

Elena Sasin

From: Andrew Stamp <andrewstamp@comcast.net>
Sent: Tuesday, November 29, 2016 1:01 PM
To: Elena Sasin
Cc: 'Margot Seitz'; 'Scott Wilson'
Subject: Applicant's response dated Nov 23, 2016 Re

Dear Elena:

From the start, this applicant has been an effort to fit a square peg into a round hole. In recognition of the flaws inherent in its initial design, the applicant significantly amended its application on November 23, 2016. Among other things, the applicant redesigned the site plan, amended the location of proposed lot lines, and withdrew its application for a flexible lot setback. In the current proposal, the rear lot for parcel 3 contains of 5 separate lines, which is emblematic of how silly this application really is.

Among other things, the applicant has changed the dimensions of an existing rear deck to make it appear smaller than it appears on aerial photographs. Contrary to what is shown on the site plan, the actual deck protrudes into the required 20 foot rear yard, contrary to Code. In addition, the new drawings submitted by the applicant do not show the proposed dwelling on Lot Three meeting the side yard setback (the side measures out to three feet). Furthermore, the applicant has still not resolved the issue that Lot 2 does not have street frontage.

We were informed of these changes yesterday. Has staff considered BDC 50.40.6, which states: "Subject to the limitations set forth in Section 50.25.10., the applicant may amend the application during a period of time of up to and including fourteen (14) days after the application has been determined to be or deemed complete." Based on a quick review of this provision, the applicant seems to be in violation of Code by submitting amendments at such a late date.

At the very least, and without waiving any rights to make any other argument, including demanding that a new application be filed and processed, we hereby request in writing pursuant to ORS 197.763(6)(C) to reopen the record to accept rebuttal to the new evidence submitted by the applicant. Please let me know if this email does not constitute a "writing." If so, I will be happy to fax or hand deliver a request as well. The two relevant statutes at issue provide:

ORS 197.763(c): If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

ORS 197.763(7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

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