-004-0022 and 660-004-0028.

(6) In determining whether proposed land uses would affect or be consistent with planned transportation facilities as provided in 0060(1) and (2), local governments shall give full credit for potential reduction in vehicle trips for uses located in mixed-use, pedestrian-friendly centers, and neighborhoods as provided in (a)-(d) below;

(a) Absent adopted local standards or detailed information about the vehicle trip reduction benefits of mixed-use, pedestrian-friendly development, local governments shall assume that uses located within a mixed-use, pedestrian-friendly center, or neighborhood, will generate 10% fewer daily and peak hour trips than are specified in available published estimates, such as those provided by the Institute of Transportation Engineers (ITE) Trip Generation Manual that do not specifically account for the effects of mixed-use, pedestrian-friendly development. The 10% reduction allowed for by this section shall be available only if uses which rely solely on auto trips, such as gas stations, car washes, storage facilities, and motels are prohibited;

(b) Local governments shall use detailed or local information about the trip reduction benefits of mixed-use, pedestrian-friendly development where such information is available and presented to the local government. Local governments may, based on such information, allow reductions greater than the 10% reduction required in (a);

(c) Where a local government assumes or estimates lower vehicle trip generation as provided in (a) or (b) above, it shall assure through conditions of approval, site plans, or approval standards that subsequent development approvals support the development of a mixed-use, pedestrian-friendly center or neighborhood and provide for on-site bike and pedestrian connectivity and access to transit as provided for in 0045(3) and (4). The provision of on-site bike and pedestrian connectivity and access to transit may be accomplished through application of acknowledged ordinance provisions which comply with 0045(3) and (4) or through conditions of approval or findings adopted with the plan amendment that assure compliance with these rule requirements at the time of development approval; and

(d) The purpose of this section is to provide an incentive for the designation and implementation of pedestrian-friendly, mixed-use centers and neighborhoods by lowering the regulatory barriers to plan amendments which accomplish this type of development. The actual trip reduction benefits of mixed-use, pedestrian-friendly development will vary from case to case and may be somewhat higher or lower than presumed pursuant to (a) above. The Commission concludes that this assumption is warranted given general information about the expected effects of mixed-use, pedestrian-friendly development and its intent to encourage changes to plans and development patterns. Nothing in this section is intended to affect the application of provisions in local plans or ordinances which provide for the calculation or assessment of systems development charges or in preparing conformity determinations required under the federal Clean Air Act.

(7) Amendments to acknowledged comprehensive plans and land use regulations which meet all of the criteria listed in (a)-(c) below shall include an amendment to the comprehensive plan, transportation system plan the adoption of a local street plan, access management plan, future street plan or other binding local transportation plan to provide for on-site alignment of streets or accessways with existing and planned arterial, collector, and local streets surrounding the site as

necessary to implement the requirements in Section 0020(2)(b) and Section 0045(3) of this division:

(a) The plan or land use regulation amendment results in designation of two or more acres of land for commercial use;

(b) The local government has not adopted a TSP or local street plan which complies with Section 0020(2)(b) or, in the Portland Metropolitan Area, has not complied with Metro's requirement for street connectivity as contained in Title 6, Section 3 of the Urban Growth Management Functional Plan; and

(c) The proposed amendment would significantly affect a transportation facility as provided in 0060(1).

(8) A "mixed-use, pedestrian-friendly center or neighborhood" for the purposes of this rule, means:

(a) Any one of the following:

(A) An existing central business district or downtown;

(B) An area designated as a central city, regional center, town center or main street in the Portland Metro 2040 Regional Growth Concept;

(C) An area designated in an acknowledged comprehensive plan as a transit oriented development or a pedestrian district; or

(D) An area designated as a special transportation area as provided for in the Oregon Highway Plan.

(b) An area other than those listed in (a) which includes or is planned to include the following characteristics:

(A) A concentration of a variety of land uses in a well-defined area, including the following:

(i) Medium to high density residential development (12 or more units per acre);

(ii) Offices or office buildings;

(iii) Retail stores and services;

(iv) Restaurants; and

(v) Public open space or private open space which is available for public use, such as a park or plaza.

(B) Generally include civic or cultural uses;

(C) A core commercial area where multi-story buildings are permitted;

(D) Buildings and building entrances oriented to streets;

(E) Street connections and crossings that make the center safe and conveniently accessible from adjacent areas;

(F) A network of streets and, where appropriate, accessways and major driveways that make it attractive and highly convenient for people to walk between uses within the center or neighborhood, including streets and major driveways within the center with wide sidewalks and other features, including pedestrian-oriented street crossings, street trees, pedestrian-scale lighting and on-street parking;

(G) One or more transit stops (in urban areas with fixed route transit service); and

(H) Limit or do not allow low-intensity or land extensive uses, such as most industrial uses, automobile sales and services, and drive-through services.

Stat. Auth.: ORS 183 & 197.040

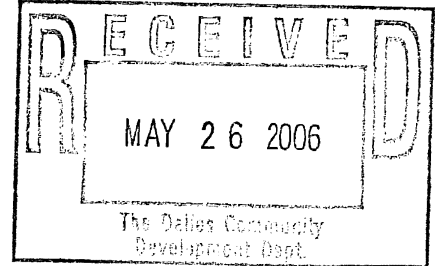
Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.610 - 197.625, 197.628 - 197.646, 197.712, 197.717 & 197.732

Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDD 6-1998, f. & cert. ef. 10-30-98; LCDD 6-1999, f. & cert. ef. 8-6-99; LCDD 3-2005, f. & cert. ef. 4-11-05



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM



DATE: February 3, 2006

TO: Teresa Penninger
ODOT, Region 5

FROM: Kathryn A. Lincoln, Assistant Attorney General
Government Services Section

SUBJECT: TPR compliance

You asked about the ability of a local jurisdiction to postpone compliance with the Transportation Planning Rule (TPR) at the time it approves a comprehensive plan amendment or zone change. Several recent LUBA decisions have discussed this issue. Under some circumstances, LUBA has approved a local decision that deferred findings required under OAR 660-012-0060 until after the initial zone change/comp plan amendment hearing. However, the city/county has to follow essentially the same quasi-judicial process required for the zone change when making the determination of compliance with the TPR or substantially similar requirements.

In *ODOT v. City of Klamath Falls*, 39 Or LUBA 641, aff'd 177 Or App 1, (2001), LUBA noted that generally local governments may not amend their zoning ordinance and defer findings of compliance with the TPR. In that case the city determined that part of the property at issue could be developed without significantly affecting transportation facilities and part of the property could **not** be developed without significantly affecting a transportation facility. LUBA concluded that the city could impose a condition on the rezoning which **prohibited** development in part of the rezoned site. The prohibition imposed by the condition remained in effect, unless and until, a specific, identified transportation facility improvement was constructed. LUBA described that action as one that limited allowed uses under OAR 660-012-0060(1)(a) [The old TPR], to ensure that the rezoning decision would be consistent with the "functional classification" of the transportation facility.

The next case in this line was *Citizens for the Protection of Neighborhoods, LLC v. City of Salem and Sustainable Fairview Associates LLC*, 47 Or LUBA 111 (2004). This was similar to the Klamath Falls case in that the developer proposed to develop a portion of the property (20 acres for residential development) but not the rest of the 275 acre property until after a master plan was approved by the city. One of the issues brought up by the petitioners was the lack of a traffic impact analysis at the rezoning stage. LUBA agreed that a TIA was not necessarily

required by OAR 660-012-0060,¹ and further that the rezoning itself (from public use to mixed residential/commercial) did not "significantly affect" any transportation facility as described in the TPR. LUBA stated: "It is permissible to find that a proposed amendment complies with OAR 660-012-0060 based on conditions or restrictions that limit allowed uses on the subject property to levels consistent with the function, capacity and performance standards of affected transportation facilities." p. 120. LUBA's approval for postponing the review was based upon the fact that the city had an ordinance that effectively replicated the standards at OAR 660-012-0060 and that ordinance would apply at the master plan review stage.

Three weeks later LUBA issued an opinion in *Concerned Citizens of Malheur County v. Malheur County and Treasure Valley Renewable Resources, LLP*, 47 Or LUBA 208 (2004). That case involved a comprehensive plan amendment for a goal exception, and rezoning of property from EFU to an Agricultural Industrial zone. LUBA reviewed the two cases discussed above in relation to Malheur County's action. LUBA noted that although the county's code did not exactly replicate OAR 660-012-0060, it was "substantially similar" to the rule language. The county, in approving the goal exception, had effectively imposed an even more restrictive condition (more restrictive than Salem's) by requiring that the developer show that the proposal would not significantly affect a transportation facility when it sought site plan approval. At the site plan approval stage the developer would have to apply the substantive standards in the county's code that are "substantially similar" to the TPR, and demonstrate that the proposal would neither allow trips that are inconsistent with the functional classifications assigned to the local roads, nor reduce any applicable performances standards. *Concerned Citizens*, p. 237. The county effectively prohibited development of the only permitted use on the property until the required demonstration of compliance with the applicable ordinance was assured.

I think it is significant that site design approval in Malheur County constituted a "permit" and as such required notice and a quasi-judicial hearing. At that hearing those affected by the proposal would have an opportunity to present their objections. Based upon that, LUBA held that the process the developer would have to follow was sufficiently similar to the master plan approval process in the City of Salem case to assure that notice and a public process would be employed and lead to a decision that would be subject to review to determine if the proposal would significantly affect a transportation facility. *Concerned Citizens*, p.238.

LUBA established limits on this theory of postponing TPR compliance in *Staus et.al. v. City of Corvallis*, 48 Or LUBA 254 (2004). The city of Corvallis did not go through a TPR analysis as part of a zone change. It argued that no development would occur in the newly rezoned district without subsequent review and approval of conceptual and detailed development plans, including a required traffic analysis. LUBA said that the city's standards "do not implement or even resemble the standards at OAR 660-012-0060 and nothing about those approvals assures compliance with the TPR." *Staus*, p. 264-265.

¹ "We generally agree * * * that OAR 660-012-0060 does not *require* preparation or analysis of a TIA although depending on the nature of the proposed amendment and the local government's approach to finding or ensuring compliance with the TPR, some kind of traffic generation or traffic impact analysis may be necessary." *Citizens for Protection of Neighborhoods*, p. 121.

So, from these cases, I think we can say that a local jurisdiction can make a decision on a comprehensive plan amendment or zone change without making findings required by the TPR, 660-012-0060, IF the city conditions the approval on a later review under standards that are substantially similar to the TPR, and that review process requires notice and a public hearing, with the right to appeal. In these circumstances, the city does not have to review a traffic impact analysis at time of the rezoning hearing.² I would also argue that these cases require that there be no development on the subject property until the city has gone through the TPR-like process.

² There may be other instances when a TIA is not required to determine if a plan amendment or zone change has a significant effect". See Bonnie Heitsch's correspondence to you on January 20.



Race Street Lofts

The Dalles, Oregon

Panoramic views overlooking the city, the river, Mt. Adams, and the Klickitat Mountain Range.

Modern, urban design;
contemporary materials;
spacious, open floor plan.



Exposed trusses on main floor.

Private backyards.



1900 sq. ft. of living space with
3 bedrooms, 2 1/2 baths, and a
tandem 2 car garage.

Stained concrete floors
with in-floor heating.

**City of The Dalles
Staff Report**

**Variance No. 109-06
Adjustment No. 06-006
Minor Partition No. 258-06
Site Plan Review No. 339-06**

Keef Morgan

Prepared by: Dick Gassman, Senior Planner *DG*

Procedure Type: Quasi-Judicial

Hearing Date: July 6, 2006

Assessor's Map: Township 1 North, Range 13 East, Map 3CC, tax lot 9400

Address: 410 East 14th Street

Comprehensive Plan

Designation: "RH" Residential High Medium Density

Zoning District: "RH" Residential High Medium Density

City Limits: Inside

Request: To build three townhouse units on one lot with a total width of 75 feet. The variance is requested to allow lots less than 28 feet in width, the adjustment is requested for a reduction in the front yard setback, the minor partition is to create three lots out of one, and the site plan review is required by the Land Use and Development Ordinance (LUDO) when single family attached dwellings are proposed in the RH zone.

BACKGROUND INFORMATION

The subject property consists of one lot on the south side of East 14th Street. It is currently occupied with a single family residence. It is immediately to the west of 418

East 14th, which has recently been approved for a similar development. The applicant would like to construct three townhouse units. The applications and requests are essentially the same as those for the property next door.

The minimum width for townhouse lots in this zone is 28 feet. The property has a total of over 14,000 square feet, but only 75 feet of width. The applicant proposes two lots of 26 feet 8 inches and one lot of 21 feet 8 inches. The standard front yard setback for lots in this zone is 20 feet. Due to the slope the applicant was originally seeking a reduction in the front yard setback from 20 feet to 14 feet. The applicant has since changed that request from 14 feet to 18 feet.

The basic design proposal is dependant on the approval of the variance for the lot width. If that is approved, the minor partition can be approved. Those issues are considered in the first part of the staff report.

The adjustment to the front yard setback is a separate issue. That decision and the site plan review issues are included in the second part of this staff report.

This variance request is being processed simultaneously with Minor Partition application MIP 258-06, Adjustment 06-006, and Site Plan Review SPR 339-06, all of which are normally administrative decisions processed at the staff level. Since this proposal as presented depends on the variance approval, all of the applications are being processed together.

NOTIFICATION

Property owners within 300 feet, City Departments, franchise utilities, Mid-Columbia Fire & Rescue, Wasco County Health Department, and State Building Codes were mailed a notice on June 21, 2006. A notice of public hearing was published in the Dalles Chronicle on June 25, 2006.

COMMENTS

As of the date of the preparation of this staff report, no public comments had been received. A site team review was held on June 1, 2006. At that time the applicant was informed that a variance would be necessary for the lot width approval, and that the applications could be combined for review purposes.

RECOMMENDATION

Approval of the variance application, with conditions, based upon the findings-of-fact for the variance. Approval of the modified adjustment request based on the findings for the adjustment. Approval of the other applications, with conditions.

PART ONE – Variance, and minor partition.

A. LAND USE AND DEVELOPMENT ORDINANCE 98-1222

Section 3.010.040 Applications

B. Completeness.

FINDING A-1: The application was found to be complete on June 21, 2006. The 120-day State mandated decision deadline is October 19, 2006. The hearing is within the required time.

Section 3.020.050 Quasi-Judicial Actions

A. Decision types. 4. Variances:

FINDING A-2: This application is for a Variance per section 3.070. Variances are processed as quasi-judicial hearings per section 3.070.020. B. Criterion met.

B. Staff Report. The Director shall prepare and sign a staff report for each quasi-judicial action, which identifies the criteria and standards applying to the application and summarizes the basic findings of fact. The staff report may also include a recommendation for approval with conditions, or denial.

FINDING A-3: The staff report will detail criteria and standards relevant to a decision, all facts will be stated, and explanations given. This will be detailed through a series of findings directly related to relevant sections and subsections of the ordinance as they relate to this request. Criterion met.

C. Public Hearings. The quasi-judicial process requires a public hearing within 45 days from the date the application is deemed complete. The application was deemed complete on June 21, 2006. The 45 day period ends on August 6, 2006.

FINDING A-4: The public hearing is scheduled for July 6, 2006. Criterion met.

D. Notice of Hearing.

FINDING A-5. Appropriate mailings to property owners within 300 feet and notice to affected departments and agencies were made on June 21, 2006. Criterion met.

Section 3.070.020 Review Procedures

A. Applications. Variance applications shall be accompanied by at least 15 copies of the concept site plan, and a written statement which specifically addresses the review criteria.

FINDING A-6: The required plans and written statement have been submitted. Criterion met.

Section 3.070.030 Review Criteria

A variance to the requirements of this Ordinance shall be granted only in the event that each of the following circumstances is found to exist:

A. The proposed variance will not be contrary to the purposes of this Ordinance, policies of the Comprehensive Plan, or any other applicable policies and standards adopted by the City.

FINDING A-7: In the RH zone, lots of 14,000 square feet are allowed a total of six units. The applicant is entitled to a total of six dwelling units, but is seeking approval for a total of three units. Granting this variance to accommodate less than the number of units allowed is not contrary to the policies of the City. Criterion met.

B. Exceptional or extraordinary circumstances apply to the subject property which do not apply generally to other property in the same zone or vicinity. Such circumstances are a result of lot size or shape, topography, or circumstances over which the applicant has no control.

FINDING A-8: As stated above, the total square footage allows for up to six dwelling units. If the applicant chose to build six apartment units, or even six condominium units, no variance would be needed. The applicant would like to construct townhouses. Townhouses require their own separate lot. In order to build three similar units of 21 feet 8 inches in width, and use the rowhouse provisions with zero lot lines for the interior lots while maintaining the required side yard setbacks, the applicant is seeking this variance. The extraordinary circumstances are the long narrow shape of the lot, the lack of access from the rear, and the combination of lot width and townhouse property requirements. Criterion met.

C. 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.

FINDING A-9: Without the variance the applicant would not be able to build to the density allowed in this manner. If our code allows six units on this lot, and the applicant would not need a variance for a six unit apartment house, or a six unit condominium development, our code should be flexible enough to allow for a three unit townhouse development. The variance process provides that flexibility. Criterion met.

D. The conditions or circumstances justifying the variance have not been willfully or purposely self-imposed, and do not result from a violation of this Ordinance since its effective date.

FINDING A-10: The code language that prevents the development of the townhouses are imposed by the City regulations and not by the applicant. The odd shape of the lot is a contributing factor. Criterion met.

E. The proposed variance will not substantially reduce the amount of privacy enjoyed by users of neighboring land uses if the variance were not allowed.

FINDING A –11: The owner has the right to build six units on the property. Denying this variance would arguably not change the number of units, nor the design, only the type of ownership. The same structures could be built without the variance. Criterion met.

F. The proposed variance is the minimum variance which would alleviate the difficulty.

FINDING A – 12: The proposed variance is the minimum variance to alleviate the difficulty. Criterion met.

PART TWO – Site Plan Review and Adjustment.

Section 3.030.040 Review Criteria (Site Plan Review)

Site Plan Review application shall be reviewed to assure consistency with the state statutes, the Comprehensive Plan, this and other City Ordinance, and the applicable provisions of Chapter 5: Zone District Regulations, Chapter 6: General Regulations, Chapter 7: Parking Standards, Chapter 8: Physical and Environmental Constraints, Chapter 9: Land Divisions, and Chapter 10: Improvements Required with Development.

1. Chapter 5: Zone District Regulations.

FINDING A-13: The use of the proposed development meets minimum standards of Chapter 5, if the variance and adjustment are approved. Section 5.020.020. A. 1. a) allows attached single family dwellings (duplexes) in the RH zone subject to site plan review. Criterion met.

2. Chapter 6: General Regulations.

- a. 6.010.070: Landscaping. In the RH zone landscaping is regulated by 6.010.020 which requires landscaping in the first 15 feet of the front yard.
- b. 6.050: Access Management. This property will have 12 foot driveways.

FINDING A-14: Landscaping will be required for front yard areas not developed with driveways. Access is not an issue. Criterion met with conditions.

- #### **3. Chapter 7: Parking.**
- The parking provisions for single family dwellings in Section 7.060 require a minimum of two parking spaces. The applicant has indicated two parking spaces in the garage, in tandem. Stacking of parking spaces is allowed for single family dwellings. All parking areas and driveways shall be paved.

FINDING A-15: Parking areas for vehicle parking requirements as indicated are adequate. Criterion met.

- #### **4. Chapter 8: Physical and Environmental Constraints.**
- The land is located in geologic hazard area A2. Section 8.040.030 requires a geologic hazard study for this type of development, prior to any development. A physical constraints permit is also required.

FINDING A-16: A geologic hazard study will be a condition of approval. A physical constraints permit will also be required for any development. Criterion met conditionally.

5. Chapter 10: Improvements Required with Development

a. East 14th Street is fully developed. All necessary utilities are available.

FINDING A-17: Chapter 10 requirements are complete when each lot has a complete set of utilities provided. This will be a condition of approval. Criterion met.

Section 3.080.040 Review Criteria (Adjustment)

A. An adjustment will be approved if the review body finds that the applicant has shown that either approval criteria 1 through 5 or 6 through 8 below, has been met.

1. If in a residential zone, show that the proposal will not significantly detract from the livability or appearance of the residential area.
2. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone.
3. City designated scenic resources and historic resources are preserved.
4. Any impacts resulting from the adjustment are mitigated to the extent practical.
5. If in an environmental sensitive area, the proposal has as few detrimental environmental impacts on the resource and resource values as is practicable.

Or

6. Application of the regulation in question would preclude all reasonable economic use of the site.
7. Granting the adjustment is the minimum necessary to allow the use of the site.
8. Any impacts resulting from the adjustment are mitigated to the extent practical.

FINDING A-18: The proposal will not significantly detract from the livability or appearance of the area. Only one adjustment per lot is being requested. Neither scenic nor historic resources are involved and there are no environmental impacts. If anything, granting the adjustment would reduce the amount of excavation needed. A minimum of 18 feet is recommended. Criterion met.

B. Additional Criteria. If the applicant meets the approval criteria above, then the Approving Authority may also take into consideration, when applicable, whether the proposal will:

1. Result in a more efficient use of the site.
2. Provide adequate provisions of light, air, and privacy to adjoining property.
3. Provide for accessibility, including emergency vehicles, per City standards.
4. Result in a structure that conforms to the general character of the neighborhood or zone district.
5. If a reduced number of parking is requested, provide adequate parking based on low demand users, or supplement on-site parking with joint use agreements.

FINDING A-19: A reduced setback would be a more efficient use of the site allowing for reduced excavation. It would provide adequate light and air and for accessibility for vehicles. The structure would still conform to the general character of the neighborhood, although it will be closer to the street than its adjacent neighbors. There are structures in the general neighborhood that are this close to the street. Criteria met.

B. Comprehensive Plan

The Comprehensive Plan was adopted in 1994.

FINDING B – 1. There is nothing in these applications that would be in conflict with provisions of the Comprehensive Plan. Criterion met.

IF APPROVED, RECOMMENDED CONDITIONS OF APPROVAL FOR THE VARIANCE APPLICATION:

1. Completion of the related minor partition.
2. Completion of a three unit townhouse development similar to that proposed in the related site plan review application.
3. All development must be completed in accordance with Land Use and Development Ordinance 98-1222.

Additional criteria for the minor partition application:

IF APPROVED, RECOMMENDED CONDITIONS OF APPROVAL FOR THE MINOR PARTITION APPLICATION:

1. Final plat submission will have to meet all the requirements outlined in the LUDO.
2. All utilities will have to be provided to each lot.

IF APPROVED, RECOMMENDED CONDITIONS OF APPROVAL FOR THE SITE PLAN REVIEW APPLICATIONS:

1. All development must be completed in accordance with Land Use and Development Ordinance 98-1222.
2. System Development Charges for sanitary sewer and water will be required at the time of construction.
3. New driveways and approaches will be required to be paved. Driveways if used for parking must be a minimum of 18 feet in length.
4. Parking is required to be two spaces per unit.
5. A geological hazard study must be submitted prior to any development. A physical constraints permit will be required for any cut or fill. If cut and fill exceeds 250 cubic yards, an engineer report will also be required.
6. Landscaping is required in the first 15 feet of the front yard not otherwise developed.
7. If irrigation is provided, a backflow device is required.

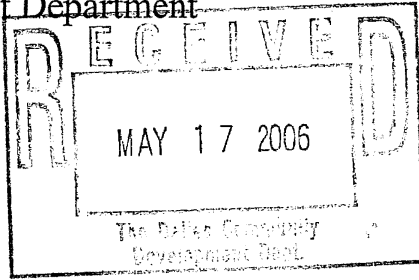
**IF APPROVED, RECOMMENDED CONDITIONS OF APPROVAL FOR THE
ADJUSTMENT REQUEST:**

1. Front yard setback to be a minimum of 18 feet.

SITE PLAN REVIEW APPLICATION

Keef - Buildings
Fee \$275⁰⁰

CITY OF THE DALLES
Community Development Department
313 Court Street
The Dalles, OR 97058
(541) 296-5481, ext. 1125
Fax (541) 298-5490
www.ci.the-dalles.or.us



Date Filed 5-17-06
File# SPR 339-06
Date Deemed Complete 6-16-06
Hearing Date 7-6-06
Approval Date _____
Permit Log # _____
Other Cross Reference# _____

APPLICANT

LEGAL OWNER (If Different than Applicant)

Name Keef Morgan
Address 600 W. 11th
The Dalles, OR 97058
Telephone # 541-300-0071

Name Aaron W. Wore
Address 3391 Bradley Dr.
Hood River, OR 97031
Telephone # (541) 490-1086

PROPERTY INFORMATION

Address 410 EAST 14th STREET
Map and Tax Lot 1W 13E 3cc tax lot 9400
Size of Development Site .33
Zone District/Overlay RH In City Limits: Yes No
Comprehensive Plan Designation RH Geohazard Zone: R2

PROJECT INFORMATION

New Construction Expansion/Alteration Change of Use Amend Approved Plan

Current Use of Property RESIDENCE -

Proposed Use of Property RESIDENCE - TOWNHOUSE'S

Briefly Explain the Project BUILDING 3 SINGLE-FAMILY
TOWNHOMES

PROPOSED BUILDING(S) FOOTPRINT SIZE (in square feet) _____

PARKING INFORMATION

Total Number of Spaces Proposed 6 (2/UNIT)
Square Footage of Parking Lot Landscaping Proposed _____

LANDSCAPING INFORMATION

Total Square Footage Landscaping Proposed 1400 sq ft UNIT Percent of Landscaping Irrigated _____

ECONOMIC DEVELOPMENT INFORMATION

Proposed Project is located in the Enterprise Zone
_____ Full Time Equivalent (FTE) jobs are currently provided.
_____ FTE jobs are expected to be created by the proposed project.

Signature of Applicant _____
Date 5/16/06

Signature of Property Owner* or Owners Agent _____
Date 5/16/06

* Notarized Owner Consent Letter may substitute for signature of property Owner

NOTE: This application must be accompanied by the information required in Section 3.030: Site Plan Review, contained in Ordinance No. 98-1222, The City of The Dalles Land Use and Development Ordinance.

PLANS SUBMITTED: At least 15 copies of concept site plan.
 At least one 11 x 17 concept site plan.
 4 copies detailed landscape plans 4 copies construction detail plans

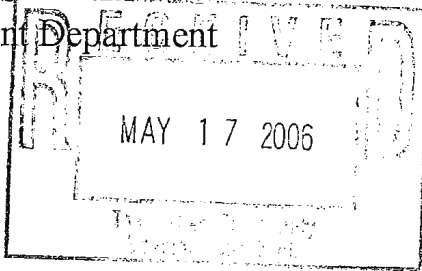
VARIANCE APPLICATION

Narrow lot request

CITY OF THE DALLES

Community Development Department

313 Court Street
The Dalles, OR 97058
(541) 296-5481, ext. 1125
Fax (541) 298-5490



Date Filed 5-17-06

File# VAR 109-06

Date Deemed Complete 6-16-06

Hearing Date 7-6-06

Approval Date _____

Permit Log # _____

Other Cross Reference# _____

APPLICANT

Name Keef Morgan

Address 600 W. 11th
The Dalles, OR 97058

Telephone # 541-300-0071

LEGAL OWNER (If Different than Applicant)

Name Aaron Wymore

Address 3391 Bradley Dr.
Hood River, OR 97031

Telephone # 541-490-1086

*If applicant is not the legal owner, attach either [1] owner consent letter, or; [2] copy of earnest money agreement, or; [3] copy of lease agreement.

PROPERTY INFORMATION

Address 410 EAST 14th STREET

Map and Tax Lot IN 13E 3rd tax lot 9400

Size of Development Site .33

Zone District/Overlay RH/A2

Comprehensive Plan Designation RH/A2

REQUEST

New Construction Expansion/Alteration Change of Use Amend Approved Plan

Brief Explanation: TOWNHOUSES - NARROW LOT

JUSTIFICATION OF REQUEST

1. What are the special circumstances (size, shape or topography of lot, location of surroundings) that do not apply to other properties in the same vicinity and zone?

3 LOT IS SLIGHTLY NARROWER THAN ALLOWABLE
MINIMUM FRONTAGE REQUIREMENT

2. What difficulties and unnecessary hardships will be created without a variance to the Ordinance?

WE WILL BE UNABLE TO BUILD THESE
UNITS & SELL THEM SEPARATELY

3. Explain why the variance will not be detrimental to the public safety, health and welfare.

THERE IS AMPLE OFF STREET PARKING & ALL
SERVICES WILL BE IN ACCORDANCE WITH CODES

4. Explain why this variance, if granted, would not be contrary to the intent of the Zoning Ordinance.

WE ARE CREATING ATTRACTIVE &
NEEDED INFILL.

PARKING INFORMATION

Total Number of Spaces Proposed 2/UNIT Total Number of Handicap Spaces Proposed _____

Total Number of Compact Spaces Proposed _____ What material will be used for the surface of the parking area CONCRETE

LANDSCAPING INFORMATION

Total Square Footage Landscaping Proposed 1400 SQ FT/UNIT Percent of Landscaping Irrigated 100%

ECONOMIC DEVELOPMENT INFORMATION

Proposed Project is located in the Enterprise Zone

_____ Full Time Equivalent (FTE) jobs are currently provided.

_____ FTE jobs are expected to be created by the proposed project.

UTILITIES

How will the site be served with water and sewer?

Water: City Water Chenoweth Irrigation Private Well

Sewer: City Sewer Private Septic

Signature of Applicant

[Signature] 5/16/06
Date

Signature of Property Owner*

[Signature] 5/16/06
Date

* Notarized Owner Consent Letter may substitute for signature of property Owner

NOTE: This application must be accompanied by the information required in Section 3.070: Variance, contained in Ordinance No. 98-1222, The City of The Dalles Land Use and Development Ordinance.

PLANS SUBMITTED: At least 15 copies of concept site plan.

2 copies detailed landscape plans 2 copies construction detail plans

INFORMATION REQUIRED WITH APPLICATION

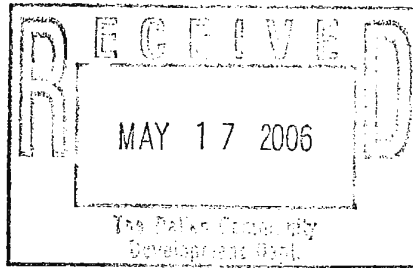
There are 3 types of plan information that can be combined on the same plan or separated onto different plans and reviewed at different times through the approval process. The minimum plan requirements which must accompany a Site Plan Review Application are those specified in the Concept Site Plan below.

1. Concept Site Plan. The concept site plan shall clearly indicate all of the following information applicable to the particular development proposal.

- Project Name
- A separate vicinity map indicating location of the proposed development.
- Scale – The scale shall be at least one inch equals 50 feet (1:50), unless a different scale is authorized by the Director.

To Whom it may concern:

We are requesting a reduction in setback for the units on East 14th St. from 20 feet to ~~14~~18' feet. The lot is steeply sloping and the full setback would require extensive and prohibitive excavation. We understand the need for adequate parking, and have created a ~~1~~ car garage for each unit, ~~eliminating or greatly~~ reducing the need for outside parking. Even so, the ~~13~~ foot setback is adequate to park a compact vehicle without infringing upon the sidewalk.

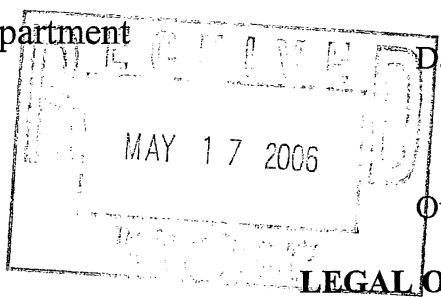


Keef 1 to 3 lots

MINOR PARTITION APPLICATION

CITY OF THE DALLES
Community Development Department
313 Court Street
The Dalles, OR 97058
(541) 296-5481, ext. 1125
Fax (541) 298-5490

Date Filed 5-17-06
File# MIP 258-06
Date Deemed Complete 6-16-06
Hearing Date 7-6-06
Approval Date _____
Permit Log # _____
Other Cross Reference# _____



APPLICANT

LEGAL OWNER (If Different than Applicant)

Name Keef Morgan
Address 600 W. 11th
The Dalles, OR 97058
Telephone # 541-300-0071

Name Aaron Coxware
Address 3391 Bradley Dr.
Hood River, OR 97031
Telephone # 541-490-1086

PROPERTY INFORMATION

Address 410 EAST. 14th STREET
Map and Tax Lot 1P BE 3cc tax lot 9400
Size of Development Site .33
Zone District/Overlay RH In City Limits: Yes X No _____
Comprehensive Plan Designation RH Geohazard Zone: A2

PROJECT INFORMATION

Current Use of Property RESIDENCE
Proposed Use of Property RESIDENCE

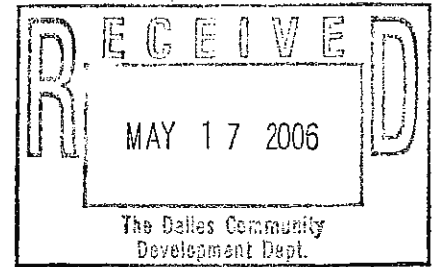
Signature of Applicant
[Signature]
Date 5/16/06

Signature of Property Owner* or Owners Agent
[Signature]
Date 5/16/06

* Notarized Owner Consent Letter may substitute for signature of property Owner

To Whom it may concern:

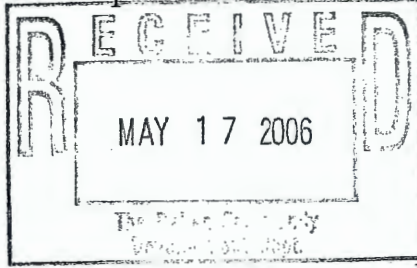
We are requesting a ~~lot line adjustment and~~ minor partition at the property on East 14th St.. Currently the lot cannot be fully developed to the allowable density due to the steep slope and unique shape of the lot. The allowable density for the lot is 4 units. We are now actually requesting approval for only 3 units, each with it's own lot. This will allow for individual ownership, which encourages pride of ownership and enhancement of the neighborhood.



ADJUSTMENT APPLICATION

Keef - setback

CITY OF THE DALLES
Community Development Department
313 Court Street
The Dalles, OR 97058
(541) 296-5481, ext. 1125
Fax (541) 298-5490
www.ci.the-dalles.or.us



Date Filed 5.17.06
File# ADJ 06-006
Date Deemed Complete 6-16-06
Hearing Date 7-6-06
Approval Date _____
Permit Log# _____
Other Cross Reference# _____

APPLICANT

Name Keef Morgan
Address 600 W. 11th
The Dalles, OR 97058
Telephone # 541-300-0071
E-Mail _____

LEGAL OWNER (If Different than Applicant)

Name Aaron Wyzorek
Address 3391 Bradley Dr.
Hood River, OR 97031
Telephone # 541-490-1086
E-Mail _____

*If applicant is not the legal owner, attach either [1] owner consent letter, or; [2] copy of earnest money agreement, or; [3] copy of lease agreement.

PROPERTY INFORMATION

Address 410 EAST 14th STREET
Map and Tax Lot IN 13E 300 Ex 1 19400
Size of Development Site .33
Zone District/Overlay RH
Comprehensive Plan Designation RH/A2

OK
Amended to 18'

REQUEST

- New Construction
- Expansion/Alteration
- Change of Use
- Amend Approved Plan

Brief Explanation: TOWN HOUSES - REQUESTING A SETBACK
REDUCTION FROM 20' TO 18' (10%), TO ACCOMMODATE THE
STEPPILY SLOPING LOT.

JUSTIFICATION OF REQUEST

Review Criteria for Adjustments are found in LUDO Section 3.080.040

For approval the applicant must satisfy the criteria in EITHER Section A or Section B. On a separate piece of paper provide sufficient information for the review body to determine each of the issues listed in the section chosen. The information may be written, photographic, or any other method which will provide useful information to the review body. Except for the application, information may be sent by fax or E-mail.

- A.
 - 1. If in a residential zone, show that the proposal will not significantly detract from the livability or appearance of the residential area.
 - 2. If more than one adjustment is being requested, the cumulative affect of the adjustments results in a project which is still consistent with the overall purpose of the zone.
 - 3. City designated scenic resources and historic resources are preserved.
 - 4. Any impacts resulting from the adjustment are mitigated to the extent practical.
 - 5. If in an environmental sensitive area, the proposal has as few detrimental environmental impacts on the resource and resource values as is practicable.

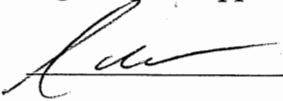
- B.
 - 1. Application of the regulation in question would preclude all reasonable economic use of the site.
 - 2. Granting the adjustment is the minimum necessary to allow the use of the site.
 - 3. Any impacts resulting from the adjustment are mitigated to the extent practical.


- C. If the applicant meets the approval criteria under either Section A or Section B, the review body may also take into consideration, when applicable, whether the proposal will:
 - 1. Result in a more efficient use of the site.
 - 2. Provide adequate provisions of light, air, and privacy to adjoining property.
 - 3. Provide for accessibility, including emergency vehicles, per City standards.
 - 4. Result in a structure that conforms to the general character of the neighborhood or zone district.
 - 5. If a reduced number of parking is requested, provide adequate parking based on low demand users, or supplement on-site parking with joint use agreements.(The applicant may also provide comments on any of the issues in part C.)

There are no mandatory plans or other types of information required with this application. It is the applicant's responsibility to provide sufficient information and documentation on each of the issues for the review body to make a decision. Insufficient justification will result in a denial.

Signature of Applicant

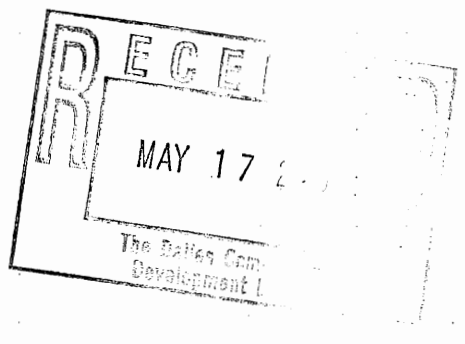
Signature of Property Owner*

 5/16/06
Date

 5/16/06
Date

* Notarized Owner Consent Letter may substitute for signature of property Owner

APRIL 6, 2006
PROJECT NAME: TOWNHOMES ON RACE



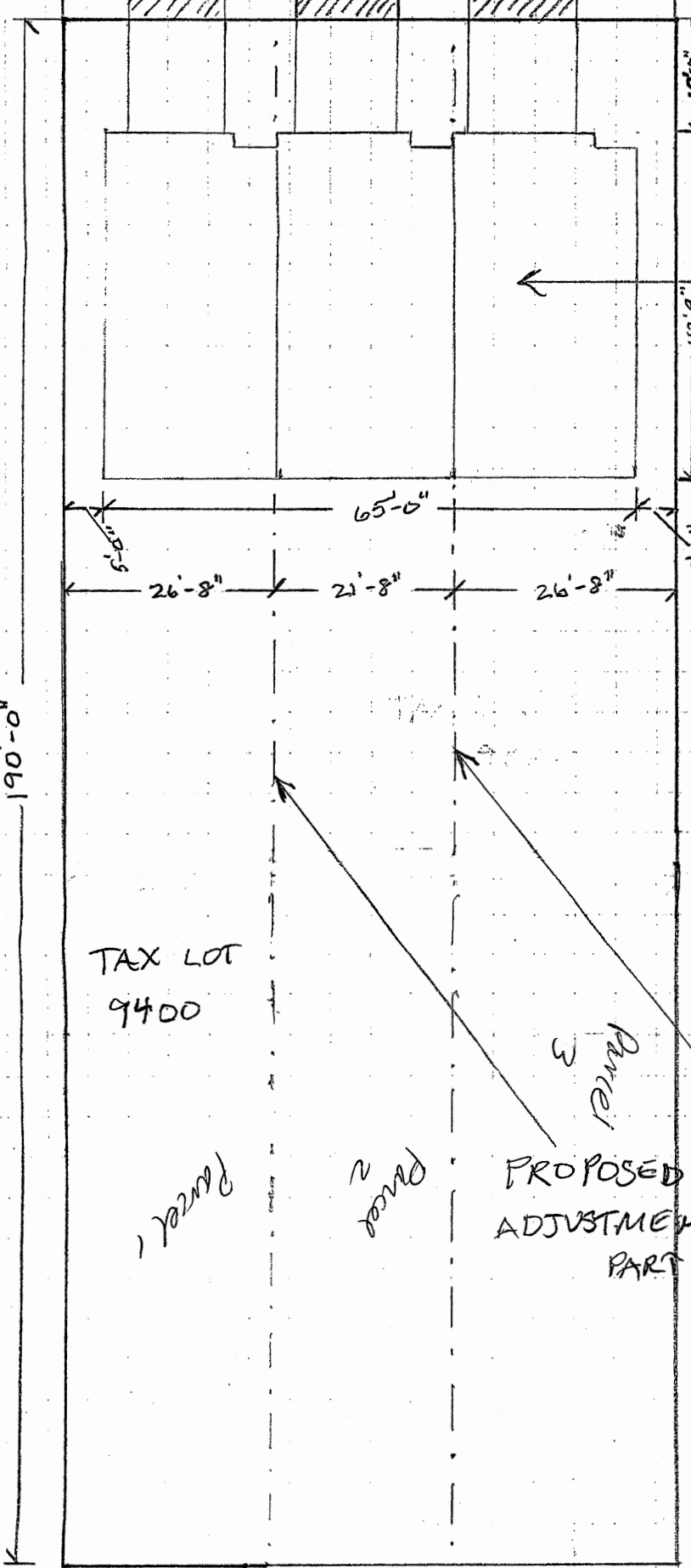
SCALE: 1" = 20'

EAST 14TH STREET

LAUGHLIN STREET

75'-0"
3 CURB CUTS @ 12'-0"
47'-0" * 12'-0" * 10'-0" * 12'-0" * 10'-0" * 12'-0" * 12'-0"

SIDEWALK



PROPOSED 3 UNIT TOWNHOUSES

BUILDING = 42'-9" x 65'-0"
HEIGHT = 30'-0"

TAX LOT 9400

PROPOSED LOT LINE ADJUSTMENT AND MINOR PARTITION

Panel 1
Panel 2
Panel 3



RESOLUTION NO. P.C. 461-06

Adopting Variance No. 109-06, Adjustment 06-006, Minor Partition No. 258-06, and Site Plan Review No. 339-06 of Keef Morgan to build three townhouse units on a lot with a total width of 75 feet. The variance is requested to allow lots less than 28 feet in width, the adjustment is for a front yard set-back of 18 feet instead of 20 feet, the minor partition is to create three lots out of one, and the site plan review is required by the Land Use and Development Ordinance (LUDO) when single family attached dwellings are proposed in the RH zone.

RECITALS:

- A.** The Planning Commission of the City of The Dalles has on July 6, 2006 conducted a public hearing to consider the above request for property located at 410 E. 14th Street that is further described as 1N 13E 3 CC tax lots 9400. Property is zoned "RH" – Residential High-Medium Density. A staff report was presented, stating the findings of fact, conclusions of law, and a staff recommendation.
- B.** Staff's report of Variance No. 109-06, Adjustment 06-006, Minor Partition No. 258-06, Site Plan Review No. 339-06 and the minutes of the July 6, 2006 Planning Commission meeting, upon approval, provide the basis for this resolution and are incorporated herein by reference.

II. RESOLUTION:

Now, therefore, be it FOUND, DETERMINED, and RESOLVED by the Planning Commission of the City of The Dalles as follows:

- A.** In all respects as set forth in Recitals, Part "I" of this resolution.
- B.** Variance No. 109-06, Adjustment 06-006, Minor Partition No. 257-06, Site Plan Review No. 339-06 are hereby approved with the following conditions:

IF APPROVED, RECOMMENDED CONDITIONS OF APPROVAL FOR THE VARIANCE APPLICATION:

1. Completion of the related minor partition.
2. Completion of a three unit townhouse development similar to that proposed in the related site plan review application.
3. All development must be completed in accordance with Land Use and Development Ordinance 98-1222.

IF APPROVED, RECOMMENDED CONDITIONS OF APPROVAL FOR THE MINOR PARTITION APPLICATION:

1. Final plat submission will have to meet all the requirements outlined in the LUDO.
2. All utilities will have to be provided to each lot.

IF APPROVED, RECOMMENDED CONDITIONS OF APPROVAL FOR THE SITE PLAN REVIEW APPLICATIONS:

1. All development must be completed in accordance with Land Use and Development Ordinance 98-1222.
2. System Development Charges for sanitary sewer and water will be required at the time of construction.
3. New driveways and approaches will be required to be paved. Driveways if used for parking must be a minimum of 18 feet in length.
4. Parking is required to be two spaces per unit.

5. A geological hazard study must be submitted prior to any development. A physical constraints permit will be required for any cut or fill. If cut and fill exceeds 250 cubic yards, an engineer report will also be required.
6. Landscaping is required in the first 15 feet of the front yard not otherwise developed.
7. If irrigation is provided, a backflow device is required.

IF APPROVED, RECOMMENDED CONDITIONS OF APPROVAL FOR THE ADJUSTMENT REQUEST:

1. Front yard setback to be a minimum of 18 feet.

2. 1. APPEALS, COMPLIANCE, AND PENALTIES

- a. Any party of record may appeal a decision of the Planning Commission to the City Council for review. Appeals must be made according to Section 3.020.080 of the Land Use and Development Ordinance, and must be filed with the City Clerk within ten (10) days of the date of mailing of this resolution.
- b. Failure to exercise this approval within the time limits set either by resolution or by ordinance will invalidate this permit.
- c. All conditions of approval must be met within the time limits set by this resolution or by ordinance. Failure to meet any condition will prompt enforcement proceedings that can result in: 1) permit revocation; 2) fines of up to \$500.00 per day for the violation period; 3) a civil proceeding seeking injunctive relief.

The Secretary of the Commission shall (a) certify to the adoption of the Resolution; (b) transmit a copy of the Resolution along with a stamped approved/denied site plan or plat to the applicant.

APPROVED AND ADOPTED THIS 6th DAY OF JULY 2007

Bruce Lavier, Chairman
Planning Commission

I, Dan Durow, Community Development Director for the City of The Dalles, hereby certify that the foregoing Resolution was adopted at the regular meeting of the City Planning Commission, held on the 6th of July 2006.

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST: _____
Dan Durow, Community Development Director
City of The Dalles