

12-7-2020
City of Milwaukie

Attention: Planning Commission Chair, Massey; Commission Members and Staff

Reference: PD 2020-001; TFR-2020-002; WG-2020-001; PLA-2020-001; ZC-2020-001

Please refer to all previous correspondence and testimony from ourselves and Waverley Heights neighbors as all comments remain pertinent. We have spent considerable time reviewing the Development plans looking for possible ways to mitigate the impact of a greater than allowed density and building size on our extremely low density, historic adjacent neighborhood. The variances and modifications requested by the developer offer no great public benefit. We offer the following excerpts from Milwaukie's planning documents:

Applicable Comprehensive Plan:

Ch. 4, Residential Land Use and Housing Element, Objective 3, Policy 1 ("New multifamily development projects will take measures to reduce negative impacts on existing, adjacent single-family development and adjacent lower-density zones. Such measures may include reduced maximum heights, increased setbacks for large facades, building size limitations, and other design features to maintain privacy of nearby properties.")

Willamette Greenway:

—to protect, conserve, enhance, and maintain the natural, scenic, historic, economic and recreational qualities of lands along the Willamette River—

Waverley Heights is a significant historic neighborhood and natural resource zoned R10 adjacent to R2. Exceptional planning would insure appropriate buffers are maintained between these properties. It would appear that buildings A2 and B2 could be moved further south on existing property to more closely adjoin existing apartments. Further, overall requested density could be reduced nominally without significant change to the proposed Plan. The issues below must be addressed:

- Developer should define the actual building height including visible foundation walls, parking garage, mechanical installation and roof peak. This height is significantly in excess of that allowed within the Greenway —likely somewhere in excess of 65 feet. Note as a point of comparison: mature fir trees average

100 feet in height. Those that remain after clearing for construction will do little to obstruct buildings from the northern view. Deciduous trees remaining form a much lower canopy to screen buildings from adjacent single family homes.

- Specifics regarding building orientation and windows, balconies and terraces overlooking neighboring properties should be provided. It appears that many are oriented toward Waverley Heights and our significant, maintained natural areas. We oppose 'view' into our properties and associated light and noise.
- Prior to project approval, developer should specifically address 'dark skies' and noise pollution impacts on neighboring properties and Milwaukie in general.
- There should be a specific plan for removal of diseased and neglected trees and replacement in the buffer area. The original Development Plans show removal of most trees in the area adjacent to Waverley Heights. It will take years for new trees to reach heights necessary for screening. Existing significant wildlife will likely never return.
- Pathways in the area adjacent to Waverley Heights should be removed in order to maintain a natural, impenetrable buffer zone.
- Re-evaluation of building material palette should be performed to insure compatibility with natural setting and to minimize visual impact from river and neighboring properties. Note that photographs from the river of the proposed development site were all taken when trees were leafed out. Winter view is significantly different and buildings will not be obscured.

We firmly believe that the City of Milwaukie can satisfy housing and density goals without allowing the exceptions to the Comprehensive Plan and the Willamette Greenway requested for this Project. Approval of this Development should specifically address the issues listed above as defined in governing documents.

The Wyse family has discussed some of the concerns listed by Waverley Heights residents and talks are ongoing. To date many issues remain unresolved and concrete commitments have not materialized.

Steve and Gloria Stone
10230 SE Cambridge Lane
Milwaukie, Oregon
503-730-8471

Date: December 8, 2020

To: Milwaukie Planning Commission

From: Patricia Justice, 10252 SE Cambridge Lane, Milwaukie, Oregon

Subject: Waverley Woods (PD-2020-001)

This is my fourth letter to you concerning the proposed application for apartments. The issues outlined in previous letters continue to concern us and are of equal importance.

This letter addresses the inadequate response by the applicant to the criteria addressing multifamily developments adjacent to single family homes. The criteria I located are as follows (my underlining):

Comprehensive Plan, Chapter 4, Objective #3, Policies

1. New multifamily development projects will take measures to reduce potentially negative impacts on existing, adjacent single-family development and adjacent lower-density zones. Such measures may include reduced maximum heights, increased setbacks for large facades, building size limitations, and other design features to maintain privacy of nearby properties.

19.311 Planned Development Zone PD

19.311.3 D. Along the periphery of any PD Zone, additional yard depth, buffering, or screening may be required.

19.505.3.D Multifamily Design Guidelines and Standards

In order to protect the privacy of adjacent properties, multifamily developments shall incorporate the following elements: 12a. The placement of balconies above the first story shall not create a direct line of sight into the living spaces or backyards of adjacent residential properties.

Every floor of the sides of buildings A2 and B2 facing our neighborhood contains balconies/wraparound balconies, and numerous large windows. Tenants of the apartments will have many direct line views onto our adjacent properties. And at night there will be light shining out from these windows. This impacts us negatively with loss of privacy and increased light pollution.

The application fails to address these negative impacts at a level of detail sufficient to determine compliance with the above criteria. For example, under privacy considerations (19.505.3.D.12a.), the applicant states on page 8 of the application, "All privacy design considerations will be met in design." This is woefully inadequate and does nothing to allay our anxieties about loss of privacy. Landscaping alone cannot be the only solution, as 3- and 4-story buildings will dwarf our single family homes. Before issuing a recommendation, please require the applicants to address in detail how they intend to protect our privacy and meet the above criteria.

And last, although requested, we have not received elevations of B2 and A2 as viewed from Waverley Heights. Nor do we have a clear understanding of the actual height of building A2 from the dirt to the roof top for the side of A2 facing the driving range. We believe this information is necessary in order to analyze the proposed development against the applicable criteria. Thank you!

December 8, 2020

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VIA E-MAIL

Mr. Robert Massey, Chair
City of Milwaukie Planning Commission
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206

RE: Waverly Woods Planned Development, File No. PD-2020-001
Letter on behalf of Waverley Country Club

Dear Chair Massey and Planning Commission Members:

This office represents Waverley Country Club (“Waverley”). In submitting its fourth letter, Waverley maintains its opposition to the above-referenced file, incorporates its previous three letters (dated October 27, November 10, and November 17), and writes specifically in response to Applicant’s Letter submitted on November 17 and the Staff Report and Recommended Findings and Conditions submitted on December 1.

1. Response to November 17 Letter from Walker Ventures, LLC (“WV”)

First, Applicant states that “[w]ere Applicant simply to develop its property under regular R-2 zoning, neighbors would not have the same opportunity to object which they have in this planned development process.” (WV Nov. 17 Letter at p. 1.) In making this statement, Applicant is saying that if it pursued a clear and objective path for development, the City would process the application under a Type I procedure—which is decided without notice and a hearing—as if this is a reason for the Planning Commission to approve the application at issue here, which does not meet its legal burden of proof. However, this threat to cut the neighbors out of a public process does not change the fact that the current application fails to meet the approval criteria and cannot be approved. This threat also demonstrates how little the Applicant is committed to the neighborly process that it says it wants to undertake.

Moreover, even if Applicant carried out its threat, two things would occur. First, it could not build the project it now proposes, which is entirely dependent upon discretionary approval criteria for approval of a taller, wider, and more dense project. So, if Applicant is saying that it would be satisfied with a lower, narrower and less dense project that would not have the same adverse impacts on the neighbors as does the current application, then it should pursue that path, but it won’t do so because it wants to build a particular project. Second, the clear and objective path that Applicant thinks it has does not exist. Milwaukie Municipal Code Section 19.505.3, Table 19.505.3.D, “Design Standard (Objective Process),” contains numerous subjective words

and phrases that cannot be applied without discretion, including 1 c and d, 2 e, 3 a and c-e, 5 b, 6 c-f, 8 c and d(2), 9, 10 e, 11 a and b and 12. Thus, in order to properly apply these standards, notice and a hearing *are* required. In any event, the Planning Commission should decide this application based on the Applicant's satisfaction of applicable law and not based on a hypothetical application that the Applicant will never submit.

Second, Applicant again misstates the correct standard that the Planning Commission and City Council must apply to its proposed planned development. In determining whether the amenities and living conditions provided by the proposal are "exceptional," the proposed development must be compared to "similar developments constructed under regular zoning," and not, as Applicant stated, to "what applicant would be permitted to build on its property under regular zoning." (WV Nov. 17 Letter at pp. 1-2; *see also* Waverley Nov. 10 Letter at pp. 1-6.)

Third, Applicant cannot create its own definition of "exceptional." (*See* WV Nov. 17 Letter at pp. 2-3.) The Code provides a definition of this term: "*not found* in similar developments constructed under regular zoning." MMC 19.911.3.C (emphasis added). The Code does not allow for exceptional advantages that are merely "better than average, out of the ordinary, superior, or uncommon"; nor does it allow for exceptional advantages that are only "rarely" found. (WV Nov. 17 Letter at p. 2.) The clear and objective definition of "exceptional" that is set forth in the Code—features "not found in similar developments constructed under regular zoning"—is the only definition that should guide the Planning Commission's and the City Council's determination of whether Applicant meets this required standard – not Applicant's definition. Applicant admits that the alleged "exceptional advantages" found in its proposed development *are* found in similar developments constructed under regular zoning. As such, those features simply cannot be considered "exceptional."

Fourth, Applicant states that it "seeks only to develop Parcel 02 which is 6.76 acres," and based on its plans, the proposed development allegedly meets the requirement that half of the open space is in the "same general character as the area containing dwelling units." (WV Nov. 17 Letter at p. 7.) However, Applicant is requesting that the entire 10.8 acres of the subject property be zoned PD; as such, it is that entire 10.8 acres that is subject to the requirements of the PD zone – not just the acreage of Parcel 02. The Staff Report clearly states this (12-1-20 Packet, Section 5.1 at pp. 30, 32), and Applicant should be required to address this discrepancy and ensure that it meets the open space requirements of MMC 19.311.3.E.

Finally, Applicant appears to complain about the timing of and process by which Waverley submitted its objections to the application at issue, stating that, "[m]any months ago, Applicant notified [Waverley's] leadership that we were preparing plans for the development of this property and inviting input from [Waverley]. Applicant received no response from [Waverley] until October 27, 2020, the day of the first Planning Commission hearing regarding this project, when it received the letter [Waverley] submitted less than two hours before the hearing." (WV Nov. 17 Letter at p. 8.) However, until Waverley received notice of the hearing, there had been no reason to discuss the matter further with the Applicant. Since the application's submittal, it has been *Waverley* that has taken the lead in engaging in discussion with the Applicant to resolve

their dispute in a positive and collaborative way. Waverley is also hopeful that all issues can be resolved.

2. Response to December 1 Staff Report & Recommended Findings and Conditions

First, and most importantly, the Application for the above Planned Development (“PD”) contains a fatal flaw in that Applicant omitted the required submission of a preliminary development plan, and the Staff Report’s new analysis does not correct this error. Specifically, the Staff Report incorrectly relies upon MMC 19.1001.6.B, which provides for concurrent review of “multiple land use applications,” to allow applicant to combine the required preliminary development plan and final development plan review elements of the PD application into a single review process. (12-1-20 Packet, Section 5.1 at pp. 4-5; *id.* at p. 33.) But those are not “multiple land use applications” subject to MMC 10.1001.6.B; rather, they are two required steps of a single land use application.

As the Staff Report correctly points out, the PD application submitted by Applicant is one of five separate land use applications submitted by Applicant for concurrent review. (*Id.* at pp. 3-4.) The Milwaukie Code does not consider the two development plans required for PD applications to be separate land use applications. *See* MMC 19.311. Rather, they are two parts of a single land use application, with separate submission requirements, one of which depends upon approval of the other. *See* MMC 19.311.5 – 19.311.7. (*See also* Waverley Nov. 17 Letter at pp. 6-7.) As such, the required preliminary review and final review must take place separately as set forth in the Code.

Indeed, the Code is specifically written to require Planning Commission review and approval of a preliminary development plan prior to any submission, review, or approval of a final development plan. MMC 19.311.5 – 19.311.7. Had the City Council intended to allow concurrent preliminary and final development plans, it could have done so, as other jurisdictions have. *See, e.g.*, Sandy Development Code, Ch. 17.64.10 (allowing Planned Development applicants to request either a sequential review or a “combined review” for the Conceptual Development Plan and Detailed Development Plan, both of which are required).

This error on the part of Applicant and the Staff Report is not a mere harmless error. Separate review of preliminary and final development plans is done for at least two reasons: (1) to give full effect to the enactment of the City Council; and (2) preliminary plan review followed by final plan review allows the public to judge the concept apart from and before submission of the more detailed final development plan and determine if the concept is worthy of pursuing and can meet the approval criteria. Allowing Applicant here to submit a “combined” preliminary and final development plan is thus contrary to law, as well as to Milwaukie’s Comprehensive Plan and Oregon’s Statewide Planning Goal 1, both of which require citizen involvement in “*all phases* of the planning process.” For this reason alone, the Application should be denied.¹

¹ To the extent the Planning Commission and/or City Council agree that Applicant cannot submit a “combined” preliminary and final development plan as discussed above, Condition 5 of Attachment 3 to the Staff Report and Findings is improper, as it assumes that such a combined submission is proper.

Second, in discussing the Willamette Greenway (“WG”) zone requirements, the Staff Report states that “[n]ew opportunities for views to the river are . . . creat[ed] from the development itself.” (12-1-20 Packet, Section 5.1 at p. 13; *see also id.* at p. 17.) This creation of views *to* the river necessarily creates views *from* the river of the new development, which is contrary to the intent of the WG zone, which prohibits structures exceeding 35 feet in height to protect those very views, as the Staff Report acknowledges. (*Id.* at p. 13; *see also* p. 39.)

Third, the Staff Report ignores that the “exceptional advantages” comparison—required for approval of a PD application—must be made against “similar developments constructed under regular zoning.” That is, the comparison of the proposed development must be made against similar developments constructed under R2 and WG zoning, as the site at issue is zoned. (*See, e.g., id.* at pp. 15-16 (discussing community garden, tuck-under parking); *id.* at pp. 31-32.) Waverley discussed this issue at length in its November 10 and November 17 letters, and incorporates those discussions here. (Nov. 10 Letter at pp. 1-6; Nov. 17 Letter at pp. 2-5.)

Fourth, the Staff Report incorrectly states that, excepting the WG height restriction, “the proposed development could be permitted via review of variances.” (12-1-20 Packet, Section 5.1 at p. 19.) As discussed in Waverley’s November 10 letter, this is not correct. (Nov. 10 Letter at pp. 12-13.)

Fifth, the Staff Report’s recommended findings do not address the requirement of MMC 19.311.E for half of the open space area to be “of the same general character” as the area containing dwelling units (12-1-20 Packet, Section 5.1 at p. 32). Meeting this standard is a requirement for approval of a PD application, and without addressing it, the application should not be approved. (*See also* Nov. 10 Letter at p. 11.) As discussed above, there are discrepancies in the acreage proposed for development that should be addressed prior to any approval.

Finally, the Staff Report and Recommended Findings state that the greatest need for housing is “at the lower price point” but that “there is a case to be made for adding to the existing housing stock at this higher price point to provide an opportunity for existing residents to move into these new units, thereby making units at lower price points available to others. Data in the HNA shows that some renter households have the ability to pay for newer and/or higher quality units than is currently available.” (*E.g.,* 12-1-20 Packet, Section 5.1 at p. 63). However, no data has been provided that shows that those renter households having the ability to pay for higher quality units want to move into the new units, or that they will in fact do so. Such speculative, hypothetical “conclusions” should not be considered by the Planning Commission or City Council.

3. Conclusion

For the reasons stated above and in Waverley’s previous letters and testimony, Waverley respectfully requests that the Commission recommend denial of the application for the Waverly Woods Planned Development, File No. PD-2020-001.

Mr. Robert Massey, Chair
December 8, 2020
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Very truly yours,

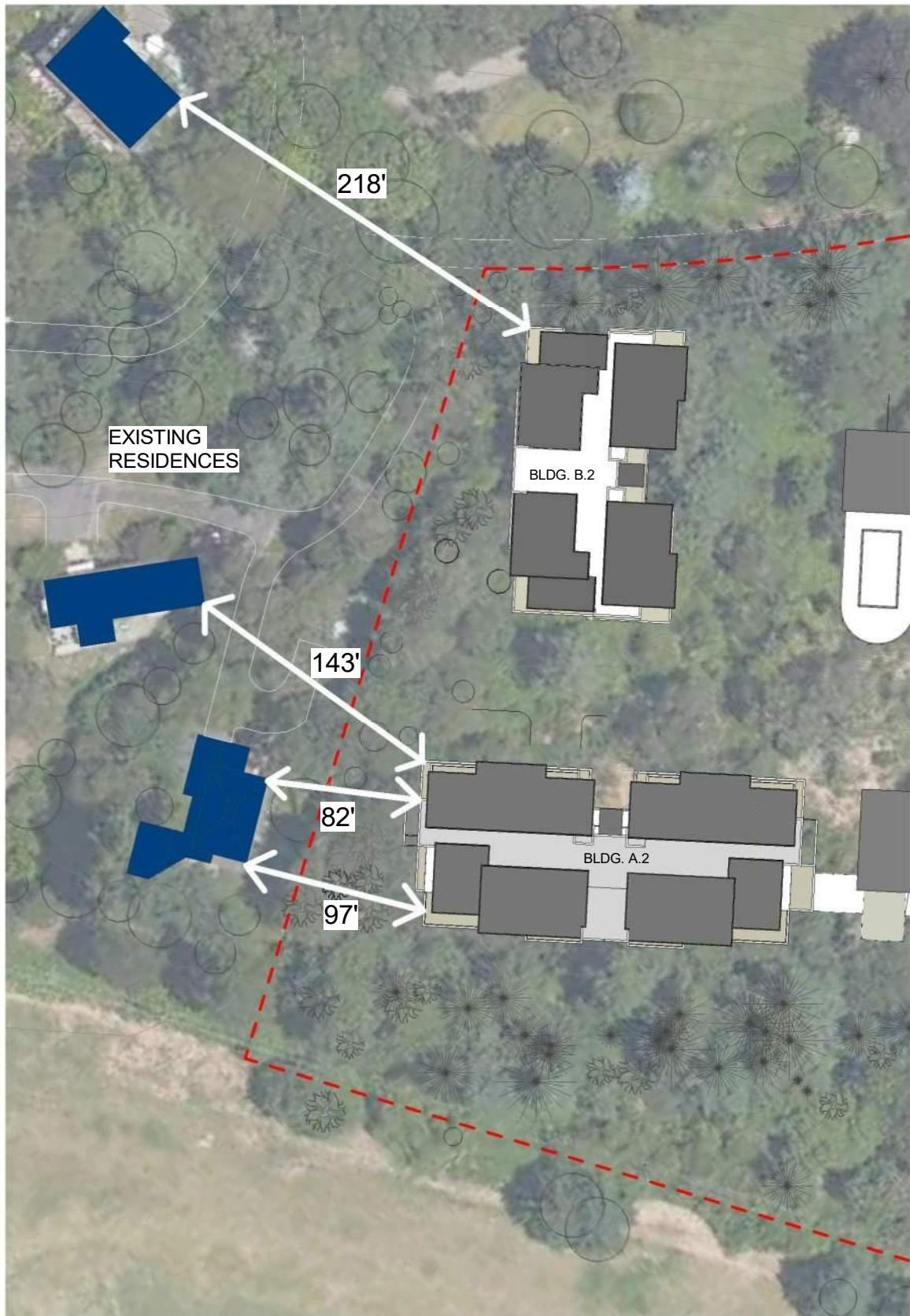
A handwritten signature in blue ink that reads "Michael C. Robinson". The signature is written in a cursive style with a large, stylized "M" and "R".

Michael C. Robinson

MCR/jmhi

cc: Ms. Vera Kolas (*via email*)
Ms. Erin Forbes (*via email*)
Mr. James Dulcich (*via email*)
Mr. Justin Gericke (*via email*)
Mr. Brian Koffler (*via email*)

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1 NEIGHBOR PROXIMITY PLAN
NTS



2 NEIGHBORHOOD PHOTO & VISUALIZATION VIEW LOCATIONS
NTS



ORIGINAL PHOTO 01



VIEW 01 FROM CAMBRIDGE LANE DOWN RESIDENTIAL ENTRY DRIVE TOWARD RIVER



ORIGINAL PHOTO 02



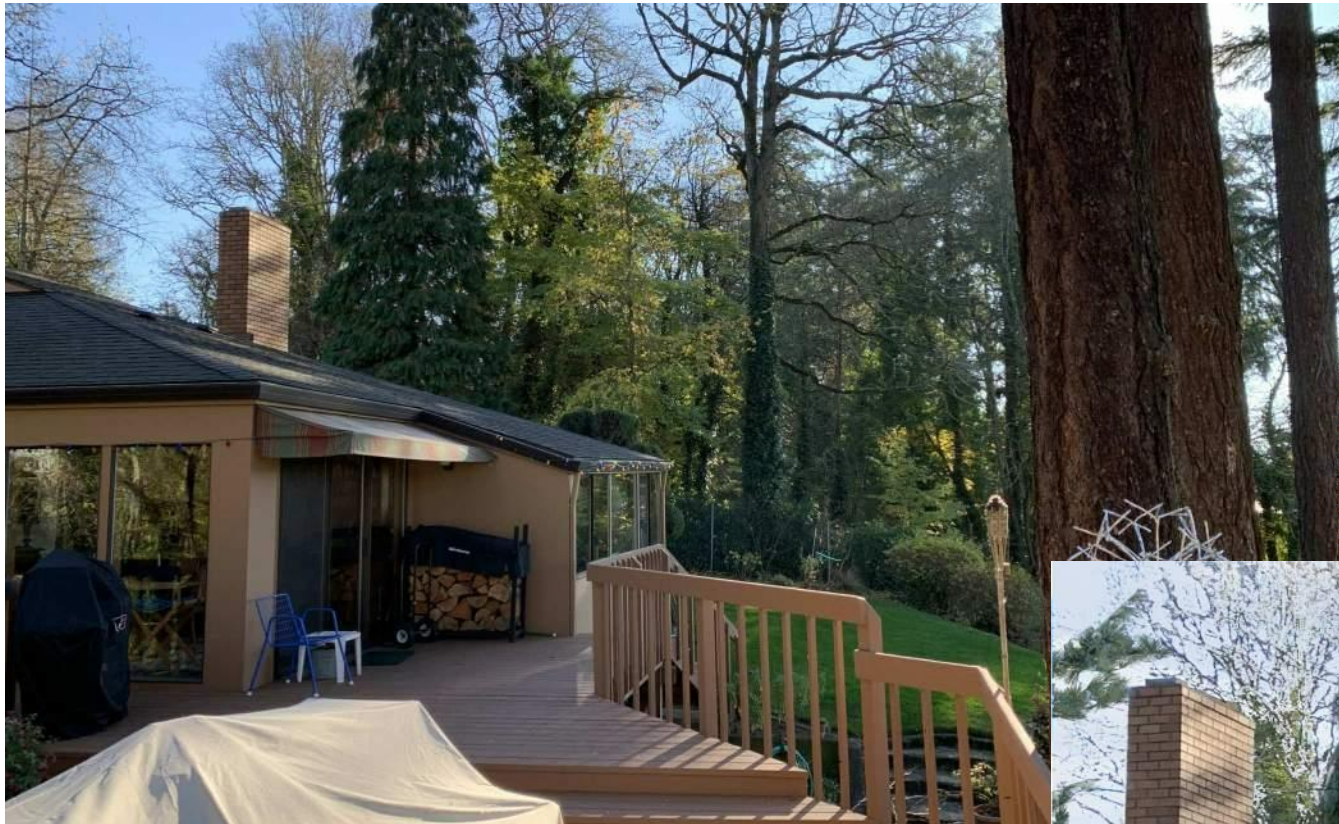
VIEW 02 FROM ADJACENT ENTRY DRIVE LOOKING SOUTH TOWARD PHASE 02 & 03 BUILDINGS



ORIGINAL PHOTO 03



VIEW 03 FROM ADJACENT RESIDENT ENTRY PORCH LOOKING SOUTHEAST



ORIGINAL PHOTO 04



VIEW 04 FROM RESIDENT EAST VIEW DECK LOOKING SOUTH TO PHASE 02 BUILDING