

FWW FARLEIGH WADA WITT
Attorneys

Margot D. Seitz
Attorney

mseitz@fwwlaw.com

121 SW Morrison Street, Suite 600
Portland, Oregon 97204
tel 503.228.6044
fax 503.228.1741
www.fwwlaw.com

September 7, 2016

Via Email Only

Elena Sasin, Assistant Planner
City of Beaverton Planning Division
P.O. Box 4755
Beaverton, OR 97076
esasin@beavertonoregon.gov

Re: *Comments in Opposition to Development Proposal*
Project Name: SW 155th Avenue 3-Lot Partition
Applicant: ADTM Development, LLC
Case File No.: LD2016-0002, TP2016-0003, FS2016-0001
Project Location: 10510 SW 155th Avenue, Tax Lot 00100 of Washington
County's Tax Assessor's Tax Map 1S132BD

Dear Ms. Sasin:

This office represents Richard King, the owner of real property located at 15460 SW Heron Court, Beaverton, Oregon. Mr. King's entire rear property line runs along the eastern property line of 10510 SW 155th Avenue, Beaverton, Oregon 97007 (the "Property"). I am writing in opposition to the above-referenced development application (the "Application") submitted by ADTM Development, LLC ("ADTM"). More specifically, ADTM seeks to partition the Property into three lots (respectively, "Lot 1," "Lot 2," and "Lot 3"). The proposed development is incongruous with the surrounding Murrayhill subdivision and is inconsistent with a recorded plat for the Murrayhill development. Moreover, it will degrade neighboring property values, violates the Murrayhill CC&Rs, and raises a variety of safety issues. This letter provides a brief summary of various constraints in the proposed development followed by a discussion of specific issues.

While the proposed development meets lot size and density requirements, there are a myriad of circumstances which constrain the design. These constraints include a radically obtuse triangular lot shape, an existing petroleum pipeline easement, and a new easement for a storm and sanitary sewer system running along the southeastern property line. The proposed lots are further constrained by a vegetated corridor and wetlands which require special facilities to mitigate contaminated runoff from impacting a tributary of Summer Creek. That hazard is

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greatly exacerbated due to the proposed concrete roadway and sidewalk which drain toward the creek. Of particular note is the relatively small frontage for the Property – it is burdened by the petroleum pipeline easement, a retaining wall (which is required due to the grade), telephone and CATV facilities, and a ground-based electrical power transformer (plus normal utility access facilities).

As a result of these physical constraints, the proposed development is incompatible with the surrounding area and creates several serious safety concerns. In addition, two plats recorded with Washington County provide that “no [Murrayhill] lot shall have direct access onto 155th Avenue.” Based on the documents located to date, the existing home and driveway on the Property should not have been approved or constructed. Thus, the City should not consider adding even more lots and homes with prohibited access. As discussed in greater detail below, the Application should be denied.

A. Flexible Setback Issue (Lot 3) and Inconsistencies with Surrounding Development.

ADTM seeks to partition and build two additional homes on the Property connected by a private road and sidewalk. In order to accomplish that, ADTM also seeks approval of a flexible rear setback on Lot 3 and a tree removal plan. To obtain a flexible setback on Lot 3, the applicant must submit evidence “demonstrating” that the following criterion is “satisfied”:

The proposal is compatible with the surrounding area regarding topography, vegetation, building character, and site design. In determining compatibility, consideration shall be given to harmony in: scale, bulk, lot coverage, density, rooflines, and building materials.

Beaverton Development Code (“BDC”) 40.30.15.3.C. The applicant has not set forth any evidence to establish that criterion. Here, it is not met.

The proposed development is unlike any other in Murrayhill. Simply put, the proposed site design, building character and vegetation is incompatible with the surrounding area. In order for any future development to be harmonious with and not impact neighboring home values, it must continue with the existing design and character of the surrounding area. Three basic design principles are common to both Murrayhill and the adjacent Williamsburg neighborhood. More specifically, those neighborhoods have: (1) established a minimum size for detached single family homes (“DSF Homes”); (2) provided direct unencumbered street access

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for DSF Homes; and (3) their DSF Homes have a full view of the streetscape from the front of the home. The proposed design fails to comply with all three of these design principles.

First, the proximity and relative sizes of the proposed homes and yards are in stark contrast to those in the immediate neighborhood. Given the odd shapes of Lots 2 and 3 and the constraints with easements and wetlands, ADTM proposes building one home with a square footage that is a small fraction of the size of single family homes in the Murrayhill and Williamsburg neighborhoods. The home proposed for Lot 3 is a mere 1,034 square feet. That is quite small in comparison with the size of the other single family homes in the area. Also note that it appears ADTM has under-reported the actual square footage of the existing home on Lot 1. According to the tax assessor, that structure is 2,522 square feet, rather than the 2,014 square feet reported on the Application. See Application, p. 7 (compare to attached Property Profile Report, p. 2).

Second, the proposed development includes extensive private driveways, which merge into a single egress, as well as a private sidewalk. Each of these components is necessary in order to access the public street from Lots 2 and 3. The construction of those improvements would necessitate the replacement of substantial vegetation with concrete (*i.e.*, a 20-foot wide concrete strip running down the west side of the Property, including a 16-foot wide roadway and a 4-foot wide sidewalk). It is my understanding that Williamsburg and Murrayhill do not have any similar 3-home flag lots.

Third and lastly, the proposed additional homes have no view of the streetscape whatsoever and one of the homes sites has the proposed frontage facing the back of the existing home with little buffer. In sum, ADTM has not met its burden to show that the flexible setback on Lot 3 should be granted. The Application should be denied on that basis. If, however, the City is inclined to grant the application, then, at a minimum, ADTM should be required to supplement its application with the required evidence and provide sufficient time for public comment on that additional information.

B. Inconsistencies with Murrayhill Plat and Safety Issues.

Although the thresholds for a traffic impact analysis or traffic management plan do not appear to be triggered in this case, we would urge the City to consider the impact of this development on traffic and pedestrian safety. 155th Avenue is a busy artery with a history of accidents. Traffic safety is a significant concern of many people in the neighborhood as well as the Murrayhill Owners Association ("MOA"). The proposed development is extremely close to a heavily used crosswalk. Shared pedestrian and bicycle use increases the concerns regarding traffic safety.

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Moreover, allowing proposed Lots 2 and 3 to use 155th Avenue for access appears inconsistent with Murrayhill Plat Nos. 3 and 18. The subject Property is known as "Lot 108" within the Murrayhill subdivision. It was platted in Murrayhill Plat No. 3 and replatted in Murrayhill Plat No. 18. Both of those plats clearly indicate that no "lot shall have direct access onto S.W. 155th Avenue or 160th Avenue." See attached Murrayhill Plats ("Notes" sections).

It should be noted that the restriction on Murrayhill lots having access to 155th Avenue remained in the plat even after that street bordered the Property. At some point, a house was built on Lot 108, and either this restriction was missed or an exception was made. Notably, no other Murrayhill lot has street access from 155th Avenue. Based upon your searches, it does not appear there are microfilm records of the building permit obtained to construct the existing house on the Property.¹ So, it is unclear if any conditions were placed on an access exception or if that restriction was simply missed. At any rate, the partition proposes the creation of two new Murrayhill lots – Lots 2 and 3. Both of those new lots should be subject to the same access restriction. At a minimum, additional research should be conducted by the Planning Division to determine the basis of the original approval which allowed a house to be built on the Property with access from 155th Avenue, despite the clear prohibition on access.

C. Inconsistencies with MOA CC&Rs and Tree Removal Issues.

Fundamentally, ADTM seeks approval of a development plan that is infeasible because it is contingent on third-party approvals which it is not likely to receive. For example, at a bare minimum, the partition Application is dependent upon: (1) the specific placement of two houses on new lots (with a reduced setback) and (2) the removal of 18 established trees. The MOA's Amended Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") require ADTM to submit plans and obtain approvals "prior to the commencement, erection, placement, or alteration of any Improvement on any Lot ...". CC&Rs 5.3.1. MOA's design standards focus, in part, on whether a new development complements the existing Murrayhill community. As discussed above, the proposed development does not do that.

The CC&Rs also prohibit the removal of most trees without pre-approval from the Architectural Review Committee. Specifically, it states:

5.2.7 Tree Removal. No trees with a diameter of six inches or more, measured at a height of five feet above ground level, may be removed from any Lot without the prior approval of the Architectural Review Committee. Each Owner shall supply to the

¹ We have conducted some initial research on this issue through the MOA, but have not discovered any specific records regarding the above decision. Nor have we found any permit records.

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Architectural Review Committee together with the plans and specifications for any proposed Improvement a drawing showing the intended location of such Improvement on such Owner's Lot and of all trees thereon, so that necessary tree removal can be readily determined.

Despite the clear language of the CC&Rs and the fact that the MOA has reminded ADTM in writing of its obligation to obtain pre-approval before taking any action, ADTM has declined to submit an application to the Architectural Review Committee.

It simply does not make sense for the Property to be partitioned into three lots if the proposed development cannot move forward. A decision on the Application should be delayed until a decision has been made by the MOA (*i.e.*, regarding placement and size of improvements, tree removal, etc.). It should also be stressed that the MOA's decisions are relevant to the flexible setback issue discussed above. For instance, the MOA is interested in whether the proposed development is "compatible with the surrounding area" as required by the Beaverton Development Code for a flexible setback.

Lastly, the Application does not meet BDC 60.15.15.4 with respect to the application of CC&Rs to the proposed development. That code section states:

4. Homeowners' Associations and Declarations. When a Homeowners' Association Agreement or other restrictive covenants are to be recorded with the development, a copy of the appropriate documents shall be submitted with the final plat. The City shall review such documents to ensure that common areas are properly maintained and that other restrictions required by the City are included.

Here the Property is currently subject to the MOA CC&Rs. Although new CC&Rs are not being created and recorded at this time, any final partition plat should acknowledge that newly created lots are subject to the MOA CC&Rs. (ADTM cannot remove two-thirds of that Property from the reach of the MOA through a partition.)

D. Additional Concerns.

Lastly, we would urge the City to closely scrutinize ADTM's (1) tree removal plan and (2) water runoff calculations. Mr. King and some of the surrounding neighbors are very concerned about the environmental impacts of the proposed development. Specifically, they are concerned about the impact of the contemplated tree removal on nearby trees due to co-mingled

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roots and new exposure to wind loads as well as water runoff. For reasons not entirely understood, the area around the proposed development has particularly unfavorable wind patterns regarding trees.

As an example, *see* the attached photos taken during a storm on October 25, 2014. (The numbers in the file names of the attached photos reflect lot numbers that can be cross-referenced with the Application.) Damage in this specific area was far more extensive than that experienced just a few blocks away. The photos were taken as trees continued to fall. Streets were rapidly and fully blocked. Although the fire department was able to provide some emergency access, it took several days for the trees to be removed (and damage fully assessed). Note that the subject Property is located directly behind the pictured homes. Based on the Application, some of the trees seen in the pictures (behind the homes) will be removed and some will remain (as they are located on adjacent property). This raises additional risks regarding wind loading on the remaining trees and possible future damage to neighboring homes.

Thank you in advance for your consideration of these issues. I would be happy to provide you with copies of any of the other documents cited in this letter, if that would be helpful. If you have other questions or would like any additional information, please let me know.

Sincerely,



Margot D. Seitz

MDS/mb
Enclosures
cc: Client
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