

# Land Use & Transportation Memorandum



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## Planning and Development Services – Development Review/Current Planning

To: David Doughman – Hearings Officer  
CC: Frank Stock, Britany Randall, and Gene Bolante – Applicant and Representatives  
From: Cassandra O'Donnell, Associate Planner  
Date: October 9, 2025  
Subject: L2500028-D(R)/A/APPEAL – Response to Pre-Hearing Appeal Memo

Please accept this memo as the County's submission during the First Open Record Period following the September 18, 2025 hearing for Casefile L2500028-D(R)/A/APPEAL. The Hearings Officer has requested that additional evidence, argument, and testimony be submitted no later than 4 o'clock PM on October 9, 2025. This memo is submitted in compliance with that deadline.

This memo responds to the applicant's final appeal memo, Exhibit PH-9, submitted September 17, 2025, as well as new evidence raised during the public hearing.

### **Neighborhood Meeting Attendee Addresses**

As described in the Staff Report (Exhibit PH-1, Attachment C, pages 9-10), neighborhood meeting requirements are established in Resolution and Order 06-20 (Pre-Hearing Exhibit PH-8). Resolution & Order 06-20 III.G(d) requires that submitted meeting notes shall include "the name and address of all people attending."

During the public hearing, the applicant indicated that the neighborhood meeting was recorded and that some attendee addresses were collected. To date, the applicant has not submitted any such attendee address list, nor have they submitted a copy of the meeting recording for staff review. As it stands, the applicant has not submitted sufficient evidence to consider this criterion satisfied.

The applicant indicates in their September 17 memo that "the only reason some addresses were not included is because individual attendees declined to provide that information." Staff acknowledges that this requirement is reliant upon voluntary disclosure by meeting attendees, and that provision of a complete list of attendees with addresses may not be achievable. If the submitted meeting notes included all collected addresses and a note that other attendees refused to provide addresses, this criterion would be considered satisfied. Again, that information was not submitted in a timely manner. Note that staff's recommendation for denial of this application is not contingent on this issue alone and indeed derives from the arguably more substantive issue of failing to meet applicable regulations of the Development Code, as discussed below.

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## **Photometric Plan**

The applicant submitted an updated photometric plan (Exhibit PH-9, Attachment 1) which they assert “fully satisfies the applicable standards” (Exhibit PH-9, page 2). On review, the updated plan does not satisfy applicable standards. Specifically, lighting at the east and west property lines exceeds the maximum permitted illumination for residential districts under Section 415-4 by as much as 0.9 foot-candles.

These criteria may be satisfied by Conditions of Approval.

## **Private Access Easement**

Staff is aware of the limited width of the private access easement. The applicant asserts that “[t]here is no legal mechanism ... to acquire additional width and no condition of approval can require otherwise” (Exhibit PH-9, pages 2-3). Staff notes that two legal mechanisms exist that could provide for additional access width – a property line adjustment or a new, wider access easement. However, both of these options require cooperation from at least one neighboring property owner. Conditions of approval cannot require such cooperation, and staff agrees that conditions of approval may not require expansion of the private access easement.

The lack of sufficient access width is not, in and of itself, sufficient to waive criteria which require certain design elements in the access. It may, however, provide grounds for one or more adjustments or variances under Section 435.

## **Parking Lot Aisle Width**

Section 413-3.2 requires that “[t]he minimum aisle width for two-way traffic and for emergency vehicle operations area is 24 feet.” The code does not distinguish between the parking lot area and the driveway. Staff has therefore interpreted this requirement as applying to the entire length of the aisle, including the driveway. The applicant proposes a 20-foot-wide aisle, including a four-foot-wide striped pedestrian connection (see below). An adjustment is proposed to reduce the required aisle width to 20 feet.

The applicant emphasizes that the proposed configuration was reviewed and accepted by Tualatin Valley Fire & Rescue. While this is a necessary component of this land use submittal, per Section 501-8.1 A, it is independent of the land use requirement under Section 413-3.2, which cannot be waived. While access may be sufficient for emergency vehicle operations in accordance with Tualatin Valley Fire & Rescue requirements, that does not necessarily mean it is sufficient for “two-way traffic and for emergency vehicle operations” per Section 413-3.2.

If an adjustment was permitted pursuant to Section 435-3 and no further reduction in aisle width was required by any other standard, this criterion may be satisfied.

If an adjustment cannot be permitted or a further reduction in aisle width was required, this requirement cannot be satisfied without an expansion of the private access easement. Since

conditions of approval may not require expansion of the private access easement, this criterion cannot be satisfied by conditions of approval.

## **Pedestrian Connection**

Section 408-10.1 A requires that the development “provide a pedestrian connection between the street and the main entrance of the primary structure on the lot.” Section 408-10.3 B requires that, “[w]here connections are parallel and adjacent to an auto travel lane, the connection must be safely separated from the auto travel lane through the use of a raised path, a raised curb, bollards, landscaping or other physical barrier.” Section 408-10.3 C requires that, “[w]hen bicycle travel is otherwise adequately provided, connections shall be at least 5 feet in paved unobstructed width.” Note that this assumes that the access aisle is adequate for bicycle travel.

The applicant proposes a four-foot-wide striped pedestrian connection parallel to the access aisle. The proposed pedestrian connection does not meet the width requirement or the separation requirement under Sections 408-10.3 B and 408-10.3 C.

The applicant argues that the proposed pedestrian connection meets the intent of Section 408 (Exhibit PH-9, page 3). The identified criteria are clear and objective as well as applicable, and staff maintains that meeting the *intent* of such criteria is insufficient. Similarly, the applicant argues that “this is the only feasible design solution within the easement constraint” (Exhibit PH-9, page 3). As noted above, the lack of sufficient access width is not, in and of itself, sufficient to waive criteria which require certain design elements in the access.

While conditions may be drafted which require the pedestrian connection to meet these criteria, it is not possible to do so without either reducing the aisle width or expanding the private access easement. As described above, such conditions are not feasible. Therefore, these criteria cannot be satisfied by conditions of approval.

Section 408-10.2 provides for a reduction of the number of pedestrian connections. Staff has found that this development does not qualify for such a reduction. The applicant has not requested a reduction or suggested findings for a reduction under this section.

Future applications for development on this site may consider one or more adjustments or variances to reduce or eliminate these criteria. The applicant has not requested any such adjustments or variances.

## **Adjustment Material Detriment**

Section 435-3.2 B requires that an adjustment “will not be materially detrimental to other property in the vicinity.” The applicant has submitted a detailed access evaluation (Exhibit OR-2). The majority of this report is focused on traffic impacts on SW Canyon Ln. While traffic impacts on the right-of-way is a relevant consideration to this project, this criterion is primarily concerned with the impacts of the adjustment itself on nearby properties. Sections 6 and 7 most directly address the width adjustment and its impacts on other property.

The access evaluation notes that Tualatin Valley Fire & Rescue reviewed and approved the plan. This is not, in itself, sufficient to ensure that the access configuration will not be materially detrimental to nearby properties.

The evaluation further notes that “no off-site improvements or changes to the existing access easement are proposed that would affect neighboring properties” (Exhibit OR-2, page 4). As noted in the Staff Report (Exhibit PH-1, Attachment C, pages 29-30), the proposed development clearly represents an intensification of the use of the easement, from the current gravel access to a vacant lot to a fully developed access aisle for a 12-unit multifamily development. This represents a major change to both the physical design and use of the existing access easement.

The evaluation also notes that the 20-foot-wide access is similar in width to a “queueing street,” where vehicle speeds are typically slow and there is sufficient width for two oncoming vehicles to pass each other, and where it is not uncommon for wider vehicles to wait at the end of restricted areas until other vehicles have cleared the way (Exhibit OR-2, page 4). While this is an accurate reflection of constrained road width on some public roads, it should be noted that the nature of the access aisle limits visibility for vehicles turning into the aisle from the public street. In the case of two wide vehicles entering the aisle from opposite sides, it may not be possible for one to see the other and wait at the end of the drive, and vehicles may be forced to maneuver close to or over curbs.

The evaluation also does not consider the impact of the narrow access aisle on turning maneuvers from and to the public street. Adjacent properties take access immediately adjacent to the proposed access aisle. The applicant has not indicated how turning maneuvers will be restricted to ensure maneuvering will not impact neighboring properties.

The evaluation asserts that the term “material detriment” must be evaluated objectively (Exhibit OR-2, page 6). Section 202-2.1 describes criteria for Type II land use actions (such as an adjustment) as “reasonably objective, requiring only limited discretion.” This criterion, in particular, is somewhat subjective and leaves room for some discretion.

Staff recommends that the Hearings Officer not find this criterion satisfied. If the Hearings Officer finds this criterion satisfied and chooses to approve the appeal request, staff recommends the following additional conditions:

- Provide a sight distance evaluation from the north end of the 20-foot-wide access aisle to demonstrate that sight distance is sufficient to see vehicles turning into the aisle from the public street.
- Construct a fence at either side of the 20-foot-wide access aisle for its length to ensure that no vehicles will enter or impact neighboring properties.

Note that these conditions may not be possible to achieve without either further reducing the aisle width or expanding the private access easement.

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If the applicant is unable to satisfy this criterion, they may consider a variance to pursue alternative criteria for approval.

## **Sight Distance**

The applicant notes that the staff report includes a finding that the proposed access location fails to meet the 250-foot sight distance requirement. This finding is resolved in the Staff Report (Exhibit PH-1, Attachment C, page 32) itself, which finds that the proposed access location satisfies sight distance under the County Engineer's guidance for determining required sight distance where the distance between the subject intersection and adjacent intersection is less than the required sight distance standard for a stop-controlled adjacent intersection approach. Sight distance is sufficient pursuant to these requirements.

## **Conclusion**

Information submitted by the applicant is not sufficient to demonstrate that the request complies with the applicable regulations of the Community Development Code and the Community Plan, including Sections 203-4.2 K, 408-10, 413-3.2, 415-4, and 435-3. The request cannot be made to comply through conditions of approval.

Staff recommends the Hearing's Officer deny the appeal request and uphold the Director's denial of the requested land use action.

If the Hearing's Officer approves the appeal request and overturns the Director's denial, Staff recommends approval be subject to the Recommended Conditions of Approval as set forth in Attachment B of the Staff Report & Recommendation and in this memo.