



April 13, 2021

Kirsten Strauss

Planner I

City of Salem Planning Division

555 Liberty Street SE, Room 305

Salem, OR 97301

RE: 12-104980-LD, 21-104981-LD, 21-104982 Completeness Response

Dear Kirsten:

Please accept this letter and the attached revised application narrative and revised plan set as our complete response to the City's March 26, 2021 determination that our application was incomplete. The materials provided herein fully respond to the items outlined in the City's letter and provide the necessary basis to deem the application complete. We look forward to continuing to work with City staff on any issues, as necessary, during the review and approval process.

Our responses to the items are as follows:

Items

SRC 800.025 – Accessway length. Accessway is measured from center line, making the length more than the allowed 400 ft.

Response: As shown on the Preliminary Plans in Exhibit A, the flag lot accessway is 400 feet measured along the centerline of the easement. This standard is met.

PLA 1 only creates two lots; thus the 400 ft. standard is not applicable for PLA 1 and could not be approved. Max for PLA 1 is 150 ft. Approval of PLA would create a non-conforming parcel and will not meet SRC205.055(d)(2). A partition would allow for the relocation of several property lines with a single application.

Response: No new lots are created in this PLA. As discussed in the response to SRC 205.055(d)(3), PLA 1 relocates a common property line between Lot 16 of Alderbrook Manor and the legal unit of land described in Volume 281, Page 265 of the Marion County Public Records. The final configuration of the access easement serving Lot 17 has been added to PLA 1 in order to show that the accessway will serve three lots (Volume 281, Page 265; Lot 16; and Lot 17). The 400-foot accessway standard is applicable and the standard is met.

As documented in the application, the application does not create new lots or propose dividing any lot. Therefore, a partition plan is not applicable.

SRC 511.010 - Street frontage for single family use is a minimum of 40 ft. No street frontage is provided for adjusted tract recorded on Vol. 281, P 265. The adjusted property would not meet development standards and therefore be non-conforming.

Response: The adjusted legal unit of land described in Volume 281, Page 265 of the Marion County Public Records conforms with the applicable requirements for street frontage and vehicular access with a flag lot accessway. Flag lots are allowed per SRC 800.025. The SRC defines flag lots specifically based on the fact that they are set back from the street. The definitions of flag lot, flag lot accessway, and the designation of front lot lines for flag lots in the SRC clearly establish that the SRC allows requirements for street frontage and vehicular access to be met with a flag lot accessway serving a flag lot that is set back from the street, as proposed in this application.

The term *flag lot* is defined in Chapter 111, which states:

*Flag lot means a lot that is **set back from the street** at the rear or at the side of another lot, with vehicular access to the street provided by a flag lot accessway (see Figure 111-1). (emphasis added)*

As shown on the Preliminary Plans in Exhibit A, the adjusted legal unit of land described in Volume 281, Page 265 of the Marion County Records will be set back from the street (Welcome Way SE) at the rear, and to the side of, the adjusted Lot 16 of Alderbrook Manor with vehicular access to Welcome Way provided by a flag lot accessway. The flag lot accessway is provided with an access easement across the adjusted Lot 16 of Alderbrook Manor. The term *flag lot accessway* is defined in Chapter 111, which states the flag lot accessway can be provided with an access easement:

*Flag lot accessway means a portion of a lot that provides legal access from a street to one or more flag lots. An accessway may be through fee-simple ownership as part of a flag lot **or by an access easement** with associated reciprocal and irrevocable access rights for all lots using the accessway. (emphasis added)*

Furthermore, front lot lines for flag lots are designated according to SRC 800.020(a)(4), which states:

*For a flag lot, the front lot line shall be the outside property line that is an extension of the flag lot accessway or the property line separating the flag portion of the lot from **the lot between it and the street from which access is provided to the flag lot...** (emphasis added)*

For the adjusted legal unit of land described in Volume 281, Page 265 of the Marion County Records, the front lot line is the outside property line (±60.11 feet

long) that separates the lot from the portion of adjusted lot 16 of Alderbrook Manor that contains the flag lot accessway (the lot between it and the street from which access is provided to the flag lot). The fact that, as with the flag lot definition, the SRC designates the front lot line for a flag lot as a portion of a property line between the flag lot and the lot between it and the street, further emphasizes that the SRC allows the street frontage and access requirement to be met with a flag lot accessway. The flag lot here conforms to all the applicable requirements of the SRC.

SRC 205.055 – Property Line Adjustment Criteria. Lot 21 of Alder Brook Annex No. 1 appears to have been divided into three lots by Zoning Adjustment ADJ77-54. The proposed layout impacts the southern-most lot's access to public streets. Creating a lot (southern-most lot of ADJ77-54) without frontage would create a non-conforming lot and would not meet SRC205.055(d)(2).

Response: It appears ADJ77-54 was never executed though a recorded plat or other legal instrument meeting the requirements of ORS 92. Therefore, it appears that a legally-created lot does not exist at this location.

Nevertheless, Lot 21 of Alder Brook Annex No. 1 is not affected by the application. The application does not propose changes to any of the Lot 21 lines or its access. As discussed in the application narrative, this application does not involve the vacation relocation or elimination of any public easement or of any public right-of-way and therefore meets 205.055(d)(5). Furthermore, this application is not required to meet the conditions of Ordinance 8-18. If the City does not find that the conditions of Ordinance 8-18 are met, Ordinance 8-18 will not take effect, and the Vacation Lane SE right-of-way can remain in place.

The applicant has indicated that the accessway will be 60 feet in width to accommodate future street access for further division. The lots located along Welcome Way that have homes already located on them would then become double frontage lots and thus non-conforming. The creation of a public or private street, as indicated in the proposal, would create a non-conforming lot and would not meet SRC205.055(d)(2).

Response: There are no double frontage lots being created or contemplated in the proposed PLA. There is no "street" being created here. The city code expressly excludes a flag lot accessway from the definition of a street. The reason that the accessway from Welcome Way is shown with 60 feet of width is an accommodation to a staff request and nothing more. City staff previously requested that the flag lot accessway be configured at this location with 60 feet of width so that it could possibly accommodate a future street. This background information was included in the application in order to demonstrate that the submitted layout reflects input provided by City staff. As discussed in the application and as shown on the plans,

the application does not include a new street. Therefore, the project does not impact the abutting properties on Welcome Way SE lots.

Nevertheless, as shown on the Alderbrook Manor Plat in Exhibit F, the Welcome Way SE lots have been platted with 120 feet of depth. Therefore, the lots meet the lot depth standard for through lots in Table 511-2 and would conform to the current development standards if a future street were to be proposed at this location in the future.

This comment is simply mistaken and the problems it perceives are mistaken based upon the express terms of the city's code.

Adjusted Lot 22 is proposed to take access from Commercial Street SE with the vacation of Vacation Ln SE. As a Major Arterial, access will not be allowed from Commercial Street SE and with the apparent vacation of Vacation Way SE, this lot will not have access to public streets. Access from the proposed easement would exceed the maximum allowed distance for a flag lot accessway.

Response: This comment may reflect that the reviewer is misreading the plans. As shown on the Property Line Adjustment 3 Plan in Exhibit A, the application does not include adjusting any of the Lot 22 lot lines (neither Lot 22 Alder Brook Annex No. 1 nor Lot 22 Alderbrook Manor), nor does it propose any development on either Lot 22 or any access from Commercial Street SE. Those are existing lawful lots not being changed at all by this application; their configuration is not changing, and neither is their access.

Furthermore, this application does not include any street or any street vacation. The Vacation Way SE vacation request was submitted, and approved, in a previous application. This application is not required to satisfy the conditions of Ordinance 8-18. If the requirements of Ordinance 8-18 are not met, and the Vacation Lane SE right-of-way is still needed to provide access to Lot 22, then Ordinance 8-18 does not take effect, and the Vacation Lane SE right-of-way can remain in place. This comment and the problems it perceives are mistaken and are not relevant to this application.

Clarification on vacation of Vacation Lane SE: The plan for Property Line Adjustment 3 indicates that the applicant will be vacating both the driveway and ROW located near Vacation Ln SE. Please provide a conceptual plan showing the final layout of the lots without Vacation Ln SE, including the lot lines of the divided Lot 21 of Alder Brook Annex No. 1.

Response: The comment is mistaken. Again, no street vacation is included in this application. If the requirements of Ordinance 8-18 are not met, and the Vacation Lane SE right-of-way is still needed to provide access to Lot 22, then the Vacation lane right-of-way can remain in place.

Lot 21 is not impacted by this application.

Moreover, the final disposition of vacated right-of-way, to the adjoining lots is a matter of law over which the applicant has no control. See ORS 271.140. The materials requested are irrelevant to this application and are not required for the city to determine compliance with any applicable approval criteria.

The condition of Ordinance 8-18 requires that all lot have access to a public street. The current proposal does not provide access for Adjusted Lot 22.

Response: As previously discussed, this application does not propose an adjustment to Lot 22. It is wholly irrelevant. If the City finds the conditions of Ordinance 8-18 are not met and the Vacation Lane SE right-of-way is still needed to provide access to Lot 22, then Ordinance 8-18 does not take effect and the right-of-way can remain in place until the City receives a future application that reconfigures the lots to the City's satisfaction.

Thank you for reviewing our application. We believe these additional clarifications and plan revisions completely respond to the items included in your March 26, 2021 incompleteness letter. Please contact me if you require any additional information.

Sincerely,

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Submitted Materials:

Revised Application Narrative
Revised Preliminary Plans