



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

11/19/2009

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Grants Pass Plan Amendment
DLCD File Number 003-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, December 10, 2009

This amendment was submitted to DLCD for review prior to adoption. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Jared Voice, City of Grants Pass
Gloria Gardiner, DLCD Urban Planning Specialist
Carla Angeli Paladino, City of Grants Pass

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FORM 2

DLCD

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: Grants Pass

Local file number: 09-40500003

Date of Adoption: Findings signed: 11/4/09 (Ord. 10/22/09)

Date Mailed: 11/9/09

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Select one

Yes

Date: 6/12/09

- Comprehensive Plan Text Amendment
 Land Use Regulation Amendment
 New Land Use Regulation

- Comprehensive Plan Map Amendment
 Zoning Map Amendment
 Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Revise submittal requirements with variance applications when related to a setback or if there is a question about the location of a structure over a property line. Applicant to submit documentation from land surveyor to verify property line locations.

Does the Adoption differ from proposal? Please select one

No

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

- 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. 003-09 (17634) [15820]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Josaphine County

Local Contact: Carla Angeli Paladino

Phone: (541) 474-6355 Extension: 6417

Address: 101 NW A St.

Fax Number: 541 - 476-9218

City: Grants Pass

Zip: 97526

E-mail Address: cangeli@grantpassoregon.gov

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

An ordinance adopting a Development Code text amendment to require the verification of property line location with certain variance applications. Date: October 21, 2009

RECOMMENDED ACTION:

The Planning Commission found that the applicable criteria were satisfied and recommended that City Council adopt the proposal.

PROCEDURE:

Follow procedure for an Ordinance.

BACKGROUND:

The purpose of the proposed text amendment is to ensure that the review body has adequate information when considering variance applications. Currently, there is no requirement to submit evidence of property line location as part of a variance application, even if the variance being sought is to a required setback. The Urban Area Planning Commission initiated the text amendment in November 2008, after considering several variance applications where the exact location of a property line was unknown, and for which applicants were unwilling to produce a survey or other acceptable evidence prior to a public hearing.

The text amendment would specify that verification of property line location is the applicant's responsibility. If the variance being sought were to a required setback, or if there was question as to whether an existing structure encroached over a property line, the variance application would have to include evidence of property line location. Per the proposal, evidence must consist of the subject land deed, along with either:

- Existing property corner monuments, previously set by an Oregon-licensed land surveyor and located in the field, or
- A site map prepared by an Oregon-licensed surveyor.

The location of monuments in the field is the preferred method of property line verification. It would be the final determination of the City Surveyor as to whether the monuments are authentic. The site map option would be required only if the applicant were unable to provide monument evidence in the field.

COST IMPLICATION:

There is no direct cost to the City associated with the amendment.

ITEM: AN ORDINANCE ADOPTING A DEVELOPMENT CODE TEXT AMENDMENT TO REQUIRE THE VERIFICATION OF PROPERTY LINE LOCATION WITH CERTAIN VARIANCE APPLICATIONS.

ORDINANCE NO. 5496

**ORDINANCE ADOPTING A DEVELOPMENT CODE TEXT AMENDMENT TO
REQUIRE THE VERIFICATION OF PROPERTY LINE LOCATION WITH CERTAIN
VARIANCE APPLICATIONS.**

WHEREAS:

1. The Comprehensive Plan of the City of Grants Pass was adopted December 15, 1982. The Development Code of the City of Grants Pass was adopted August 17, 1983; and
2. The ordinance amends Section 6.050 (Review Procedures and Submittal Requirements for Variances) of the Development Code; and
3. The proposal is consistent with the goals and policies of the Comprehensive Plan; and
4. The applicable criteria from the Development Code are satisfied, and the proposed amendment is recommended by the Planning Commission to the City Council.

NOW, THEREFORE, THE CITY OF GRANTS PASS HEREBY ORDAINS:

Section 1: The amendment to Development Code Section 6.050, as set forth in Exhibit "A", is hereby adopted.

ADOPTED by the Council of the City of Grants Pass, Oregon, in regular session this 21st day of October, 2009.

SUBMITTED to and Approved by the Mayor of the City of Grants Pass, Oregon, this 22 day of October, 2009.

Michael Murphy
Michael Murphy, Mayor

ATTEST:

David Koenen
Finance Director

Date submitted to Mayor: 10-22-09

Approved as to Form, Mark Bartholomew, Interim City Attorney

Mark Bartholomew

6.050. Review Procedures and Submittal Requirements.

²Except as specified below, variances shall be processed in accordance with the procedures in Schedule 2-1.

- (1) Applications for variances shall be submitted and processed along with the land use application for site plan review, property line adjustment, partition, or subdivision.
- (2) Where the site plan review, property line adjustment, partition, or subdivision requires a higher procedure type, the variance shall be considered using the higher procedure.
- (3) Where the variance requires a higher procedure type, the related application, such as an application where the building permit serves as the development permit, shall be considered using the higher procedure.
- (4) When an application requires more than one variance, the applicant shall file a single application for all variances, and pay one fee for the application, in addition to the required application and fee for the site plan review, property line adjustment, partition, or subdivision.
- (5) The applicant variance application shall include the following: a written narrative with responses to the criteria in this Chapter.
 - (a) A written narrative with responses to the criteria in this chapter.
 - (b) It shall be the applicant's responsibility to verify the location of property lines. If the variance is to a required setback, or if there is question as to whether an existing structure on the subject property encroaches into the public right-of-way or onto an adjacent property, the application shall include evidence of property line location. Evidence shall consist of the subject land deed and one of the following:
 - (i) Property corner monuments set by an Oregon-licensed land surveyor, and evidenced by recordation in the Josephine County survey records, shall be the preferred evidence of property line location. The monuments shall be in full view and subject to City inspection prior

EXHIBIT A
to Ordinance

to a complete application. It shall be
the final determination of the City
Surveyor as to whether the monuments are
authentic.

- (ii) If unable to provide monument evidence in
the field, the applicant shall submit a
site map prepared by an Oregon-licensed
land surveyor as part of the application.
The site plan map shall, at a minimum,
include the following:
- a. Scale, north arrow, date of preparation.
 - b. Location: Street address, and assessor's
map page number and tax lot number.
 - c. Dimensions and size of parcel by deed,
with any measured distances necessary to
show convincing evidence of the true
property line location.
 - d. Proposed and existing buildings and
structures, including fences: location,
dimension, setbacks to property lines,
distance between buildings, height.
 - e. Current deed conveyance number and any
registered survey numbers used in the
determination of the property lines shown
therewith.
 - f. The site plan shall include a signed
statement from the map preparer which
certifies that the lines shown accurately
represent existing conditions as laid out
on the subject ground and are adequate for
the purpose of verifying property line
location.

EXHIBIT A1
to Ordinance

CITY OF GRANTS PASS COMMUNITY DEVELOPMENT DEPARTMENT

**VARIANCE SURVEY
DEVELOPMENT CODE TEXT AMENDMENT
CITY COUNCIL -FINDINGS OF FACT**

Procedure Type:	Type IV: Planning Commission Recommendation and City Council Decision
Project Number:	09-40500003
Project Type:	Development Code Text Amendment
Applicant:	City of Grants Pass
Planner Assigned:	Carla Angel Paladino
Application Received:	May 29, 2009
Application Complete:	May 29, 2009
Date of Planning Commission Staff Report:	August 5, 2009
Date of Planning Commission Hearing:	August 12, 2009
City Council's Findings of Fact:	August 26, 2009
Date of City Council Staff Report:	October 13, 2009
Date of City Council Hearing:	October 21, 2009 <i>continued from September 16, 2009 & October 7, 2009</i>
City Council Findings of Fact:	November 4, 2009

I. PROPOSAL:

A Development Code Text Amendment to Article 6 to require the verification of property line location with variance applications.

II. AUTHORITY AND CRITERIA:

Section 4.102 of the City of Grants Pass Development Code provides the procedure for initiation of a Development Code text amendment. The proposed amendment was initiated by the Urban Area Planning Commission.

Sections 2.060, 7.040 and 7.050 authorize the Urban Area Planning Commission to make a recommendation to the City Council and authorize the City Council to make a final decision on a land use matter requiring a Type IV procedure, in accordance with procedures of Section 2.060.

The text of the Development Code may be recommended for amendment and amended provided the criteria in Section 4.103 of the Development Code are met.

III. APPEAL PROCEDURE:

The City Council's final decision may be appealed to the State Land Use Board of Appeals (LUBA) as provided in state statutes. A notice of intent to appeal must be filed with LUBA within 21 days of the Council's written decision.

IV. PROCEDURE:

- A. An application for a Development Code text amendment was submitted on May 29, 2009. The application was deemed complete on May 29, 2009, and processed in accordance with Section 2.060 of the Development Code and Sections III and V of the 1998 Intergovernmental Agreement.
- B. Notice of the proposed amendment was mailed to the Oregon Department of Land Conservation and Development (DLCD) on June 12, 2009, in accordance with ORS 197.610 and OAR Chapter 660-Division 18.
- C. Notice of the proposed amendment was mailed to Josephine County on June 12, 2009, in accordance with the 1998 Intergovernmental Agreement.
- D. Notice of the August 12, 2009, Planning Commission hearing was mailed to potentially interested parties on July 23, 2009.
- E. Public notice of the August 12, 2009, Planning Commission hearing was published in the newspaper on August 5, 2009, in accordance with Sections 2.053 and 2.063 of the Development Code.
- F. A public hearing was held by the Planning Commission on August 12, 2009, to consider the proposal and make a recommendation to City Council.
- G. Notice of the September 16, 2009, City Council hearing was mailed to potentially interested parties on September 1, 2009, in accordance with Sections 2.053 and 2.063 of the Development Code.
- H. Public notice of the September 16, 2009, City Council hearing was published in the newspaper on September 9, 2009, in accordance with Sections 2.053 and 2.063 of the Development Code.
- I. The September 16, 2009, City Council meeting was canceled due to lack of quorum.
- J. Public notice of the October 7, 2009, City Council hearing was mailed to potentially interested parties on September 17, 2009, in accordance with Sections 2.053 and 2.063 of the Development Code.
- K. At the October 7, 2009, meeting the City Council continued the public hearing to consider the proposal to a date certain, October 21, 2009.
- L. A public hearing was held on October 21, 2009, to consider the proposal.

V. SUMMARY OF EVIDENCE:

- A. The minutes of the public hearing held by the City Council on October 21, 2009, which are attached as Exhibit "A", summarize the oral testimony presented and are hereby adopted and incorporated herein.
- B. The PowerPoint presentation given by staff at the October 21, 2009, City Council hearing is attached as Exhibit "B" and incorporated herein.
- C. The basic facts and criteria regarding this application are contained in the City Council staff report and its exhibits, which are attached as Exhibit "C" and incorporated herein.

VI. GENERAL FINDINGS- BACKGROUND AND DISCUSSION:

The purpose of the proposed amendment is to ensure that the review body has adequate information when considering variance applications. Currently, there is no requirement to submit evidence of property line location as part of a variance application, even if the variance being sought is to a required setback. The Urban Area Planning Commission initiated the text amendment in November of 2008, after considering several variance applications where the exact location of a property line was unknown, and for which applicants were unwilling to produce a survey or other acceptable evidence prior to a hearing.

The text amendment would specify that verification of property line location would be the applicant's responsibility. If the variance being sought were to a required setback, or if there was question as to whether an existing structure encroached over a property line, the variance application would have to include evidence of property line location. Per the proposal, evidence must consist of the subject land deed, along with either:

- Existing property corner monuments, previously set by an Oregon-licensed land surveyor and located in the field, or
- A site map prepared by an Oregon-licensed surveyor.

The location of monuments in the field is the preferred method of property line verification. It would be the final determination of the City Surveyor as to whether the monuments are authentic. The site map option would be required only if the applicant were unable to provide monument evidence in the field.

VII. FINDINGS OF FACT- CONFORMANCE WITH APPLICABLE CRITERIA:

The text of the Development Code may be recommended for amendment and amended provided that all of the following criteria of Section 4.103 of the Development Code are met.

CRITERION 1: The proposed amendment is consistent with the purpose of the subject section and article.

City Council's Response: Satisfied. The proposal amends Section 6.050, "Review Procedures and Submittal Requirements", of Article 6, "Variances". The "Purpose" statement for Article 6 is stated below, with applicable language in bold font.

This Article provides standards, criteria, and procedures for variances. This Code cannot provide standards to fit every potential development situation. The City's varied geography, and complexities of land development, require flexibility. This Article provides that flexibility, while maintaining the purposes and intent of the Code. These provisions provide relief from strict application of measurable standards of the Development Code when the property has unique physical constraints or characteristics.

When greater flexibility is desired, or where flexibility is desired but there are no unique physical constraints or characteristics of the property, application may be made through the Planned Unit Development process of Article 18. Flexible application of the Code for development or creation of lots through the Planned Unit Development process shall be managed through the provisions of Article 18, and does not require action under this Article.

The proposed amendment is consistent with the purpose statement of Article 6 because it clarifies the submittal requirements for variance applications. Additionally, requiring the verification of property lines as part of an application for a variance to setbacks will assist the review body in providing relief from strict application of the setback standards.

CRITERION 2: The proposed amendment is consistent with other provisions of this code.

City Council's Response: Satisfied. The proposed amendment is internally consistent with other provisions of the Development Code. Article 6 is the only section of the Code that addresses standards, criteria or procedures for variance applications. Holding an applicant responsible for the location of his / her property lines is consistent with other sections of the Code that govern other types of applications and that also require or recommend a surveyor to locate property lines, such as Article 17 (Lots and Creation of Lots) and Section 23.037 (Fencing).

CRITERION 3: The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, and most effectively carries out those goals and policies of all alternatives considered.

City Council's Response: Satisfied. See below

Comprehensive Plan Consistency

The proposed amendment is consistent with the goals and policies of the Comprehensive Plan. Applicable goals and policies are:

Element 13. Land Use.

13.4.3. The Development Code procedures shall act to streamline the land development process and eliminate unnecessary delays, and shall contain standards and procedures for land use actions that are clear, objective, and nonarbitrary.

City Council's Response: Satisfied. Requiring applicants to verify the location of their property lines with a variance application, where the property line location could affect the degree to which a standard is being varied, will assist review bodies in making clear, objective and non-arbitrary decisions.

Most Effective Alternative

The alternative to approving the proposal is to retain the existing variance requirements within the Development Code. The proposed amendment more effectively carries out the goals and policies stated above than the existing requirements.

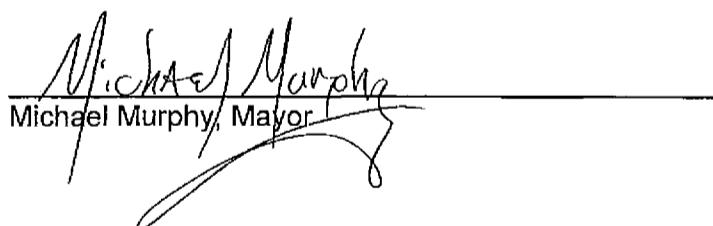
CRITERION 4: The proposed amendment is consistent with the functions, capacities, and performance standards of transportation facilities identified in the Master Transportation Plan.

City Council's Response: Satisfied. Variances do not generally affect the functions, capacities or performance standards of the Master Transportation Plan. However, requiring a property owner to verify the location of his / her property lines as part of a variance application will minimize the chance of inadvertently approving a structure encroaching into the public right-of-way, which could potentially affect the function of transportation facilities.

VIII. DECISION AND SUMMARY:

The City Council found the applicable criteria were satisfied and **APPROVED** the Development Code text amendment. The vote was 8-0-0, with Councilors Renfro, Wheatley, Michelon, Gatlin, Boston, Hitchcock, Cummings, and Webber in favor, and none opposed.

IX. ADOPTED BY THE GRANTS PASS CITY COUNCIL this 4th day of November 2009.



Michael Murphy, Mayor

City Council Meeting
October 21, 2009
6:00 PM
City Council Chambers

The Council of the City of Grants Pass met in regular session on the above date with Mayor Murphy presiding. The following Councilors were present: Cummings, Wheatley, Renfro, Boston, Hitchcock, Gatlin, Michelon, and Webber. Absent: None. Also present and representing the City were City Manager Pro Tem Samson, Interim City Attorney Bartholomew, Finance Director Reeves, Public Safety Director Henner, Interim Community Development Director Angeli Paladino, Parks and Community Services Director Seybold, Public Works Director Haugen and Human Resources Director Lange.

The invocation was given by Councilor Boston, followed by the Pledge of Allegiance.

Proclamations:

Domestic Violence Awareness Month

Mayor Murphy read the proclamation for Domestic Violence Awareness Month. Rachel Williams thanked the City Council for giving the Women's Crisis Support Team the opportunity to address this issue at the City Council meeting and proclaim October as Domestic Violence Awareness month. She then went on to explain the importance of domestic violence awareness.

Red Ribbon Week

Mayor Murphy read the proclamation for Red Ribbon Week. Shawn Martinez thanked the Mayor for the proclamation. She stated that the Commissioners are also doing a proclamation for us tonight at the same time. She noted Red Ribbon Week as October 23 through the 31st. She then went on to give the schedule of events for the week.

Presentation: Recognition of Concerned Fathers Against Crime

Director Henner gave background about Concerned Fathers Against Crime and presented a certificate of appreciation to CFAC. Deputy Chief Landis described an incident at Councilor Boston's church where CFAC was involved and how effective they have been over the years.

1. PUBLIC HEARING:

- a. Ordinance adopting a Development Code and Comprehensive Plan Text Amendment to amend the residency requirements for persons appointed to the Urban Area Planning Commission and to amend the time frame for issuance of Director's Interpretations.

City Council Meeting
October 21, 2009

EXHIBIT A
to CC F.O.F.

Mayor Murphy stated, item 1(a) is a hearing that is going to be continued until November 4, so I need a motion. Councilor Cummings made a motion to continue the item until November 4 which was seconded by Councilor Renfro. Mayor Murphy called for a vote.

MOTION

It was moved by Councilor Cummings and seconded by Councilor Renfro that the hearing be continued until November 4 and the vote resulted as follows: "AYES": Renfro, Wheatley, Gatlin, Hitchcock, Michelon, Boston, Cummings and Webber. "NAYS": None. Abstain: None. Absent: None.

Having received a favorable vote, Mayor Murphy declared the motion to have duly passed.

- b. Ordinance adopting a Development Code text amendment to require the verification of property line location with certain variance applications.

Mayor Murphy stated, this is a legislative land-use hearing and at this time I will open the public hearing to consider the application. We will begin the hearing with a Staff report followed by a presentation by the applicant, statements from persons in favor of the applicant, statements by persons in opposition to the application, and an opportunity for additional comments by the applicant and staff. Once that has occurred, the public comment portion will be closed and the matter will be discussed and acted upon by the Council. Mayor Murphy asks if there is anyone present who wishes to challenge the authority of the Council to hear this matter. Seeing none, Mayor Murphy asks if there are any additional Council members who wish to abstain from participating in the hearing or declare a conflict or a potential conflict of interest. Seeing none, he stated that's all we need and called for a Staff report.

Interim Community Director Angeli Paladino stated, the application before you this evening is a Development Code Text Amendment. We are looking at is revising Article 6 of the Development Code to specify property line location verification with variance applications. A little bit of background, the Planning Commission did initiate this Text Amendment in November of 2008. Staff then took that initiation and then moved forward producing some language to revise the Development Code. The reason for their initiation was that they had reviewed several land-use applications, specifically variance applications, where the property line location was unknown and at the time the applicants were not willing to provide survey information to actually tie those applications together. To date there is no requirement to submit evidence of property line location with a variance application, even if the variance is to a standard; specifically, something measurable, like a setback. The amendment is intended to ensure that the review body has adequate information so that when they are reviewing those cases they know exactly where the property lines are and where those setbacks are going. The criteria for the amendment this evening is 4.013 of the Development Code. Those criteria have been addressed in detail in the Staff report for the Planning Commission and they have looked at those and reviewed those and found those to be satisfied.

The specific proposal summary -- again, we are modifying Article 6 which is in regards to variances of the Development Code and we are looking to require submittal requirements that would provide Staff from the applicant, verification of property line locations. Specifically, the evidence provided about the property line location if the applicant requested a variance to a setback standard or if there is a question about an existing building on the site where we are not sure whether the building is encroaching over a property line or within the right-of-way. Those would be the instances where we would need property line location. In terms of the type of evidence required that is proposed in the amendment, we would look for the subject property's land deed along with either the existing corner monuments of the site set by an Oregon licensed land surveyor and that those monuments be recorded at the County survey records where those monuments could be identified in the field, or the applicant would submit the land deed along with a site map prepared by an Oregon land licensed surveyor.

Conclusion and recommendation – again, the Planning Commission has recommended the City Council approve this amendment as proposed in Exhibit A to the ordinance in your packet. I would be happy to answer any questions.

Mayor Murphy stated, I don't think we have proponents or opponents as such, but do we have any comments from anyone in the audience tonight? Seeing none, he closed the public comment and returned it to the Council.

Councilor Renfro stated, I am definitely in favor of this because I think it is just natural that in order to make sure that everybody is on their own property that it needs to have cornerstones there to prove where you are. I'm in favor of this myself.

Councilor Cummings stated, I would make a motion that the ordinance be read by title only first reading. Councilor Webber seconded the motion. Mayor Murphy called for further discussion. Seeing none, he called for a vote.

ORDINANCE NO. 5496

Councilor Cummings moved that the Council adopt the ordinance by the first reading. Motion seconded by Councilor Webber. The vote resulted as follows: "AYES": Renfro, Wheatley, Gatlin, Boston, Cummings, Hitchcock, Webber, and Michelon. "NAYS": None. Abstain: None. Absent: None. The ordinance is read.

Councilor Cummings moved that the ordinance be read by title only, second reading. Motion seconded by Councilor Boston. The vote resulted as follows: "AYES": Renfro, Wheatley, Gatlin, Boston, Cummings, Hitchcock, Webber, and Michelon. "NAYS": None. Abstain: None. Absent: None. The ordinance is read.

Mayor Murphy asked if the ordinance should be adopted, signified by roll call vote as follows: Councilor Michelon - yes; Councilor Hitchcock - yes; Councilor Renfro - yes; Councilor Webber - yes; Councilor Cummings - yes; Councilor Wheatley - yes; Councilor Boston - yes; Councilor Renfro - yes.

Mayor Murphy declared Ordinance Number 5496 is adopted.

c. Ordinance Adopting a New Urbanization Element of the Comprehensive Plan.

City Manager Pro Tem Samson stated, at this time I will open the public hearing to consider the new Urbanization Element of the Comprehensive Plan. We will begin the hearing with a Staff report followed by public comment and then the matter will be discussed and acted upon by the Council. Is there anyone present who wishes to challenge the authority of the Council to consider this matter? Seeing none, do any of the Councilors wish to abstain from participating in this hearing or declare a conflict of interest or potential conflict of interest? Seeing none, in this hearing the decision of the Council will be based on specific criteria. All testimony and evidence must be directed towards those criteria. The criteria which apply in this case are noted in the Staff report. In accordance with state law this decision will be submitted to the Department of Land Conservation and Development (DLCD) in the manner of periodic review. Therefore, the decision is not appealable to the Land Use Board of Appeals (LUBA). Instead, persons who participated at the local level, orally or in writing, during the local process leading to the final decision may object to the City's work task submittal by filing an objection with DLCD. To be valid, first, objections must be in writing and filed with DLCD's Salem office no later than 21 days from the date the decision notice was mailed by the City. Second, to clearly identify an alleged deficiency in the work task sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal has alleged to have violated. Third, suggest specific revisions that would resolve the objections. Fourth, demonstrate that the objecting party participated at the local level, orally or in writing, during the local process. Failure to raise an issue or objection with enough detail to afford the Council and parties an opportunity to respond to the issue, might preclude raising that issue on appeal. We will now begin with the Staff report.

Senior Planner Schauer stated, this is, as you well know, the proposed amendment to the Comprehensive Plan to adopt the new Urbanization Element. Just for clarity, this is part of the UGB review process but does not include any proposed change to the urban growth boundary location as part of the application before you this evening. (He gives a PowerPoint presentation with information that is also provided in the Staff Report.) Those are the criteria that the Planning Commission made findings regarding, in terms of compliance with those criteria, they found those to be satisfied and recommended adoption of the Urbanization Element. As City Manager Pro Tem Samson noted, this is a little different than a typical type of legislative action that is appealable to LUBA. Instead, someone choosing to object would file an objection with DLCD. I do have one exhibit to enter into the record that is not in your packet. It is a Council memo that was distributed by e-mail this morning. It is Council memo #233 and that contains some responses to Councilor Webber's questions that he provided as he was unable to attend Monday's workshop. It also provides some update on some communications that occurred with DLCD

Property Line Location Verification with Variance Applications

Development Code Text Amendment

City Council Meeting
October 21, 2009
Presented By: Carla Angell Padadino

Background

- Planning Commission initiated text amendment by motion November 12, 2008.
 - UAPC had considered several variance applications where the property line location was unknown and applicants were unwilling to provide survey information prior to a hearing.
- Currently, there is no requirement to submit evidence of property line location with a variance application, even if the variance being sought is to a measurable standard such as setback.
- Amendment intended to ensure that review body has adequate information to make an informed decision when considering variance applications.

4.103 Criteria for Amendment

- The text of the Development Code may be recommended for amendment and amended provided that all the following criteria are met:
- (1) The proposed amendment is consistent with the purpose of the subject section and article.
 - (2) The proposed amendment is consistent with other provisions of this Code.
 - (3) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, and most effectively carries out those goals and policies of all alternatives considered.
 - (4) The proposed amendment is consistent with the functions, capacities and performance standards of transportation facilities identified in the Master Transportation Plan.

Proposal Summary:

- Modifies Article 6 of the Development Code to require verification of property line location with variance applications
- Specifically, evidence must be provided about property line location if an applicant requests a variance to:
 - Setback standard or
 - If there is question about an existing structure encroaching over a property line or within public right of way

Proposal Summary (cont'd):

- Type of evidence required during time of variance submittal:
- Subject Property's Land Deed along with either:
 - 1) Existing property corner monuments, set by an Oregon-licensed land surveyor and recorded with the County survey records; where monuments could be identified in the field, or
 - 2) A site map prepared by an Oregon-licensed surveyor.

Conclusion & Recommendation

- The Planning Commission recommended City Council APPROVE the proposed Development Code Text Amendment, as identified in Exhibit A to the Ordinance.

EXHIBIT B¹
to CC F.O.F.

Questions?

CITY OF GRANTS PASS COMMUNITY DEVELOPMENT DEPARTMENT

**VARIANCE SURVEY
DEVELOPMENT CODE TEXT AMENDMENT
CITY COUNCIL STAFF REPORT-TYPE IV**

Procedure Type:	Type IV: Planning Commission Recommendation and City Council Decision
Project Number:	09-40500003
Project Type:	Development Code Text Amendment
Applicant:	City of Grants Pass
Planner Assigned:	Carla Angeli Paladino
Application Received:	May 29, 2009
Application Complete:	May 29, 2009
Date of Planning Commission Staff Report:	August 5, 2009
Date of Planning Commission Hearing:	August 12, 2009
Planning Commission Findings of Fact:	August 26, 2009
Date of City Council Staff Report:	October 13, 2009
Date of City Council Hearing:	October 21, 2009 continued from September 16, 2009 & October 7, 2009

I. PROPOSAL:

A Development Code Text Amendment to Article 6 to require the verification of property line location with variance applications. See **Exhibit A of the Ordinance or Exhibit 1.A.3. for text amendment as recommended by the Urban Area Planning Commission.**

II. AUTHORITY AND CRITERIA:

The authority and criteria are provided in the Planning Commission's Findings of Fact.

III. APPEAL PROCEDURE:

The City Council's final decision may be appealed to the State Land Use Board of Appeals (LUBA) as provided in state statutes. A notice of intent to appeal must be filed with LUBA within 21 days of the Council's written decision.

IV. BACKGROUND AND DISCUSSION:

Detailed background and discussion is provided in the Planning Commission's Findings of Fact.

V. CONFORMANCE WITH APPLICABLE CRITERIA:

Detailed findings of conformance with applicable criteria are provided in the Planning Commission's Findings of Fact.

VI. CITY COUNCIL ACTION:

A. Positive Action:

1. approve the proposal recommended by the Planning Commission.
2. approve the proposal recommended by the Planning Commission with modifications (list):

B. Negative Action: Deny the request and make no amendment for the following reasons (list):

C. Postponement: Continue item

1. indefinitely.
2. to a time certain.

NOTE: *This is a legislative decision. State law does not require that a decision be made on the application within 120 days.*

VII. INDEX TO EXHIBITS:

1. Planning Commission's Findings of Fact and the Attached Record

- A. August 5, 2009 Planning Commission Staff Report
 1. Proposed Text Amendment to Section 6.050
 2. Planning Commission Discussion and Motion to Initiate Text Amendment from November 12, 2008 Meeting Minutes
 3. Modified Proposed Text Amendment to Section 6.050
- B. Minutes of August 12, 2009, Planning Commission Hearing
- C. August 12, 2009, Staff Power Point Presentation

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SCANNED

SEP - 2 2009 **CITY OF GRANTS PASS COMMUNITY DEVELOPMENT DEPARTMENT**

**VARIANCE SURVEY
DEVELOPMENT CODE TEXT AMENDMENT
PLANNING COMMISSION FINDINGS OF FACT-TYPE IV**

Procedure Type:	Type IV: Planning Commission Recommendation and City Council Decision
Project Number:	09-40500003
Project Type:	Development Code Text Amendment
Applicant:	City of Grants Pass
Planner Assigned:	Jared Voice
Application Received:	May 29, 2009
Application Complete:	May 29, 2009
Date of Planning Commission Staff Report:	August 5, 2009
Date of Planning Commission Hearing:	August 12, 2009
Planning Commission Findings of Fact:	August 26, 2009

I. PROPOSAL:

A Development Code Text Amendment to Article 6 to require the verification of property line location with variance applications.

II. AUTHORITY AND CRITERIA:

Section 4.102 of the City of Grants Pass Development Code provides the procedure for initiation of a Development Code text amendment. The proposed amendment was initiated by the Urban Area Planning Commission.

Sections 2.060, 7.040 and 7.050 authorize the Urban Area Planning Commission to make a recommendation to the City Council and authorize the City Council to make a final decision on a land use matter requiring a Type IV procedure, in accordance with procedures of Section 2.060.

The text of the Development Code may be recommended for amendment and amended provided the criteria in Section 4.103 of the Development Code are met.

III. APPEAL PROCEDURE:

The City Council's final decision may be appealed to the State Land Use Board of Appeals (LUBA) as provided in state statutes. A notice of intent to appeal must be filed with LUBA within 21 days of the Council's written decision.

IV. PROCEDURE:

- A. An application for a Development Code text amendment was submitted on May 29, 2009. The application was deemed complete on May 29, 2009, and processed in accordance with Section 2.060 of the Development Code and Sections III and V of the 1998 Intergovernmental Agreement.
- B. Notice of the proposed amendment was mailed to the Oregon Department of Land Conservation and Development (DLCD) on June 12, 2009, in accordance with ORS 197.610 and OAR Chapter 660-Division 18.
- C. Notice of the proposed amendment was mailed to Josephine County on June 12, 2009, in accordance with the 1998 Intergovernmental Agreement.
- D. Notice of the August 12, 2009, Planning Commission hearing was mailed to potentially interested parties on July 23, 2009.
- E. Public notice of the August 12, 2009, Planning Commission hearing was published in the newspaper on August 5, 2009, in accordance with Sections 2.053 and 2.063 of the Development Code.
- F. A public hearing was held by the Planning Commission on August 12, 2009, to consider the proposal and make a recommendation to City Council.

V. SUMMARY OF EVIDENCE:

- A. The basic facts and criteria regarding this application are contained in the August 5, 2009, Planning Commission staff report and its exhibits, which are attached as Exhibit "A" and incorporated herein.
- B. The minutes of the public hearing held by the Urban Area Planning Commission on August 12, 2009, which are attached as Exhibit "B", summarize the oral testimony presented and are hereby adopted and incorporated herein.
- C. The PowerPoint presentation given by staff at the August 12, 2009, Planning Commission hearing is attached as Exhibit "C" and incorporated herein.

VI. GENERAL FINDINGS- BACKGROUND AND DISCUSSION:

The purpose of the proposed amendment is to ensure that the review body has adequate information when considering variance applications. Currently, there is no requirement to submit evidence of property line location as part of a variance application, even if the variance being sought is to a required setback. The Urban Area Planning Commission initiated the text amendment in November of 2008, after considering several variance applications where the exact location of a property line was unknown, and for which applicants were unwilling to produce a survey or other acceptable evidence prior to a hearing.

The text amendment would specify that verification of property line location would be the applicant's responsibility. If the variance being sought were to a required setback, or if there was question as to whether an existing structure encroached over a property line, the variance application would have to include evidence of property line location. Per the proposal, evidence must consist of the subject land deed, along with either:

- Existing property corner monuments, previously set by an Oregon-licensed land surveyor and located in the field, or
- A site map prepared by an Oregon-licensed surveyor.

The location of monuments in the field is the preferred method of property line verification. It would be the final determination of the City Surveyor as to whether the monuments are authentic. The site map option would be required only if the applicant were unable to provide monument evidence in the field.

VII. FINDINGS OF FACT- CONFORMANCE WITH APPLICABLE CRITERIA:

The text of the Development Code may be recommended for amendment and amended provided that all of the following criteria of Section 4.103 of the Development Code are met.

CRITERION 1: The proposed amendment is consistent with the purpose of the subject section and article.

Planning Commission Response: Satisfied. The proposal amends Section 6.050, "Review Procedures and Submittal Requirements", of Article 6, "Variances". The "Purpose" statement for Article 6 is stated below, with applicable language in bold font.

This Article provides standards, criteria, and procedures for variances. This Code cannot provide standards to fit every potential development situation. The City's varied geography, and complexities of land development, require flexibility. This Article provides that flexibility, while maintaining the purposes and intent of the Code. These provisions provide relief from strict application of measurable standards of the Development Code when the property has unique physical constraints or characteristics.

When greater flexibility is desired, or where flexibility is desired but there are no unique physical constraints or characteristics of the property, application may be made through the Planned Unit Development process of Article 18. Flexible application of the Code for development or creation of lots through the Planned Unit Development process shall be managed through the provisions of Article 18, and does not require action under this Article.

The proposed amendment is consistent with the purpose statement of Article 6 because it clarifies the submittal requirements for variance applications. Additionally, requiring the verification of property lines as part of an application for a variance to setbacks will assist the review body in providing relief from strict application of the setback standards.

CRITERION 2: The proposed amendment is consistent with other provisions of this code.

Planning Commission Response: Satisfied. The proposed amendment is internally consistent with other provisions of the Development Code. Article 6 is the only section of the Code that addresses standards, criteria or procedures for variance applications. Holding an applicant responsible for the location of his / her property lines is consistent with other sections of the Code that govern other types of applications and that also require or recommend a surveyor to locate property lines, such as Article 17 (Lots and Creation of Lots) and Section 23.037 (Fencing).

CRITERION 3: The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, and most effectively carries out those goals and policies of all alternatives considered.

Planning Commission Response: Satisfied. See below

Comprehensive Plan Consistency

The proposed amendment is consistent with the goals and policies of the Comprehensive Plan. Applicable goals and policies are:

Element 13. Land Use.

13.4.3. The Development Code procedures shall act to streamline the land development process and eliminate unnecessary delays, and shall contain standards and procedures for land use actions that are clear, objective, and nonarbitrary.

Planning Commission Response: Satisfied. Requiring applicants to verify the location of their property lines with a variance application, where the property line location could affect the degree to which a standard is being varied, will assist review bodies in making clear, objective and non-arbitrary decisions.

Most Effective Alternative

The alternative to approving the proposal is to retain the existing variance requirements within the Development Code. The proposed amendment more effectively carries out the goals and policies stated above than the existing requirements.

CRITERION 4: The proposed amendment is consistent with the functions, capacities, and performance standards of transportation facilities identified in the Master Transportation Plan.

Planning Commission Response: Satisfied. Variances do not generally affect the functions, capacities or performance standards of the Master Transportation Plan. However, requiring a property owner to verify the location of his / her property lines as part of a variance application will minimize the chance of inadvertently approving a structure encroaching into the public right-of-way, which could potentially affect the function of transportation facilities.

VIII. RECOMMENDATION:

The Planning Commission found that the applicable criteria are satisfied and recommended that the proposed amendments to Development Code Section 6.050, *Review Procedures and Submittal Requirements* (for variances), as set forth in Exhibit 3 to the Planning Commission staff report, be forwarded to City Council for adoption. The vote was 5-0-0, with Commissioners Berlant, Kellenbeck, Arthur, Fedosky and Richardson in favor, and none opposed. Commissioners Fitzgerald and Fowler were absent; there is one vacant position.

IX. FINDINGS APPROVED BY THE URBAN AREA PLANNING COMMISSION this 26th day of August 2009.

for Stacey Kellenbeck, Chair
Commissioner Gary Berlant, Chairperson

cap/jv

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CITY OF GRANTS PASS COMMUNITY DEVELOPMENT DEPARTMENT

**VARIANCE SURVEY
DEVELOPMENT CODE TEXT AMENDMENT
PLANNING COMMISSION STAFF REPORT-TYPE IV**

Procedure Type:	Type IV: Planning Commission Recommendation and City Council Decision
Project Number:	09-40500003
Project Type:	Development Code Text Amendment
Applicant:	City of Grants Pass
Planner Assigned:	Jared Voice
Application Received:	May 29, 2009
Application Complete:	May 29, 2009
Date of Planning Commission Staff Report:	August 5, 2009
Date of Planning Commission Hearing:	August 12, 2009

I. PROPOSAL:

A Development Code Text Amendment to Article 6 to require the verification of property line location with variance applications. *See Exhibit 1 for text of proposed amendment*

II. AUTHORITY AND CRITERIA:

Section 4.102 of the City of Grants Pass Development Code provides the procedure for initiation of a Development Code text amendment. The proposed amendment was initiated by the Urban Area Planning Commission.

Sections 2.060, 7.040 and 7.050 authorize the Urban Area Planning Commission to make a recommendation to the City Council and authorize the City Council to make a final decision on a land use matter requiring a Type IV procedure, in accordance with procedures of Section 2.060.

The text of the Development Code may be recommended for amendment and amended provided the criteria in Section 4.103 of the Development Code are met.

III. APPEAL PROCEDURE:

The City Council's final decision may be appealed to the State Land Use Board of Appeals (LUBA) as provided in state statutes. A notice of intent to appeal must be filed with LUBA within 21 days of the Council's written decision.

IV. BACKGROUND AND DISCUSSION:

The purpose of the proposed amendment is to ensure that the review body has adequate information when considering variance applications. Currently, there is no requirement to submit evidence of property line location as part of a variance application, even if the variance being sought is to a required setback. The Urban Area Planning Commission initiated the text amendment in November of 2008, after considering several variance applications where the exact location of a property line was unknown, and for which applicants were unwilling to produce a survey or other acceptable evidence prior to a hearing.

The text amendment would specify that verification of property line location would be the applicant's responsibility. If the variance being sought were to a required setback, or if there was question as to whether an existing structure encroached over a property line, the variance application would have to include evidence of property line location. Per the proposal, evidence must consist of the subject land deed, along with either:

- Existing property corner monuments, previously set by an Oregon-licensed land surveyor and located in the field, or
- A site map prepared by an Oregon-licensed surveyor.

The location of monuments in the field is the preferred method of property line verification. It would be the final determination of the City Surveyor as to whether the monuments are authentic. The site map option would be required only if the applicant were unable to provide monument evidence in the field.

V. CONFORMANCE WITH APPLICABLE CRITERIA:

The text of the Development Code may be recommended for amendment and amended provided that all of the following criteria of Section 4.103 of the Development Code are met.

CRITERION 1: The proposed amendment is consistent with the purpose of the subject section and article.

Staff Response: Satisfied. The proposal amends Section 6.050, "Review Procedures and Submittal Requirements", of Article 6, "Variances". The "Purpose" statement for Article 6 is stated below, with applicable language in bold font.

This Article provides standards, criteria, and procedures for variances. This Code cannot provide standards to fit every potential development situation. The City's varied geography, and complexities of land development, require flexibility. This Article provides that flexibility, while maintaining the purposes and intent of the Code. These provisions provide relief from strict application of measurable standards of the Development Code when the property has unique physical constraints or characteristics.

When greater flexibility is desired, or where flexibility is desired but there are no unique physical constraints or characteristics of the property, application may be made through the Planned Unit Development process of Article 18. Flexible application of the Code for development or creation of lots through the Planned Unit Development process shall be managed through the provisions of Article 18, and does not require action under this Article.

The proposed amendment is consistent with the purpose statement of Article 6 because it clarifies the submittal requirements for variance applications. Additionally, requiring the verification of property lines as part of an application for a variance to setbacks will assist the review body in providing relief from strict application of the setback standards.

CRITERION 2: The proposed amendment is consistent with other provisions of this code.

Staff Response: Satisfied. The proposed amendment is internally consistent with other provisions of the Development Code. Article 6 is the only section of the Code that addresses standards, criteria or procedures for variance applications. Holding an applicant responsible for the location of his / her property lines is consistent with other sections of the Code that govern other types of applications and that also require or recommend a surveyor to locate property lines, such as Article 17 (Lots and Creation of Lots) and Section 23.037 (Fencing).

CRITERION 3: The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, and most effectively carries out those goals and policies of all alternatives considered.

Staff Response: Satisfied. See below

Comprehensive Plan Consistency

The proposed amendment is consistent with the goals and policies of the Comprehensive Plan. Applicable goals and policies are:

Element 13. Land Use.

13.4.3. The Development Code procedures shall act to streamline the land development process and eliminate unnecessary delays, and shall contain standards and procedures for land use actions that are clear, objective, and nonarbitrary.

Staff Response: Satisfied. Requiring applicants to verify the location of their property lines with a variance application, where the property line location could affect the degree to which a standard is being varied, will assist review bodies in making clear, objective and non-arbitrary decisions.

Most Effective Alternative

The alternative to approving the proposal is to retain the existing variance requirements within the Development Code. The proposed amendment more effectively carries out the goals and policies stated above than the existing requirements.

CRITERION 4: The proposed amendment is consistent with the functions, capacities, and performance standards of transportation facilities identified in the Master Transportation Plan.

Staff Response: Satisfied. Variances do not generally affect the functions, capacities or performance standards of the Master Transportation Plan. However, requiring a property owner to verify the location of his / her property lines as part of a variance application will minimize the chance of inadvertently approving a structure encroaching into the public right-of-way, which could potentially affect the function of transportation facilities.

VI. RECOMMENDATION:

- Staff recommends the Planning Commission **RECOMMEND APPROVAL** of the proposed text amendment to City Council, as presented in Exhibit 1.

VII. PLANNING COMMISSION ACTION:

A. Positive Action: Recommend that City Council approve the request:

1. as submitted
2. with the revisions as modified by the Planning Commission (list):

B. Negative Action: Recommend that City Council deny the request for the following reasons (list):

C. Postponement: Continue item

1. indefinitely.
2. to a time certain.

NOTE: The application is a legislative amendment and is not subject to the 120-day limit.

VIII. INDEX TO EXHIBITS:

1. Proposed Text Amendment to Section 6.050
2. Planning Commission Discussion and Motion to Initiate Text Amendment from November 12, 2008 Meeting Minutes
3. Modified Text Amendment to Section 6.050

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6.050. Review Procedures and Submittal Requirements.

²Except as specified below, variances shall be processed in accordance with the procedures in Schedule 2-1.

- (1) Applications for variances shall be submitted and processed along with the land use application for site plan review, property line adjustment, partition, or subdivision.
- (2) Where the site plan review, property line adjustment, partition, or subdivision requires a higher procedure type, the variance shall be considered using the higher procedure.
- (3) Where the variance requires a higher procedure type, the related application, such as an application where the building permit serves as the development permit, shall be considered using the higher procedure.
- (4) When an application requires more than one variance, the applicant shall file a single application for all variances, and pay one fee for the application, in addition to the required application and fee for the site plan review, property line adjustment, partition, or subdivision.
- (5) The applicant ~~variance application~~ shall include ~~the following~~ a written narrative with responses to the criteria in this Chapter.

~~(a)~~ A written narrative with responses to the criteria in this chapter.

~~(b)~~ It shall be the applicant's responsibility to verify the location of property lines. If the variance is to a portion of subject property, then the question as to whether an existing structure on the subject property encroaches onto the public right-of-way or onto an adjacent property, the application shall include evidence of property line location. Evidence shall consist of the subject land deed and one of the following:

~~(1)~~ Property corner monuments set by an Oregon-licensed land surveyor, and evidenced by recordation in the Josephine County Survey records, shall be the preferred evidence of property line location. The monuments shall be in full view and subject to City inspection prior

EXHIBIT 1
to IAPC Staff Report

to a complete application. It shall be
the final determination of the City
Surveyor as to whether the monuments are
adequate.

(iii) Irreducible to provide monument evidence in
the field, the appropriate City Surveyor shall
have map prepared by an Osgoode-licensed
land surveyor as soon as the application
has been filed. The survey plan shall be a minimum
of one-half mile long.

a. Scale, north arrow, date of preparation,

b. Location, street addresses and assessments
on page number and lot numbers;

c. Dimensions and size of parcels by deed,
which may include dimensions necessary to
show connecting evidence of the true
Proprietary Line Location;

d. Proposed and existing buildings and
structures, including previous location
dimensions, setbacks to property lines,
obstruction between buildings, height;

e. Current legal conveyance number and any
registered survey numbers used in the
determination of the proprietary lines shown
therein;

f. The Surveyor shall include a signed
statement from the map preparer which
certifies that the lines shown adequately
represent existing conditions as laid out
on the subject ground and are adequate for
the purpose of verifying property line
locations.

EXHIBIT 1a
to UAPC report

**CITY OF GRANTS PASS
URBAN AREA PLANNING COMMISSION
November 12, 2008**

**7:00 P.M. MEETING
City Council Chambers**

COMMISSIONERS:

Gary Berlant (Chair), Stacey Kellenbeck, Perry Wickham, Gerard Fitzgerald
Loree Arthur (Vice Chair), Darin Fowler, David Fedosky, Richard Sackett

1. ROLL CALL

The Urban Area Planning Commission met in regular session on the above date with Chair Berlant presiding. Present: Commissioners Arthur, Kellenbeck, Wickham, Fitzgerald, Sackett, and Fowler. Absent: Fedosky. Also present and representing the City was Principal Planner Angeli Paladino, Associate Planner Lora Glover, and Associate Planner Jared Voice.

2. ITEMS FROM PUBLIC:

Chair Berlant invites anyone in the audience to address the Planning Commission on any matter that is not part of the regular agenda to come forward at this time. Seeing none, Chair Berlant moved on to the next order of business.

3. CONSENT AGENDA:

a. MINUTES:

i. October 22, 2008 Pgs. 1-44

Corrections noted by Commissioner Arthur: In the motion on the bottom of page 2 it said we were continuing something until November 11 but it was November 12, it was tonight. On page 43 second paragraph about 5-6 lines down it says "and justifiable" when it should say "unjustifiable". On page 86 in one of the findings it says "we approve the requested tentative subdivision" about halfway down the page, and I don't think that was a tentative subdivision. It was a site plan that we approved. This correction is verified with Principal Planner Angeli Paladino.

Correction noted by Commissioner Fitzgerald: On page 30 in the second paragraph it says "predicament where his business is imperil" should read "his business is in peril"

Commissioner Wickham asks if Westlake is not opposing any of their conditions this week. Principal Planner Angeli Paladino states no, the property line adjustment is finally settled.

Urban Area Planning Commission
November 12, 2008

Exhibit 2
to UAPC 56

Commissioner Arthur asks if Director Huber has some comment or direction, or speculation for when we do have something we want to kick on up to City Council so a policy decision is made on it. The 2 examples I can think of right offhand are about the level of service, intersections and requiring it to be every turn/every direction – I don't know what the right terminology is there. Clearly, that was unworkable because there are already places that exist where you could never under any circumstances get every turn up to... This other one was when we came up with the alternative of providing a pedestrian path to a destination street, and in both of those cases, we were at an absolute deadlock. We have conducted no business in the coming 3 years if we hadn't had some kind of resolution. At that point, we forced a decision. But we also have been dealing with the City Council, and probably will be worse off if every decision of a policy nature has to have a vote on it – let's go out and see what the public says about it. There goes our 120 days pretty quick. Somebody somewhere along the line has to make some decisions based upon real facts.

Director Huber states his general advice would be to not use an application to send a message to the City Council. You need to decide it on its own merits. With that said, don't be afraid to write them. We can draft a memorandum from Urban Area Planning Commission to City Council, "we need some policy direction on how to apply... the level T service standard," for example. I would just ask for some help. We can carry it forward, that's one way. Otherwise, I guess if you can make very crystal clear findings that "we are denying this because we are applying this criteria in this particular way" or "this particular policy this particular way." We can watch how they handle it. If they overturn it on that, there's an answer for you.

Commissioner Arthur states they did deny them on the merits, given the existing Code.

Director Huber states he does not remember that.

Commissioner Arthur states, like that level of service thing – we did deny them on the merits given what the existing Code was. We weren't just making up reasons to send them up.

Director Huber asks if there is anything else for him, seeing no further questions he thanks the Commissioners for their attention.

b. Results from other cities who require surveys with land use applications:

Principal Planner Angeli Paladino states she has a couple of other things for them. That Commissioner Arthur had asked for a survey of what other cities do if they require surveys when

applications come in. Just preliminarily, asking our neighbors close-by – I called Ashland, Medford, and Roseburg and none of them require surveys with applications, at the front end. If they are doing a partition or subdivision, at some point they have to do a survey; to record it. But as part of a complete application they do not require it. So if you would like me to check other states or see what works in other communities that do require it, I am happy to look a little further and deeper. This was just kind of preliminary.

Commissioner Arthur states they don't require them for any kind of application? Principal Planner Angeli Paladino states they told her no, for those three cities.

Commissioner Wickham asks that staff be mindful of the fact that if it is a critical situation, we word those in the Staff Report to make sure that without proper certification from a surveyor or engineer, confirming – let's say it has something to do with concrete or steel or something like that – prior to finishing, or proceeding, that those form boards be located by surveyors. He states he has done that in many other communities and it is just a courtesy to the builder and also to the citizens and the Staff that says "we are going to do this right," that we have a licensed surveyor saying our form boards are within the tolerable, or allowable error, and you stamp it and allow them to proceed in those cases.

Commissioner Kellenbeck states she thinks generally the way it is works but she gets what Commissioner Arthur is saying. When someone is applying for a variance to a measurable standard, like a setback, and we are sitting here trying to make a decision on whether or not to grant a variance to a measurement amount, and we're arguing over fractions of an inch or portions of a foot – in that case, it just seems bizarre that we are trying to make Findings of Fact that are defensible legally when we don't have any real facts. I guess that's the one place, is variances, where I see there might be some room to make a requirement.

Commissioner Wickham asks if they could draft a letter from all of them stating that from the viewpoint of the Urban Area Planning Commission it is not a requirement, but it certainly would be in your benefit to have that done prior to stepping before us so that is not something we'll.... Or you could just tell the applicant when they come in "sure you don't need a survey. But let me tell you, those folks up there on the Planning Commission are really..." You know what I mean.

Commissioner Arthur states the most bizarre one she remembers was the one for adding a carport to a small house on Conklin and the initial requirement to do anything to add on, was that the property be legally sited, and it showed that their house was on the neighbor's property. They were very frustrated. I think whoever they had as their contractor/builder just didn't know what

was going on. But all they needed to do was show "is the house on your property or not" but that never seemed to get across. But that was a very simple solution to the problem.

Principal Planner Angeli Paladino states that a lot of times, taking the Conklin example, that person didn't want to spend the \$1800.00 or \$2500.00 it was going to take to prove that their house was on their property. They already believed it was on their property. That issue is still out there. So without something in the Code which says you are required to do it, people can apply and we can move forward and then we are going to have staff and applicants at a crossroads because we don't think it's on the property and they do, and we don't have anything to prove it otherwise. So it is difficult. I don't know what the best solution on that one is.

Commissioner Sackett asks if this will basically affect a common ordinary citizen like him, because a subdivision, they are going to survey it and everything. It is going to be somebody like me, doing some add-on or something.

Principal Planner Angeli Paladino states that was what it was with the Conklin line. Somebody just wanted to add on a carport and it turned into a huge deal.

Commissioner Fitzgerald asks if these other jurisdictions have no provision for the Urban Area Planning Commission to add it as a condition.

Principal Planner Angeli Paladino states she cannot really answer that question. I am assuming that the review body has that discretion to add... just like you do. Certainly, I would assume that.

Commissioner Fitzgerald states that maybe they could do that.

Commissioner Wickham states he can appreciate the way it is now. I mean if an applicant wants to come in and not spend the money up front and they want to do this where they have to make it quite clear before they are allowed to proceed or get a stamp or approval or anything, that they have to physically prove, through hiring of a land surveyor or engineer, that these are going to meet the requirements. I guess we as a body can be a little more flexible, saying we understand, and we are allowing you to do this provided it fits. If it doesn't fit, and it could happen later on, You could walk out of here feeling we gave you the approval to do it but we want to let you know, we're still telling you, if it doesn't fit later on when you hire a surveyor, because you are going to have to, then you can't do it – even though you may feel like we've given you the approval to do it. It is really not up to us... [He is interrupted by Chair Berlant because of the time.]

Principal Planner Angeli Paladino asks if there is any follow up they would like staff to do on that, maybe something that you have proposed -- a text amendment or the letter that Commissioner Wickham had proposed that would be just a reminder to applicants. Did you want me to look at other cities, other states?

Commissioner Wickham feels that it could be handled on a staff level. That staff just needs to point out the fact that there are some pretty highly technical professional-minded people on the UAPC.

Commissioner Kellenbeck states she disagrees, that if there is one thing she has learned from the City of Grants Pass is you have to ask yourself "who is the customer." In this case, the customer isn't just the person who made the application, the customer might be the neighbor who doesn't know any better, next door, who actually has a garage built on their property -- and now we are furthering the development by building a carport without any evidence... So I'm saying that, in the case of variances related to a measureable distance, I believe there should be a requirement up front for a survey. So we know exactly what the distance is they are applying for variance to -- but only in those cases.

Commissioner Fitzgerald asks if they could put that as a condition for approval and in a case like the Hellgate gas tank where they are talking inches, could they say they postpone a decision until they see a survey? Or say, we approve it with the condition of a survey that proves it -- setbacks and such.

Principal Planner Angeli Paladino states the reason she does not believe either of those things work is because they do not require a survey and postpone an applicant's right to a hearing to go get that information, he also has the right to deny the extension of 120 days. Then we are up against the denial for a piece of information that we did not require from them up front. Now, the other side of that is that if we condition it in an approval to make some sort of finding via a surveyor and a condition, we are setting up an "if and when" situation and we are deferring the decision to the surveyor and we are not ultimately seeing what the end result is going to be and making conditions appropriate to that. I just think we can't win either way.

Commissioner Wickham states that way it falls on the applicant, it doesn't fall on the staff. It's not the staff's final burden to determine whether or not it is going to fit or not. I mean, the staff is going to impart on them there is a chance it is not going to fit, or it is not going to work and they really should consider that before they keep going any further. Sure there are some cases where it doesn't apply. I have 20 acres and I'm putting a house in the middle of it. I don't think I've got

to worry about it too much. But when you are working in a neighborhood and you couldn't even tell if your house was on your property or not, it might be a good idea to have it done. But leave it on the applicant. That we aren't telling them they have to but it is a good idea they should.

Commissioner Fitzgerald states to him it seems easiest to do either a text amendment or a policy statement, but better a text amendment that says if the decision is based on a variance or any of those cases where a decision has to be based on an exact measurement and placement then that is part of your burden to prove that's the case.

Commissioner Kellenbeck states that she wants to be very specific because basically every decision they make is based on exact measurements, whether it is a 20 yard setback or whatever. So what I'm saying, if I were to make a motion to initiate a text amendment it would be that applications for variance specific to a measurable distance are required to provide survey information to that distance – not the whole property, just the applicable distance they are applying for a variance to.

Commissioner Fitzgerald states that Commissioner Kellenbeck is talking about verifiable – this measurement that is taken must be verifiable and the burden of proof is on the applicant to furnish said proof.

Commissioner Kellenbeck states that is correct, because if there is a survey marker already there, we are not requiring them to go get a survey. She states she will revise her motion to initiate a text amendment. Commissioner Fitzgerald seconds that motion. Chair Berlant asks for further discussion. Seeing none, he asks for a vote.

MOTION

Commissioner Kellenbeck motions to initiate a text amendment that applications for variances specific to a measurable distance are required to provide survey information to that distance, not the whole property, just the applicable distance they are applying for a variance to. Revising to note if there is a survey marker already there, we are not requiring them to go get a survey. Commissioner Fitzgerald seconds the motion. The vote was as follows: "AYES": Berlant, Arthur, Sackett, Wickham, Kellenbeck, Fowler, Fitzgerald. "NAYS": None. Absent: Fedosky.

Having received a favorable vote, Chair Berlant declares the motion to have duly passed.

Commissioner Kellenbeck states that she remembered what it is she was going to say to Associate Planner Voice related to fences. She absolutely, strongly, with past-due urgency believes there needs to be at least an over the counter permit process for fences. Someone brings up fees. She responds that she does not care—no charge, cheap charge, whatever—but

Commissioner Fitzgerald has a personal note, that his son is leaving Friday, in the Marines, going to Afghanistan. So he would covet their prayers on that.

Commissioner Kellenbeck thanks Community Development Director Huber and the other staff for having patience through a rough night.

Commissioner Wickham states his son left Sunday for Iraq, 2nd tour, and he is 6'6" so he is a moving target. Also he does want to bring up one thing about the street improvements decided tonight. He feels the applicant left tonight with a real sweet deal – for 187 feet of street frontage if he even chooses to build it, when in reality he had 522 feet. I don't know how you can not say he didn't. I just felt maybe it wasn't prepared well enough – maybe I'm out of line, but I don't think anybody else caught on to the fact that the 202, which is the larger parcel was reduced to the smaller parcel, down to no street frontage, and subsequently left 1401 to become the larger parcel and it was actually frontage. What better opportunity – I realize it's harder economic times, but going from \$327,000.00 on something... Wow! To actual construction costs more along the lines of about \$75,000.00 - \$78,000.00 to have the whole thing done – and once and for all secured, along with the sidewalk and the curb and the gutters and the entrance and all that. I think we missed it, unless I missed it – but I don't think I did. You guys did.

9. ADJOURNMENT

There being no further business to come before the Commission, Chair Berlant adjourned the meeting at 10:05 p.m.

Gary Berlant, Chair
Urban Area Planning Commission

Date

12/10/08

as presented on the record

These minutes were prepared by contract minute taker, Wendy Hain.

6.050. Review Procedures and Submittal Requirements.

²Except as specified below, variances shall be processed in accordance with the procedures in Schedule 2-1.

- (1) Applications for variances shall be submitted and processed along with the land use application for site plan review, property line adjustment, partition, or subdivision.
- (2) Where the site plan review, property line adjustment, partition, or subdivision requires a higher procedure type, the variance shall be considered using the higher procedure.
- (3) Where the variance requires a higher procedure type, the related application, such as an application where the building permit serves as the development permit, shall be considered using the higher procedure.
- (4) When an application requires more than one variance, the applicant shall file a single application for all variances, and pay one fee for the application, in addition to the required application and fee for the site plan review, property line adjustment, partition, or subdivision.
- (5) The applicant ~~variance application~~ shall include ~~the following~~ a written narrative with responses to the criteria in this Chapter.

~~(a) A written narrative with responses to the criteria in this chapter.~~

~~(b) It shall be the applicant's responsibility to verify the location of property lines. If the variance is to a required setback, or if there is question as to whether an existing structure on the subject property encroaches onto the public right-of-way or onto an adjacent property, the application shall include evidence of property line location. Evidence shall consist of the subject land deed and one of the following:~~

~~((i)) Property corner monuments set by an Oregon-licensed land surveyor and evidenced by recordation in the Josephine County survey records. Shall be the preferred evidence of property line location. The monument shall be in full view and subject to City inspection prior~~

EXHIBIT 3
to UAPC Staff Report

to a complete application. It shall be
the final determination of the City
Surveyor as to whether the monuments are
authentic.

(f) It is the intent of the City to provide monument evidence in
the field. The applicant shall submit the
site map prepared by an Oregon-licensed
land surveyor as part of the application.
The site plan map shall at a minimum
include the following:

- a. Scale, north arrow, date of preparation
- b. Location of street address and accessories
map page number and tax lot number
- c. Coordinates and size of land by deed
and any measured distances necessary to
show compliance evidence of the true
location of the location
- d. Proposed and existing buildings, any
structures, including names, location,
dimensions, setbacks, property lines,
distance between buildings, height
- e. Current deed conveyance number and any
registered survey number used in the
determination of the property lines shown
thereon
- f. The site plan shall include a signed
statement from the map preparer that
certifies that the lines shown accurately
represent existing conditions as laid out
on the surface ground and are adequate for
the purpose of verifying property line
location.

EXHIBIT 3a

URBAN AREA PLANNING COMMISSION

August 12, 2009

6:00 PM

Council Chambers

1. ROLL CALL

The Urban Area Planning Commission met in regular session on the above date with Chair Berlant presiding. Commissioners Arthur, Kellenbeck, Richardson and Fedosky were present. Absent were Commissioner Fowler and Commissioner Fitzgerald with one seat vacant. Also present and representing the City was Principal Planner Angeli-Paladino, and Associate Planner Voice.

2. ITEMS FROM PUBLIC: None.

3. CONSENT AGENDA:

a. MINUTES

i. Minutes of July 22, 2009.

Chair Berlant stated, we will move on to the Consent Agenda which includes the minutes from July 22 and the Findings of Fact for the appeal of the Hearings Officer decision to deny a minor site plan review.

[Commissioner Richardson brings up concern about the decision on the minor site plan Findings of Fact. This is discussed below under the Findings of Fact.]

Chair Berlant stated, there are some corrections or changes to the minutes. Let's deal with that while Principal Planner Angeli-Paladino is looking at the procedural issue.

Commissioner Arthur stated, the ones I noted are -- there were a number of very small typos or words spelled the way they were heard instead of the way they are. On page 15, 4th line up, talking about people residing in the dwelling, it is residents are the people; r-e-s-i-d-e-n-t-s, residents of the dwelling. On page 20, 6th line down, "there are certain inefficiencies"; it should be "inherent in building on slopes" not "inherited". On page 25, 3rd paragraph, first line, the end of it; it says "Davis" City Council, it should be "did this City Council ever receive the packet".

Commissioner Richardson stated, in addition, on page 13, the comment "Mr. Renz asked, will do", it's probably "well do these need to go to the Steering Committee?" That is the fourth line down. Also on page 32, it's in the second paragraph, the tail end of the fifth line down, I don't know about "individual owlet", baby owls? I'm sure that we meant something different. (I was a little concerned in reading these because spell-check is not somebody's friend and whoever is doing this is relying on what they hear or spell-check and we've got a tremendous amount of inconsistencies, typographical errors, and things in the document.

Urban Area Planning Commission
August 12, 2009

Exhibit B
to UAPC F.O.F.

Commissioner Richardson asked, if they propose the 26th, is that within the 120 days and would the second week in September be beyond the 120 days? That's the issue.

Principal Planner Angeli-Paladino stated, this is the first evidentiary hearing. So it came in, in July. I don't have the file in front of me but we would have three months from July. In case there was an issue that you disapproved of, then you need to go to the City Council. I'm assuming we could still fit it in.

Chair Berlant stated, but when an applicant, when any party requests a continuance they are in effect waiving the amount of time as required to get it there.

Commissioner Richardson stated, I don't know that I agree but go ahead.

Commissioner Fedosky stated, I think the August 26 night is going to be a long night...busy, just based on some of the topics that were brought up in the last meeting and what we intend to tackle that evening.

Chair Berlant asked, so the next date was?

Principal Planner Angeli-Paladino stated, September 9.

Chair Berlant asked, so you can make a motion to move it to August 26 and pack the agenda or you can make a motion to move it to September 9 based on what we know of the current agenda for the 26th and live with either decision.

Commissioner Richardson stated, since mine was the original motion and it's still standing I would move the continuance until September 9. Commissioner Arthur seconds the motion. Chair Berlant calls for a vote.

MOTION

Commissioner Richardson moved and Commissioner Arthur seconded a motion to continue the hearing until September 9, 2009. AYES": Arthur, Berlant, Fedosky, and Richardson. "NAYS": None. Abstain: Kellenbeck. Absent: Fowler and Fitzgerald. The motion carries.

- ii. 09-40500003: Variance Survey Development Code Text Amendment
Proposal: Development code text amendment to Article 6 to require the verification
of a property line location with variance applications.
Applicant: City of Grants Pass
Planner: Jared Voice

Chair Berlant stated, the next item on the agenda is the Variance Survey Development Code Text Amendment. This is a legislative matter, so there aren't any issues of ex parte contacts or things of that nature. Chair Berlant asked if there was anyone present who wished to challenge the authority of the Commission to hear this matter. Seeing none, Chair Berlant asked if there were any Commissioners who wished to abstain from the hearing. Seeing none, Chair Berlant stated that in the hearing, the decision of the Commission will be based upon specific criteria which are set forth in the Development Code, all testimony given which apply in this case are noted in the Staff Report. If anyone would like a copy of the Staff Report, please write that in a note to me and one will be provided to you. It is important to remember that if you fail to raise an issue with enough detail to afford the Commission and the parties an opportunity to respond to the issue, you will not be able to appeal to the Land Use Board of Appeals (LUBA) based on that issue. Chair Berlant stated the hearing will now proceed with a report from staff.

Associate Planner Voice stated, I want to first point out I handed out an additional exhibit. It's labeled Exhibit 3 to UAPC Staff Report. I just wanted to point out that that is part of this proposal and I'll get back to that in a second. Proposal summary -- this text amendment would specify that verification of property line location is an applicant's responsibility within the variance section, and if the variance being proposed is sought to a required setback, or if there is any question as to whether there is an existing structure/building encroaching over a property line, then the variance application must include evidence of the property line location. The evidence must consist of the subject land deed along with either one of two things; one would be location of existing property corner monuments in the field previously set by an Oregon licensed land surveyor, or; as an alternative to that, the applicant could submit a site map prepared by an Oregon licensed land surveyor. The location of monuments in the field would be the preferred option. That would obviously be the simpler and cheaper option for the applicant. It would be up to the City Attorney to determine if something was found in the field whether those were authentic monuments or not. The site map option would only be required if the applicant were unable to locate the monument evidence in the field.

Background -- the Planning Commission initiated this text amendment by motion back in November 2008. The Planning Commission had considered over at least a couple of years, several variance applications where property line location was unknown and applicants were unwilling to provide evidence of the location prior to the hearing; so the Commission was in the position of trying to make a decision without adequate information really to make that decision. Currently there is no specific requirement in the Development Code to submit evidence of property line location with a variance application, even if the variance being sought were to a required setback where it would be really a critical piece. The amendment is intended to ensure that the review body, the Planning Commission, usually has adequate information to make an informed decision when considering the variance application.

Again, there is a new Staff Report exhibit -- that is Exhibit 3. It has modified the proposal somewhat from what was included in the original packet. If you flip to the second page, item 2d, "proposed on existing buildings and the underlying pieces and structures, including fences." We just wanted to

specify that those were also required to be shown on a site plan. The additional language was recommended by the City Surveyor when he looked at it again. The conclusion and recommendation is that the Planning Commission recommends the City Council approve the proposed amendment as set forth within Exhibit 3 that was handed out tonight. This is a type IV hearing, so the Planning Commission doesn't make a formal decision; just a recommendation, and City Council would make the final decision as to whether to adopt the amendment or not. And I can attempt to answer any questions.

Commissioner Kellenbeck stated, I had one concern but it may just be a question depending on whether or not I'm reading this correctly. My concern is that, when we look at this, I don't feel that this Code section should... any time in the future, once you are gone -- which is really soon, and we've all stepped down or whatever -- I don't want this to be interpreted to mean that a property owner requesting a variance so they have to go survey their entire property. I wasn't sure that the language was specific enough to only say that the monuments or the surveying is necessary in order to prove that location that we are talking about, because that's certainly two entirely different expenses on the applicant and I just wasn't sure. If you could point that out to me or if we need to clarify that we get to our discussion.

Associate Planner Voice stated, attempting the wording under item 2b, the attempt was to, I guess to address that concern -- that if the variance were to require a setback or if there was a question as to whether the existing structure on the subject property encroached into the public right-of-way. So for example, if the variance were to building height or some other standard not related to a setback, or if there was not an issue of a building encroaching over to a property line, that would not be required as part of the application.

Councilor Kellenbeck stated, my question is to variances that are to a setback standard and whether or not once you get below specifically item (b) and you get into, like, "If unable to provide monument evidence" and you start talking about the minimum site plan map that would be required and, for example, it just simply says, "Proposed in existing buildings and structures, including fences, location dimensions, setbacks to property lines, distance between building height..." This is sort of boilerplate language that we see in other parts of the Code but, to me, it's not clarifying that we only need surveyed those items that directly relate to the variance request.

Associate Planner Voice stated, our City Surveyor was pretty concerned about really limiting what was going to be shown on the survey. He was concerned that if a surveyor was preparing a site map that, I'm not sure if it's legally or more ethically, these things should be shown on the site map and that was the reason why that was so detailed and didn't include just the setback line. So that's really the reason why that is such a detailed list. He felt that it was important if a survey was being prepared by a licensed surveyor that those things should be shown on that site plan.

Commissioner Richardson stated, I want to present unqualified support for this because we've been involved in a legal battle for almost 6 years over an easement strip to the river and it's still in the Court of Appeals and it has to do with a neighbor who decided to encroach onto easements owned by a dozen other people. I think this is absolutely important... that people come to the Council prepared to say I know exactly where my property line is and I'm following the rules. I think it is way past time for this.

Commissioner Arthur stated, at some point in this discussion tonight I'd like to go back and revisit three or four of the items we have had to deal with in the last two or three years to see if this actually solves the problem. I don't know when is a good time to do that, so do you want to continue with what you are doing and take testimony, and then discuss it?

Chair Berlant stated, why don't we do that... Let's take this, and this is really if you have questions. Are there any other specific questions for Associate Planner Voice? Seeing none, Chair Berlant asked if there was anybody that wanted to address the Commission on this item. Seeing none, he closed the public hearing portion.

Commissioner Arthur stated; the questions I had asked Principal Planner Angeli-Paladino about came from one of the examples we had, and it's kind of the flip side of what Commissioner Kellenbeck was concerned about -- about needing more information than just the immediate little corner that you might be dealing with in that particular application. What was it that you found?

Principal Planner Angeli-Paladino stated, you and I can also pull up the Staff report. We have that online. We can do that. My understanding is that there was an issue in the Nonconforming Development section of the Code, Article 15.051(2): "Encroachment onto an adjoining property..." That was actually noted in a specific case that dealt with an expansion of a carport off of a house and the opposite side that wasn't being expanded appeared to be encroaching onto the neighbor's property, and because of that, this was what was noted in the Staff report. "Encroachment of a structure onto an adjoining property is not considered non-conforming development. The City cannot authorize expansion or modification of any portion of the structure that encroaches onto adjoining property." So that was kind of a... we've got this main issue that we can't solve because we have no idea where the property lines are based on a surveyor or something that came in with the application -- so that needs to be addressed before we can actually say "Okay, you can expand. Do the expansion and not meet the setback on the opposite side." I think that was your concern. Did this address that or not? I think Associate Planner Voice did cover that part in the text amendment under 5b.

Associate Planner Voice stated, it is 5b: "If the variance is related to a required setback or if there is a question as to whether an existing structure on the subject property encroaches into the public right-of-way or onto an adjacent property."

Commissioner Arthur asked, that would apply even if that structure was not the subject of the variance, right? Because what happened when that incident occurred, the Conklin one was... I mean you were not supposed to consider the variance at all if the underlying property was at fault. Isn't that correct? That was what we were stuck on, on that one.

Principal Planner Angeli-Paladino stated, right, if the property was encroaching then we kind of had to stop right there before that was clarified. We did stop at that point. We never got clarification on that. It was actually denied that evening and they never came back.

Chair Berlant stated, I think, addressing Commissioner Kellenbeck's concern, as I read it, that if the property corner monuments are there, then you don't have to do anything. Then the other section kicks in only if they are not there, and therefore, you are going to have to do the survey, and therefore, all this other stuff has to be there.

Principal Planner Angeli-Paladino stated, I think there was some discussion back then about -- specifically, I think about Conklin: "Okay, what if we just verify that eastern property line. Is that enough? And I think that may be Commissioner Kellenbeck's question about are we requiring them to do all four corners of the property, or are we just saying you are doing a setback on this side, so all you need to do is verify that one property line. Is that correct? I think, based on what our City Surveyor recommended we would be looking at all four sides, not just one. So yes, it would be more costly but that would be to verify that what we are doing and what we are approving is accurate.

Commissioner Kellenbeck stated, that made sense to me once Associate Planner Voice said that because it triggered a conversation that I had with a private surveyor awhile back. He said -- a totally different issue, but I'm drawing the connection there -- he was saying that, for him to even go out as a licensed surveyor there were certain things that he had to do including those monuments and recording it in order for him to even show up. So that made sense. Thank you.

Commissioner Richardson stated, I was going to say involved in the one that I've seen personally was an individual who said, "I think it runs from that corner to that corner." And that was the basis of the appeal in the courts as opposed to them knowing where their boundaries were when they built the lean-tos and the other things they chose...it was in the County at the time and not the City, and they just did it. So I think having to show where your property is... If you've recently purchased the property, generally speaking, you have the metes and bounds. It's for some of these places where it's not altogether certain and I understand that there are parts of Josephine County that are somewhat murky in terms of where the actual property lines and things run, that it can't hurt to definitely identify all four corners of your property.

Commissioner Arthur stated, the one on 10th Street between 800 and 1000, somewhere along there, where the guy built the garage 2 feet from the neighbor's one. On that one, we ended up forcing him to buy 5 feet of property or something from the next-door neighbor in order to leave the garage where it was. But how would that have been prevented from happening by this?

Associate Planner Voice stated, I'm not sure specifically what that application, if that... Was it a variance application?

Commissioner Arthur stated, It came to us after it was built and on ground and...

Associate Planner Voice asked, this does not cover site plan or building permit approvals so unless it was specifically a variance application, it would not necessarily have been prevented here. I guess the only way to prevent that would be to have a survey required with any type of application, which we don't currently have.

Commissioner Arthur stated, then that other case on Midland where the guy built the garage and showed the building inspector some re-bars that he said were the property line and were not, and ended up with the garage built 11 feet from the street. So this wouldn't solve that either because that came to us after it was built. Well, maybe we haven't addressed.... How about the townhouses down on 5th and Bridge where they were built on the sidewalk? The foundations went in and they had to be moved.

Principal Planner Angeli-Paladino stated, this doesn't apply to that either. I think there was an error from the surveyor, from the site plan map from an old survey. Basically, they drafted it incorrectly so they thought they met the setback and then when they actually went out and had the footings and foundation ready to go, the building inspector said, "Well, here is the sidewalk. We know where the property line is and here is where the foundation is. They don't match." So also, that was something that was in error before we could do anything about it before we went out and looked at it. It sounds like there is a separate issue that you are going towards that isn't part of this.

Commissioner Arthur stated, I'm trying to think... I'm sure there are at least a couple more. A couple of them had to do with fences and there was one where there was some corner of a building that was encroaching, and then we've also had the ones on encroaching into the GPID berm distances -- something about that.

Commissioner Kellenbeck stated, I just wanted to say that all those different examples you gave -- it's my assumption that they came to us because they'd already done it and Planning said well either correct it or apply for a variance and take your chances with the Planning Commission. So they came to us under variance, which then this would apply but it means that they are not going to come in here and argue

about whether they are 6 inches or 8 inches off their property line, they are going to have to get a survey to even come to us so that we say, "No, actually you are 3 inches off the property line." So it helps a little bit because we will then still know what we are talking about. But in all of those cases it was too late. They were just coming to us hoping that we would grant a variance out of the kindness of our hearts or something. They weren't based on a whole lot of evidence. I think that this is a definite help to the process and I would move forward with it.

Commissioner Arthur stated, mentioning the 8 inches reminds me what the other one was and that's the Hellgate fuel tank and how would that apply, if at all?

Principal Planner Angeli-Paladino stated, they would have had to submit that survey up front. I think that during all of your deliberation you had finally said, "we want to know where this tank is." Because everybody was questioning it and we finally had, after the fact, a survey come in after a couple of continuances from the surveyor saying, "Yes, these are the dimensions." So before we accept the application, we are going to need that stamped survey map that says this is what we are proposing to do. So it would be in your packet up front.

Chair Berlant stated, clearly this is a great improvement and whether or not we want to initiate something that goes farther in some of those other areas, I think that is kind of a separate question.

Commissioner Kellenbeck stated, I'll make a motion we recommend approval to the City Council of the variance as revised in Exhibit 3. Commissioner Richardson seconds the motion.

Chair Berlant calls for discussion. Seeing none, calls for a vote.

MOTION

Commissioner Kellenbeck moved and Commissioner Richardson seconded a motion to recommend approval to the survey variance text amendment as revised in Exhibit 3.
AYES": Arthur, Kellenbeck, Fedosky, Berlant, and Richardson. "NAYS": None. Abstain: None. Absent: Fowler and Fitzgerald. The motion carries.

5. CITIZEN INVOLVEMENT COMMITTEE:

- a. Items from the Public: None.

6. ITEMS FROM STAFF:

- a. Presentation on QAPA conference session: Planning for an Aging Population.

that differently and that's something that could be discussed. It still provides access in the neighborhood but doesn't...well, it's discounted by the cost of one set of sidewalks. It minimizes the land that the City needs and some other things, and it's worth considering.

Chair Berlant stated, absolutely. I'm just saying that sidewalks are important.

8. ADJOURNMENT

There being no further business to come before the Commission, Chair Berlant adjourned the meeting at 8:20 p.m.

for Stacey Kellenbeck Yarnish
Gary Berlant Chair
Urban Area Planning Commission

8-26-09
Date

These minutes were prepared by contract minute taker, Wendy Hain.

Variance Survey Development Code Text Amendment

August 12, 2009 UAPC Meeting
Presented By: Jared Voce

Proposal summary:

- Would specify that verification of property line location is applicant's responsibility.
- If variance is being sought to required setback, or if there is question as to whether an existing structure is encroaching over a property line, the variance application must include evidence of property line location.

Proposal summary (cont'd):

- Evidence must consist of subject land deed, along with either:
 - Existing property corner monuments, previously set by an Oregon-licensed land surveyor and located in the field, or
 - A site map prepared by an Oregon-licensed surveyor.
- The location of monuments in the field is the preferred option.
 - Would be final determination of City Surveyor as to authenticity of monuments.
- Site map option required only if applicant were unable to provide monument evidence in the field.

Background

- Planning Commission initiated text amendment by motion November 12, 2008.
 - UAPC had considered several variance applications where property line location was unknown and applicants were unwilling to provide survey prior to a hearing.
- Currently, there is no requirement to submit evidence of property line location with a variance application, even if the variance being sought is to a required setback.
- Amendment intended to ensure that review body has adequate information to make an informed decision when considering variance applications.

New Staff Report Exhibit

- **Exhibit 3**- Modified proposed amendment to Section 6.050 (on dais).
- Additional language for Subsection (ii)-d requires that site plan shows existing buildings and structures, including fences.
- Additional language was recommended by City Surveyor.

Conclusion & Recommendation

- Planning Commission recommend that City Council approve the proposed Development Code text amendment, as set forth within Exhibit 3.

EXHIBIT C¹
to UAPC F.O.F.

Questions?

4.103 Criteria for Amendment

The text of this Code may be recommended for amendment and amended provided that all the following criteria are met:

- (1) The proposed amendment is consistent with the purpose of the subject section and article.
- (2) The proposed amendment is consistent with other provisions of this Code.
- (3) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, and most effectively carries out those goals and policies of all alternatives considered.
- (4) The proposed amendment is consistent with the functions, capacities and performance standards of transportation facilities identified in the Master Transportation Plan.

EXHIBIT C1²
to UAPC F.O.P.

MMUNITY DEVELOPMENT
CITY OF GRANTS PASS
101 N.W. "A" ST.
GRANTS PASS, OR 97526



Attn : Plan Amendment Specialist
Department of Land Conservation & Development
635 Capitol Street NE, Suite 150
Salem, OR 97301 - 2540