



MEMORANDUM

To: The Honorable Mayor and City Commission
From: Carrie Richter, Deputy City Attorney
Tony Konkol, Community Development Director
Christina Robertson-Gardiner, AICP, Planner
Re: Appeal 13-01: Appeal of the Mountain Ridge Homes Application
(Planning file HR 13-02)
Date: July 10, 2013

STAFF RECOMMENDATION:

Staff recommends the City Commission deny the Appeal (AP 13-01), and uphold the Historic Review Board's decision to approve to conditionally approve the applicant's request to construct a new single family residence in the Canemah National Register District. The 120-day deadline for this application is August 24, 2013.

The City Commission may:

- Affirm the Historic Review Board's decision, thereby denying the appeal and approving the application as submitted by the applicant; or
- The Commission may adopt an appropriate condition of approval to address any criteria they feel has not been met, approve the application with conditions and deny the appeal; or
- If the criterion cannot be met through a condition of approval, the Commission may approve the appeal and thereby deny the application.

NOTICE OF APPEAL HEARING:

As stated in OCMC 17.50.190(E)

Notice of the Appeal Hearing. The planning division shall issue notice of the appeal hearing to all parties who participated either orally or in writing before the close of the public record in accordance with Section 17.50.090B. Notice of the appeal hearing shall contain the following information:

- 1. The file number and date of the decision being appealed;*
- 2. The time, date and location of the public hearing;*
- 3. The name of the applicant, owner and appellant (if different);*
- 4. The street address or other easily understood location of the subject property;*
- 5. A description of the permit requested and the applicant's development proposal;*
- 6. A brief summary of the decision being appealed and the grounds for appeal listed in the notice of appeal;*

7. A statement that the appeal hearing is confined to the issues raised in the notice of appeal;
8. A general explanation of the requirements for participation and the city's hearing procedures.

This appeal hearing has been noticed in accordance with this requirement.

STANDING TO APPEAL:

As stated in OCMC 17.50.190.D(2),

For Type III and IV decisions, only those persons or recognized neighborhood associations who have participated either orally or in writing have standing to appeal the decision of the planning commission or historic review board, as applicable. Grounds for appeal are limited to those issues raised either orally or in writing before the close of the public record.

Mr. Edgar and Mr. Post both commented on the application at the review hearing before the HRB and have submitted the required appeal fee of \$50.00, and thus have standing to appeal the application. Although the appeal was submitted on Canemah Neighborhood Association letterhead, the appellants agree that this appeal is only on their personal behalf, and not on behalf of the neighborhood association.

This appeal of the Historic Review Board's Type III decision is governed by Chapter 17.50.120 and 17.50.190 of the Oregon City Municipal Code. A person must have participated in the hearing below to have standing to pursue and appeal but anyone may present written or oral testimony during the appeal hearing. However, the record is limited to the record before the City's Historic Review Board (no new evidence will be allowed), the issues will be limited to the issues identified in the notice of appeal and only those persons who participated at the Historic Review Board hearing will be allowed to participate either orally or in writing in the appeal. The appellant must establish that the applicable criteria cited in the appeal have not been met or cannot be met through the conditions of approval attached to the approved decision.

BASIC FACTS:

The Project includes the construction of a new single family residence in the Canemah Historic District. Specifically on 4th St. between what are labeled 707 and 615 on OCWebMaps. The proposed size of the home is 2445 sq. ft. finished. The applicant proposes a vernacular style home with a main level, an upper level partially within the roof line, and a partial daylight basement level. In addition the applicant proposes a single car garage attached to the home with a covered breezeway. The applicant met with the Historic Review Board at the January and February 2013 Meetings for Design Advice, the minutes, video and agenda materials have been added to the record. On May 29, 2013, the Historic Review Board issued a notice of decision that approved the residence with conditions. This appeal followed.

The main body of the home consists of a gable running front to back with upper level over on the left side of the building. Next to that the applicant proposes the "addition" portion of the home that is set back from the main façade and is diminutive in scale to the main body. The garage is proposed to be accessed directly from the street and the applicant requests a "preservation incentive" to allow the garage within 3' of the front property line. The main roof pitches are

conditioned to be 12:12 and 5:12 for the hipped porches. The main and upper level siding is 8" exposed cement board lap and 4" exposed cement board lap for the lower level. The windows are fiberglass and the trim is 1x4 with extended cap. All of the gables are adorned with a frieze board.

The site is a 50'x100' lot with an additional 35' x 100' vacated easement. It slopes to the rear with an approximate 20% slope. There is a large cedar tree on or near the west property line approximately 51' from front property line. There is also an alder tree in the middle of the lot approximately 40' from front property line. The rest of the lot is covered with brush.

The applicant proposes a concrete drive to garage and a "hammer head" turnaround/parking space. The rest of the front of the lot will be landscaped with some terraced rockery walls to transition some of the slope from street to house. There will be a rear porch and patio below. The applicant proposes to do some fill and 4' high rockery retaining wall at the rear of the house to create a useable yard area. This transition will be softened with some native shrubs as well. In order to minimize the impact on the adjacent property to the West, the applicant proposes to minimize any fill on the NW side of the house and garage, but add a loose hedge of native plants to reduce the overall visual height of the new building. The Historic Review Board conditioned the approval to require the applicant to amend its landscaping plan to add more bushes and trees to better block the garage from the Draper house to the west and to break up massing of the day light basement.

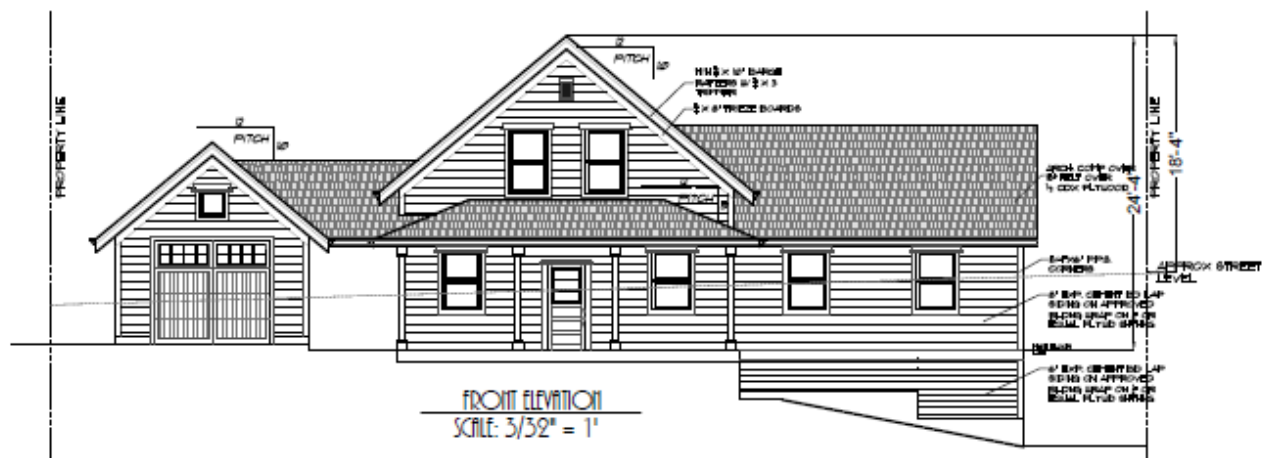
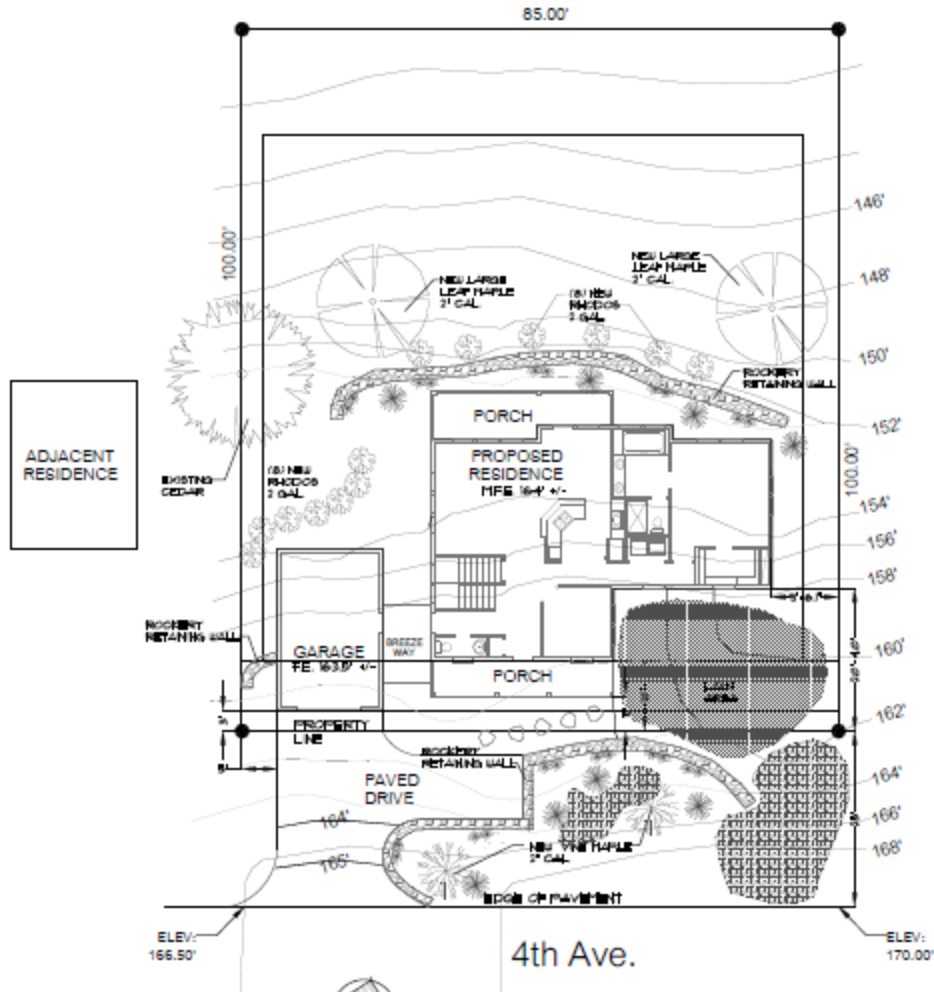
Proposed Areas:

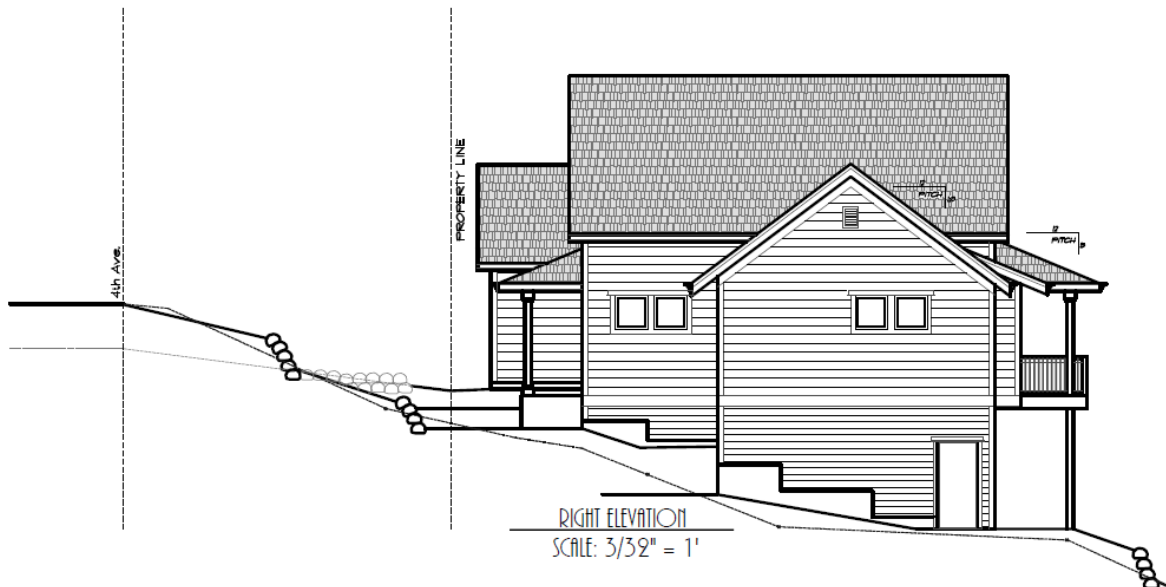
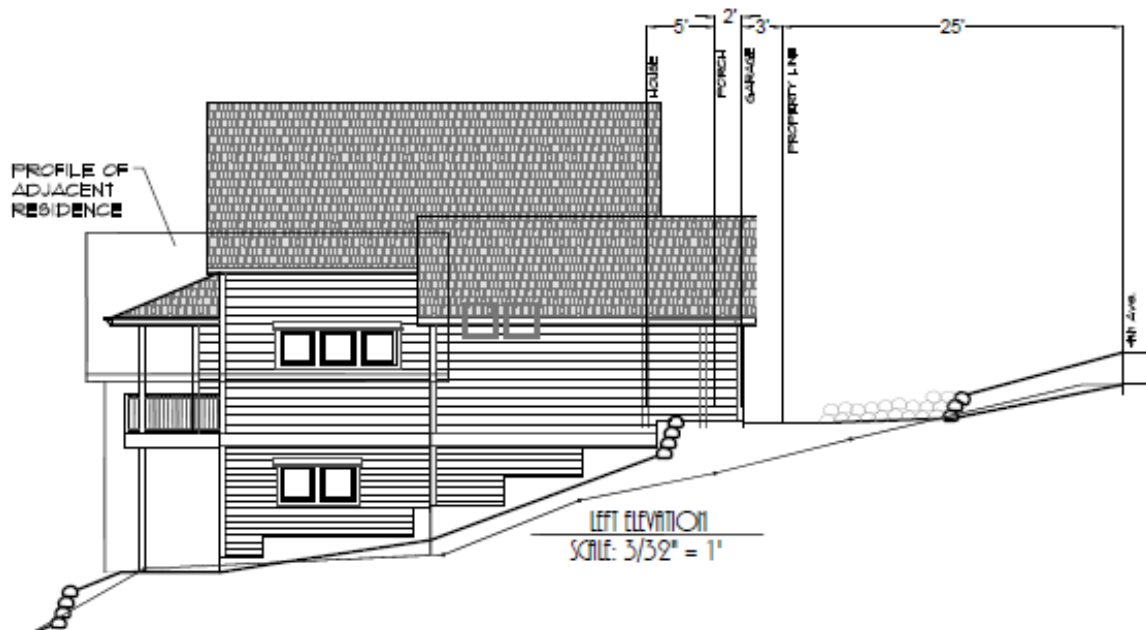
- Main building area:..... 1333 s.f.
- Garage area:..... 345 s.f.
- Covered Porches and breezeway: 368 s.f.
- Paved drive:..... 625 s.f.

4. DRAWINGS

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|---|--|---|---|
|  | ACER VARIETIES - MAPLES
1-1/2" TO 2" cal. |  | RHODODENDRON - RHODODENDRON
2 gal. |
|  | ACER VARIETIES - MAPLES
1-1/2" TO 2" cal. |  | ERICA SPECIES - SCOTCH HEATHER
1 gal. |
|  | AZALEA VARIETIES - XBURY
AZALEA
1 gal. |  | FRAGARIA VESCA - WOOD STAWBERRY
(GROUND COVER) |
| | |  | BASALT STONES |

ALL BED AREAS TO BE COVERED
WITH SMALL PEBBLE FIR MULCH







At 4th Street looking North and residence to the West

ISSUES RAISED BY THE APPELLANTS

The appeal raises a number of issues, some of which were raised before the HRB and others which were not. Generally, the appellants objections during the proceeding before the HRB were limited strictly to design, concerns over natural hazards were not raised and were not within the purview of HRB, in any event. As explained above, this review is limited to the record before the HRB and therefore, other issues should not be considered. However, in the interest of providing a complete report, responses to these additional issues are discussed at the end of this report.

National Register District Status

Canemah is the only area within the City that, in addition to being subject to the Historic District Overlay, it is also a National Register Historic District. Appellants believe that the existence of the National Register Historic District designation required that the HRB impose a higher standard of design compatibility and the HRB erred by requiring compliance with only the minimum requirements contained in the New Construction Guidelines.

Although it is true that Canemah is the only National Register District within the City, nothing within the OCMC or the Guidelines for New Construction in Oregon City Historic Districts distinguish between Districts that are on the National Register and those that are not. To the contrary, the Guidelines open with a discussion of the key features of Canemah architectural history and many of the particular guidelines are directed specifically to resource trends that are specific to Canemah, in particular, and not to McLoughlin.

The National Register is a federally run historic preservation program to which the City plays no regulatory role. Instead, pursuant to the City's obligations to comply with Goal 5, protecting historic resources of statewide significance, the City has designated Canemah Historic District, as well as McLoughlin Conservation District as areas that are subject to the Historic District Overlay and the Guidelines for New Constructions. The City could certainly decide to impose greater restrictions on new development in Canemah in the future, but the appellants cite to no additional requirement and staff knows of none.

That said, this is the first new construction proposed in Canemah since the revised Design Guidelines for New Construction were adopted in 2006 and as such, it makes sense for the City Commission to consider District resources, both generally, as well as nearby the subject property, to determine if a more strict standard is appropriate given the number or quality of the contributing resources and the extent to which this propped infill detracts from the resources or the District, as a whole. The Guidelines objectives are to "safeguard the heritage of Oregon City" and "enhance the visual character of the districts by constructing harmonious designs." These same objectives apply and if the proposed new construction fails comply with the Guidelines as necessary to achieve a design that enhances the visual character of the district than it must be denied or conditions drafted that

make the design compatible. The particular applicable standards are discussed in greater detail below.

Home and Garage Location

Appellants object to the existence and location of the garage and the location of the home, with an extending front patio into the setback area, on the site. The Appellant goes on to note that historic homes did not have garages and when garages did exist, they were located beside or behind the houses, not in front of the house. With regard to the location of garage, the Appellants believe that approving an attached garage within 3 feet of the front property line and 5 feet from the side property line is unprecedented and adversely affects a contributing structure, the Draper House, to the west. The Appellants note that typical front setbacks within the City are 20-feet from the front property line and there are no infill houses in Canemah that are this far forward on the lot.

Historic Guideline C-3 also appears to be at issue here. It requires:

Establish the Site Plan and the Overall Building Form. Is the use of the site and the building's placement on the site respectful of its context? Is the size, shape and bulk of the building consistent with the style chosen? Does it complement the neighborhood context? Is there too much 'program' for the site or style?

As the Appellants' correctly note, the overwhelming majority of existing architecture within this portion of Canemah consists of Vernacular styled homes. The Guidelines characterize the location of existing Vernacular homes are sited as having: "no uniform setback;" and "House Placement: to suit the existing topography." Other site design principles highlighted in the Guidelines include: "Site houses according to neighboring or contextual practice. At sloping sites, houses were sited at [the] most easily built portions of the lot and close to grade." In sum, these guidelines contemplate variations in setback that is dictated largely by the topography.

With regard to the existence of the garage, the Vernacular style characteristics provide: "Garages: Not found historically; informal graveled or paved parking next to street or along house; New garages to be located along side or behind house. Where topography is a concern, locate garage offset from building primary façade, close to street with direct access." This standard makes clear that garages are expressly permitted for inclusion with new construction.

OCMC 17.12.040(E) sets the baseline setbacks for residences within the R-6 zone. The front yard setback is 10 feet for the home and 20 feet from the public right of way for garages. Porches need to be set back at least 5 feet. The side yard setback is 5 feet for all structures but can be reduced to 3 feet in the case of detached garages. The setbacks for the home complies with these standards with the home setback 10 feet and the patio setback 5 feet. The garage is setback 5 feet from the side property line. Thus, the only issue is the reduction of the front setback necessary to accommodate the garage.

A preservation incentive, more commonly known as an adjustment, to the setback standards applicable to accessory structures to accommodate the location of the garage is allowed under OCMC 17.40.065(c). According to OCMC 17.54.010(B)(2), a detached accessory building that is less

than 200 square feet must be located behind the front building line of the primary structure and be set back from the front property line by 10 feet. Also, OCMC 17.12.040(E)(3) requires that the garage be set back from the 20 feet from the public right of way.

In approving the preservation incentive to reduce the front setback, the HRB made clear that it decided to deviate the Oregon City Planning and Building Division Policy for Determination of Attached Buildings and to view the garage as detached, even though it is connected by a breezeway, and thus eligible for a setback reduction to 3 feet on the front. Further, one of the Canemah-specific design standards provides that South of 3rd, “houses with downslope lots may have greatly reduced front yard.” The subject property contains a downslope lot that is south of 3rd, and given the overall site topography, the HRB deemed it appropriate to greatly reduce the front yard through a preservation incentive.

Finally, the HRB acknowledged that an existing large cedar tree exists on an adjacent property and that the garage had to be pushed toward the front property line to accommodate the extensive drip line. Condition 6 to the approval acknowledged this intent and encouraged pushing the garage further back from the front property line so long as it will not interfere with the cedar tree drip line.

Bulk, Scale and Massing is Incompatible with Vernacular Design within the Historic District

Appellants charge that the proposed infill house introduces an incompatible hybrid design where the bulk, scale and horizontal massing detracts from the Historic District. Appellants argue that the design extends 66.5 feet across two 50 foot wide lots making this design wider than a Vernacular Style home appropriate for development in Canemah. According to the Appellants, one of the key features of structures, most particularly Vernacular style structures, is that they are one and a half stories and no more than 28-feet wide. Appellants also support their claim by highlighting the large disparity between the overall impervious surface of roof coverage against nearby historic structures.

The proposed main body of the structure is 26 feet wide. The overall building width including the “L” addition is 22.6” feet wide. Considered with the garage and breezeway (if attached) the full front façade is 70 feet. The proposed property is one-and-a half stories tall from the street (but three-stories if considered given the slope). The Historic Review Board found that the design broke up the massing by utilizing historic proportions for both the primary volume and addition.

Although the Appellants assert that this overall width is unprecedented in Canemah, there is no data in the record to determine whether that is indeed the case. Further, there is no comparative data in the record on which to determine the width of a historic structure containing an “L” addition.

In addition to Historic Guideline C-3 quoted above, Section 5 of the Character Guidelines, identifies particular design principles that, if followed, will result in compatible design. With regard to building size, the Guidelines call for a building width that “maintains a historic height to width ratio for the style.” The Guidelines note a preference for a “primary single rectangular form or with the addition of a subordinate rectangular form to create a wing, ‘L,’ or addition.” With regard to residential volume, the Guidelines contain a special reference to Canemah to “maintain historic residential massing.” Pgs. 38-40. In describing the characteristics of existing Vernacular resources in Canemah,

the Guidelines state: “Lots range from 50 x 100 to 100 x 100 and contain a single house.” Other than this statement the Design Guidelines do not discuss appropriate Vernacular-styled building widths and set no limitations on them.

As quoted above, the Guidelines themselves suggest some precedent for locating a single house on a 100 foot, double-wide lot. Further, there is precedent for deviating from the tall and narrow Vernacular styles to acknowledge that when these houses were expanded, which happened frequently, the additions took the form of “L” shaped secondary extensions which had the affect of extending the width of the front façade. Nothing in the sections quoted above talks about evaluating building mass compatibility based on the overall amount of impervious surface.

The Appellants argue that by taking advantage of the steep slopes, the applicant has proposed a 3-level home which overwhelms the historic houses next door and across the street. From the street this building is one and half stories consistent with the Canemah Vernacular style which includes a “basement option.” The HRB found that given the steep slopes, all three levels will not be visible from a public way. Thus, a one and a half-story structure extending across a 100 foot lot is compatible.

With regard to roof pitch, the Canemah Vernacular Building Form Standards require a gable roof “of not less than 8:12 pitch with “10:12 pitch and steeper preferred.” All of the propose roof pitches for both the primary, addition and garage gable roofs are 10:12 pitch. Although a steeper roof pitch may be preferred, the HRB acknowledged with the one and a half-story homes, there is some precedent for the 10:12 pitch and such a pitch was appropriate in this case. The Board was additionally concerned that increasing the roof pitch to 12:12 would increase to height of the roof peak which would increase the overall mass of the building.

Proposed Design Elements

Appellants claim that the window design and fiberglass material as well as the use of cement fiberboard siding results in a design that is incompatible with the surrounding historic resources.

New Construction Design Guideline E-1 requires:

Design and choose specific design elements, products and materials that are allowable and consistent with the design styling and framework established.

With regard to windows, the Appellants believe that the proportions need to mimic the tall, narrow, 2 to 1 proportion, 4 over 4 divided lite configuration, double hung wood windows contained in the Draper House or the home across the street at 702 4th Avenue. According to the Appellants, fiberglass windows do not maintain a true divided lite design complete with raised dividers.

Towards the end of the HRB meeting, the Appellants and the Applicant agreed to modify the application to include four over four, true divided lite, wood windows on the front of the home. The HRB adopted a condition of approval requiring:

5. The applicant shall utilize the following, unless an alternate has been approved by the Historic Review Board.

- a. wood or fiberglass windows and doors. Fiberglass windows (Marvin Integrity or equivalent)

Thus, although the HRB found that wood windows are not required for a compatible design, they are permitted should the applicant wish to pursue this course. If the appellants and the applicant made a different arrangement, that agreement is between them and the HRB's decision bears no relation to it.

The Appellants claims that the use of concrete siding is inconsistent with a standard requiring that materials be complementary and non-detracting and would prefer the use of wood siding. As with the use of high-end fiberglass windows, the HRB has some precedent for finding that smooth finish concrete siding represents an appropriate balance between modern materials that maintain sufficient design characteristics so as not to detract within a Historic District. The use of 4" and 8" smooth concrete lap board mimics historic reveal dimensions and can be painted to give the appearance of wood siding.

With regard to the garage, Appellants claim that the proposal lacks architectural elements such as windows, doors, trim and roof lines that are compatible with the main structure. The garage ridgeline is too high; it should be lowered to match the roof line for the wing or addition portion of the home. The front of the proposed garage contains wood, swinging double panel doors with simulated divided light windows similar to a transom mimicking a historic design. Above the garage door is a small window. The roofline of the garage is lower than the main portion of the structure and is the same height as the "L" addition.

Overall Building Compatibility

Appellants argue that taken together, the siting of the building on the property, the overall building scale and massing, the design details and materials, result in a building that is incompatible with the surrounding Canemah vernacular designed homes.

OCMC 17.40.60(F)(5) provides

The general compatibility of exterior design, arrangement, proportion, detail, scale, color, texture and materials proposed to be used with the historic site;¹

In sum, the appellants appear to believe that the project merely contains too much program resulting in a residential structure and garage that does not fit comfortably on the site and does not contain design details necessary to contribute to the neighborhood. The HRB disagreed finding historic precedent for wider, one and a half-story homes with "L" shaped additions located very close to the front property line in Canemah and found that this proposal was generally compatible.

¹ The notice of appeal cites OCMC 17.40.60(E)(6) as providing this standard. Subsection (E) applies to exterior alternations. Subsection (F) applies to new construction and (F)(5) contains the same general compatibility requirement.

Geologic Hazard Overlay District

Appellants claim that notwithstanding that a portion of this property is encumbered by the Geologic Hazard Overlay Zone, the City failed to ensure that the design includes adequate storm water drainage system. Failure to safely remove these materials will work to further destabilize the existing slope.

The property is located within the Geologic Hazards Overlay District. A new-single family residence on this property will require review pursuant to this chapter. The applicant has chosen to obtain approval from the Historic Review Board prior to submitting for this review. This bifurcated process is allowed.

However, the applicant will not be able to submit for building permits until the required Type II Geologic Hazards Review has been approved. Additionally, any alterations that affect the exterior elevations of the building will require additional Historic Review.

Existing Public Utility Easements within the Vacated Apperson Street

Although not fully explained, the Appellants assert, again for the first time, that existing Public Utility infrastructure exists within a portion of this property that was previously occupied by a public road known as Apperson Street. Oregon City Ordinance, No. 92-1003, vacates this portion of Apperson reserving a public utility easement over the area. However it also indicates that if the easement is reduced to less than the vacated area, the boundaries of the easement shall continue to 4th Avenue. Although this issue is beyond the purview of this appeal, staff will work with the applicant to either relocate these utilities or allow them to remain consistent with current or revised easement agreements.

CONCLUSION AND RECOMMENDATION

The Historic Review Board created the design guidelines in 2006 to give a “safe harbor” for applicants proposing new development in the district. Understanding that alternative designs might be pursued in the district, they made sure to elaborate that these alternative designs can be approved if the applicant can prove that the new construction is compatible with the district. In this case, the Historic Review Board agreed with the applicant in finding that there is compatibility and saw that the proposed new construction struck a balance between compatible infill and not creating a false sense of history.

The appellants contend that Vernacular style requires a tall and narrow single structure with skinny windows and a steep gable roof. While that is one design approach, it was not the one presented by the applicant. The guidelines envision multiple approaches to achieving a design that can fall under the architectural category of “Vernacular” and are considered compatible within the Canemah District. As witnessed by the various options employed in the guidelines, there is no one specific approach or concrete dimensions as requested by the appellant.

The City Commission has appointed the members of the Historic Review Board to provide guidance on historic issue within the city. Through the public process, the Board has affirmed that they

believe that the applicant's proposal met the adopted Design Guidelines for New Construction (2006) and OCMC 17.40.060(F) Historic Overlay District's criteria for New Construction (with small revisions) is compatible in the District.

The task of the City Commission is to review the submitted application and make findings that 1. The criteria can be met, 2. The criteria can be met if specific conditions of approval can be added or 3. That the criteria cannot be met and there are no conditions sufficient to bring the building into compliance with the criteria.

EXHIBITS

1. AP 10-03 and Appellants Submittal
2. Public Comment for AP 13-01
3. May 28, 2013 Draft HRB Minutes for HR 13-01
4. HR 13-02 Notice of Decision
5. Items entered into the record at the May 28, 2013 Hearing
6. [OCMC 17.40 Historic Overlay District](#)
7. [Design Guidelines for New Construction](#)

The following meeting agendas, videos, staff report and exhibits for this project are available for viewing at <http://oregon-city.legistar.com/Calendar.aspx> and are part of the record.

8. May 28, 2013 Historic Review Board File HR 13-02
9. February 26, 2013 Design Advice
10. January 22, 2013 Design Advice