

June 1, 2015

Land Conservation and Development Commission
635 Capitol St. NE, Suite 150
Salem 97301-2540



Dear Sir or Madam:

This letter is a request of an enforcement order against the City of Happy Valley for compliance with Happy Valley Land Use code 16.71.050 Class C variances.

On November 16, 2014, I sent a letter to the City of Happy Valley notifying them of my intent to petition the Land Conservation and Development Commission for an enforcement order pursuant to ORS 197.319 to 197.335. A copy was sent to the city's attorney, Beery, Elsner and Hammond.

On January 16, 2015, I received a mailing, with a post date of January 13, 2015, from the city attorney Beery, Elsner and Hammond, refuting my arguments, stating that no action would be taken, and revealing their reasoning behind that decision.

After reviewing the letter, I found that none of the arguments listed in the letter were satisfactory to justify the continued non-compliance of the code. Not only did the letter include incorrect facts, but the analysis was incomplete and incorrect.

As such, the response by the city is completely inadequate, as it failed to address the underlying problems resulting from lack of enforcement and misinterpretation of the code. As will be shown in the remainder of this letter, the reasons listed by the city are incorrect and inadequate to justify why no action will be taken by the city.

In addition to the items that were listed in the original letter, the city is currently engaging in other behavior that highlights their complete disregard for their own land use laws, public opinion, and statewide planning goals. The actions show that they are willing to pass laws designed to limit citizen involvement, and will even go so far as to pass land use code that would make their prior illegal land use decisions appear to be legal.

As can be seen in the attorneys response to my original letter as well as the actions of every entity involved in planning in Happy Valley (Planning Department, Planning Commission Board, Design Review Board, and City Council), the entire city appears to believe that they can do what they want, when they want, regardless of current land use code or support of the surrounding community. With the wording of the attorney's letters, they are so bold as to state that the LCDC has no jurisdiction over their actions.

The city is in the process of modifying the land use code in another blatant attempt to bypass the authority of the LCDC. One of the arguments in the attorney's response letter

was to suggest that the Planning Commission decisions could not be reviewed by the LCDC based on a prior case. In that case a hearings officer's decision was questioned.

After reviewing the case, it is clear that the attorney was attempting to apply the ruling of an unrelated case to this current enforcement in an attempt to convince me to drop this enforcement order.

Past violations and consequences

Although there is no requirement to show past violations in this letter, I am including them to show the behavior of the city of Happy Valley, their complete indifference to the land use code, and the extent they have gone in the past to cover up their violations.

Although some of the violations occurred back in 2009, they are very relevant to the current violations. That is because the same people that violated the code in 2009 are still working in the Happy Valley planning division, and are using the same or similar tactics to cover up their violations.

Illegal zoning during annexation

The first known violation of land use code by Happy Valley was done during the annexation of the land used for the McDonalds and bank. Although the LCDC does not have any authority to reverse the decision because it is over 3 years ago, it shows the length at which the staff, still employed with Happy Valley, will go to violate the land use code, and the length at which they are willing to go to cover up the violations.

Prior to the annexation, the northern portion of the land was zoned as R-10 (residential). Happy Valley annexed the land and converted this portion of property to MUC (multi-use commercial), despite the land use requirement that the land be converted to Happy Valley zoning of R-10 (that land use code passed just 2 months before, and was ignored).

This conversion was done without proper notification during an annexation of 10 properties. The staff went so far to cover up the illegal conversion that they made the claim in their staff report that the conversion was done because "a very small portion" of the property was residential. This "very small portion" was actually around 40% of the entire lot.

The only notification that the public received was on the last page of a several page notice, where a table listed the 10 properties along with the before and after zoning. There was no explanation of the codes shown on the chart, just that the land would be converted from OA/R-10 to MUC. Without knowing the detailed codes and what they meant, those notified could not possibly know the meaning of these abbreviations.

The conversion from residential to commercial was not noticed by the neighborhood until we received notice of a proposed bank on the residential portion of the property, four years later. By that time, the 3-year limit for land use decisions had passed, so the LCDC had no authority to reverse the decision.

More recent violations

It has taken barely one year for the city to approve 4 variances that violate land use codes, on 3 adjacent properties. The city misinterpreted or failed to enforce sections of the land use code at all phases of development. As a direct consequence, the subdivision of a lot for the bank and the McDonalds was approved when it should have been denied, which resulted in 2 out of 4 of the violations listed being needed to develop the lots.

The same process was repeated for the Walgreen and adjoining lot. Because the developer knew that they could get variances with no restrictions, they didn't even need to attempt to configure the lots to satisfy the requirements, because they knew all variances would be granted without question.

As a direct result of the city's lack of planning, these lots were reconfigured and redrawn inappropriately, and as a result, every one of the developer's desired projects in this area required at least one variance to be approved.

None of these variances would have been necessary if the city had done the proper analysis of the proposed buildings on the sites at the time the property lot lines were redrawn or when the design of the building was delivered.

In all cases, the city completely ignored alternatives to granting the variances for the lots, and allowed the land to be divided in such a way that would require Floor to Area Ratio ("FAR") variances of 72% for the bank, 64% for the McDonalds, and 24% for the Walgreens, and a retaining wall variance of 62%, all far exceeding the 20% threshold for Class C variances.

In addition to the Class C variance violations, the city also allowed the grading of property in which the Steep Slopes Development Overlay clearly applies without the studies required by the land use code. As a result, none of the surrounding neighbors was allowed to comment on the removal of tens of thousands of cubic yards of land.

On March 3, 2015, the city council held a public hearing in which they discuss replacing some of the functionality of the Planning Commission, with a hearings officer. One of the items that the hearings officer would take over is variances. You would never suspect this of happening from the meeting agenda, unless you read the entire packet.

This is just the first step of an attempt to bypass the jurisdiction of the LCDC by passing a law tailored to a prior appeals court case where a hearings officer's actions were outside of the jurisdiction of the LCDC. You have to look carefully at the packet to see it. See "*2015-03-03 Mayor and City Council - Full Agenda-1025.pdf*". On page 22 of the 114 page document, it has the following:

The Hearings Officer (instead of the Planning Commission) would hear all quasijudicial Type III cases (for example, Subdivisions/PUD's; Conditional Use Permits, Variances) etc., etc., except those with significant design or policy considerations. Appeals of these decisions could continue to go the City Council.

Consequences likely to occur without corrective action by the city

Allowing variances to be approved when other options exist will result in both immediate and long-term consequences.

As will be shown below, this problem will not only continue, but will intensify and affect enforcement of all the land use code in Happy Valley, not just the FAR and retaining wall codes mentioned in this enforcement request. With future developers knowing they don't have to comply with the codes for building size, retaining walls, parking, or other items that may not meet code, they will push for additional variances that could easily be circumvented by alternate methods.

Immediate consequences

It is likely that there will be **at least 24 Class C variance violations** in the near future. This does not include the two Class C variances that were improperly approved for the Walgreens development. Including other land use code violations related to the Chapter 32 of the Happy Valley Steep Slopes Development Overlay ("SSDO"), this number increases to well over 50 land use code violations.

This also does not include any violations that may occur associated with the 39-lot *Scouter's Meadow* subdivision or the 22-lot *Quail Hill* subdivisions that will be brought before the Planning Commission on March 10, 2015. It also does not include any land use violations that might occur with the annexation of 18 properties into Happy Valley (159 acres) that was done on March 17, 2015.

One (1) of the Class C variance violations will be for the land north of McDonalds, where the bank was originally planned. The developer will most likely apply for a FAR variance to allow a building with Floor to Area Ratio ("FAR") that is smaller than the allowed code. This is despite the fact that many other designs and building types would satisfy the FAR requirements.

Two (2) Class C variance violations will likely occur on the land to the east of the proposed Walgreens. One will be for the FAR, and another will be for the retaining wall height. The Walgreens would have fit into the lot, without the variances, if the property had not been redrawn into two separate lot that are both too small to develop individually.

The 20 remaining Class C variances will be the result of redrawing of property lines creating 3 separate subdivisions. For each of these subdivisions, the developer will not be able to build on the newly created lots, because they are not buildable according to the Steep Slopes Development Overlay, section 16.32.070, which states that the minimum buildable lot size is 10,000 square feet on land in which the SSDO applies.

Because of chapter 16.32.070, the minimum lot size of 10,000 square feet on lots that are subject to steep slopes, building any structure on the lots will either require a Class C

variance, or violation of this section of the code. For the subdivisions described below, the city of Happy Valley has shown that the SSDO applies, so there is no question on the applicability of the SSDO to these subdivisions.

Without Class C variances, the newly drawn lots will not be buildable without violating the SSDO code that requires lots to be 10,000 square feet or more to be considered buildable. Because this is an obvious case of self-imposed restrictions on the lot (the developer created the lots knowing that the new lots were unbuildable), allowing a Class C variance to build on the lots would be illegal.

There are other items in the SSDO that have already or are will require violations of the code if any buildings are put on the sites. Some of these code violations are listed briefly below. These violations are not included in this request so that this request can remain as simple as possible. A separate enforcement request will be submitted to address all the issues associated with the SSDO.

At least eighteen (22) land use violations will occur due to the improper redrawing of property lines for the *Gateway to Happy Valley* subdivision (a 20-lot subdivision, Tax Lots 3300, 3400, and 3600), approved by the Planning Commission on January 13, 2015. This includes the following:

- Chapter 16.32.050 (A) (6) - Permitted Uses restricting cut and fill to 3-foot depth (8 lots, 8 violations)
- Chapter 16.32.070 - Minimum Buildable Lot Size (6 lots, 6 Class C variance violations)
- Chapter 16.32.100 - Density and Density transfers (4 lots, 2 violations)

At least nineteen (19) land use violations on nine properties will be the result of lots created for the *Grand View Meadows* development (a 69-lot subdivision, tax lot - 13e30c 00700), approved by the Planning Commission on February 24, 2015. This includes the following:

- Chapter 16.32.050 (A) (6) - Permitted Uses restricting cut and fill to 3-foot depth (3 lots, 3 violations)
- Chapter 16.32.060 - Platting of new parcels or lots (1 to 6 Class C variance violations, depending on how strict the code is interpreted)
- Chapter 16.32.070 - Minimum Buildable Lot Size (9 lots, 9 violations)
- Chapter 16.32.100 - Density and Density transfers - maximum 2 units per acre (9 lots, only 3 allowed resulting in 6 violations)

At least nine (9) land use violations will be due to lots created for the *Pine View Meadows* (a 42-lot subdivision, tax lots - 13e30c 02000, 13e30c 02002, 13e30c 02003), approved by the Planning Commission on February 24, 2015.

- Chapter 16.32.050 (A) (6) - Permitted Uses restricting cut and fill (3 lots, 3 violations)
- Chapter 16.32.070 - Minimum Buildable Lot Size (9 lots, 9 Class C variance violations)

One land use violation will be made for the food cart development at 145th and Sunnyside. The staff member decided that he would make up his own rules for parking requirements, and ignore the existing code. When his errors were pointed out, the new calculations were ignored. Even though the number of parking spaces provided represented only 50% of those required, no variance was required by the city.

As the economy improves and development accelerates, and with the amount of steep slopes in Happy Valley, the number of violations will only increase. It is impossible to estimate the number of times this will happen in even the next 6 months, because the land use laws require only 21 days notice.

There has already been a large amount of land use code that has been ignored by the city. These are clearly intentional violations, they are not accidental. I have attended many Planning Commission meetings, Design Review meetings and even City Council meetings to point out the violations of the land use code that resulted from one or more departments approving land use decisions.

Even after being shown that there is no question that the code is being violated, the planning department refuses to acknowledge, much less change their decisions to comply with the code. Their current strategy is to accept testimony and immediately disregard it. This has been clearly demonstrated at the public meetings, and emailed responses by the planning staff. If any testimony might prevent the approval of a development, it will be ignored.

Long-term consequences

I have been involved in the land use process in Happy Valley for slightly over a year, actively attempting to get the Happy Valley planning department to enforce its own code. Throughout that time, the city has openly admitted to being pro-development. Through their action they have demonstrated their bias toward the builders by their interpretation of the laws, to the point of ignoring or not enforcing these laws, even after the violations were reported.

The city has an appeal structure in place that discourages appeals due to the excessive costs of undertaking the appeals. With the attitude of the mayor and city council, any money spent on an appeal is almost guaranteed to be lost.

In the city council meeting of 01/20/2015, I was told by the mayor during my testimony that she would support the decisions of the planning staff as much as possible. This comment suggests to me that no matter how bad a decision by the planning department can be, appeals to the city council will most likely result in the upholding of the planner's decisions.

As a result, any opposition to the planning department's interpretation of the land use laws will most likely have to be appealed to LUBA to get an unbiased interpretation of

the law. And, because all avenues for appeals must have the local appeals exhausted before they can be decided, there is a huge obstacle for Citizen Involvement.

Even if an appeal of a decision is made to LUBA, and the LUBA appeal is successful, the person will still have an out of pocket expense of thousands of dollars that cannot be recovered, because the money spent on the appeal to the city is not refunded. The city knows this, and continues to place this financial burden for all land use decisions.

As further proof of the city's bias, the city is already approving land use decisions that violate other sections of the code. Right across the street at a triplex build last year, the developer had incomplete plans approved for the building. Prior to development, the developer cut down several trees without first obtaining tree cutting permits required by the city. No fines were ever levied against the developer.

For that same triplex, the developer also started to build an illegal retaining wall on the neighbor's property. Because the wall was not complete, the city forced them to remove the wall. However, this wall was replaced with two separate illegal retaining walls that do not meet with city code, which were allowed to be kept even after being reported.

For one retaining wall, the setback was supposed to be half the height of the wall, but was put directly on the property line. The other wall was over 4-feet, and was not engineered as required by code. Rather than enforce the code and require the walls to be corrected, the city simply ignored the violations and stopped communication with me.

More recently, on the same triplex, a final landscaping plan was approved that allowed the entire lot to be covered in bark. This was in direct violation of one of the conditions of approval for the triplex that stated:

5. Landscaping shall be installed pursuant to the revised Landscaping Plan (Exhibit 4), consistent with the requirements of Section 16.42.030. Bark shall not be used as groundcover.

When I reported this violation, I received an email from Steve Koper:

Mr. Phillips –

This afternoon, in response to your recently filed "Citizen Concern" form, I personally visited the subject property.

Based on that visit, I have concluded that the subject property is in substantial compliance with the approved final landscape plan (attached).

Accordingly, no further action will be taken by the City.

Regards,

Steve Koper, AICP

Associate Planner
City of Happy Valley
16000 SE Misty Dr.
Happy Valley, OR 97086
Phone: 503-783-3845

The attached landscaping plan was approved by Mr. Koper, who totally ignored the condition of approval that required no bark to be used on the property.

Under the current patterns allowed by Happy Valley, any undeveloped land can be subdivided, or have their lot lines redrawn so that any land use code can be avoided. The developer for the McDonalds, bank and Walgreens has done this twice last year - once for the lot that has the McDonalds and bank, and once again for the lot with the Walgreens and the undeveloped lot to the east of the proposed Walgreens.

By the time the public notices these items, it is too late to legally do anything, too expensive to fight, or both. In all cases, the rights of the general public are trampled in order to satisfy the desires of the developers.

Background - attorney's attempt to misrepresent facts

Interestingly enough, the attorney began arguments in their letter against my reasons within the section labeled *Background*. With this tactic, the attorney makes statements that are not facts, with the hope that they will be taken as facts and that will not be argued because they are not included in the analysis section of the letter. In effect, throw mud at the wall and see what sticks.

Item #1: Attempt to use my wording against me

In this case, the attorney attempts to pick apart my original letter by attacking the wording I used in a single sentence, rather than attacking the actual content of the letter.

Because I am not a lawyer, I wrote the letter to be readable and convey the information to the city. The letter was never intended to stand up in a court of law. I wanted the letter to be readable to those that are currently making the incorrect decisions so they could understand what they were doing wrong. I knew I had to make my sentences as simple as possible, since the planning staff, planning commission and city attorney all have a great deal of confusion interpreting so many sections of the existing code.

The attorney pointed out that in one sentence I wrote "lot configuration", rather than "lot configuration, or other conditions of the site", and even noted "Emphasis is original". If you re-read the letter I sent, it is clear that whenever I said lot configuration, I actually meant *lot configuration or other conditions of the site*. If you make this substitution in your head when reading my original letter, you will see that my original arguments are just as valid.

The breaking down of my sentence structure shows the desperation of the attorney to find any kind of credible argument to use. As with his other arguments, the analysis of my sentence structure and grammar fail to make the attorney's argument valid.

Item #2: Incorrect interpretation of the code.

In the second paragraph immediately prior to the Analysis on page 3, the attorney argues the following:

Although HDVC 15.17.05 list six separate criteria which must be met in order to approve a variance, you have only expressed issue with the first, and as such the remaining five criteria are not addressed herein.

According to the attorney's argument, the burden of proof lies for my arguments is that I have to prove that more than one of the items listed in the code was violated in order to prove that the entire section was violated. This argument makes no sense, as shown in the text below:

B. Approval Criteria. The City shall approve, approve with conditions, or deny an application for a variance *based on all of the following criteria*:

It is clear that if we consider the text in (B), that all 6 conditions must be met to approve the variance, because 5 out of 6 cannot be considered all of the criteria. In other words, if any one of the criteria is not met, the entire section fails. As such, the only proof needed to invalidate the variance is due to the lot configuration or other conditions of the site. Because of this, the statement at the bottom of page 3 should replace with the following (corrections made in bold):

Giving effect, as we must, to all parts of the ordinance, it is clear that the variance approvals at issue **DO NOT** meet the criteria, **because they do not satisfy the condition listed under 16.71.050 (B) (1).**

Response to the analysis provided by the city attorney

Although not required for this letter, the following will show how each of the arguments made in the letter from the city attorney are invalid.

Invalid Argument - Interpretation of code is too narrow.

Under the section labeled "*1. The City Correctly Interpreted the Applicable Criteria*", the city attorney first says that my arguments are too narrow because the wording in my initial letter said "due to the lot configuration", instead of the complete text of the code, "lot configuration, or other conditions of the site". The claim is that my letter ignores the "other conditions of the site".

As shown in the explanation of the attorney's tactic under the Background section earlier in this letter, the omission of the text "*other conditions of the site*" was intended to improve readability of the text, not to limit the interpretation of the code. Again, if you mentally substitute "lot configuration or other conditions of the site" in the original letter I sent to the city, there is no narrowing of meaning, as claimed by the attorney.

Invalid Argument - Variances are necessary due to lot configuration and other conditions of the site.

For each variance in which this argument is used, the city's attorney claims that the variances were required due to the lot configuration and other conditions of the lot. As shown in the original letter I sent to the city, the variances were approved due to the desired use of the lot, not because of the lot configuration and other conditions of the site.

As can be seen in the various examples, the city and the city attorney have difficulties not just in their interpretation of the code, but also have problems in providing accurate information and relevant information. Oversimplification during their evaluation of the code has resulted in the incorrect interpretation of the code.

#1: Claims for VAR-01-13 for the Sunnyside Plaza and Bank

To back up this argument for the bank, the city attorney said that the FAR variance would require a 14,000 square foot bank, and under the city's parking code, would require 90 parking spaces. This is yet another example of incorrect information and an attempt to misrepresent the facts in this case.

Item #1: Without the FAR variance, the bank would not require the 90 stalls that the attorney claims in his letter. The staff report shows that a bank would require 60 stalls. Although this might be considered a typo, the other incorrect information in this letter indicates to me that it was an intentional exaggeration to try and help prove their point.

The attorney fails to mention that there is some leeway before a Class C variance is required; otherwise a Class A or Class B variance could be used. In this case, the FAR class C variance is required because the FAR is more than 20% from the base code. Rather than a 14,000 square foot building required to satisfy FAR requirements, the building could be as 20% smaller, or 11,200 square feet, could have been done using a Class B variance.

The attorney also fails to mention that in order to satisfy the FAR requirements of the site that the building can be more than one story tall. The building standards allow buildings of up to 45 feet high, enough to build a 3- or 4-story building. In addition, a Class C variance is required only if the code is exceeded by 20%. If the developer used the same footprint, but built multiple stories, no Class C FAR variance would have been necessary.

The maximum parking stalls is reduced significantly if you bring both items into play. Rather than 60 stalls for a 14,000 square foot building, they could build a 11,200 square

foot building that would require only 39 parking spaces, with no Class C variance required, assuming that the building had the same parking requirements. See item #2 for more information.

Item #2: The statements by the city staff and attorney assume that the only allowed use for the lot is for a drive-through bank. That is simply not true. There are many other allowed uses for this site that must be considered prior to limiting the actual use to a drive-through bank, as show in Table 16.23.010-1 Mixed Use Districts (MUC, MUE, RCMU) Permitted Uses.

In fact, during one of the public meetings for the bank, one of the Planning Commissioners stated that the surrounding neighborhood would probably not want a 2-story office building, which would have easily fit on the lot. Note that this was not a statement that any of the neighbors had made. Also note that no arguments could be made refuting the commissioner's statement because public testimony had been closed at that point. This is just another example of the city siding with the developer at the expense of the surrounding neighborhood.

If an office building was planned, rather than a bank, then no Class C variance would have been needed for parking, because the code allows for a 20% difference without submitting a Class C variance. Because of this allowance, only 21 parking spaces would have been necessary. The proposed bank had space for 21 parking spaces. With the elimination of the drive-through, there would be more than enough space to put the extra parking spaces for a 2-story office building, with room to spare.

Although a 2-story office building may not be desired by the developer, there is nothing in the Class C variance code that suggests the developer's *desires* for a specific building structure has any impact as to whether or not the variances can be approved.

Item #3: The city staff and attorney state that the site will not support the required parking stalls. This statement is not entirely correct, because once again, they are suggesting that the only allowed use of the lot is a drive-through bank. The amount of parking depends on the type of building on the site. As can be seen in Table 16.43.030-1 (Parking Standards), the parking requirements vary widely. For example, no parking spaces are required for a public park, and only 2.3 spaces are needed for office buildings.

Because a FAR variance is not required for all uses of the lot, the allowed uses are restricted to those in which a variance is not required. If the city were to allow a bank on this site, they would also have to make a comparison to make sure the FAR variance would not exceed a parking variance. In the case of the bank, the FAR variance is 72% smaller than the allowed building size.

#2: Claims for VAR-03-13 for the McDonalds at SE 119th and Sunnyside

The city's attorney once again attempts to show that the only possible use of the land is a drive-through restaurant. This demonstrates a tactic used by many politicians - repeat

something enough and people will start to believe it. As in the case of the bank, arguments used by the city's attorney are not valid.

Item #1: FAR requirement

The city stated in their response that to avoid the variance for the FAR, the building would have to be 13,000 square feet. This is simply not true. Based on the code, a Class C variance is required only if the code is exceeded by 20%; anything less would require a Class A or a Class B variance.

Using the 20% guideline, the building could have been as small as 10,400 square feet (80% of 13,000) before a Class C Variance was required.

Item #2: Parking spaces.

As mentioned earlier in this letter for the bank, the developer had many other alternative buildings to choose from as show in Table 16.23.010-1 Mixed Use Districts (MUC, MUE, RCMU) Permitted Uses. They were not restricted to building a drive-through restaurant on the lot; they had many other options for development.

In this case, the developer chose a type of building that requires the second largest number of parking spaces of all building types allowed in the MUC zone. It is the conditions of the *desired* development, not of the land, that would cause a variance on the lot, so the variance should not have been approved.

The city requires 9.9 spaces for a drive-through restaurant, far more than even the bank to the north of the property, and the second-largest amount of parking spaces per square foot of building required in Happy Valley. The only higher requirement for parking is for a restaurant without a drive-through. As with the bank, the developer chose to ignore every other use allowed in the MUC zone, and chose to pick the use that had the second largest requirement for parking of the MUC zone.

As with the bank, the developer could have built multiple story building to satisfy the FAR requirement. In this case, however, the building would have never supported the number of parking spaces for a drive-through restaurant. The only alternative would be to build a different type of building, rather than a drive-through restaurant.

An alternative use allowed by the zoning would have been a theater, which requires only 0.3 parking spaces for each 1,000 square foot of building. This would have required just 4 parking spaces.

The developer should not have been allowed to choose a building that required 33 times more parking than other uses unless the lot size supported the extra parking spaces.

Item #3: Site Layout.

The city further argues that the access to the McDonalds required a large private drive which reduced the amount of property that was buildable. However, they completely

ignore the fact that a smaller variance that would not have required a Class C variance could have been made on the property.

As shown above, a Class C variance requires a 20% or more variance from the base code. Because of that, the structure could have been as small as 10,400 square feet without requiring a Class C variance. As with the bank, the developer had the option of building up to 45 feet high, allowing a 2- or 3-story structure on the lot.

The developer could have easily built a 2-story drive-through bank, a single-story theater, or even a park on this lot with absolutely no need for any Class C variance. In fact, no variances at all (class A, B or C) would have been needed with a theater or a park.

It is the responsibility of the developer to find a use that fits on the lot. It is the city's responsibility to ensure that the laws are enforced, and that only the uses that actually fit on a property are allowed. Just because a use is allowed in a zone doesn't mean it must be allowed if it will not fit in the lot provided.

#3: Claims for VAR-02-14 for the Walgreen at 11995 SE Sunnyside Road

As with the bank and McDonalds, the city approved the Class C variance without considering alternate uses of the lot. The arguments supplied are for a specific use of the property, not for conditions of the lot.

Item #1: FAR requirement

The city stated in their response that to avoid the variance for the FAR, the building would have to be 19,500 square feet. This is simply not true. Based on the code, a Class C variance is required only if the code is exceeded by 20%; anything less would require a Class A or a Class B variance.

Using the 20% guideline, the building could have been as small as 15,600 square feet (80% of 19,500) before a Class C variance was required.

Item #2: Parking spaces.

Once again, the attorney mentions the requirements for a specific building type, and completely ignores every other allowed building type on the lot. In their own words "*The lot in this case would not support this type of building and parking configuration*". By their own admission, the lot does not support this particular type of building and parking.

The code requires that the land be used in such a manner to minimize variances. One way to do that is to build a different type of building that does not require so many parking spaces. Another way to minimize variances would be to build a 2-story building.

The staff report says "The applicant has proposed 58 parking stalls as part of the 14,500 square-foot "Walgreens" and would not have enough land area to design a 78-stall parking lot in conjunction with a 19,500 square-foot *single-story* structure..." (emphasis added). Because a 2-story structure would have easily allowed the development without

the FAR variance and without the retaining wall variances, both variances should have been denied.

Item #3: Retaining Wall

Any retaining wall over 8 feet tall requires a variance. However, because there was an alternative to a single wall (a tiered wall is even listed in the code), the variance should have been denied.

The developer claimed that they could not encroach on the neighboring property to install the necessary retaining wall. They did not discuss the fact that the retaining wall could have been tiered by moving the base of the lower retaining wall into the parking lot, rather than moving the top of the retaining wall toward the neighboring property. In other words, they only considered using the neighbor's property, not the property they actually own.

If the retaining wall variance had been denied, then the developer would have been required to submit a Class A or B variance for parking. Because both Class A and Class B variances are less severe than the Class C variance, it was an alternative that should have been used instead.

As with all the other variances that were passed illegally, no alternatives were even considered prior to passing the Class C variances. In the case of the retaining wall, the code itself included an alternative to the variance (a tiered retaining wall). This would have required an additional 8 feet of space taken from the parking lot. Although this would have reduced the number of parking spaces, the number of reduced spaces would not have required a Class C variance.

Invalid argument - No jurisdiction based on definition of "Local Government"

By far the most outrageous and ridiculous claim made in the letter from the city attorney is that the LCDC does not have jurisdiction in this matter over the Planning Commission. Once again, the city attorney mentions a section of the law that does not apply, states facts that are unrelated to the case, and hopes I would be ignorant enough to fall for these tactics.

The first tactic used by the attorney is to attempt to show that the definition of "Local Government" in ORS 197.15(13) does not apply to Planning Commission. The hope of the city attorney was that the LCDC would agree with the argument that the Planning Commission is not part of the "Local Government" and by false association, also agree that city council and planning staff are not under the jurisdiction of the LCDC.

However, the city attorney did not include the text of the "Local Government" definition in the letter because it would show that the staff of the planning department, the planning commission, and the city council, would all fit under the definition.

As shown in the definition below, the LCDC has jurisdiction over the local government, which includes the city staff as well as the mayor and city council. In addition, the Planning Commission's sole purpose is performing land use planning functions, and is therefore an "*associate of local government performing land use planning functions*". There is no question that the Planning Commission is under the LCDC's jurisdiction.

ORS 197.15(13) : "Local government" means any city, county or metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025.

Another claim by the city's attorney is that the Court of Appeals has held for purposes of Chapter 186 that the term local government "*... does not necessarily refer to all levels of the government within a city, county, or special district.*" then gives the example of *Gage v City of Portland*.

The attorney fails to mention that in *Gage v City of Portland*, it was a hearings officer that was not considered part of the local government definition, and therefore that portion of the decision has absolutely no bearing on this enforcement request.

The attorney also failed to reveal in their letter was that this case was appealed to the Supreme Court, and that the decision by the Court of Appeals was not entirely upheld by the Supreme Court, which affirmed in part and reversed in part the decision of the Court of Appeals.

Even without any formal legal education, I know that the Supreme Court decisions override those of the Court of Appeals. Referencing an overridden solution is just another tactic used to try and convince me to drop this enforcement request to the LCDC.

The attorney's belief that a hearings officer's decisions cannot be overseen by the LCDC is important to keep in my with the most recent attempts by the city to move the responsibility of land use decisions from the Planning Commission to a hearings officer. As mentioned before, this is a blatant attempt to move land use decisions out of the oversight of the LCDC.

Other examples of lack of enforcement

There are only two properties near my house that have been developed over the past year that are in Happy Valley - a triplex and a McDonalds.

In the case of the triplex, numerous violations of code were present from the beginning of the project through completion of the project. The violations began when the city staff approved the building and landscaping plans submitted by the developer. The city staff did not enforce the requirements for the landscaping plans, and ignored about half of the requirements of the plans required for the design review.

Because of the incomplete plans, the developer built illegal retaining walls without required permits, cut down trees without regard to the tree-cutting code, and added

landscaping that does not comply with the code and also violates conditions of approval of the design review, and add fencing that does not comply with the code.

Rather than a triplex with a small grass lawn that matches the surrounding properties, the entire lot is covered with bark, in violation of a condition of approval that specifically prohibited the use of bark as a groundcover. Instead of a solid 10 foot buffer between the triplex and the northern property line, there is a 5 foot buffer with a path and fences illegally attached to the neighbor's fence.

In the case of the McDonald's, the city staff recommended that one of the setback requirements at the frontage of the building be allowed to be ignored with the condition that the developer enhance the bus stop in front of the McDonald's. After the McDonald's was open for business, the bus stop had not been enhanced.

When I inquired as to when the enhancements would be completed, I was told verbally that the enhancements were cancelled because TriMet requested the enhancements not be made due to the increased cost of maintenance.

Although no Class C variance may have been needed to grant the exception listed above, it is yet another example of the city ignoring not just the laws on the books, but of their own conditions added to the development process.

The city is also currently refusing to enforce the code related to the Steep Slopes Development Overlay ("SSDO"). The violations related to the SSDO are so numerous and severe that a separate enforcement request will be made to address the issues.

Summary

Class C variances can only be made if the *lot configuration or other conditions of the site* demands it, only if the variance is not used to circumvent existing code, and only if it is the minimum change that could be allowed. ***Tenant needs, property values, developer desires and market conditions are not listed as acceptable criteria for approval.***

If the variance is required due to the actions of the developer, such as selecting buildings that require more parking than other types of buildings, or redrawing lot boundary lines that create unbuildable lots, then it is a self-imposed hardship caused by the landowner, and therefore cannot be approved. In every one of these cases described in this letter, that is exactly what happened.

If any other designs can be made for the lots that do not require the Class C variance, then the least allowed variance (i.e., NO variance) is required. Therefore, if there are any other options available to the developer that do not require a variance, the variance must be denied.

If the city's argument that a variance can be approved for any use allowed by the zoning is allowed to stand, then any developer, on any lot, in any area would be allowed to do anything with any lot, no matter how small or how large the lot is.

It's one thing to approve a variance to allow development of a lot for uses that are supported by the surrounding neighbors. It's quite another to approve a variance for a development that the majority of the neighbors do not want.

In the case of the bank and McDonalds, there was significant resistance from the surrounding property owners, which was demonstrated by the signing of petitions by more than 75% of the occupied houses in the neighborhood.

The city listened to but refused to consider the opposition, or any of the testimony provided against the bank or the McDonalds. A very likely contribution to this is that only 5 of these property owners opposed to the developments were within the city limits. The remaining 25 property owners that opposed these developments were in the unincorporated Clackamas County.

The city approved the bank and McDonalds with 100% opposition of the Happy Valley homeowners surrounding the property.

The city must not be allowed to ignore land use laws. If this is allowed to continue, then it disrupts the foundation of the law, and allows the city to violate nearly every one of the Oregon Land Use Goals setup by the state.

The LCDC has authority in periodic review process to require local government to add specific language or provisions to its land use legislation to assure compliance with

statewide goals and LCDC rules. (Oregonians in Action v. LCDC, 121 Or App 497, 854 P2d 1010 (1993), Sup Ct review denied).

Despite Happy Valley's belief that they can ignore established land use code, which they have been violating since at least 2009, they must comply with the rulings of the LCDC. Rather than obey the laws as written or change the decisions that violate current land use code, the planning department is instead attempting to re-word the existing code so that the actions that violated the code in the past will now be allowed.

Re-writing the land use codes so that prior illegal actions can be done should not be allowed. With the sheer number of potential violations of Class C variances, as well as other land use decisions, a review for the compliance of the laws is required as soon as possible.

Respectfully,



James Phillips
11800 SE Timber Valley Drive
Clackamas OR, 97086
503-698-4895

cc:

City of Happy Valley
16000 SE Misty Drive
Happy Valley, OR 97086

Attachments:

- (1) Initial letter to Happy Valley
- (2) Proof of mailing
- (3) Response from Happy Valley, including attachments
- (4) Proof #1: McDonalds and Bank variances were self-imposed due to desires of the developer, not due to lot configuration or other conditions of the site
- (5) Proof #2: Walgreens variances were self-imposed due to desires of the developer, not due to lot configuration or other conditions of the site
- (6) Chapter 16.32 - Steep Slopes Development Overlay
- (7) 16.23.010 Mixed Use Commercial and Employment Districts, which includes Table 16.23.010-1 Mixed Use Districts (MUC, MUE, RCMU) Permitted Uses, which shows the permitted uses of the MUC (multi-use commercial), the base zone for the bank, McDonalds and Walgreen buildings described in this letter
- (8) 16.43.030 Automobile parking standards, including Table 16.43.030-1 (Parking Standards), which shows minimum parking spaces required for each building type

Citizen's request letter

Initial letter to Happy Valley notifying them of my intent to petition the Land Conservation Development Commission for an enforcement order

November 16, 2014

City of Happy Valley
16000 SE Misty Drive
Happy Valley, OR 97086

Beery Elsner & Hammond
1750 SW Harbor Way, Suite 380
Portland, OR 97201-5106

Dear Sir or Madam:

As required by *ORS 197.319 Procedures prior to request of an enforcement order*, I am hereby notifying you of my intent to petition the Land Conservation and Development Commission for an enforcement order pursuant to ORS 197.319 to 197.335.

Requestor:

James Phillips
11800 SE Timber Valley Drive
Clackamas, OR 97086
503-698-4895

Affected Local Government:

City of Happy Valley
16000 SE Misty Drive
Happy Valley, OR 97086

This petition will be based on ORS 197.320 (6), which states:

A local government has engaged in a pattern or practice of decision making that violates an acknowledged comprehensive plan or land use regulation. In making its determination under this subsection, the commission shall determine whether there is evidence in the record to support the decisions made. The commission shall not judge the issue solely upon adequacy of the findings in support of the decisions;

Statement of facts

The City of Happy Valley has approved several Class C variances that should not have been approved. The variance requests were due to self-induced hardships from the developer caused by ignoring alternatives to their designs and focusing on tenant needs for the proposed buildings, not from the conditions of the lots.

Rather than follow the restrictions of *the lots* as required by the land use codes, the developer chose a design based on tenant needs. Although used as arguments for each of the Class C variances, the code makes no mention of tenant needs as being an acceptable criteria for approving Class C variances. In each case noted below, it is obvious that the Class C variances could be entirely avoided by using a different design.

The purpose of land use codes is to control development, and prevent specific undesirable development. By allowing the developer to submit a Class C variance merely because they want to develop for a particular tenant, or want to avoid building some other structure that would comply with the code violates the intent of the code. The code specifically states that the variance is required due to the conditions *of the lot*, not due to a developer's design to build a specific structure, or based on any future tenant needs.

The developer decided to design buildings and retaining walls that they knew did not comply with the code, based on future tenant requirements, then later submitted variances to get around their self-induced hardships based on tenant needs. This is clearly not the intent of the Class C variances, as shown in the code below.

16.71.050 Class C variances.

A. Applicability. Class C variance requests are those that do not conform to the provisions of Sections 16.71.030 and 16.71.040 (Class A and Class B), and that meet the criteria in subsections (B)(1) through (5) below. Class C variances shall be reviewed using a Type III procedure, in accordance with Chapter 16.61.

B. Approval Criteria. The City shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:

1. The variance requested is required due to the lot configuration, or other conditions of the site;
2. That the condition requiring the variance has not been intentionally created to circumvent the Land Development Code;
3. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use or development of adjacent property;
4. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the development provisions which are in question;
5. The variance will not result in violation(s) of any other adopted ordinance or Code standard; each Code standard to be modified shall require a separate variance request;
6. In granting the variance, the City Administrator or appropriate and designated body or agent may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this title.

(Ord. 406 § 1, 2010; Ord. 389 § 1(Exh. A), 2009)

The purpose of *Section 16.71.050 - Class C variance*, as shown in the code above, is to approve only if the variance is required due to *the lot configuration*. A Class C variance cannot be approved simply because the developer wants to build something that meets a tenant's needs but violates the code, or wants to avoid building something else that does not require a variance. This code is intended for true limitations *of the lot*; it is not designed to accommodate self-induced hardships based on tenant needs.

In the following cases, Class C variances were approved in violation of *Section 16.71.050 - Class C variances*. Both the planning department and the Planning Commission allowed these variances. These variances were not required due to the condition of the lot but were needed only to satisfy the developer's desire to build a specific building on

the site - for a specific tenant's needs. Alternative structures that could easily avoid the variance were available to the developer in each case. In all cases, the developer simply chose to ignore the available options.

Specific cases where *Section 16.71.050 - Class C variances* was abused are listed below. In all cases, there were alternatives to the design that would have avoided using the Class C variance. Because there were alternatives to each design, none of the variances were required by the conditions of the lot. All of these variances were self-imposed hardships based solely on the developer's future tenant needs, and should have been denied.

- **10/14/2014 - VAR-02-14 WALGREEN - 11995 SE Sunnyside Road**
Two variances approved in violation of 16.71.050 (B) (1), (2) and (4).
 - FAR variance approved when other buildings would comply with FAR requirements.
 - Retaining Wall variance approved when alternative retaining wall could have been built on site to avoid the variance.
- **02/11/2014 - VAR-03-13 MCDONALDS - 119th & SUNNYSIDE VAR-03-13**
FAR variance for McDonalds approved in violation of 16.71.050 (B) (1), (2) and (4). Lot supported other buildings that would comply with FAR requirements.
- **09/24/2013 - VAR-01-13 SUNNYSIDE PLAZA/BANK 122ND & SUNNYSIDE**
FAR variance for bank approved in violation of 16.71.050 (B) (1), (2), (3) and (4). Item (3) was violated in this case because no consideration was given to surrounding neighbors that opposed the bank.

Approvals of the FAR variances were not close to meeting code. In all cases, many other buildings and many other uses could have been made for the lot. The variances were needed only because a specific use was desired on the lot for a specific tenant; there are no items in the law that state Class C variances are allowed because of specific desired designs, tenant needs, property values or market conditions

In the case of the bank on 09/23/2013, a member of the Design Review board even made a comment that the developer had the ability to build a 2-story office building, but that the surrounding property owners would probably rather see a 1-story building. From this comment alone, it is clear that the Class C variance was not required because an alternative structure could be put on the lot.

In the case of the Walgreens on 10/14/2014, I testified to the Planning Commission during the variance meeting, and stated that the variances were not legal. I quoted the code of *Section 16.71.050 - Class C variances*, stating that no variance is allowed if any other option is available on the lot. I said that the variance violated parts (1) and (2) of the code and should be denied. At the end of my prepared testimony, I gave my personal reasons for not wanting the Walgreens.

When I was done with my prepared testimony, the Planning Commission completely ignored the legal arguments I presented, and instead focused their questions and comments on my personal reasons for not wanting the Walgreens. They stated that they could not dictate whether a Walgreens is allowed or not. Despite my efforts to try and

refocus their attention on *Section 16.71.050 - Class C variances*, they continued to focus on my personal reasons, not the legal arguments that I gave. They completely ignored that portion of my testimony, and approved the variance.

Corrective Action Sought

The following four corrective actions should be put in place to prevent non-compliance of *Section 16.71.050 - Class C Variances*. Whether intentional or not, the Happy Valley Staff and the Happy Valley Planning Commission have already allowed non-compliant Class C variances to be submitted and approved due to a mis-interpretation of the code. In each of the cases above, the code was applied to a specific design that was submitted. The intent of the code is to apply variances based on the conditions *of the lot*, not to the conditions of the submitted design or any tenant requirements or existing property values.

Corrective Action #1: Training to explain how to interpret and comply with *Section 16.71.050 - Class C variances*. The Happy Valley Staff and the Happy Valley Planning Commission made mistakes in testing for compliance of the code in the above examples, and in particular the variances approved for the Walgreens, due to their incorrect interpretation of the code.

In order to provide the proper enforcement of this code, the staff and board must be made aware that Class C variances in *Section 16.71.050 - Class C variances* are based on the conditions *of the lot*, not of the design submitted for the lot, tenant needs, property values or market conditions.

The mistake that was made was that the code and questions asked were based on the submitted design, not on the existing lot conditions. Although the variances that were approved were the minimum variances required for the submitted plans, they were not in compliance with *Section 16.71.050 - Class C variances* because they were not the minimum variance required for *the lot*.

When a design is submitted that does not comply with the code, if there are any other designs available that do not violate the code (whether or not the tenant wants them), then this is a self-inflicted hardship. All Class C variances that are requested for a self-inflicted hardship must be denied as soon in the process as possible.

Corrective Action #2: The Happy Valley Design Review Board and the Happy Valley Mayor and City Council need to be instructed to the interpretation of *Section 16.71.050 - Class C variances*, in case the subject is brought up to the Design Review Board or City Council. If any evidence shows that the variances do not comply with the code, the Design Review Board and City Council must consider the evidence.

In no case shall the Design Review Board or City Council be allowed to say that the variances are not part of the Design Review criteria. There are many items within the design review process that rely on the validity of any Class C variance. To consider these items unimportant goes against the intent of the land use code.

Corrective Action #3: In addition to the training above, additional questions need to be added to existing documents (such as the Class C variance request) to prevent this from happening in the future. Questions must be asked and answered at each step in the approval process to prevent non-compliant Class C variances from flowing through the process.

Although the current process of listing each individual item under *Section 16.71.050 - Class C variances* is intended to provide compliance with the code, the questions are not being asked appropriately to actually provide compliance. The current questions are being answered as if the code is based on the submitted design only. However, the code is based on the *lot conditions*, not the submitted design, so the current process is not testing the validity of the Class C variance as intended by the land use code.

Before any Class C variance can be accepted by the staff, the following questions must be asked about the variance requested. This will ensure that the *lot configuration*, not the submitted design, is the controlling factor behind the Class C variances. These questions must be included in the staff report submitted for the Class C variance when brought before the Planning Commission, as well as the design review submitted to the Design Review Board.

1. Can any other design (allowed in the current zoning of the lot) be used on the lot that will not require the Class C variance requested? If yes, then the variance must be denied because it is a self-imposed hardship, not a limitation of the lot configuration.
2. Does the site support any other designs (allowed in the current zoning of the lot) that do not require the Class C variance? If yes, then the variance must be denied because it is a self-induced hardship, not a limitation of the lot configuration.

If these questions are not included in the Class C variance request, or they are not included in the staff report to the Planning Commission when the variance is heard, or if they are not included in the design review submitted to the Design Review Board, or if the answers to any of these questions do not allow a Class C variance, then there is no choice but to deny the variance, and deny any design that relies on the Class C variance.

These questions must be asked when the Class C variance is submitted to the Planning Department staff, must be included as part of the documentation that will be submitted to the Planning Commission if a Class C variance is to be considered by the Planning Commission, and must be included as part of the documentation that will be submitted to the Design Review Board.

If the questions cannot be answered proving that the Class C Variance is appropriate for the lot, the variance shall be denied as early in the process as possible to eliminate the costs of attempting to approve a Class C variance that should not be passed and to avoid requiring the public to file appeals to decisions that should not have been allowed in the first place.

Corrective Action #4: For the properties that have been approved but have not yet been built, the variances that have been incorrectly approved must be invalidated, and any Design Review that has passed must be invalidated as well. The variance and design for the Walgreens must be invalidated immediately because the variances do not comply with the code. No action can be done for the McDonald's variance, because the building is complete and open for business. Although the developer has said that the bank is no longer going to be built, the variance and design review for the bank must be invalidated.

Pattern of non-compliance

The following facts indicate the pattern of non-compliance of the code. Segments from the staff reports in which the decisions were based are attached.

- (a) In all 3 cases, the pattern of non-compliance began with the Planning Staff's acceptance of the Class C variance, and continued with the Planning Commission's approval of the variances.
- (b) As shown above, at least 3 violations of the code occurred.
- (c) These violations occurred over a time period of slightly over 1 year.

Summary

Class C variances can only be made if the *lot configuration* demands it, only if the variance is not used to circumvent existing code, and only if it is the minimum change that could be allowed. ***Tenant needs, property values and market conditions are not listed as acceptable criteria for approval.***

If any other designs can be made for the lots that do not require the variance, then the least allowed variance (i.e., NO variance) is required. Therefore, if there are any other options available to the developer that do not require a variance, the variance must be denied.

Please take care of this matter as soon as possible. The continued non-compliance of this code cannot be allowed to continue.

Respectfully,

James Phillips
11800 SE Timber Valley Drive
Clackamas OR, 97086
503-698-4895

Attachments:

- (1) Walgreens variance approval criteria (pages 40-42 of Planning Commission Packet of 10/14/2014 - <http://www.happyvalleyor.gov/Archive.aspx?ADID=1067>)
- (2) McDonalds variance approval criteria (page 443-445 of Planning Commission Packet of 02/11/2014 - <http://www.happyvalleyor.gov/Archive.aspx?ADID=969>)
- (3) Bank variance approval criteria (pages 13-15 of Planning Commission Packet of 09/24/2013 - <http://www.happyvalleyor.gov/Archive.aspx?ADID=836>)

Proof of mailing

Proof of mailing of the Citizen's
Request letter to the City of Happy
Valley and to the city's attorney.
Beery Elsner & Hammond

City's Response Letter

Letter from Christopher D. Crean,
representative from Beery Elsner &
Hammond, responding to the citizen's
request letter



Beery Elsner
& Hammond LLP

January 13, 2015

SENT VIA FIRST-CLASS MAIL

Mr. James Phillips
11800 SE Timber Valley Drive
Clackamas, OR 97086

RE: Notice of Intent to File Petition for Enforcement Order Pursuant to ORS 197.319

Dear Mr. Phillips:

This firm represents the City of Happy Valley ("City"). We received your letter and accompanying materials dated November 16, 2014, regarding the City's alleged non-compliance with certain provisions of the Happy Valley Development Code ("HVDC"). Please accept this letter as the City's response.

In your letter, you allege the City engaged in a "pattern or practice" of making land use decisions that violate the City's acknowledged land use regulations when it approved three Class C variance applications. You argue that these approvals violate HVDC 16.71.050. Based on these alleged violations, you indicate you intend to initiate enforcement proceedings before the Land Conservation and Development Commission ("LCDC") unless the City undertakes three types of corrective action: (1) training in the correct interpretation of HVDC Section 16.71.050, (2) legislative amendments to the HVDC to ensure compliance with HVDC Section 16.71.050, and (3) invalidate the listed variance decisions.

For the reasons set forth below, the City does not agree that it has engaged in a "pattern or practice" of issuing land use decisions that violated the City's acknowledged land use regulations, that corrective action is either necessary or appropriate, or that "good cause" exists to "proceed on the petition." ORS 197.324. For these reasons, the City respectfully declines to undertake the corrective actions described in your letter.

Background

Your letter identifies three variance decisions that you believe were approved in error. These are:

1. Var-01-13 for the Sunnyside Plaza and Bank at the intersection of SE 122nd Avenue and Sunnyside Avenue. The application was approved by the City Planning Commission on September 4, 2013. The decision was not appealed to the City Council.
2. Var-03-13 for the McDonalds at the intersection of SE 119th Avenue and Sunnyside Avenue. The application was approved by the City Planning Commission on February 11, 2014. The decision was not appealed to the City Council.
3. Var-02-14 for the Walgreens at 11995 SE Sunnyside Road. The application was approved by the City Planning Commission on October 14, 2014. The decision was not appealed to the City Council.

An application for a Class C variance is subject to the City's "Type III" review process. HVDC Table 16.61.010-1 and 16.61.040. Under HVDC 16.61.040.A, the Planning Commission issues a decision following a public hearing. The Planning Commission's decision becomes final unless it is appealed to the City Council.

Under HVDC 16.71.050, "[t]he City shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:

1. The variance requested is required due to the lot configuration, or other conditions of the site;
2. That the condition requiring the variance has not been intentionally created to circumvent the Land Development Code;
3. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use or development of adjacent property;
4. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the development provisions which are in question;
5. The variance will not result in violation(s) of any other adopted ordinance or Code standard: each Code standard to be modified shall require a separate variance request;
6. In granting the variance, the City Administrator or appropriate and designated body or agent may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this title.

The purpose of the variance process is set forth in HVDC 16.71.010. It provides in relevant part: "The variance procedures provide relief from specific Code provisions when they have the unintended effect of preventing reasonable development in conformance with all other codes. The variance procedures are intended to provide flexibility while ensuring that the purpose of each development standard is met."

The Planning Commission found in each case that the variance met the criteria in 16.71.050. However, in your letter you assert that the City may approve a Class C variance "only if the variance is required due to *the lot configuration*." (Emphasis in original.) You then go on to argue in all three cases that the applicant failed to demonstrate that the variance was necessary due to the lot configuration and, for that reason, the application should have been denied. Although HVDC 16.17.050 lists six separate criteria which must be met in order to approve a variance, you have only expressed issue with the first, and as such the remaining five criteria are not addressed herein. For the reasons set forth below, these arguments lack merit and do not establish "good cause" to conclude that the City has failed to comply with its own code provisions.

Analysis

For the following reasons, your letter does not provide a basis for either corrective actions or enforcement proceedings: (1) the City decisions correctly interpret the applicable code language; (2) the Planning Commission's interpretation is supported by the text and context of the code language; (3) there is no evidence that the decisions violate the City's comprehensive plan and land use regulations; (4) LCDC only has authority to review the decision of a "local government" under ORS 197.320; and (5) a showing of "good cause" requires more than mere allegations.

1. The City Correctly Interpreted the Applicable Criteria

As noted, the approval criteria for a Class C variance are set forth in HVDC 16.71.050. Under HVDC 16.61.050.A.1 the City must find that the variance is necessary "due to lot configuration, or other conditions of the site." Despite the plain language of the ordinance, your letter focuses exclusively on the phrase "lot configuration" and ignores any discussion of "other conditions of the site." Accordingly, your interpretation of HVDC 16.71.050.B.1 is too narrow and your analysis of the City's findings is incorrect because you ignore the findings regarding the "other conditions of the site."

Giving effect, as we must, to all parts of the ordinance, it is clear that the variance approvals at issue meet the criteria.

- A. Var-01-13 for the Sunnyside Plaza and Bank at the intersection of SE 122nd Avenue and Sunnyside Avenue. As noted, the application was approved by the Planning Commission on September 4, 2013.

The Planning Commission adopted as its findings the September 24, 2013 staff report. The staff report found that the variance is due to factors such as "lot configuration," "site design," and "access restrictions." Exhibit 1, pp. 2, 5. In reaching this conclusion, the report examines and documents the unique requirements of the lot (the "size of the proposed development area"). The staff report points out that the minimum FAR would require a 14,000 square-foot bank, which under the City Code, would require 90 parking stalls. The staff report found that the site's size would not support such an arrangement. Furthermore, because of the lot's access restrictions, the tenant is required to construct a long driveway, which further impacts the land available for development, and hence the minimum FAR. Exhibit 1, p. 3. Accordingly, the staff report concludes that the variance is necessary due to lot configuration and other conditions of the site.

Therefore, the Planning Commission properly interpreted HVDC 16.71.050.B.1 and approved the variance based on the lot configuration (i.e., access restrictions and size) and other conditions of the site imposed by other City code provisions (i.e., parking stall requirements with larger buildings).

- B. Var-03-13 for the McDonalds at the intersection of SE 119th Avenue and Sunnyside Avenue. As noted, the application was approved by the Planning Commission on February 11, 2014.

Here too, the Planning Commission adopted as its findings the February 11, 2014, staff report. The staff report recommended approving the variance due to "site design and access restrictions." Exhibit 2, p. 2. Given the size of the lot, the applicant would need to propose a 13,000 square foot building to meet the minimum FAR requirements. The City Code requires buildings of that size to have 129 parking stalls. Exhibit 2, p. 3. The lot's size is not great enough to design a 129-stall parking area on the proposed development site, along with a building that meets the FAR standard. Exhibit 2, p. 3.

Furthermore, because of the site layout, the restaurant is proposed to be exclusively accessed by vehicles from the south. This access plan requires the construction of a relatively wide private drive, further reducing the area of the site that could be developed. Therefore, a 13,000 square foot structure is an unlikely development scenario due to the conditions of the site. Exhibit 2, p. 3.

The City granted the variance based on the lot configuration (i.e., access restrictions and size) and other conditions of the site imposed by other City code provisions (i.e., parking stall requirements with larger buildings).

- C. Var-02-14 for the Walgreen at 11995 SE Sunnyside Road. The application was approved by the City Planning Commission on October 14, 2014, and the decision was not appealed to the City Council.

Again, the Planning Commission adopted the findings in the October 14, 2014, staff report. The staff report recommended approving the variance based on a "combination of factors related to the proposed 'use' and the building/site design." Exhibit 3, p. 2.

Similar to the two other variances, the City found that because of the size of the lot, the applicant would need to propose a 19,500 square-foot drug store to meet the minimum FAR. However, with a 19,500 square foot drug store, the City would require 78 parking stalls. The lot in this case would not support this type of building and parking configuration. Therefore, because of the conditions of the lot and additional restrictions found in the City Code, the City granted relief from the FAR minimum requirement. Exhibit 3, p. 3.

In this case, the applicant also requested a variance for the retaining wall height. This variance is also due to the unique conditions of the lot: "the applicant has requested the retaining wall height variance to achieve a level development site that is at a similar elevation to that of Sunnyside Road." Exhibit 3, p. 3. As stated in the Design Review, "[t]he grade of the site necessitates the use of the wall to maintain support of the land." Exhibit 3, p. 31

As the findings in staff report indicate, both variances were due to a combination of factors, including lot configuration, building/site design and topography.

For these reasons, the record demonstrates that the City properly interpreted the ordinance in each case.

2. The City's Interpretation is Consistent with the Text and Context of the Ordinance

Both the text and context of HVDC 16.71.050 indicate the City Council intended the variance criteria should be read broadly to allow for reasonable development, and that the Council contemplated many possible reasons for granting a variance.

- (i) *The plain language of HVDC 16.71.050.B.1 Supports the Planning Commission's Interpretation*

Again, in your letter you repeatedly rely on a single phrase from HVDC 16.71.050.B.1 - that a variance may be approved "only if the variance is required due to the lot configuration," and ignore the remaining clause in the section - "or other conditions of the site." The code language is not ambiguous. According to the plain text of HVDC 16.71.050.B.1, the City may approve a variance for reasons other than lot configuration - i.e. based on "other conditions of the site."

Further, the phrase "other conditions of the site" is extremely broad and indicates that the City Council anticipated that many circumstances might warrant granting a variance and adopted language to accommodate these circumstances.

Ultimately, your preferred interpretation of HVDC 16.71.050B.1 simply ignores the plain text of the code section. If the City Council intended the code to prevent the City from granting a variance unless the site "does not support any other design," it could have added such language but did not do so. Instead, the City Council adopted broad language that allows a variance to be granted if necessary based on "lot configuration or other conditions of the site."

(ii) The context of the Code provision supports the plain language reading.

Other provisions of the same code section support a broad reading of HVDC 16.71.050. The "Purpose" section unmistakably establishes that the variance process is intended to provide flexibility and allow reasonable construction on the site: "The variance procedures are intended to provide flexibility while ensuring that the purpose of each development standard is met" (emphasis added).

Moreover, the entire purpose of the variance section is to provide "relief from specific Code provisions when they have the unintended effect of preventing reasonable development in conformance with all other codes." In contrast to this stated purpose, your interpretation of HVDC 16.71.050.B.1 unnecessarily restricts the City from providing relief where necessary and appropriate and would hamper reasonable development.

The "purpose" section makes clear that these three variances are exactly the type of situation the Council sought to address with the variance criteria. In all three cases, the other code sections regarding the minimum FAR, a minimum number of parking stalls for larger buildings, and the actual size of the lot created "the unintended effect" of preventing reasonable development. Accordingly, based on the lot configuration and other site conditions, the Planning Commission granted a variance to the FAR requirements to allow the development to proceed.

For these reasons, the text and context of HVDC 16.71.050.B.1 support the Planning Commission's interpretation of the ordinance.

3. Failure to Demonstrate Decision(s) Violate Acknowledged Land Use Regulations

In a nutshell, your letter simply expresses a subjective disagreement with the Planning Commission's interpretation of HVDC 16.71.050.B.1. A subjective disagreement with the City decisions is not the same as a determination by LUBA, or other review authority, that the decisions violate the City's acknowledged land use regulations. LUBA has statutory authority to review this type of land use decision and has never found the City's interpretation of its variance criteria to violate the City's comprehensive plan or land use regulations, in these cases or any other. Indeed, in these three cases, LUBA did not have the opportunity to review because the decisions were not appealed to the City Council.

Ultimately, a local decision is presumed correct unless and until reversed or remanded by LUBA or other review authority. Absent a determination by the City Council, LUBA, Circuit Court or other appropriate review authority that the Planning Commission's decisions improperly interpret the variance criteria, there is no evidence to support the allegation that the City is engaged in a "pattern or practice" of making land use decisions in violation of the City's comprehensive plan and land use regulations.

For this reason, there is no basis for enforcement proceedings under ORS 197.324.

4. ORS 197.324 Applies to a Decision of the "Local Government"

LCDC has authority to proceed on an enforcement petition when it has "good cause" to believe that a "local government" has engaged in an inappropriate pattern or practice of decision-making, ORS 197.320(6), 197.324. Significantly, a planning commission is not a "local government" for the purpose of this statute. As used in ORS 197.324, "local government" refers to the elected governing body, not an appointed committee.

As defined in ORS 197.015(13), a "local government" means a "city, county or metropolitan service district . . ." Consistent with this definition, the Court of Appeals has held for purposes of Chapter 197 that the term "local government" does not necessarily refer to all levels of government within a city, county or special district. For example, in *Gage v. City of Portland*¹ the court held that the term "local government" in ORS 197.829 means only the governing body.

With respect to ORS 197.320, the text of the statute indicates that the Legislature intended it to address actions taken by the governing body, not a lower board, commission or committee. The twelve types of "local government" actions listed in the statute can only be taken by the governing body of the listed local governments, including the section at issue here: ORS

¹ 319 Or. 308, 877 P.2d 1187, 1188 (1994)

197.320(6). Therefore, for the purposes of ORS 197.320, we conclude that “local government” means the “governing body.”

Because the Planning Commission is not the “local government,” in order to petition for an enforcement action under ORS 197.320, you first must appeal a Planning Commission decision to the City Council. Once the City Council makes a final decision, the decision falls within the auspices of “local government” action under ORS 197.320. However, until then, LCDC does not have authority under ORS 197.320 to pursue enforcement.

For this reason, LCDC does not have jurisdiction to review the Planning Commission decisions under ORS 197.320.

5. Applicable Legal Standard

ORS 197.324(2) allows LCDC to conduct a public hearing on an enforcement petition if the Commission determines there is “good cause” to believe that one or more of the circumstances described in ORS 197.320 exists – in this case, that the City has engaged in a “pattern or practice” of making land use decisions that violate the City comprehensive plan or land use regulations. ORS 197.320(6). “Good cause” is a delegative term that imparts on the LCDC “the authority, responsibility and discretion for refining and executing generally expressed legislative policy.”² Here, the legislative policy is to give effect to the statewide planning goals by ensuring that local government decisions are made in compliance with the acknowledged comprehensive plan and land use regulations. ORS 197.010(1)(c), 197.175(2)(d).

For the reasons described above, there is not “good cause,” indeed any cause, for LCDC to conclude that the City is engaged in a pattern or practice of making land use decisions that violate the City’s acknowledged comprehensive plan or land use regulations. Generally, “good cause” is shown “where a petitioner demonstrates, through specific allegations, that there is reason to believe that he may be entitled to relief.”³ Here, you fail to show any “reason to believe” you should be entitled to relief. As noted, none of the decisions were appealed to either the City Council or LUBA, so there has been no determination by a body with review authority over these decisions that they were in any way improper. Moreover, the findings in each case expressly describe the variance criteria and explain why the evidence demonstrates that the criteria are met. You simply disagree with the findings and the Planning Commission’s interpretation of the development code text, in which case you should have appealed the decisions to the City Council. Having failed to seek review of the decisions at the appropriate

² *Springfield Education Assoc. v. Springfield School Dist.*, 290 Or 217, 224–228, 621 P2d 547 (1980). “Whether certain facts are within the intended meaning depends upon the policy that inheres in the term by its use in a statute which is intended to accomplish certain legislative purposes.”

³ *Moyn v. Czerniak*, No. CIV 02-10-JE, 2004 WL 1293920, at *1 (D. Or. June 10, 2004).

January 13, 2015
Page 9

time and in the appropriate manner, you now seek to invoke LCDC's enforcement authority as a means of collaterally attacking these final land use decisions. In short, you have not provided "reason to believe" the City has failed to comply with its acknowledged land use regulations sufficient to warrant enforcement proceedings under ORS 197.324.

Conclusion

For the reasons described above, we conclude that the City has not engaged in a "pattern or practice" of issuing land use decisions that violate the City's acknowledged land use regulations, that "good cause" for enforcement proceedings exists, or that corrective action is either necessary or appropriate. For these reasons, the City respectfully declines to undertake the corrective actions described in your letter.

Sincerely,



Christopher D. Crean

CDC/kkb

Attachments

cc: Jason Tuck, City Manager – without attachments
Michael Walter, Community Development Director – without attachments

City's response letter Enclosure #1

Planning Packet for Planning
Commission Variance Meeting

VAR01-13

Variance for Bank

Floor Area Ratio ("FAR") Variance

Note: This cover sheet was not included in the original mailing from the city.

Mayor
Honorable Lori DeRemer



City Manager
Jason Tuck

CITY OF HAPPY VALLEY

STAFF REPORT TO THE PLANNING COMMISSION

CLASS "C" VARIANCE APPLICATION

FLOOR AREA RATIO (VAR-01-13)

SEPTEMBER 24, 2013

City staff has reviewed the subject application requesting a Class "C" variance to the minimum floor area ratio (FAR) required for nonresidential development within the City's Mixed Use Commercial land use district. The proposed variance is to allow for an approximately 4,000 square-foot bank, which is currently under Design Review, to have a floor area ratio of 0.07:1, which falls below the minimum requirement of 0.25:1. The subject site can be described as Clackamas County Assessor Map Numbers 22E03AA: Tax Lots 400 and 500. It has been determined that the proposed application (VAR-01-13) complies with the requirements of the City's Land Development Code (LDC). **Therefore, staff recommends the Planning Commission APPROVE the applicant's proposal subject to the findings and conclusions in this report.**

I. GENERAL INFORMATION

APPLICANT AND PROPERTY OWNER:

RPS Development Company, Inc.
2653 High Heaven Road
McMinnville, OR 97128

APPLICANT'S REPRESENTATIVE:

Cardno
5415 SW Westgate Drive, Suite 100
Portland, OR 97221

DEVELOPMENT DISTRICT:

The subject site has a plan designation/land use zone of Mixed Use Commercial (MUC). The MUC designation/zone was applied to the site when the subject properties were annexed into the City in 2009.

16000 SE Misty Drive
Happy Valley, Oregon 97086
Telephone: (503) 783-3800 Fax: (503) 658-5174
Website: www.ci.happy-valley.or.us

PROPERTY LOCATION:

The subject property is located north of the intersection of SE 119th Drive and SE Sunnyside Road, and is further described as Clackamas County Assessor Map Numbers 22E03AA: Tax Lots 400 and 500.

APPLICABLE CRITERIA:

Sections 16.23.010 (Mixed Use Commercial and Employment Districts) and 16.71.050 (Class "C" variances) of Title 16 of the City's Municipal Code ("Development Code").

EXHIBITS:

1. Staff Report and Findings of Fact
2. Application and Narrative
3. Materials submitted by the Applicant, including:
 - A. Vicinity and Site Map
 - B. Existing Conditions Plan
 - C. Preliminary Site Plan
 - D. Future Development Plan
4. Public Comments

OBSERVATIONS:

BACKGROUND:

- The applicant has proposed the subject variance request to facilitate the Design Review of a 4,000 square-foot bank. A public hearing will be held before the City's Design Review Board to evaluate the aforementioned bank's building design and site improvements (landscaping, parking, access drives, etc.) on September 30, 2013 (Local File Number: DR-04-13). The applicant intends to further develop the subject site beyond the bank project and has provided a future development plan to illustrate how the southern portion of the property could develop. It should also be noted that the applicant has processed a lot line adjustment with the City to reconfigure the boundary between Tax Lots 400 and 500 (previous configuration is shown in Exhibit 3B and the revised boundary is shown in Exhibit 3C).

PROPOSED VARIANCE:

- Per Section 16.71.050 (Class "C" Variance) of the City's Development Code, the applicant is proposing a variance to the City's requirements found in Table 16.23.010-2 (Development Standards for MUC, MUE and RCMU Districts) specifically in regard to the minimum FAR for nonresidential development, which per this code section is 0.25:1. This variance is being requested due to the proposed bank having a projected FAR of 0.07:1. The proposed FAR is due to a combination of factors related to the site design and access restrictions.

- Given the size of the proposed development area, the applicant would need to propose an over 14,000 square-foot structure to meet the minimum FAR required by the Development Code. The Development Code would "in-turn" require a 14,000 square-foot bank to have approximately 60 automobile parking spaces. The applicant has proposed 19 parking stalls as part of the 4,000 square-foot bank and would not have enough land area to design a 60-stall parking lot on the proposed development site. Furthermore, the bank is proposed to be located in the northern portion of the subject site and is required to be exclusively accessed by vehicles from the south, via SE Sunnyside Road (Exhibit 3C). This access plan requires the construction of a relatively long private drive, further reducing the area of the site that could be developed as the location of a parking area or building footprint, making the 14,000 square-foot bank an unlikely development scenario on the subject site. To facilitate a development scenario where the applicant meets the minimum parking requirements of the Development Code, while still provided adequately sized drive isles/vehicular maneuvering areas and a one-story building that is not "oversized" when compared to the structures in the surrounding neighborhood this variance application was proposed. Staff concurs with the applicant that the proposed Class "C" variance is appropriate for the subject development and has therefore recommended approval.

PUBLIC COMMENTS:

- The City's Planning Division received several letters and a petition signed by residents in the area of the subject site, all in opposition of the proposed bank. These letters and the petition are included within this report as Exhibit 4.

II. FINDINGS OF FACT

CITY OF HAPPY VALLEY DEVELOPMENT CODE:

The following sections of Title 16 of the Happy Valley Municipal Code (Land Development Code -LDC) are applicable to this request:

"16.23.010 Mixed Use Commercial and Employment Districts.

[...]

C. Development Standards. The development standards in Table 16.23.010-2 apply to all uses, structures, buildings, and development in the MUC, MUE and MUE-NC Districts.

Table 16.23.010-2 Development Standards for MUC, MUE and RCMU Districts

Standard	MUC	MUE	RCMU
<i>Residential density:¹</i>			
<i>Low density (maximum)</i>	<i>24 du/net acre</i>	<i>24 du/net acre</i>	<i>24 du/net acre</i>
<i>Low density (minimum)</i>	<i>15 du/net acre²</i>	<i>15 du/net acre²</i>	<i>15 du/net acre²</i>
<i>Medium density (maximum)</i>	<i>34 du/net acre</i>	<i>NA</i>	<i>34 du/net acre</i>
<i>Medium density (minimum)</i>	<i>25 du/net acre²</i>	<i>NA</i>	<i>25 du/net acre²</i>
<i>High density (maximum)</i>	<i>50 du/net acre</i>	<i>NA</i>	<i>50 du/net acre</i>
<i>High density (minimum)</i>	<i>35 du/net acre²</i>	<i>NA</i>	<i>35 du/net acre²</i>
<i>Lot size (minimum)</i>	<i>Variable³</i>	<i>Variable³</i>	<i>Variable³</i>
<i>Lot width (minimum)</i>	<i>Variable³</i>	<i>Variable³</i>	<i>Variable³</i>
<i>Lot depth (minimum)</i>	<i>Variable³</i>	<i>Variable³</i>	<i>Variable³</i>
<i>Floor area ratio</i>			
<i>Nonresidential FAR (minimum)</i>	<i>0.25:1⁴</i>	<i>0.25:1⁴</i>	<i>0.25:1⁴</i>
<i>Nonresidential FAR (maximum)</i>	<i>5:1</i>	<i>2:1</i>	<i>5:1</i>
<i>FAR for mixed use building with residential uses (minimum)</i>	<i>0.25:1</i>	<i>0.25:1</i>	<i>0.25:1</i>
<i>FAR for mixed use building with residential uses (maximum)</i>	<i>5:1</i>	<i>3:1</i>	<i>5:1</i>
<i>Landscaping (minimum)</i>	<i>Variable⁵</i>	<i>Variable⁵</i>	<i>Variable⁵</i>
<i>Building setbacks (minimum)</i>	<i>Variable³</i>	<i>Variable³</i>	<i>Variable³</i>
<i>Building height (maximum)</i>	<i>65 feet³</i>	<i>65 feet³</i>	<i>Variable³</i>
NOTES:			
¹ Density calculations shall be made pursuant to Section 16.63.020(F).			
² Minimum density of eighty (80) percent of each sub-area is required.			
³ Building height is measured pursuant to Chapter 16.12, Definitions. Standards are flexible and shall be determined through the master plan process or a design review.			
⁴ Must include a shadow plan to establish future development.			
⁵ Pursuant to Section 16.42.030, fifteen (15) percent of the net developable area must be usable open space.			

[...]

Staff Response:

The applicant has provided a "shadow plan" for the development of the remaining portion of the subject site (Exhibit 3D), that illustrates the "constraints" of the proposed bank property, due to the applicant's future development plans. With approval of the subject variance, the minimum FAR of 0.25:1 will be reduced to 0.07:1. Therefore, per the provisions of this variance, this criterion is addressed by the subject request.

16.71.050 Class C variances.

A. Applicability. Class C variance requests are those that do not conform to the provisions of Sections 16.71.030 and 16.71.040 (Class A and Class B), and that meet the criteria in subsections (B)(1) through (5) below. Class C variances shall be reviewed using a Type III procedure, in accordance with Chapter 16.61.

Staff Response:

The applicant's proposal is for a variance to a standard found within the Development Code and is for an amount that exceeds the "thresholds" of a Class "A" or "B" variance and therefore requires a Class "C" variance. As a result, the subject variance request is being processed by means of the City's Type "III" review procedure, which requires a public hearing before the City's Planning Commission. This criterion is satisfied by the subject request.

B. Approval Criteria. The City shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:

1. The variance requested is required due to the lot configuration, or other conditions of the site;

Staff Response:

The variance requested is due to combination of factors, including lot configuration and access restrictions. This criterion is satisfied by the subject request.

2. That the condition requiring the variance has not been intentionally created to circumvent the Land Development Code;

Staff Response:

The challenges associated with lot configuration and access restrictions were not created to circumvent the provisions of the Development Code. This criterion is satisfied by the subject request.

3. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use or development of adjacent property;

Staff Response:

The variance will not alter the essential character of the neighborhood because the reduced building footprint of the bank, a result of the proposed FAR variance, would work to provide for a smaller-scale building that will better "fit" into the surrounding neighborhood. Furthermore, the proposed variance will not impair the appropriate use or development of adjacent properties as it only relates to the FAR of the bank. This criterion is satisfied by the subject request.

4. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the development provisions which are in question;

Staff Response:

The proposed variance represents a 70 percent deviation from the applicable minimum FAR requirement, requiring the applicant to submit for a Class "C" variance. Due to the length of the access drive and the size of the parking lot associated with the 4,000 square-foot bank, the requested variance is in an amount that is the minimum necessary to facilitate the bank project. This criterion is satisfied by the subject request.

5. The variance will not result in violation(s) of any other adopted ordinance or Code standard; each Code standard to be modified shall require a separate variance request;

Staff Response:

The proposed variance does not result in any other violation, no other standard requires variation. This criterion is satisfied by the subject request.

6. In granting the variance, the Planning Official or designee may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this title."

Staff Response:

No conditions are proposed. This criterion is not applicable to the subject request.

III. CONCLUSION AND RECOMMENDATION

The applicant has submitted an application for a Class "C" variance that will fulfill the criteria associated with the applicable policies and sections of the Happy Valley Comprehensive Plan and Development Code. Therefore, based on the findings of fact, the conclusionary findings for approval and the materials submitted by the applicant, staff hereby recommends that the Planning Commission **approve** VAR-01-13.

DESIGN REVIEW II APPLICATION



City of Happy Valley
16000 SE Misty Drive
Happy Valley, Oregon 97086
Phone: 503-783-3800 Fax: 503-658-5174

<input type="checkbox"/> Comprehensive Plan/ Zoning Map Amendment	<input type="checkbox"/> Master Plan	File No: _____
<input type="checkbox"/> Conditional Use Permit	<input type="checkbox"/> Temporary Use Permit	Date Rec'd: _____
<input type="checkbox"/> Subdivision	<input type="checkbox"/> Design Review I	
<input type="checkbox"/> Environmental Review Permit	<input checked="" type="checkbox"/> Design Review II	FEE: \$ _____
<input type="checkbox"/> Planned Unit Development	<input checked="" type="checkbox"/> Property Line Adjustment	Receipt No: _____
<input type="checkbox"/> Partition	<input type="checkbox"/> Other _____	Staff: _____
<input checked="" type="checkbox"/> Variance		

APPLICANT INFORMATION

Proposed change:

Class C variance request to the 0.25:1 minimum FAR requirement
The proposed FAR is 0.07 for the bank pad.

NAME OF APPLICANT: RPS Development Company, Inc Attn: Alan Roodhouse

Mailing Address: 2653 High Heaven Rd City: McMinnville St OR Zip 97128

Applicant is: Legal Owner Agent

Phone Number of Applicant: Work (503) 435-4907 Home _____

Name of Contact Person, (if other than applicant) Thatch Moyle Cardno _____

Mailing Address 5415 SW Westgate City: Portland St OR Zip 97221

Phone Number of Contact Person: work (503) 419-2500 Home _____

Site Address: _____

Legal Description T 2S R 2E Section 03 Tax Lot(s) 0400, 0500

Present use of property: Vacant with outbuilding located at northern property

Method of Sewage Disposal: _____

Water Supply: _____

Required Attachments (see attached listing)

I hereby certify the statements contained herein, along with the evidence submitted, are in all respects true and correct to the best of my knowledge.

Alan Roodhouse _____
Owner's Signature Applicant's Signature

Date: 7-25-13 Date: _____

The **Applicant's Statement of Disclosure of Interest** must be completed and included with any application for Comprehensive Plan, Zoning Map Amendments, Variances, Conditional Use Permits, Partitions, Subdivisions, Planned Unit Developments and all Appeals.

INTRODUCTION

GENERAL INFORMATION

Applicant: RPS Development Company, Inc
2653 High Heaven Road
McMinnville, OR 97128
Contact: Alan Roodhouse

Applicant's Representative Cardno
5415 SW Westgate Dr, Suite 100
Portland, OR 97221
(503) 419-2500 phone
(503) 419-2600 fax
Contact: Thatch Moyle, AICP
thatch.moyle@cardno.com

Tax Lot Information:	Map	Tax Lots
	22E03AA	0400 & 0550

Location: 11899 & 11965 SE Sunnyside Road in Happy Valley, Oregon within Clackamas County.

Generally bounded by SE Sunnyside to the south, SE 122nd Avenue to the east, SE Forest Creek Court to the west, and SE Shady Meadow Court to the north.

Current Zoning Designation: Mixed Use Commercial (MUC)

Project Site Area: 2.61 Acres

SUMMARY OF PROPOSAL

The Sunnyside Plaza commercial project represents a 2-phase development project for a site located within both the City of Happy Valley and Clackamas County. Phase 1 focuses on the western portion of the site, directly north of SE Sunnyside Road and just east of the SE Forest Creek Court cul-de-sac. The proposal includes a commercial bank pad and a future retail pad. The first building, a 4,000 SF bank pad, is located at the northern end of the site, with primary access also from SE 119th Drive. The second portion of the site is a future retail pad located at the south end of the site, adjacent to SE Sunnyside Road. Accompanying drive aisles, parking stalls, are provided for the bank pad, while the access aisle does allow for connection to the future retail pad. Code compliant landscaping, lighting, and pedestrian access are also provided and noted on the attached plan set included with this project narrative.

This proposal is subject to the Design Review Major submittal requirements. In addition, the applicant is filing for a property line adjustment (PLA). All application and submittal items are included with this project narrative, along with the required fees for processing.

TITLE 16 LAND DEVELOPMENT CODE

ARTICLE 16.2 LAND USE DISTRICTS

16.23.010 Mixed Use Commercial and Employment Districts.

B. Permitted Uses. Table 16.23.010-1 identifies the land uses that are allowed in the MUC, MUE and RCMU Districts. [complete table omitted from this narrative]

Table 16.23.010-1 Mixed Use Districts (MUC, MUE, RCMU) Permitted Uses [table reduced for this narrative]

<i>Use</i>	<i>MUC</i>
Coffee shops, cafés, sandwich shops and delicatessens	P
Drug stores	P
Restaurants full service	P
Restaurants—Drive-through	P
Retail and service commercial uses similar to those above but not listed elsewhere in this section upon administrative determination through the design review process	P
Professional and administrative offices	P
Medical office buildings	P

Response: The proposed bank pad is a permitted use within the MUC mixed-use district, while the proposed future retail pad will likely be a use summarized in the above table which is permitted outright.



C. Development Standards. The development standards in Table 16.23.010-2 apply to all uses, structures, buildings, and development in the MUC, MUE and RCMU Districts.

Table 16.23.010-2 Development Standards for MUC, MUE and RCMU Districts

<i>Standard</i>	<i>MUC</i>
Lot size (minimum)	Variable ³
Lot width (minimum)	Variable ³
Lot depth (minimum)	Variable ³
Floor area ratio	
Nonresidential FAR (minimum)	0.25:1 ⁴
Nonresidential FAR (maximum)	5:1
FAR for mixed use building with residential uses (minimum)	0.25:1
FAR for mixed use building with residential uses (maximum)	5:1
Landscaping (minimum)	Variable ⁵
Building setbacks (minimum)	Variable ³
Building height (maximum)	65 feet ³

NOTES:

¹ Density calculations shall be made pursuant to Section 16.63.020(F).

² Minimum density of eighty (80) percent of each sub-area is required.

³ Building height is measured pursuant to Chapter 16.12, Definitions. Standards are flexible and shall be determined through the master plan process or a design review.

⁴ Must include a shadow plan to establish future development.

⁵ Pursuant to Section 16.42.030, fifteen (15) percent of the net developable area must be usable open space.

Response: The new proposed lot dimensions shown on the property line adjustment (PLA) preliminary plat (Sheet C1.1) show a lot size of 1.328 acres for Parcel 1 and 1.183 acres for Parcel 2. Generally, the minimum lot width is approximately 40-feet for Parcel 1 and 200-feet for Parcel 2. The minimum lot depth for Parcel 1 is 84-feet, while Parcel 2 is 191-feet. The proposed bank has an FAR of 0.06, below the 0.25:1 FAR minimum requirement. A Class C variance is included with this application to address the FAR requirement.

As shown on Sheet C2.0- Site Plan, 0.823 acres of landscaping is provided, representing 31.5% of the overall site area. The bank pad is setback approximately 30-feet from the proposed PLA northern property line.

The proposed maximum building height is 25'9" for the bank roof line at the primary entrance to the building. This height is well below the 65-foot maximum height restriction.

ARTICLE 16.7 EXCEPTION TO CODE STANDARDS

Chapter 16.71 VARIANCES

16.71.020 Applicability and application requirements.

- A. Exceptions and Modifications versus Variances.** A Code standard or approval criterion (“Code section”) may be modified without approval of a variance if the applicable Code section expressly allows exceptions or modifications. If the Code section does not expressly provide for exceptions or modifications, then a variance is required to modify that Code section and the provisions of Chapter 16.71 apply. Except that a variance shall not be approved that would vary the “permitted uses” or “prohibited uses” of a land use district.

Response: Based on input received from City Staff at the time of the initial submittal and completeness review, the proposed FAR minimum requirement should be processed as a Class C variance. No exceptions or modifications are sought with this application.

- B. Combining Variances With Other Approvals—Permit Approvals by Other Agencies.** Variance requests may be combined with and reviewed concurrently by the City approval body with other land use and development applications (e.g., development review, site design review, subdivision, conditional use, etc.), however, some variances may be subject to approval by other permitting agencies, such as ODOT in the case of State Highway access.

Response: This project narrative includes a Design Review Major, PLA, Tree Removal Permit, and a Class C variance request all submitted concurrent.

- C. Types of Variances.** There are three types of variances (Class A, B, or C). The type of variance required depends on the extent of the variance request and the discretion involved in the decision-making process. Regulations described in the following sections of this chapter pertaining to applicability of the type of variance should be considered a guide only. Ultimately, it is at the discretion of the Planning Official to determine whether a variance proposal is processed as a Class A, B, or C.

Response: The applicant is submitting for a single Class C variance request to the minimum 0.25:1 FAR requirement.

- D. Application.** The variance application shall conform to the requirements for Type I, II, or III applications (Chapter 16.61), as applicable. In addition, the applicant shall provide a narrative or letter explaining the reason for his or her request, alternatives considered, how the stated variance criteria are satisfied, and why the subject standard cannot be met without the variance.

Response: The variance application is being submitted concurrent with a Type II Design Review Major application. This project narrative is provided as supporting evidence for the variance requests.

16.71.050 Class C variances.

- A. Applicability.** Class C variance requests are those that do not conform to the provisions of Sections 16.71.030 and 16.71.040 (Class A and Class B), and that meet the criteria in subsections (B)(1) through (5) below. Class C variances shall be reviewed using a Type III procedure, in accordance with Chapter 16.61.
- B. Approval Criteria.** The City shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:
- 1. The variance requested is required due to the lot configuration, or other conditions of the site;**

2. That the condition requiring the variance has not been intentionally created to circumvent the Land Development Code;
3. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use or development of adjacent property;
4. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the development provisions which are in question;
5. The variance will not result in violation(s) of any other adopted ordinance or Code standard; each Code standard to be modified shall require a separate variance request;
6. In granting the variance, the City Administrator or appropriate and designated body or agent may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this title.

Response: The variance request to the minimum 0.25:1 FAR requirement is requested to site a bank building pad within a 1.328 acre parcel. The 4,000 SF bank is designed to appear larger or more dense in massing, as the central entry does feature an elevated roof line and articulation to give the impression of a second-story structure. Even with this goal of creating a larger structure, the building only achieves a 0.05 FAR, well below the 0.25:1 FAR minimum. Based on the tenant needs to site a bank with a drive-thru facility and vehicle parking area, the building size required under the 0.25:1 FAR would be a 14,500 SF structure. This is well above the tenant needs. Also, the parking requirements associated with a structure of that size would make the project unfeasible. As such, the applicant requests a Class C variance to adequately site a bank pad on the proposed parcel.





MAP & TAX LOT NO.
22E-03AA-201

MAP & TAX LOT NO.
22E-03AA-500
1.895 ACRES

MAP & TAX LOT NO.
22E-03AA-600

MAP & TAX LOT NO.
22E-03AA-701

MAP & TAX LOT NO.
22E-03AA-800

MAP & TAX LOT NO.
22E-03AA-700

MAP & TAX LOT NO.
22E-03AA-900

- 3) STORM CURVE
RIM: 331.07
IE IN (E)
IE OUT (S)
- 4) STORM CURVE
RIM: 331.07
IE IN (E)
IE OUT (S)
- 5) STORM CURVE
RIM: 331.07
IE IN (E)
IE OUT (S)
- 6) STORM CURVE
RIM: 331.07
IE IN (E)
IE OUT (W)
SUMP: 327.1
- 7) STORM CURVE
RIM: 334.20
IE OUT: 330.65

- EXISTING
- 1) SANITARY
RIM: 331.07
IE OUT
 - 2) SANITARY
RIM: 331.07
IE IN
IE OUT
 - 3) SANITARY
RIM: 331.07
IE IN
IE OUT
 - 4) SANITARY
RIM: 331.07
IE IN
IE OUT
 - 5) SANITARY
RIM: 331.07
IE IN
IE OUT

IT NO.
22

2

3

5

10

EXISTING TREE
TO BE REMOVED

EXISTING TREE
TO BE REMOVED

EXISTING TREE
TO BE REMOVED

TREE
REMOVED

POSSIBLE FROM
DAILY LOCATED

SOUNDING

LEAN-TO

HOUSE

BARN

HOUSE

WELL

WELL

WELL

WELL

WELL

WELL

WELL

WELL

WELL

12.3%

13.9%

12.2%

6.7%

22.4%

5%

1.8%

1.8%

3.4%

22.4%

22.4%

22.4%

22.4%

22.4%

22.4%

22.4%

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

396.27'

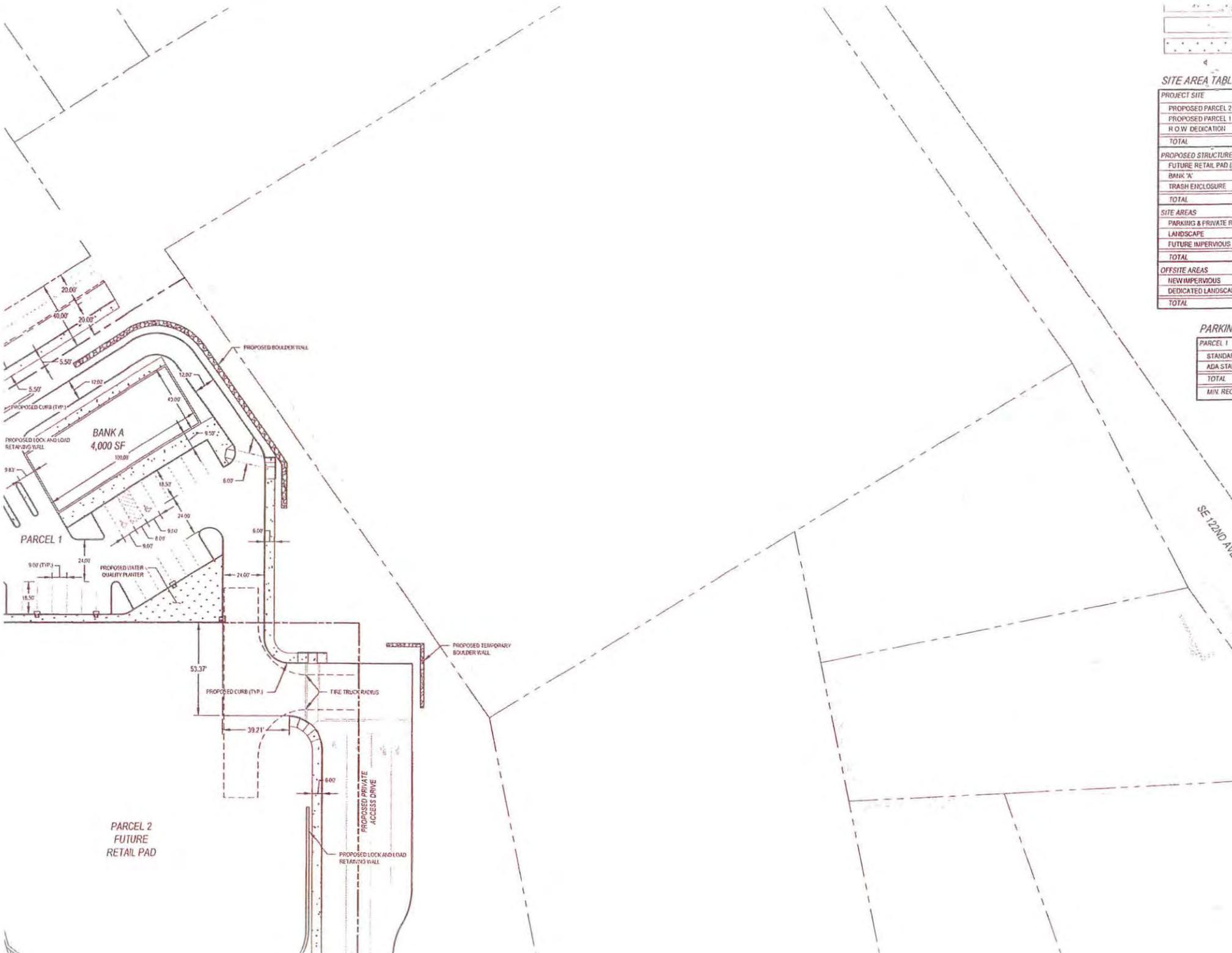
396.27'

396.27'

396.27'

151.52'

S84°40'56"E 610.58'



SITE AREA TABL

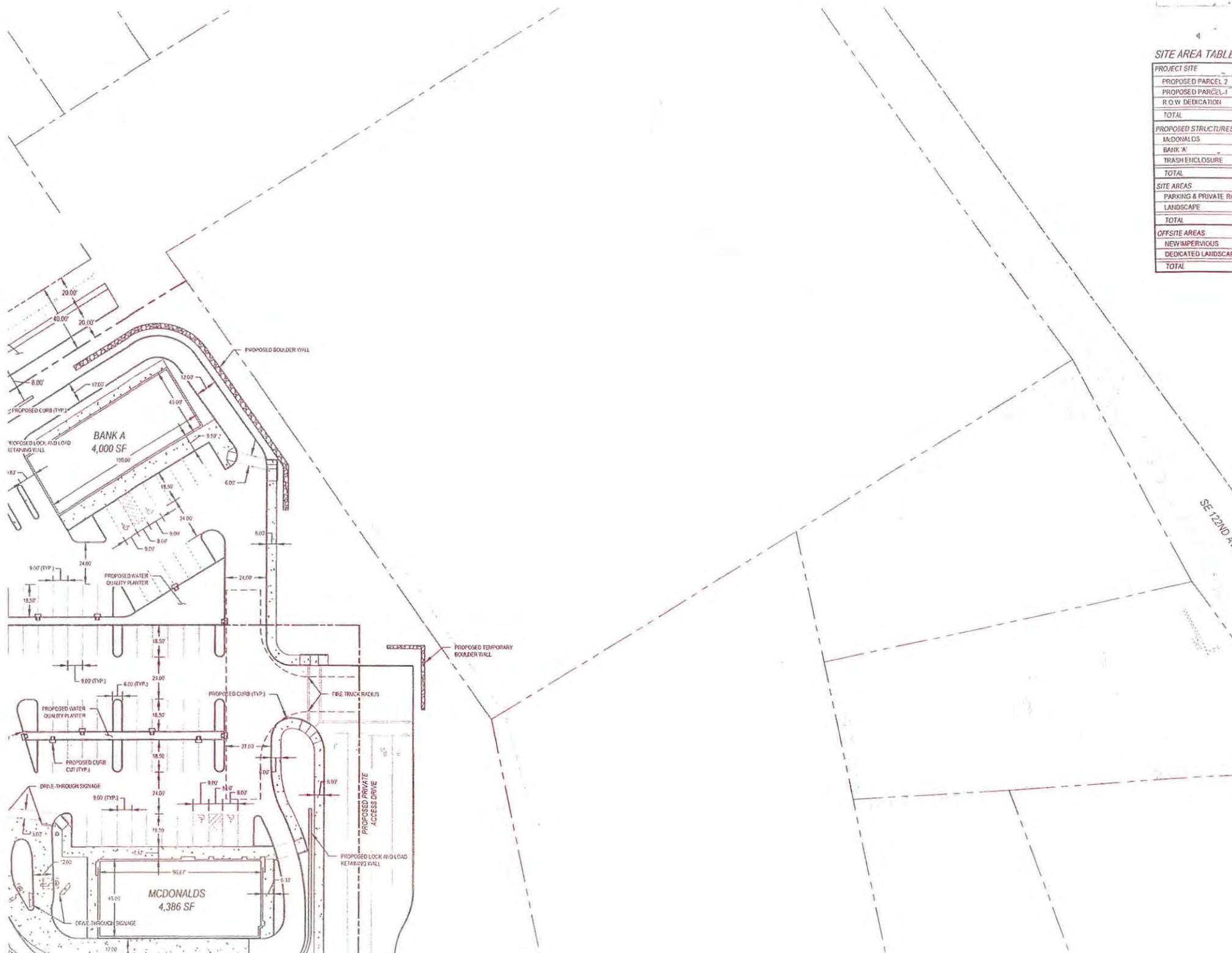
PROJECT SITE	
PROPOSED PARCEL 2	
PROPOSED PARCEL 1	
R.O.W. DEDICATION	
TOTAL	
PROPOSED STRUCTURE:	
FUTURE RETAIL PAD (U)	
BANK 'A'	
TRASH ENCLOSURE	
TOTAL	
SITE AREAS	
PARKING & PRIVATE R	
LANDSCAPE	
FUTURE IMPERVIOUS	
TOTAL	
OFFSITE AREAS	
NEW IMPERVIOUS	
DEDICATED LANDSCAP	
TOTAL	

PARKIN

PARCEL 1	
STANDAR	
ADA STAL	
TOTAL	
MIN. REQ	

SITE AREA TABLE

PROJECT SITE	
PROPOSED PARCEL 2	
PROPOSED PARCEL 1	
R.O.W. DEDICATION	
TOTAL	
PROPOSED STRUCTURES	
MCDONALDS	
BANK 'A'	
TRASH ENCLOSURE	
TOTAL	
SITE AREAS	
PARKING & PRIVATE RO.	
LANDSCAPE	
TOTAL	
OFFSITE AREAS	
NEW IMPERVIOUS	
DEDICATED LANDSCAPE	
TOTAL	



SE 122ND AVENUE

Justin Popilek
Senior Planner
City of Happy Valley
16000 SE Misty Dr.
Happy Valley, OR 97086

August 29, 2013

Dear Mr. Popilek,

RE: File Number DR-04-13/VAR 01-13 Bank Pad

I am writing in response to the notice from the City of Happy Valley, regarding the above noted file, on the proposal of a 4,000 square-foot bank to be located on the address 11899 and 11965 SE Sunnyside Road.

As a parent and a homeowner, I am very much opposed to this proposal. This location is directly in front of our residential property on Shady Meadow Court, as well as neighboring properties on Forest Creek Drive and Timber Valley Drive. This is a small and secure residential area. Our neighborhood consists of several families with children. Most of the children are elementary school age or younger, and two children living within 200 meters of the property have special needs. Having commercial/business property directly across the street from children and families is dangerous and hazardous. It will put a significant increase in traffic right in front of our homes, on our streets and neighborhoods where our children play.

In addition to the dangers of this large-scale construction and ongoing business, allowing the build of commercial and business properties in a residential area will significantly decrease the value of our homes. I was advised that the impact on our home values could be a decrease of as much as 15%. With our current home values, that would result in an approximate loss of almost \$40,000 per home.

I am strongly contesting the bank construction. Our community would support an alternative plan to develop this land into single detached residential houses. We strongly urge you to accept this proposal.

I have also added my name to the community response from the property owners in our subdivision. As the parent of one of the special needs children in the community, I also wanted to share my specific concerns and fears regarding the bank construction proposal. Please feel free to contact me with questions.

Regards,



Kimberly La Pointe
12620 SE Shady Meadow CT
Happy Valley, OR 97086
503-320-9957

Justin Popilek
Senior Planner
City of Happy Valley
16000 SE Misty Dr.
Happy Valley, OR 97086

Dear Mr. Popilek:

RE: File Number DR-04-13/VAR 01-13 Bank Pad

I am writing in response to the notice from the City of Happy Valley, regarding the above noted file, on the proposal of a 4,000 square-foot bank to be located on the address of 11899 and 11965 SE Sunnyside Road. Enclosed with this letter is a map of this area.

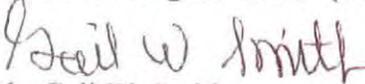
This location is directly in front of the residential properties in the subdivision of Shady Meadow Court, Forest Creek Drive, and around the corner from Timber Valley Drive. All of the residents on these streets are strongly opposed to the building of a bank in a residential neighborhood. We are also opposed to the floor-to-area ratio variance proposed for the bank building. This is where we live and this is where our children run and play, and ride their bikes and tricycles. It is a dead-end street, with only and in-and-out access at the western end.

Obviously there will be noise and dust during construction, and it will obviously increase traffic right in front of our houses, decrease the safety of our neighborhood, and obviously lower the value of our properties.

We are contesting the construction of a bank in our neighborhood. This remaining area needs to be developed as residential homes, not commercial development.

We will appreciate your further review of commercial construction in this residential area. As stated above, I have enclosed a map of this area, with my home shown as the reddish dot, showing the proximity of my property to the proposed bank property. You must obviously know the access to the proposed bank is accessible only by driving through a residential neighborhood, where our children are playing.

We, as residents of this area, will appreciate your further review of what we, the residents of this area, consider this to be a bad choice for a bank location. My home was the second home built in this quiet neighborhood, back in 1984. I have enjoyed the quietness of the area, and the stream behind my home. Please consider another location for a business location, other than a residential neighborhood. (See enclosed map)


Mr. Gail W. Smith
11755 SE Timber Valley Dr.
Happy Valley, OR 97086



September 01, 2013

Mr. Justin Popilek - City Planner
16000 SE Misty Dr.
Happy Valley, OR 97086

Re: File #DR-04-13/VAR01-13

Dear Mr. Popilek,

I am writing in response to Happy Valley's notification to affected homeowners that it will be hearing a proposal from the RPS Development Company to build a drive through banking facility on property currently addressed as 11899 and 11965 SE Sunnyside Rd. This property is directly in front of my house as well as two others at the end of Shady Meadow Ct. Such construction will have an adverse effect on everyone's property values as well as neighborhood safety.

Together, Shady Meadow Ct., Timber Valley Dr. and Forrest Creek Dr. make up a large constituency of homeowners with school age children. To allow a drive through operation of any kind in such a setting would be foolish to say the least and negligent to most.

With the above in mind, I implore you and the council disapprove the proposal brought forth by the RPS Development Company.

Sincerely,

William Hudson
12636 SE Shady Meadow Ct.

11800 Timber Valley Dr #D
Clackamas, OR 97086
503-698-4895

12600, SE Shady Meadow Ct
Happy Valley, OR 97086
503-819-6030

Justin Popilek
Senior Planner
City of Happy Valley
16000 SE Misty Dr.
Happy Valley, OR 97086

September 6, 2013

Dear Mr. Popilek,

RE: File Number DR-04-13/VAR 01-13 Bank Pad

We are writing in response to the notice from the City of Happy Valley, regarding the above noted file, on the proposal of a 4,000 square-foot bank to be located on the address 11899 and 11965 SE Sunnyside Road.

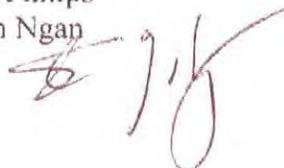
This location is directly in front of our residential properties in the subdivision of Shady Meadow Court, Forest Creek Drive, around the corner from Timber Valley Drive and Winter Creek Court. All of us on these streets are strongly opposed to the building of a bank. We are also opposed to the Floor-to-Area Ratio variance proposed for the bank building. Not only will there be an enormous amount of noise and dust in a construction of this scale, but more importantly, it will also significantly drive down the value of our properties. It will put a great increase in traffic right by our houses, therefore decrease the safety of our neighborhood. We have numerous young school age children living in the area and their safety will be at stake.

We are contesting the bank construction. We are proposing an alternative plan to develop this land into single detached residential houses. We strongly urge you accept this proposal.

We have attached the names, addresses, phone numbers and signatures of property owners in this subdivision. Please review and contact us if you have any questions.

Regards

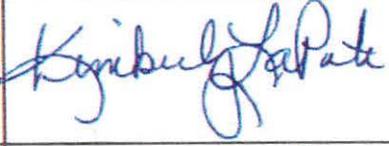
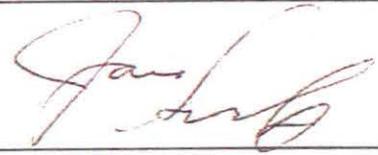
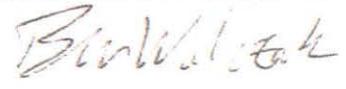

Jim Philips
Sam Ngan



To: City of Happy Valley

Re.: File DR-04-13 / FAR-01-13 Contest to Bank Construction

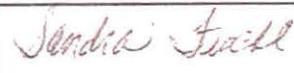
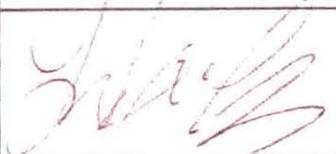
List of Property Owners Opposed to Bank Construction:

Name (Last, First)	Signature	Phone Number	Address
LaPointe Kimberly		503-320- 9957	12620 SE Shady Meadow Ct Happy Valley OR 97086
LaPointe Dan		503-307-4230	11
Michelle Finholt		208-724-6360	11840 SE Timber Valley Dr. Happy Valley OR 97086
Rachel S Day		971-221-1451	11990 Timber Valley Happy OR 97086
JAIA SCHMIDT		480-620-7404	11771 SE TIMBER VALLEY DR. Happy Valley, OR 97086
Ben Walczak		(503) 512-1969	11949 SE Timber Valley Dr Happy Valley, OR 97086

To: City of Happy Valley

Re.: File DR-04-13 / FAR-01-13 Contest to Bank Construction

List of Property Owners Opposed to Bank Construction:

Name (Last, First)	Signature	Phone Number	Address
POLLOCK, HELEN		503-970-3511	11811 SE Timber Valley Dr Happy Valley, OR 97086
FISCHL, SANDRA		503-329-0463	11999 SE Timber Valley Dr Happy Valley OR 97086
Deboon, Nate		971-675-6401	12012 SE Timber Valley Dr Happy Valley OR 97086
SHANNON GILLIS		503-700-3407	12015 S.E. TIMBER VALLEY DR. HAPPY VALLEY OR. 97086
Templeton, Jeffrey		503-875-9251	11880 SE Timber Valley Dr Happy Valley OR 97086
Grimstvedt, Bill		503-668-8344	12575 SE SANDY MEADOW HAPPY VALLEY OR 97086

To: City of Happy Valley

Re.: File DR-04-13 / FAR-01-13 Contest to Bank Construction

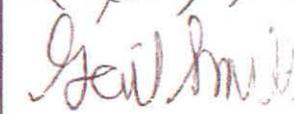
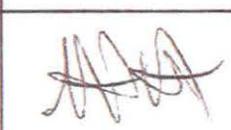
List of Property Owners Opposed to Bank Construction:

Name (Last, First)	Signature	Phone Number	Address
Stephens, Tammara	Tammara Stephens	503-698-8430	12455 SE Winter Creek Ct Happy Valley, OR 97086
Phillips, James	James Phillips	503-698-4815	11800 SE Timber Valley Drive Clackamas, OR 97086
Chinchilla, Tiffany	Tiffany Chinchilla	503-490-0314	11821 SE Forest Creek Ct Happy Valley, OR 97086
JAY ROSEN	Jay Rosen	503-709-3909	11811 SE Timber Valley Happy Valley
Green, Catherine	Catherine Green	971-409-9741	11511 SE Timber Valley Dr Happy Valley
Faris, Gina	Gina Faris	503-380-8142	12042 SE Timber Valley Dr Happy Valley 97086

To: City of Happy Valley

Re.: File DR-04-13 / FAR-01-13 Contest to Bank Construction

List of Property Owners Opposed to Bank Construction:

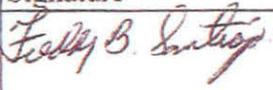
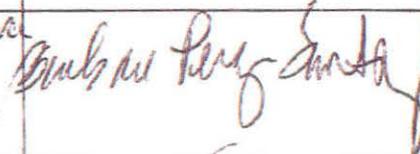
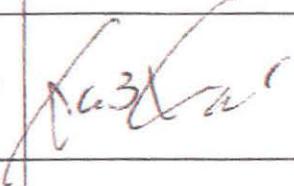
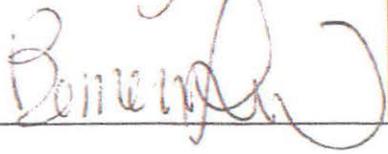
Name (Last, First)	Signature	Phone Number	Address
HUDSON, W.		503/454-0712 1WHUDSON@COMCAST.NET	12636 SE SHADY MEADOW CT.
ELETT, Valerie		503-706-9130 cell val.ellet@gmail.com	11900 SE Timber Valley Dr.
ELETT, JOHN		val-johnny@comcast.net	
Charlie & Kay Hopkins		503-698-1108	11750 SE Timber Valley Dr
SMITH, GAIL		503-698-4575	11755 SE Timber Valley Dr.
GILBERT Stue		503-698-9837	11770 SE Timber Valley Dr.



To: City of Happy Valley

Re.: File DR-04-13 / FAR-01-13 Contest to Bank Construction

List of Property Owners Opposed to Bank Construction:

	Name (Last, First)	Signature	Phone Number	Address
1	Santiago, Freddy B.		971-506-4256	12597 SE Shady Meadow Ct. Happy Valley, OR 97086
2	Perez-Santiago, Barbara		971-506-4254	12597 SE Shady Meadow Ct Happy Valley OR 97086
3	Temple, James		503 698-2012	12424 SE Winter Creek Ct Happy Valley, OR 97086
4	M Aslam		715 288 4003	12140 SE Timber Valley Dr. Happy Valley 97086
5	Ngan, Sam		503-819-6030	12600 SE Shady Meadow Ct Happy Valley 97086
6	Law, Roman		503-698-3807	12600 SE Shady Meadow Ct. Happy Valley 97086

DR-04-13: MAJOR DESIGN REVIEW OF A 4,000 SQUARE FOOT BANK

Arguments against the proposed 4,000 square foot bank

This document will show that the proposed drive-through bank cannot be built on the properties proposed. Happy Valley annexed these properties, at the request of the owner of the properties, in 2009. The intent of the annexation was to get around the limitations of the current zoning by convincing the city of Happy Valley to annex the property.

The annexation had a couple of additional benefits to the land owner. First, a large portion of the property was incorrectly re-zoned from R-10 to MUC with no public comment. Along with this major benefit to the land owner, at the cost of the surrounding neighborhood, they no longer had to comply with the Office Apartment (OA) limitations imposed by the Clackamas County zoning regulations.

REASON 1: OA zoning does not allow drive-thru bank

The Clackamas County Zoning and Development Ordinance specifically prohibit drive-thru banks. The following excerpts are from the Clackamas County Zoning and Development Ordinance, showing the allowed uses of Office Apartment, the Clackamas County zoning of the properties prior to the annexation. This must be considered.

1. 509.03 PRIMARY USES. A. Office Uses. 5. Banks, credit unions, and savings and loan, brokerage, and other financial institutions, but not drive up windows or drive through services.
2. 509.07 PROHIBITED AND PREEXISTING USES. A. The following are prohibited uses in the Office Apartment District (OA). 1. Use of structures and land not specifically allowed. 2. Drive-thru window service.

REASON 2: Conflicts with Sunnyside Corridor Community Plan

A drive-thru bank at this location conflicts directly with two of the goals listed in the Sunnyside Corridor Community Plan.

1. "Provides a mix of housing types, densities and price ranges to accommodate the diverse housing needs of the projected population". Building a bank at this location will eliminate at least 2 houses that could be built on those properties.
2. "Protect the character of existing neighborhoods." Building a bank on land designed and zoned to be residential housing changes the character of the existing neighborhood dramatically.

REASON 3: Zoning was incorrectly changed when property was annexed

Even more important, however, is that the zoning was incorrectly changed when tax lots 400 and 500 were annexed into the city of Happy Valley in 2009. None of the required notices or public comment periods for zoning changes were made. When considering the correct, legal, zoning, no commercial building, much less a drive-thru bank, could be built on the property at the location specified in the design plan.

The following facts show that tax lots 400 and 500 were incorrectly annexed with a zone change.

1. Three properties in this area were annexed in 2009 to the city of Happy Valley. Prior to the annexation, the zoning for the properties were as follows. *These numbers are estimates based on tax map 22E03AA.*
 - a. Tax lot 300 - 100% Office Apartment
 - b. Tax lot 400 - 55-60% Office Apartment, 40-45% R-10
 - c. Tax lot 500 - 65-70% Office Apartment, 30-35% R-10.
2. When any property is annexed into the city of Happy Valley, a zoning change is automatically made based on the current zoning of the property. *This requirement was ignored for a significant portion of the property, improperly converting about 1 acre from R-10 to MUC.*
 - a. Clackamas County zoning R-10 converts to Happy Valley R-10
 - b. Clackamas County zoning Office Apartment converts to Happy Valley Multi Use Commercial
3. Zoning changes may be made without public comment if the zoning change is required based on the Sunnyside Corridor Community Plan. *The Sunnyside Corridor Community Plan, as shown in the staff notes of annexation, clearly shows the property as being split between LDR (Low Density Residential) and OA (Office Apartment), with all of the R-10 zoning within the LDR area. No conversion of R-10 to any other zoning is allowed.*
4. A staff report was submitted to the City Council of Happy Valley on April 21, 2009, entitled "ANNEXATION APPLICATION AND COMPREHENSIVE PLAN MAP/ZONING MAP AMENDMENT (File No. ANN-01-09/CPA-03-09)". This document (Word document ANN-01-09- CC STAFF REPORT2.doc) has the following

Improper conversion of Tax Lots 400 and 500 from R-10/OC to MUC requires denial of design

comment: "Currently, these lots of record are zoned a combination of Clackamas County Office Apartment (OA), with a very small portion of Clackamas County R-10.". *This statement is extremely misleading.*

- a. *There were 3 tax lots that were annexed, and this statement indicates that a "very small portion" of the combined 3 tax lots were zoned as OA. However, as indicated above, nearly half on tax lot 400 and a third of tax lot 500 were zoned as R-10. The combined area of these lots is approximately 1 acre. The ONLY tax lot where this statement is anywhere near accurate is for tax lot 300, which was 100% OA prior to the annexation.*
- b. *Another interpretation of the statement might be that the lots are too small to build houses on. This is definitely not the case. The portion of R-10 for Tax Lot 400 is as large as or larger than most properties on Timber Valley Drive. The portion of R-10 for Tax Lot 500 is larger than every other property with a house on Timber Valley Drive, Shady Meadow Court and Forest Creek.*
- c. Since the statement does not reflect the true facts of the properties, there are no extenuating circumstances that would require automatically changing from R-10 to MUC.

The remainder of this document has additional visual information that will help show that when tax lots 400 and 500 were annexed into the city of Happy Valley, at the request of the property owners, that the zoning was incorrectly converted from the Clackamas County zoning to the Happy Valley zoning equivalents. As such, no bank or any other commercial structure can be built on the property until the land is re-zoned through the legal channels.

DR-04-13 MAJOR DESIGN REVIEW OF A 4,000 SQUARE FOOT BANK
Improper conversion of Tax Lots 400 and 500 from R-10/OC to MUC requires denial of design

Plan upon annexation to the City, these properties, in their entirety, will receive a comprehensive plan designation/zoning district of City Mixed Use Commercial (MUC). This proposal is in compliance with the above section. This criterion has been satisfied.

There are a couple of problems with this statement and response. First, there are 3 individual properties, with 3 different annexation requests, so they should be treated as such. Second, the statement "Currently, these lots of record are zoned a combination of Clackamas County Office Apartment (OA), *with a very small portion* of Clackamas County R-10." is completely false.

- Tax lot 300: 0% R-10. This was already 100% OA, which converts to MUC automatically.
- Tax lot 400: 40-50% R-10. This is not a "very small portion" of the total area.
- Tax lot 500: 30-35% R-10. This is not a "very small portion" of the total area.

Even if you stretch the imagination and consider all 3 properties as a whole, this "very small portion" of land represents at least 30% of the total land area annexed.

Recently, tax lot 300 was re-zoned from OA to a zoning that would allow a triplex on the property. When the objection was made that the property was too small to build a triplex, the comments were not taken into consideration. One of the facilitators of the meeting made a comment saying that they could not deny the zoning change because there was nothing in the law preventing the zone change.

The same standards should be held for tax lots 400 and 500. There should have been a public comment period specifically for the zoning. Since there was not, the land should still be considered R-10. Nothing in the law allows rezoning properties without a public hearing and comment period. Since no public hearing was made for tax lots 400 and 500, the city of Happy Valley must consider this land to be zoned as R-10. Unequal application of the law should not be allowed. The property owners have every right to attempt to get the zoning changed from R-10 to MUC. However, they cannot be allowed to bypass county and city laws just because of a mistake made during the annexation period.

No promise was made to the property owners in regards to the annexation. The path of zoning was well established and documented, so they have no recourse toward the city for correcting the original mistake.

The information below is from the document "*ANNEXATION APPLICATION AND COMPREHENSIVE PLAN MAP/ZONING MAP AMENDMENT (File No. ANN-01-09/CPA-03-09)*".

Office Apartment

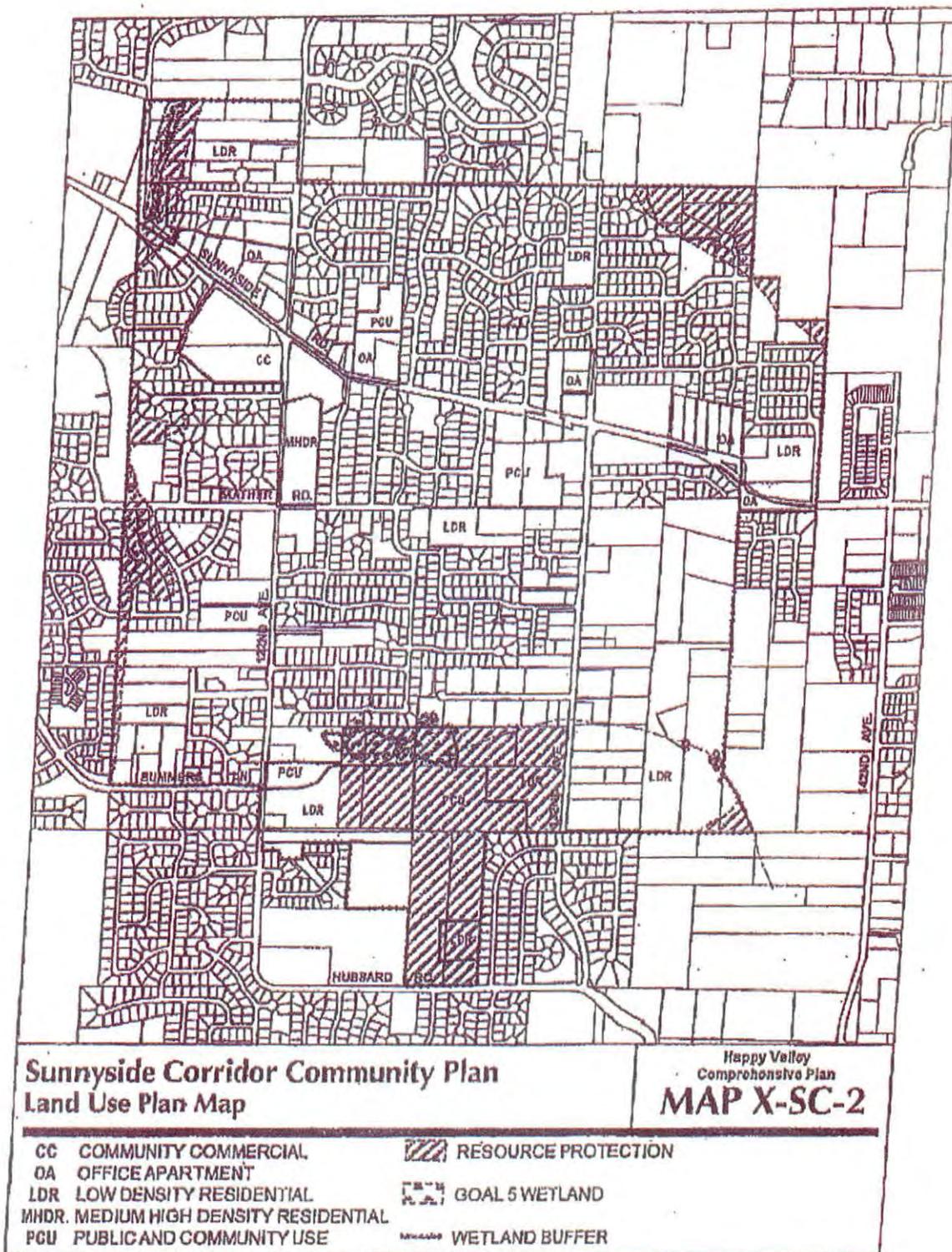
4.0- The Clackamas County Office Apartment designation shall be applied in the Sunnyside Corridor Community Plan Area to provide for employment and limited housing uses. Clackamas County Office apartment designations shall be applied as depicted on Map X-SC-2 and may be applied in other locations when the Clackamas County Office Apartment Area of Application criteria are met. However, if annexed within the city limits, such areas shall be converted to the City Mixed Use Commercial (MUC) plan designation/zoning district."

Response:

Three existing lots of record (Clackamas County Assessor Map No. 22E03AA: Tax Lots 300, 400, and 500), are proposed for annexation and are located within the City of Happy Valley Sunnyside Corridor Community Plan area and are designated as Office Apartment (OA) and Low Density Residential (LDR). Currently, these lots of record are zoned a combination of Clackamas County Office Apartment (OA), with a very small portion of Clackamas County R-10. In compliance with the City's Sunnyside Corridor Community

DR-04-13 MAJOR DESIGN REVIEW OF A 4,000 SQUARE FOOT BANK
 Improper conversion of Tax Lots 400 and 500 from R-10/OC to MUC requires denial of design

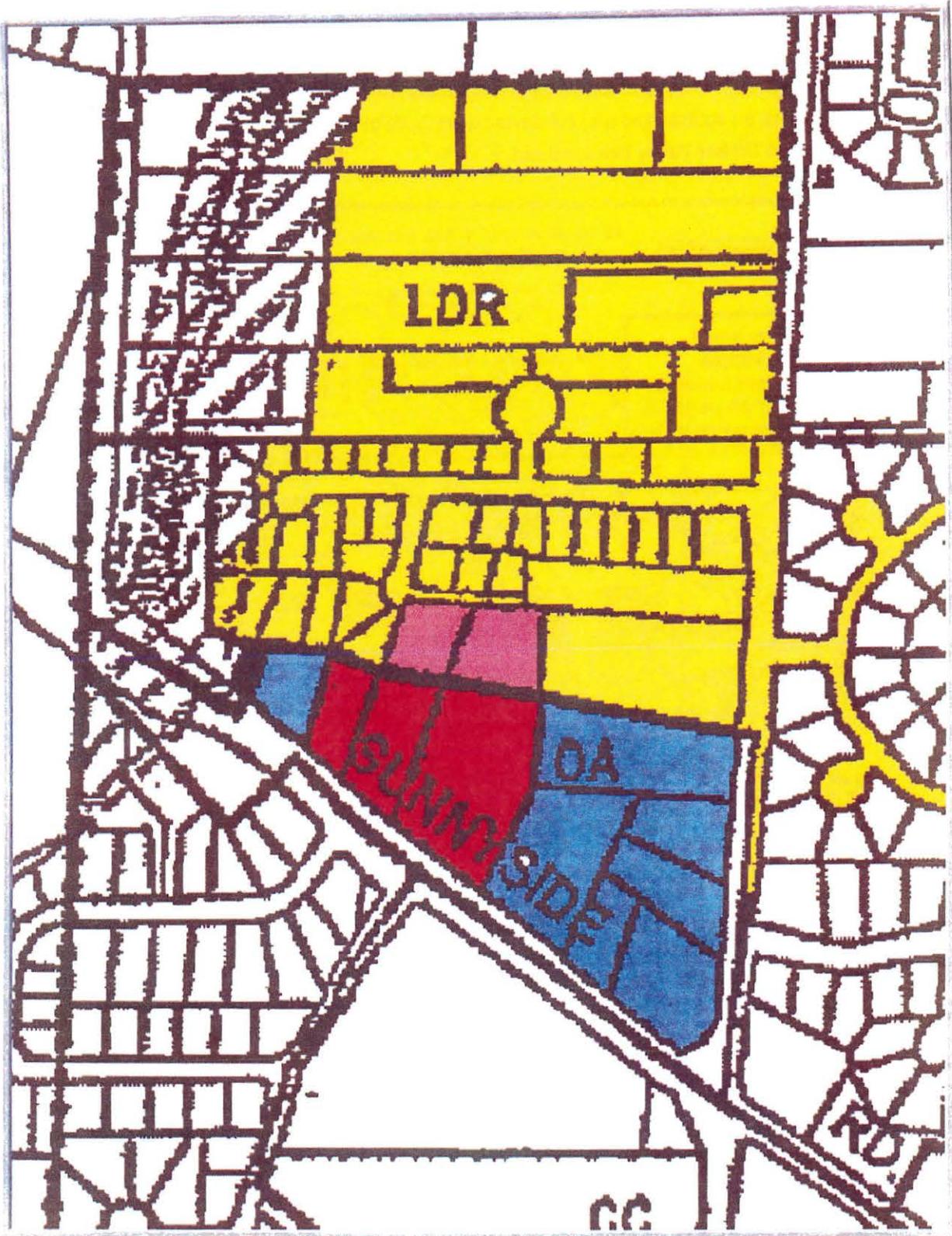
Map X-SC-2, as shown in the Sunnyside Community Plan.



DR-04-13 MAJOR DESIGN REVIEW OF A 4,000 SQUARE FOOT BANK

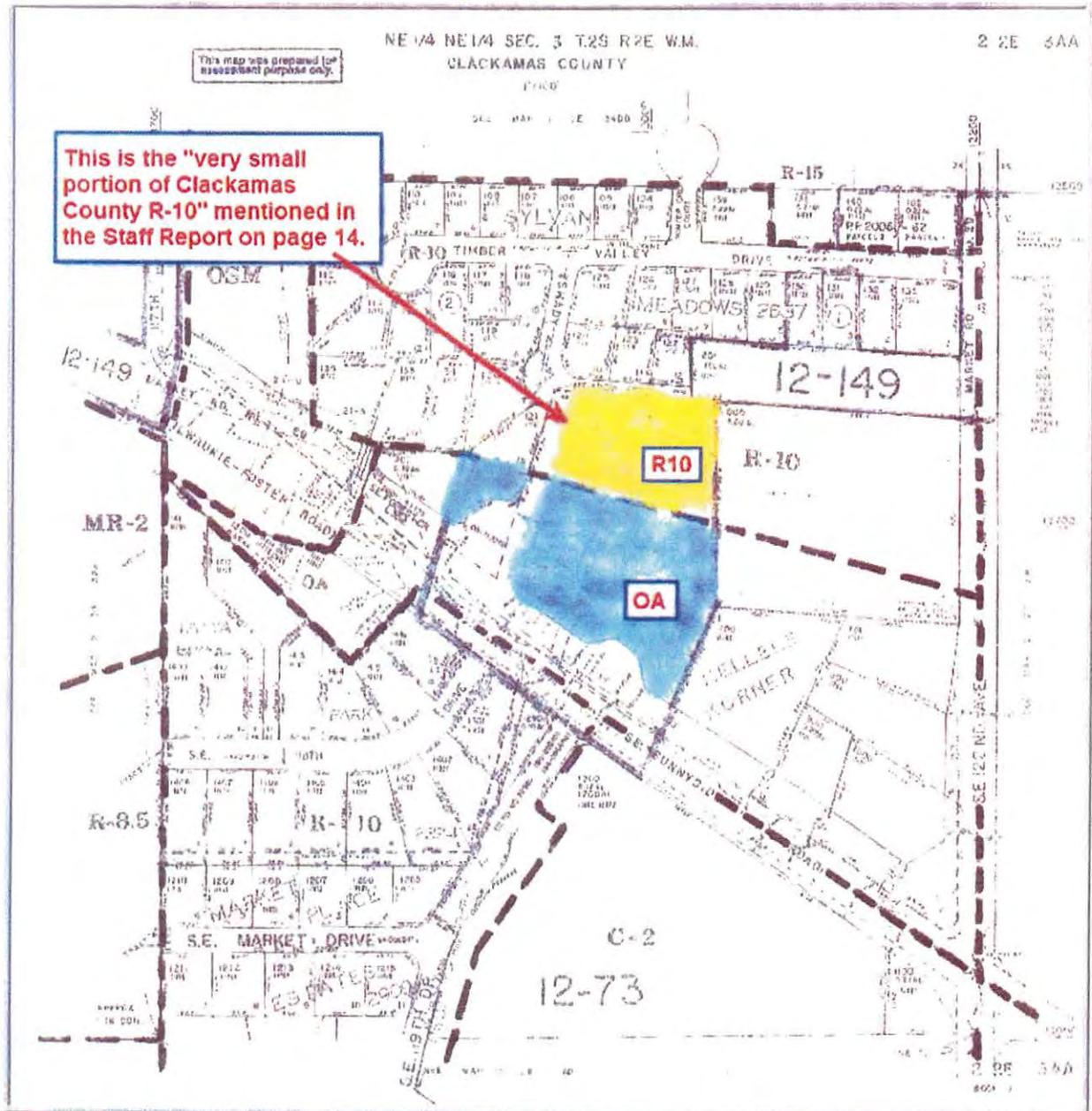
Improper conversion of Tax Lots 400 and 500 from R-10/OC to MUC requires denial of design

From **Map X-SC-2**, with highlighting. The yellow portion is LDR (Low Density Residential). The cyan portion is OA (Office Apartment). The pink portion is the property that was annexed that was in the LDR area. The red portion is the area property that was zoned OA.



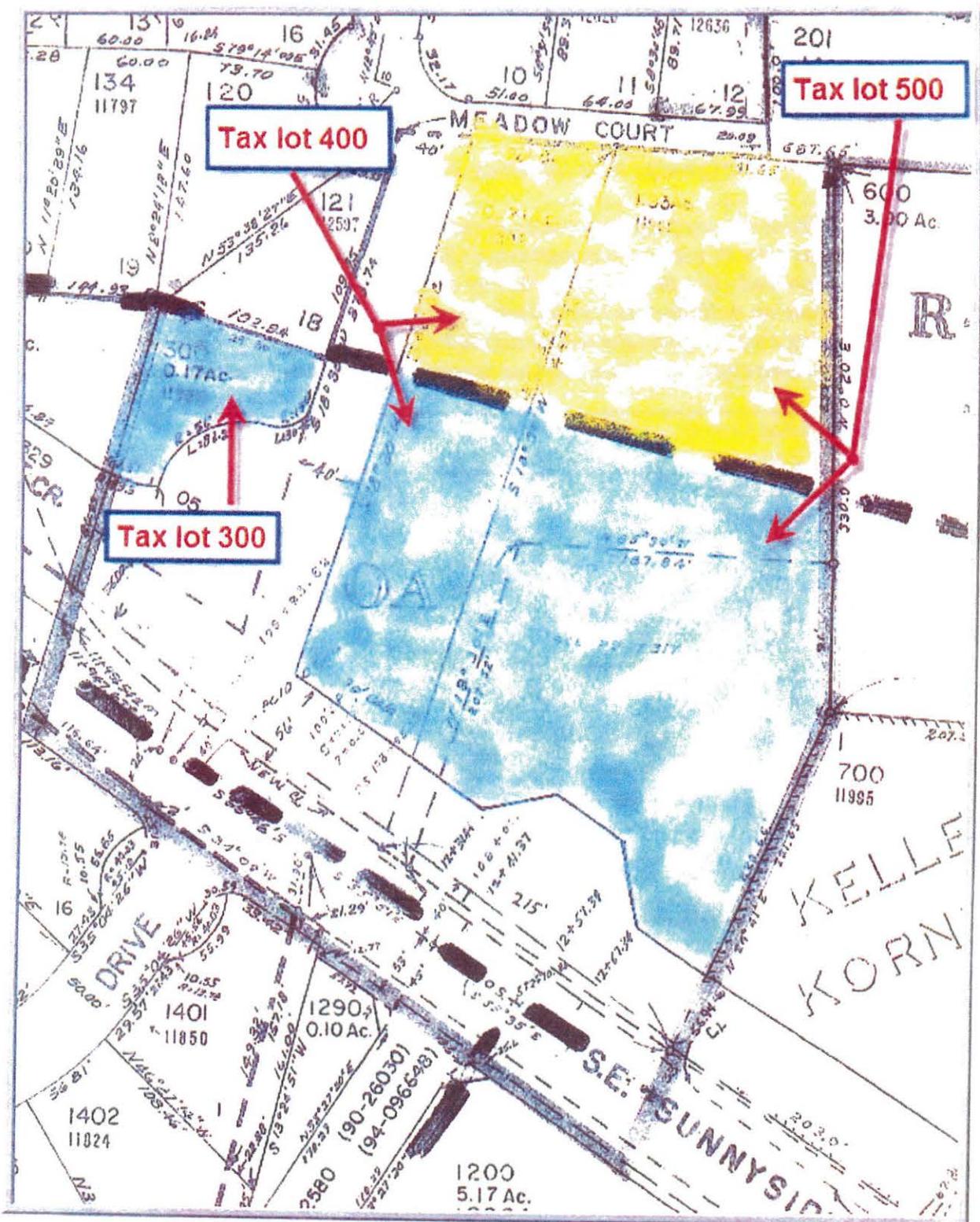
DR-04-13 MAJOR DESIGN REVIEW OF A 4,000 SQUARE FOOT BANK
Improper conversion of Tax Lots 400 and 500 from R-10/OC to MUC requires denial of design

This is **Tax Map 2203AA**. This map shows the zoning prior to annexation. The property that was annexed is highlighted. The yellow portion was zoned R-10. The green portions were zoned OA. Note that tax lot 300, the small irregular shaped area, is a fraction of what is shown in the Sunnyside Corridor Plan. This is because an access road and cul-de-sac were built to remove access to Sunnyside, requiring traffic to flow out to Timber Valley Drive instead.



DR-04-13 MAJOR DESIGN REVIEW OF A 4,000 SQUARE FOOT BANK
Improper conversion of Tax Lots 400 and 500 from R-10/OC to MUC requires denial of design

Here is an expanded view of the properties shown in Tax Map 2203AA. The yellow portion is R-10. The green portion is OA.



CITY OF HAPPY VALLEY MUNICIPAL CODE

Happy Valley Land Development Code

*“16.40 Amendments to the Comprehensive Plan, Land Use Map and Land Development Title of this Code
 [...]”*

16.40.080 *Designation upon annexing to the City of Happy Valley*

A. Whenever any property or area is annexed to the city from unincorporated Clackamas County with an accompanying Clackamas County comprehensive plan designation and zone, the action by the city council to annex the property or area shall also include an ordinance to legislatively amend the city’s comprehensive plan map/zoning map to reflect the conversion to the County designation/zone to a corresponding city designation/zone, as demonstrated in the conversion table, below.

<i>Clackamas County Zone</i>	<i>City of Happy Valley Zone</i>
<i>Urban/Rural Residential</i>	
<i>R-2.5</i>	<i>SFA</i>
<i>R-5</i>	<i>R-5</i>
<i>R-7</i>	<i>R-7</i>
<i>R-8.5</i>	<i>R-8.5</i>
<i>R-10</i>	<i>R-10</i>
<i>R-15</i>	<i>R-15</i>
<i>R-20</i>	<i>R-20</i>
<i>MR-1</i>	<i>MUR-M1</i>
<i>MR-2</i>	<i>MUR-M2</i>
<i>HDR</i>	<i>MUR-M3</i>
<i>RA-2</i>	<i>R-15</i>
<i>FU-10</i>	<i>FU-10</i>
<i>Natural Resources</i>	
<i>EFU</i>	<i>EFU*</i>
<i>Commercial</i>	
<i>NC</i>	<i>MUE-NC</i>
<i>C-2</i>	<i>MCC</i>
<i>RCC</i>	<i>MCC</i>
<i>RCO</i>	<i>MUC</i>
<i>OC</i>	<i>CCC</i>
<i>RCHD</i>	<i>MUR-M2</i>
<i>OA</i>	<i>MUC</i>
<i>Industrial</i>	
<i>I-2</i>	<i>EC</i>

DR-04-13 MAJOR DESIGN REVIEW OF A 4,000 SQUARE FOOT BANK
 Improper conversion of Tax Lots 400 and 500 from R-10/OC to MUC requires denial of design

<i>I-3</i>	<i>IC</i>
<i>BP</i>	<i>EC</i>
<i>Special Districts</i>	
<i>OSM</i>	<i>IPU</i>
<i>Sunnyside Village</i>	
<i>VR-4/5</i>	<i>VR-4/5*</i>
<i>VR-5/7</i>	<i>VR-5/7*</i>
<i>VCS</i>	<i>VCS*</i>
<i>VA</i>	<i>VA*</i>
<i>VO</i>	<i>VO</i>
<i>VTH</i>	<i>VTH</i>
<p><i>*Annexation of these zoning districts would require the creation of a new comprehensive plan designation/zoning district within the city that would mirror the applicable Clackamas County designation/zone.</i></p>	

Clackamas County Zoning and Development ordinance

509.02 AREA OF APPLICATION

Areas may be zoned Office Apartment District when they meet Subsection 509.02(A) or (B):

- A. The area to be considered by the land use application is located in a Corridor Design Type Area as defined in the Growth Concepts section of the Land Use Chapter of the Comprehensive Plan; or
- B. The area to be considered by the land use application is located on a Corridor Street and the majority of the area is within 150 feet of the Corridor Street right-of-way, and meets the following criteria:
 - 1. Access to the site will meet transportation safety standards and not cause an unacceptable level of service on the Corridor Street; and
 - 2. Access to the site is consistent with access management plans that have been prepared for the Corridor Street. (For example, see Comprehensive Plan Map X-SC-5, *Summyside Corridor Community Plan, Summyside Road Access Management Targets*.)

City's response letter Enclosure #2

Planning Packet for Planning
Commission Variance Meeting

VAR03-13

Variance for McDonalds

Floor Area Ratio ("FAR") Variance

Note: This cover sheet was not included in the original mailing from the city.

Mayor
Honorable Lori DeRemer



City Manager
Jason Tuck

CITY OF HAPPY VALLEY

STAFF REPORT TO THE PLANNING COMMISSION

CLASS "C" VARIANCE APPLICATION

FLOOR AREA RATIO (VAR-03-13)

FEBRUARY 11, 2014

City staff has reviewed the subject application requesting a Class "C" variance to the minimum floor area ratio (FAR) required for nonresidential development within the City's Mixed Use Commercial land use district. The proposed variance is to allow for a 4,386 square-foot restaurant, which is currently under Design Review, to have a floor area ratio of 0.09:1, which falls below the minimum requirement of 0.25:1. The subject site can be described as Clackamas County Assessor Map Numbers 22E03AA: Tax Lots 400 and 500. It has been determined that the proposed application (VAR-03-13) complies with the requirements of the City's Land Development Code (LDC). **Therefore, staff recommends the Planning Commission APPROVE the applicant's proposal subject to the findings and conclusions in this report.**

I. GENERAL INFORMATION

APPLICANT AND PROPERTY OWNER:

RPS Development Company, Inc.
2653 High Heaven Road
McMinnville, OR 97128

APPLICANT'S REPRESENTATIVE:

Cardno
5415 SW Westgate Drive, Suite 100
Portland, OR 97221

DEVELOPMENT DISTRICT:

The subject site has a plan designation/land use zone of Mixed Use Commercial (MUC). The MUC designation/zone was applied to the site when the subject properties were annexed into the City in 2009.

PROPERTY LOCATION:

The subject property is located north of the intersection of SE 119th Drive and SE Sunnyside Road, and is further described as Clackamas County Assessor Map Numbers 22E03AA: Tax Lots 400 and 500.

APPLICABLE CRITERIA:

Sections 16.23.010 (Mixed Use Commercial and Employment Districts) and 16.71.050 (Class "C" variances) of Title 16 of the City's Municipal Code ("Development Code").

EXHIBITS:

- A. Staff Report and Findings of Fact
- B. Materials submitted by the Applicant, including:
 - 1. Vicinity and Site Map
 - 2. Existing Conditions Plan
 - 3. Preliminary Site Plan
 - 4. Applicant's Narrative

OBSERVATIONS:

BACKGROUND:

- The applicant has proposed the subject variance request to facilitate the Design Review of a 4,386 square-foot drive-through restaurant. A public hearing will be held before the City's Design Review Board to evaluate the aforementioned restaurant's building design and site improvements (landscaping, parking, access drives, etc.) on February 24, 2014 (Local File Number: DR-07-13). The applicant intends to further develop the subject site beyond the restaurant project, to the north, but does not have a specific development plan confirmed at this point (as a previously approved project for a bank on the northern parcel was withdrawn by the applicant). The applicant has indicated in the narrative (Exhibit B-4, Page 3) that he will be working with the property owners residing to the north and west of the subject site on a screening/landscape plan to buffer the adjacent neighborhood from the proposed commercial development. It should be noted that the applicant has processed a lot line adjustment with the City to reconfigure the boundary between Tax Lots 400 and 500 (previous configuration is shown in Exhibit B-2 and the revised boundary is shown in Exhibit B-3).

PROPOSED VARIANCE:

- Per Section 16.71.050 (Class "C" Variance) of the City's Development Code, the applicant is proposing a variance to the City's requirements found in Table 16.23.010-2 (Development Standards for MUC, MUE and RCMU Districts) specifically in regard to the minimum FAR for nonresidential development, which per this code section is 0.25:1. This variance is being requested due to the proposed restaurant having a projected FAR of 0.09:1. The proposed FAR is due to a combination of factors related to the site design and access restrictions.

- Given the size of the proposed development area, the applicant would need to propose an approximately 13,000 square-foot structure to meet the minimum FAR that is required by the Development Code. The Development Code would "in-turn" require an approximately 13,000 square-foot restaurant (with a drive through) to have 129 automobile parking spaces. The applicant has proposed 45 parking stalls as part of the 4,386 square-foot restaurant and would not have enough land area to design a 129-stall parking lot on the proposed development site. Furthermore, the restaurant is proposed to be exclusively accessed by vehicles from the south, via SE Sunnyside Road (Exhibit B-3). This access plan requires the construction of a relatively wide private drive, further reducing the area of the site that could be developed as the location of a parking area or building footprint, making the 13,000 square-foot structure an unlikely development scenario on the subject site. To facilitate a development scenario where the applicant meets the minimum parking requirements of the Development Code, while still provided adequately sized drive isles/vehicular maneuvering areas and a one-story building that is not "oversized" when compared to the structures in the surrounding neighborhood this variance application was proposed. Staff concurs with the applicant that the proposed Class "C" variance is appropriate for the subject development and has therefore recommended approval.

PUBLIC COMMENTS:

- The City's Planning Division received no correspondence pertaining to VAR-03-13 from neighboring property owners or other interested parties during the public comment period.

II. FINDINGS OF FACT

CITY OF HAPPY VALLEY DEVELOPMENT CODE:

The following sections of Title 16 of the Happy Valley Municipal Code (Land Development Code -LDC) are applicable to this request:

16.23.010 Mixed Use Commercial and Employment Districts.

[...]

C. Development Standards. The development standards in Table 16.23.010-2 apply to all uses, structures, buildings, and development in the MUC, MUE and MUE-NC Districts.

Table 16.23.010-2 Development Standards for MUC, MUE and RCMU Districts

Standard	MUC	MUE	RCMU
<i>Residential density:</i> ¹			
<i>Low density (maximum)</i>	24 du/net acre	24 du/net acre	24 du/net acre
<i>Low density (minimum)</i>	15 du/net acre ²	15 du/net acre ²	15 du/net acre ²
<i>Medium density (maximum)</i>	34 du/net acre	NA	34 du/net acre
<i>Medium density (minimum)</i>	25 du/net acre ²	NA	25 du/net acre ²
<i>High density (maximum)</i>	50 du/net acre	NA	50 du/net acre
<i>High density (minimum)</i>	35 du/net acre ²	NA	35 du/net acre ²
<i>Lot size (minimum)</i>	Variable ³	Variable ³	Variable ³
<i>Lot width (minimum)</i>	Variable ³	Variable ³	Variable ³
<i>Lot depth (minimum)</i>	Variable ³	Variable ³	Variable ³
<i>Floor area ratio</i>			
<i>Nonresidential FAR (minimum)</i>	0.25:1 ⁴	0.25:1 ⁴	0.25:1 ⁴
<i>Nonresidential FAR (maximum)</i>	5:1	2:1	5:1
<i>FAR for mixed use building with residential uses (minimum)</i>	0.25:1	0.25:1	0.25:1
<i>FAR for mixed use building with residential uses (maximum)</i>	5:1	3:1	5:1
<i>Landscaping (minimum)</i>	Variable ⁵	Variable ⁵	Variable ⁵
<i>Building setbacks (minimum)</i>	Variable ³	Variable ³	Variable ³
<i>Building height (maximum)</i>	65 feet ³	65 feet ³	Variable ³
NOTES:			
¹ Density calculations shall be made pursuant to Section 16.63.020(F).			
² Minimum density of eighty (80) percent of each sub-area is required.			
³ Building height is measured pursuant to Chapter 16.12, Definitions. Standards are flexible and shall be determined through the master plan process or a design review.			
⁴ Must include a shadow plan to establish future development.			
⁵ Pursuant to Section 16.42.030, fifteen (15) percent of the net developable area must be usable open space.			

[...]

Staff Response:

Rather than providing a "shadow plan" illustrating the development of the subject site, the applicant has provided their actual development plan (Exhibit B-3), that illustrates the "constraints" of the subject property. With the approval of the subject variance, the minimum FAR of 0.25:1 will be reduced to 0.09:1. Therefore, per the provisions of this variance, this criterion is addressed by the subject request.

16.71.050 Class C variances.

A. Applicability. Class C variance requests are those that do not conform to the provisions of Sections 16.71.030 and 16.71.040 (Class A and Class B), and that meet the criteria in subsections (B)(1) through (5) below. Class C variances shall be reviewed using a Type III procedure, in accordance with Chapter 16.61.

Staff Response:

The applicant's proposal is for a variance to a standard found within the Development Code and is for an amount that exceeds the "thresholds" of a Class "A" or "B" variance. As a result, the applicant has applied for a Class "C" variance. The subject variance request is being processed by means of the City's Type "III" review procedure, which requires a public hearing before the City's Planning Commission. This criterion is satisfied by the subject request.

B. Approval Criteria. The City shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:

1. The variance requested is required due to the lot configuration, or other conditions of the site;

Staff Response:

The variance requested is due to a combination of factors, including lot configuration and access restrictions. This criterion is satisfied by the subject request.

2. That the condition requiring the variance has not been intentionally created to circumvent the Land Development Code;

Staff Response:

The challenges associated with lot configuration and access restrictions were not created to circumvent the provisions of the Development Code. This criterion is satisfied by the subject request.

3. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use or development of adjacent property;

Staff Response:

The variance will not alter the essential character of the neighborhood because the reduced building footprint of the restaurant, a result of the proposed FAR variance, would work to provide for a smaller-scale building that will better "fit" into the surrounding neighborhood. Furthermore, the proposed variance will not impair the appropriate use or development of adjacent properties as it only relates to the FAR of the restaurant. This criterion is satisfied by the subject request.

4. *That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the development provisions which are in question;*

Staff Response:

The proposed variance represents a 64 percent deviation from the applicable minimum FAR requirement, requiring the applicant to submit for a Class "C" variance. Due to the length of the access drive and the size of the parking lot associated with the 4,386 square-foot restaurant, the requested variance is in an amount that is the minimum necessary to facilitate the restaurant project. This criterion is satisfied by the subject request.

5. *The variance will not result in violation(s) of any other adopted ordinance or Code standard; each Code standard to be modified shall require a separate variance request;*

Staff Response:

The proposed variance does not result in any "violation", as no other standard requires variation. This criterion is satisfied by the subject request.

6. *In granting the variance, the Planning Official or designee may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this title."*

Staff Response:

No conditions are proposed. This criterion is not applicable to the subject request.

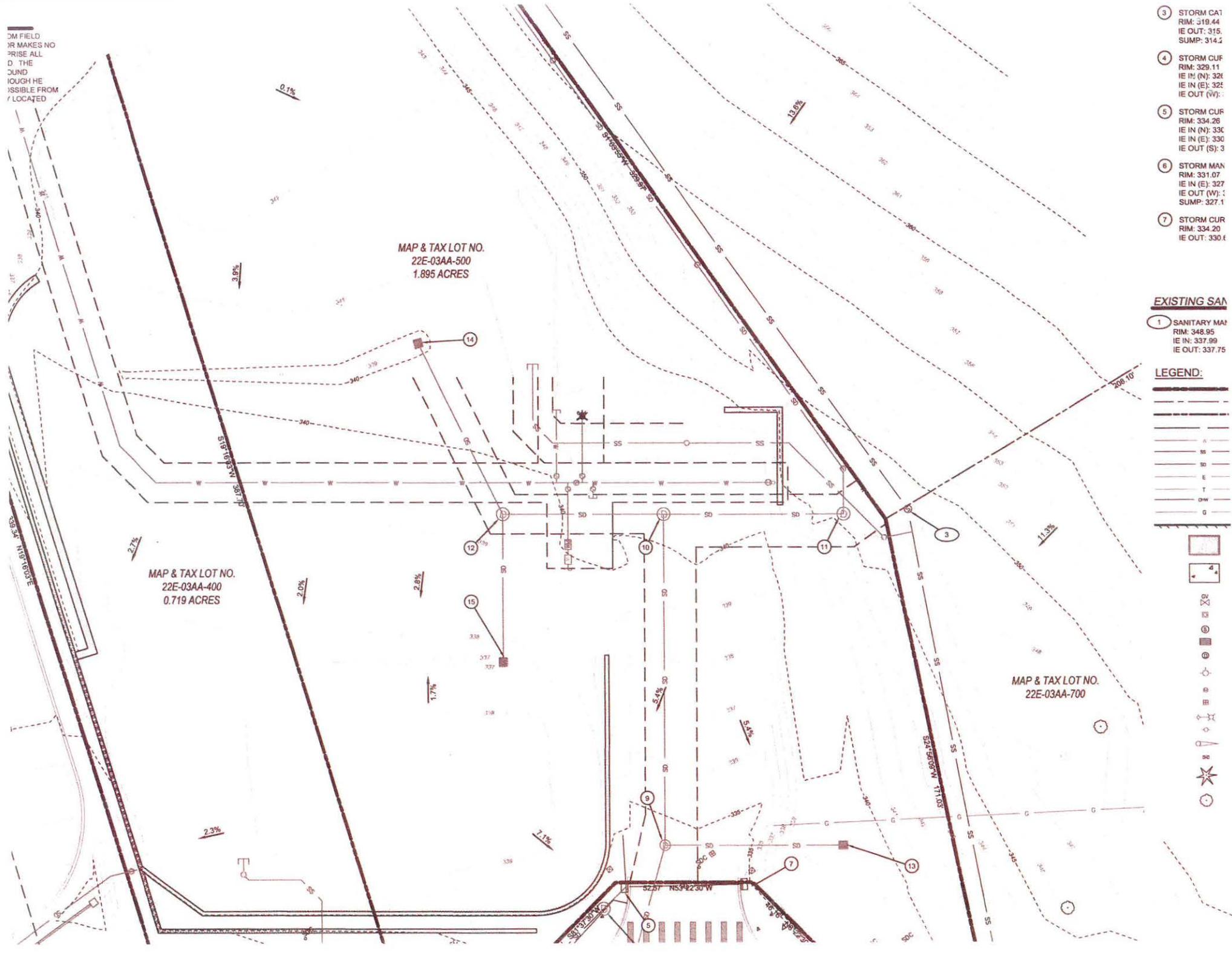
III. CONCLUSION AND RECOMMENDATION

The applicant has submitted an application for a Class "C" variance that will fulfill the criteria associated with the applicable policies and sections of the Happy Valley Comprehensive Plan and Development Code. Therefore, based on the findings of fact, the conclusionary findings for approval and the materials submitted by the applicant, staff hereby recommends that the Planning Commission **approve** VAR-03-13.



Exhibit D. 1

DM FIELD
OR MAKES NO
RISE ALL
D THE
OUND
OUGH HE
SSIBLE FROM
LOCATED



MAP & TAX LOT NO.
22E-03AA-500
1.895 ACRES

MAP & TAX LOT NO.
22E-03AA-400
0.719 ACRES

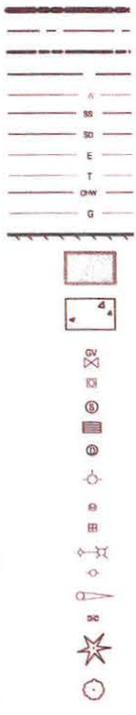
MAP & TAX LOT NO.
22E-03AA-700

- 3 STORM CURB
RIM: 319.44
IE OUT: 315.
SUMP: 314.2
- 4 STORM CURB
RIM: 329.11
IE IN (N): 327
IE IN (E): 325
IE OUT (W):
- 5 STORM CURB
RIM: 334.26
IE IN (N): 330
IE IN (E): 330
IE OUT (S): 3
- 6 STORM MAN
RIM: 331.07
IE IN (E): 327
IE OUT (W):
SUMP: 327.1
- 7 STORM CURB
RIM: 334.20
IE OUT: 330.6

EXISTING SAN

- 1 SANITARY MAN
RIM: 348.95
IE IN: 337.99
IE OUT: 337.75

LEGEND:



SUNNYSIDE PLAZA

MCDONALD'S

Happy Valley, Oregon

An Application For:

Design Review Major

FAR Variance

Submitted December 10, 2013

Completeness submittal January 8, 2014

Applicant:

McDonald's USA, LLC

12131 113th Ave NE

Kirkland, WA 98034

Prepared by:

Cardno

5415 SW Westgate Drive, Suite 100

Portland, OR 97221

Phone: (503) 419-2500

Fax: (503) 419-2600

21304310

TABLE OF CONTENTS

INTRODUCTION.....	2
SUMMARY OF PROPOSAL	3
TITLE 16 LAND DEVELOPMENT CODE	4
ARTICLE 16.2 LAND USE DISTRICTS.....	4
16.23.010 <i>Mixed Use Commercial and Employment Districts.....</i>	<i>4</i>
ARTICLE 16.4 COMMUNITY DESIGN STANDARDS	7
Chapter 16.40 <i>DESIGN STANDARDS ADMINISTRATION</i>	<i>7</i>
Chapter 16.41 <i>ACCESS AND CIRCULATION</i>	<i>7</i>
Chapter 16.42 <i>LANDSCAPING, STREET TREES, FENCES AND WALLS</i>	<i>10</i>
Chapter 16.43 <i>PARKING AND LOADING</i>	<i>17</i>
Chapter 16.44 <i>SPECIAL STANDARDS FOR CERTAIN USES</i>	<i>24</i>
Chapter 16.46 <i>HAPPY VALLEY STYLE DESIGN STANDARDS.....</i>	<i>26</i>
ARTICLE 16.6 ADMINISTRATION OF LAND USE AND DEVELOPMENT	41
Chapter 16.62 <i>LAND USE REVIEW AND DESIGN REVIEW</i>	<i>41</i>
ARTICLE 16.7 EXCEPTION TO CODE STANDARDS	43
Chapter 16.71 <i>VARIANCES.....</i>	<i>43</i>
CONCLUSION	45

EXHIBITS

- A. Land Use Application Forms
- B. Plan Set
- C. Property Title & Deed Information
- D. Tax Map
- E. Storm Drainage Memo
- F. Arborist Report
- G. Transportation Impact Analysis
- H. Public Noticing Material

INTRODUCTION

GENERAL INFORMATION

Applicant:

McDonald's USA, LLC

12131 113th Ave NE

Kirkland, WA 98034

Contact: Doug Bates, Construction Manager
Doug.Bates@us.mcd.com

Applicant's Representative

Cardno

5415 SW Westgate Dr, Suite 100

Portland, OR 97221

(503) 419-2500 phone

(503) 419-2600 fax

Contact: Thatch Moyle, AICP

thatch.moyle@cardno.com

Tax Lot Information:

Map

Tax Lots

22E03AA

0400 & 0550

Location:

11899 & 11965 SE Sunnyside Road in Happy Valley, Oregon within Clackamas County.

Generally bounded by SE Sunnyside to the south, SE 122nd Avenue to the east and SE Forest Creek Court to the west.

Current Zoning Designation:

Mixed Use Commercial (MUC)

Project Site Area:

2.61 Acres

SUMMARY OF PROPOSAL

The Sunnyside Plaza commercial project represents a 2-phase development project for a site located within both the City of Happy Valley and Clackamas County. Phase 1 focuses on the western portion of the site, directly north of SE Sunnyside Road and just east of the SE Forest Creek Court cul-de-sac. Phase 1 includes both a bank pad located at the back portion of the site that has already been submitted and approved under a Design Review Major application, as well as this proposed McDonald's restaurant. The McDonald's is a 4,386 SF restaurant with drive-thru, located at the southern end of the site along SE Sunnyside Road, with primary access from SE 119th Drive. Accompanying drive aisles, parking stalls and drive-thru vehicle queuing are provided for the McDonald's, with site layout and design to tie into the approved bank pad. Code compliant landscaping, lighting, and pedestrian access are also provided and noted on the attached plan set included with this project narrative.

This proposal is subject to the Design Review Major submittal requirements. In addition, the applicant is filing for a variance to address the minimum floor-to-area ratio requirements that cannot be met.

AN UPDATE TO THE PROPOSED LANDSCAPE SCREENING TO THE NORTH

Although City of Happy Valley code section 16.42.030 does not require buffer screening along the north boundary of the McDonald's parking area as it is within a commercial center and is not within 100ft of a property line, at the City's request the owner plans to work with the four residential property owners (Tax Lots 121, 122, 123, 124) adjacent to Parcel 1 (the north future development parcel) to formalize an agreement which in part will provide appropriate landscape screening within the right-of-way immediately adjacent to the north and west boundaries of Parcel 1 at the time of McDonald's construction. The agreement will also provide a mutually agreed-upon framework for the future screening of Parcel 1 (above minimum City code) when it develops. As part of the agreement the property owners will agree to not appeal the proposed Design Review applications of the McDonald's and the future Parcel 1 application as the latter relates to perimeter walls, fencing and landscape screening. The owner plans to start this process once the City rules that the McDonald's application is complete and sets the required hearing dates.

TITLE 16 LAND DEVELOPMENT CODE

ARTICLE 16.2 LAND USE DISTRICTS

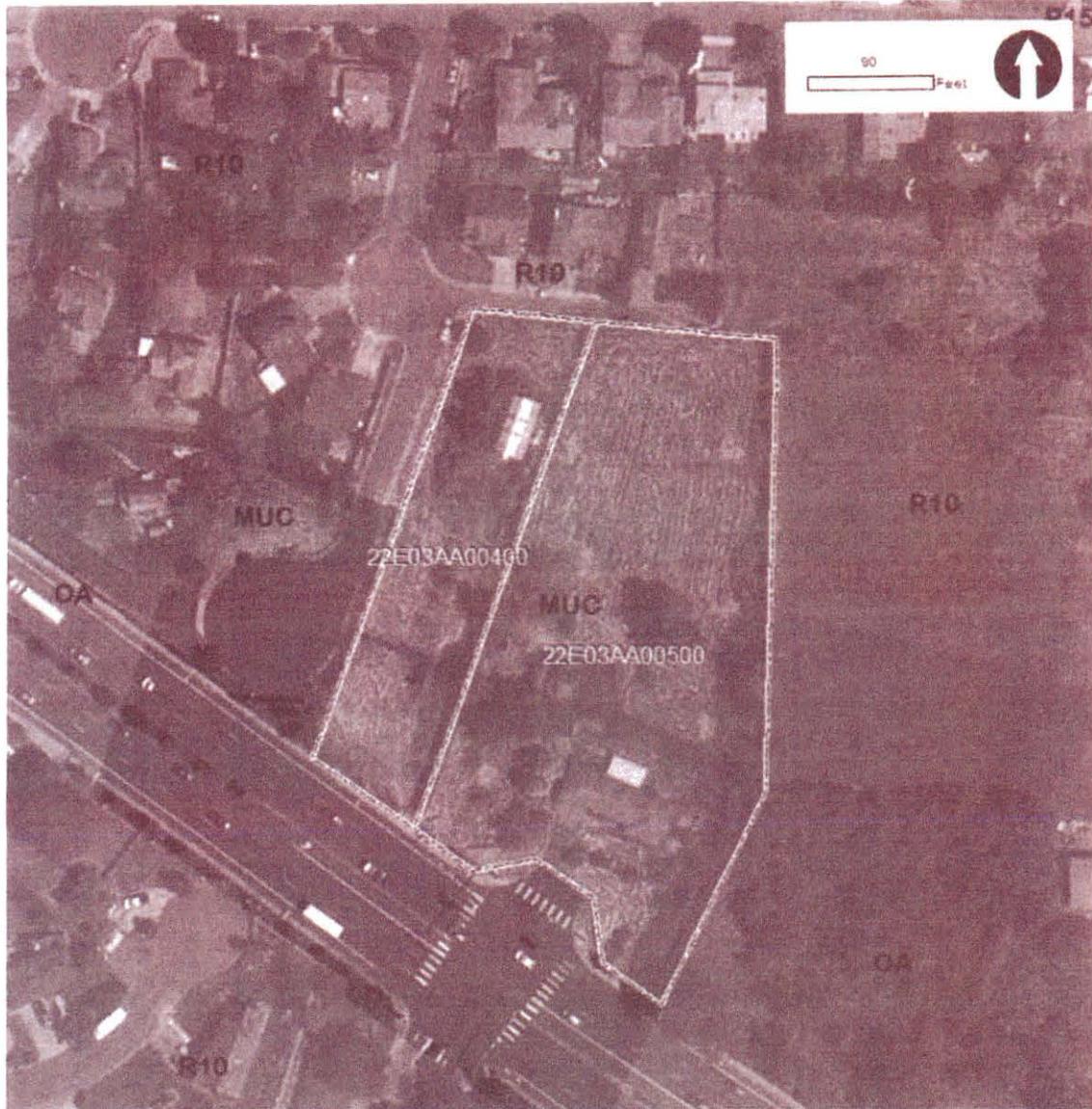
16.23.010 Mixed Use Commercial and Employment Districts.

B. Permitted Uses. Table 16.23.010-1 identifies the land uses that are allowed in the MUC, MUE and RCMU Districts. [complete table omitted from this narrative]

Table 16.23.010-1 Mixed Use Districts (MUC, MUE, RCMU) Permitted Uses [table reduced for this narrative]

<i>Use</i>	<i>MUC</i>
Coffee shops, cafés, sandwich shops and delicatessens	P
Drug stores	P
Restaurants full service	P
Restaurants—Drive-through	P
Retail and service commercial uses similar to those above but not listed elsewhere in this section upon administrative determination through the design review process	P
Professional and administrative offices	P
Medical office buildings	P

Response: The proposed McDonald's drive-through restaurant is a permitted use within the MUC mixed-use district.



C. Development Standards. The development standards in Table 16.23.010-2 apply to all uses, structures, buildings, and development in the MUC, MUE and RCMU Districts.

Table 16.23.010-2 Development Standards for MUC, MUE and RCMU Districts

<i>Standard</i>	<i>MUC</i>
Lot size (minimum)	Variable ³
Lot width (minimum)	Variable ³
Lot depth (minimum)	Variable ³
Floor area ratio	
Nonresidential FAR (minimum)	0.25:1 ⁴
Nonresidential FAR (maximum)	5:1
FAR for mixed use building with residential uses (minimum)	0.25:1
FAR for mixed use building with residential uses (maximum)	5:1
Landscaping (minimum)	Variable ⁵
Building setbacks (minimum)	Variable ³
Building height (maximum)	65 feet ³

NOTES:

¹ Density calculations shall be made pursuant to Section 16.63.020(F).

² Minimum density of eighty (80) percent of each sub-area is required.

³ Building height is measured pursuant to Chapter 16.12, Definitions. Standards are flexible and shall be determined through the master plan process or a design review.

⁴ Must include a shadow plan to establish future development.

⁵ Pursuant to Section 16.42.030, fifteen (15) percent of the net developable area must be usable open space.

Response: The new proposed lot dimensions shown on the previously submitted property line adjustment (PLA) shows a lot size of 1.183 acres for Parcel 2. Generally, the minimum lot width is approximately 200-feet with a minimum lot depth of 191-feet. The proposed bank has an FAR of 0.085, below the 0.25:1 FAR minimum requirement. A Class C variance is included with this application to address the FAR requirement.

As shown on Sheet C2.0- Site Plan, 10,716 SF of landscaping is provided, representing 20.8% of the overall site area.

The proposed maximum building height is 24'6". This height is well below the 65-foot maximum height restriction.

ARTICLE 16.4 COMMUNITY DESIGN STANDARDS

Chapter 16.40 DESIGN STANDARDS ADMINISTRATION

16.40.020 Applicability.

Each chapter within the Community Design Standards contains an applicability statement for those specific standards.

Response: The applicant is aware of the applicability provision and will work to address each standard seen as applicable to this proposal.

Chapter 16.41 ACCESS AND CIRCULATION 16.41.020 Applicability.

This section applies to all public streets within the City and to all properties that abut these streets. The standards apply when lots are created, consolidated, or modified through a land division, lot line adjustment, lot consolidation, or street vacation; and when properties are subject to site design review.

Response: SE Sunnyside Road and SE Forest Creek Court are both public streets that abut the project boundary. Therefore, the access and circulation standards do apply to this project.

16.41.030 Vehicular access and circulation A. Access to Arterial and Collector Streets.

- 1. Location and design of all accesses to and/or from arterials and collectors (as designated in the transportation system plan) are subject to review and approval by the City Engineer. Where practical, access from a lower functional order street shall be required.**
- 2. Accesses to arterials or collectors shall be located a minimum of one hundred fifty (150) feet from any other access or street intersection. Exceptions may be granted by the City Engineer. Evaluations of exceptions shall consider posted speed of the street on which access is proposed, constraints due to lot patterns, and effects on safety and capacity of the adjacent public street, bicycle and pedestrian facilities.**
- 3. No development site that abuts an arterial or collector street shall be allowed more than one access point to that street (as designated in the transportation system plan) except as approved by the City Engineer. Evaluations of exceptions shall consider posted speed of street on which access is proposed, constraints due to lot patterns, and effects on safety and capacity of the adjacent public street, bicycle and pedestrian facilities.**
- 4. When developed property is to be expanded or altered in a manner that significantly affects on-site parking or circulation, both existing and proposed accesses shall be reviewed under the standards in subsections (B)(1) and (B)(2) of this section. As a part of an expansion or alteration approval, the City may require relocation and/or reconstruction of existing accesses not meeting those standards.**
- 5. When a partition, subdivision or a planned unit development abuts or contains an existing or proposed arterial street as defined within the Comprehensive Plan, the City Engineer or Planning Commission shall require reverse frontage lots, thereby precluding access to the parkway streets.**

Response: SE Sunnyside Road is defined as a Major Arterial according to the City of Happy Valley Road Map. Therefore, site access onto SE Sunnyside Road is located more than 600-feet from the next closest access point at the SE Sunnyside Road and SE 122nd Avenue intersection to the east and more than 1,000-feet to the closest intersection to the west at SE 117th Avenue. There is only one proposed access point onto Sunnyside from the development, with the proposed property line adjustment creating both parcels to be served by the access driveway onto Sunnyside.

B. Driveways.

1. **A driveway to an off-street parking area shall be improved from the public roadway to the parking area a minimum width of twenty (20) feet for a two-way drive or twelve (12) feet for a one-way drive but in either case not less than the full width of the standard approach for the first twenty (20) feet of the driveway.**
2. **Access to and from off-street parking areas shall not permit backing onto a public street, except for single-family dwellings.**
5. **Driveways, aisles, turnaround areas and ramps shall have a minimum vertical clearance of twelve (12) feet for their entire length and width but such clearance may be reduced in parking structures.**
6. **No driveway shall traverse a slope fifteen (15) percent or greater at any point along the driveway length.**
7. **The location and design of the driveway within the lot frontage shall provide for unobstructed sight pursuant to the vision clearance requirements. Requests for exceptions to these requirements will be evaluated by the public works director considering the physical limitations of the lot and safety impacts to vehicular, bicycle, and pedestrian traffic.**
8. **The number of driveway and private street intersections with public streets should be minimized by the use of shared driveways for adjoining lots where feasible. When necessary for traffic safety and access management purposes, or to access flag lots, the City Engineer may require joint access and/or shared driveways.**

Response: The proposed driveway provided directly across from SE 119th Avenue will be improved to provide 3-travel lanes at the point of entry. The width of the driveway is approximately 39-feet, with 13-feet provided for each travel lane. This driveway access provides connectivity into the site, where off-street parking, drive aisles, and building access points are shown. All off-street parking areas are removed from any backing conflict along SE Sunnyside Road. The driveway will make use of the existing driveway apron, which is designed to provide vision clearance corridors. The driveway features a 4.9% grade (as shown on the Grading Plan, Sheet C3.0).

16.41.040 Pedestrian access and circulation.To ensure safe, direct and convenient pedestrian circulation, all developments, except single-family detached housing (i.e., on individual lots), shall provide a continuous pedestrian and/or multi-use pathway system as shown in the City's TSP, Happy Valley Parks Master Plan, or North Clackamas Parks District Master Plan. (Pathways only provide for pedestrian circulation; multi-use

pathways accommodate pedestrians and bicycles.) The system of pathways shall be designed based on the standards in subsections A through E of this section.

- A. Continuous Pathways.** The pathway system shall extend throughout the development site, and connect to all future phases of development, adjacent trails, public parks and open space areas whenever possible. The developer may also be required to connect or stub pathways(s) to adjacent streets and private property.

Response: Pedestrian pathways do extend throughout the development site. As shown on the Site Plan, there are proposed pathways along SE Sunnyside Road and SE Forest Creek Court, as well as internal pathways providing connectivity between Sunnyside Road and the primary building entrance. The northeast portion of the site shows a pedestrian pathway connection from the bank pad, with an ADA ramp for the central drive aisle crossing.

- B. Safe, Direct and Convenient Pathways.** Pathways within developments shall provide safe, reasonably direct and convenient connections between primary building entrances and all adjacent streets. For purposes of this Code section, the “primary entrance” of commercial, industrial, mixed use, public and institutional buildings is the main public entrance to the building. In the case where no public entrance exists, street connections shall be provided to the main employee entrance. For residential buildings, the “primary entrance” is the front door (i.e., facing the street). For multifamily buildings in which each unit does not have its own exterior entrance, the “primary entrance” may be a lobby, courtyard or breezeway that serves as a common entrance for more than one dwelling. A determination of whether or not a bicycle or pedestrian route is safe, direct, and convenient will be based on the following criteria:

1. Planned bicycle and pedestrian routes do not deviate unnecessarily from a straight line and will not involve a significant amount of out-of-direction travel for likely users.
2. Bicycle and pedestrian routes are reasonably free from hazards and provide safe access to destinations.

Response: A pedestrian path is shown along the primary vehicle entrance that continues up the approach to a linkage with the bank pad pedestrian path, as well as connection to the primary McDonald’s entrance. This pathway provides access circulation to both the bank pad and off-site users.

- C. Connection within Development.** For all developments subject to site design review, pathways shall connect to all building entrances to one another. In addition, pathways shall connect all parking areas, storage areas, recreational facilities and common areas (as applicable), and adjacent developments to the site, as applicable.

Response: A pedestrian path is shown along the primary vehicle entrance that continues up the approach to a linkage with the bank pad pedestrian path, as well as connection to the primary McDonald’s entrance. This pathway provides access circulation to both the bank pad and off-site users. This pathway does provide access to all parking areas, as well as adjacent properties along SE Sunnyside Road.

- D. Connections to Transit.**

1. **New retail, office and institutional buildings at or near major transit stops shall provide for convenient pedestrian access to transit through the use of the continuous pathway system outlined in subsections A and B above.**
2. **In addition to other requirements in this section, sites that are located at a major transit stop shall provide the following:**
 - a. **Either locate buildings within twenty (20) feet of the transit stop, a transit street or an intersection street, or provide a pedestrian plaza at the transit stop or a street intersection;**
 - b. **A reasonably direct pedestrian connection between the transit stop and building entrances on the site;**
 - c. **A transit passenger landing pad accessible to disabled persons;**
 - d. **Lighting at the transit stop.**

Response: This site is not located near a major transit stop. Tri-Met bus service does include a bus stop located at SE Sunnyside Road and SE 119th Avenue. Bus line #155 provides service from the Clackamas Town Center, with service every 40 minutes. The existing bus stop includes a simple bench and Tri-Met signage. The applicant is proposing to enhance the bus stop with an updated bench and enhanced landscaping and pavers.

E. Design and Construction. Pathways shall be designed and built in accordance with City public works standards. (Ord. 389 § 1(Exh. A), 2009)

Response: The applicant will design and construct pedestrian pathways to the standard outlined by the City public works standards.

Chapter 16.42 LANDSCAPING, STREET TREES, FENCES AND WALLS

16.42.020 Applicability.

This chapter shall apply to all land divisions and developments subject to site design review.

Response: As this project involves design review major, the landscaping, street tree, fences and walls provisions do apply. The following narrative sections will address all applicable code sections.

16.42.030 Landscaping standards.

A. General Requirements for Landscaping.

1. **Where landscaping is required by this code, a detailed landscape design plan in accordance with Section 16.42.030(C) shall be submitted for review with development applications. No development may commence until the Planning Official or Planning Commission has determined the plans comply with the specific standards of this section. All required landscaping and related improvements shall be completed or financially guaranteed prior to the issuance of a certificate of occupancy.**
2. **Appropriate care and maintenance of landscaping on-site and landscaping in the adjacent public right-of-way is the joint and several right and responsibility of the property owner, tenant, and their agent, if any, unless otherwise provided by the lease agreement, or City ordinances specify otherwise for general public and**

safety reasons. If street trees or other plant materials do not survive or are removed, materials shall be replaced in kind within four months. Landscaping shall be maintained in a condition which presents a healthy, neat, and orderly appearance and shall be kept free of refuse and debris.

3. Significant plant and tree specimens should be preserved to the greatest extent practicable and integrated into the design of a development. Trees that are six inches or greater in diameter measured at a height of four and one-half feet above grade are considered significant pursuant to Section 16.42.050. Plants to be saved and methods of protection shall be indicated on the detailed landscape plan submitted for approval. Existing trees may be considered preserved if no cutting, filling, or compaction of the soil takes place between the trunk of the tree and the area five feet outside the tree's drip line. Trees to be retained shall be protected from damage during construction by a construction fence located five feet outside the drip line.
4. In no case shall shrubs, conifer trees, or other screening be permitted within vision clearance areas of street, alley, or driveway intersections, or where the City Engineer otherwise deems such plantings would endanger pedestrians and vehicles. All plant growth in landscaped areas shall be controlled by pruning, trimming, or otherwise so that it will not interfere with the maintenance or repair of any public utility.
5. Landscaped areas may include architectural features or artificial groundcovers such as sculptures, benches, masonry or stone walls, fences, rock groupings, bark dust, decorative hard paving and gravel areas interspersed with planted areas, and on-site natural features which are retained and improved. The exposed area developed with such features shall not exceed twenty-five (25) percent of the required landscaped area. This area may be developed into pedestrian amenities, including, but not limited to, sidewalk cafés, seating, water features and plazas, as approved by the Planning Official or designee or the Design Review Board. Artificial plants are prohibited in any required landscaped area.
6. Balconies required for entrances and exits should not be considered as landscaped areas except where such exits and entrances are for the sole use of the unit.
7. Roofed structures shall not be included as open space except for open unenclosed public patios, balconies, gazebos, or other similar structures or spaces.
8. Driveways and parking areas shall not be included as landscaped area.
9. All areas not occupied by paved roadways, parking areas, loading areas, driveways, walkways, patios, or buildings shall be landscaped.
10. Topsoil and Cover Planting.
 - a. During construction, sufficient topsoil and overburden shall be stored on the property in a stabilized condition at an isolated location to restore graded or backfilled areas. Such areas shall be covered with not less than eight inches of topsoil of at least equal quality to that removed, provided

that if the average depth of the topsoil prior to excavation was less than eight inches, then the depth required need not exceed such lesser average.

- b. Upon replacement of topsoil, the developer shall provide groundcover selected by the developer adequate to control erosion, prevent undue runoff and restore the surface in a manner suitable for its future development. Such groundcover will be identified by the developer on the site plan at the time of site plan review or preliminary approval of a partition, subdivision, PUD, or nonresidential development.
11. Final public infrastructure inspection and authorization to submit building permits may occur prior to the landscaping requirements having been met, provided that the City has received bonding or other assurances to cover the cost of required public improvements, in accordance with Section 16.50.080.

Response: A detailed Landscape Planting Plan (Sheet L1.0) is provided with this narrative. The Planting Plan does provide plantings with a palette of selections taken from the City of Happy Valley plant list and a general note placed on the plan states that all landscape planting shall conform to the standards established under the City of Happy Valley Planning Department.

B. Area Required. The following minimum lot area shall be landscaped for the following uses:

1. Duplexes, triplexes and fourplexes: twenty (20) percent;
2. Multifamily dwellings containing five or more units: twenty (20) percent;
3. Nonresidential uses, e.g., commercial, industrial, institutional, or civic: fifteen (15) percent.

Response: The applicant is aware of the minimum 15% lot area landscaping requirement. As shown on the Site Plan site area summary table provided on Sheet 2.0, overall landscaping covers 11,797 SF of the site. This represents 22.9% of the overall site, well above the minimum requirement.

C. Landscaping Plan Requirements.

1. The applicant shall submit a preliminary landscape design plan which includes:
 - a. Location of underground irrigation system sprinkler heads where required by the City;
 - b. Location and height of fences, buffers and screening;
 - c. Location of terraces, decks, shelters, play areas, accessory structures and facilities, and common open areas;
 - d. Location, type, size and species of existing and proposed plant materials; and
 - e. A narrative which addresses soil conditions and erosion control measures that will be used;
 - f. Proposed location(s) and design of trash receptacles, clustered mailboxes per the provisions of the Americans with Disabilities Act and implementing federal regulations as well as the accessibility provisions of the Oregon Structural Specialty Code, newspaper boxes, and entry features or signs;

- g. Any trees over six inches in diameter at four feet in height proposed to be removed;**
- h. The approval standards shall be the applicable standards contained in this section.**

Response: A detailed Landscape Planting Plan (Sheet L1.0) identifies the location, type, size and species of existing and proposed plant materials, as well as those trees proposed to be removed and retained. A general note on the Planting Plan states that landscape areas shall have a complete underground automatic irrigation system with full head to head coverage. The complete system layout will be provided with construction documents.

D. Parking Lot Landscaping.

- 1. Except for a residential development that has landscaped yards, parking facilities shall include landscaping to cover not less than fifteen (15) percent of the area devoted to parking facilities. The landscaping shall be uniformly distributed throughout the parking area and may consist of trees, shrubs, and groundcovers.**

Response: As shown on the Landscape Planting Plan (Sheet L1.0), the proposed parking facilities do include landscaping within the parking islands and adjacent to drive aisles and drive-thru facilities. These areas have a mix of trees, shrubs and ornamentals, and groundcover plantings and do provide coverage throughout the parking area.

- 2. Screening of all parking areas containing four or more spaces and all parking areas in conjunction with an off-street loading facility shall be required. Where not otherwise specified by district requirement, screening along a public right-of-way and the parking area perimeter shall include a minimum ten (10) feet depth of buffer plantings adjacent to the right-of-way and along the perimeter of the parking area except when the perimeter of the parking area is within a commercial center or part of shared parking area, where a buffer is not required.**

Response: The Planting Plan does show landscape screening along the public ROWs for SE Sunnyside Road and SE Forest Creek Court. These screened areas do provide a minimum 10-foot depth around all portions of the site, aside from the central driveway entrance.

- 3. When parking in a commercial or industrial district adjoins a residential zoning district, a sight-obscuring screen that is at least eighty (80) percent opaque when viewed horizontally from between two and eight feet above the average ground level shall be required. The screening shall be composed of materials that are an adequate size so as to achieve the required degree of screening within two years after installation.**

Response: Aside from the landscape screening provided along SE Forest Creek Court for that portion of the side yard that abuts the McDonald's pad, the remainder of the site screening was addressed at the time of the bank pad Design Review Major.

- 4. Parking areas shall be divided into bays of not more than eight spaces in parking areas with twenty (20) or more spaces. Between, and at the end of each parking bay, there shall be planters that have a minimum width of five feet and a**

minimum length of seventeen (17) feet for a single depth bay and thirty-four (34) feet for a double bay. Each planter shall contain one major structural tree and groundcover. Truck parking and loading areas are exempt from this requirement.

Response: All parking stalls within the proposed development are broken into bays of not more than seven (8) consecutive stalls before a landscape island. The landscape islands provide single-bay depth, which is approximately 18.5-feet in length by at least nine-feet in width. The central bank of parking stalls does propose a 2.5-foot overhang into the planter to achieve the 19-foot depth. The location of the landscape islands is shown on the Planting Plan (Sheet L1.0).

E. Required Tree Plantings.

- 1. Planting of trees is required for all public street frontages, and along private drives more than one hundred (100) feet in length. Trees shall be planted outside the right-of-way except where there is a designated planting strip or City-adopted street tree plan. (See Section 16.42.040(B) for standards.)**

Response: Street trees are provided along all public street frontages, outside the ROW. See the Planting Plan (Sheet L1.0) to reference specific tree locations along the public ROW.

- 2. The City maintains a list of appropriate trees for street tree and parking lot planting situations in Table 16.42.040-1. Selection of species should be made from the City-approved list. Alternate selections may be approved by the Planning Official or designee following written request. The type of tree used shall determine frequency of trees in planting areas. Trees in parking areas shall be dispersed throughout the lot to provide a canopy for shade and visual relief. Street trees shall be planted at thirty (30) feet on center except where planting a tree would conflict with existing trees, retaining walls, utilities and similar barriers.**

Response: As shown on the Planting Plan, the Golden Desert Ash is proposed as the singular street tree along all public street ROWs, while other trees have been selected for the internal parking lot landscaping and drive aisle buffering. These trees include a Windmill Palm, Shademaster Honey Locust, Austrian Pine, and Vine Maple. All trees were selected by the project Landscape Architect to provide a balance and aesthetically pleasing site context.

3. Trees may not be planted:

- a. **Within five feet of a permanent hard surface paving or walkways, unless specific species, special planting techniques and specifications approved by the Planning Official or designee are used;**
- b. **Within ten (10) feet of fire hydrants and utility poles;**
- c. **Within five feet from a curb face when not in a planter strip or island;**
- d. **Where the Planning Official or designee determines the trees may be a hazard to the public interest or general welfare.**

- 4. Trees shall be pruned to provide a minimum clearance of eight feet above sidewalks and twelve (12) feet above street and roadway surfaces.**

Response: All trees are planted at least five feet back from any permanent hard surface

paving or walkway, ten feet from a fire hydrant and utility pole, and five feet from a curb face when not in a planter strip or island.

- F. Irrigation. Landscaping shall be irrigated, either with a manual or automatic system, to sustain viable plant life, or shall submit a xeriscaping landscape plan based on drought tolerant plantings for review and approval of the Planning Official and/or Design Review Board. Any development, redevelopment, or street improvement or installation project that results in the requirement of more than one standard residential meter ($\frac{5}{8}$ x $\frac{3}{4}$, rated at twenty (20) gallons per minute) to be dedicated to the irrigation of publicly accessible green space and/or planter strips, shall be required to install irrigation systems that utilize evapotranspiration (ET) based controllers, if the green spaces are to be irrigated at any time during peak demand season. Subdivisions, planned unit developments (PUDs) and road projects requiring more than two standard residential meters ($\frac{5}{8}$ x $\frac{3}{4}$, rated at twenty (20) gpm) to be dedicated to the irrigation of publicly accessible green space and/or planter strips, shall utilize central control systems with active connection to weather stations and flow monitoring sensors. The developer or project owner will be required to pay the cost for initial set-up and programming with the contractor selected by Sunrise Water Authority to manage the irrigation control system. Sunrise Water Authority will retain responsibility for engaging the contractor to operate any and all irrigation management systems installed under this program. Annual operational costs for the management of the system shall be collected from the homeowners within the subdivision or planned unit development as a surcharge on their water bill. Industry standard charges for operation and management of ET based irrigation control systems are based upon the number of valves in the irrigation system. This charge shall be equitably distributed amongst all home sites within the subdivision or PUD or, in the case of road projects, borne by the project owner, such as the County, City or State;**

Response: A general note on the Planting Plan states that landscape areas shall have a complete underground automatic irrigation system with full head to head coverage. The complete system layout will be provided with construction documents.

G. Types and Size of Plant Material.

1. **At least seventy-five (75) percent of the required landscaping area shall be planted with a suitable combination of trees, shrubs, or evergreen groundcover.**
2. **Plant Materials. Use of native plant materials or plants acclimatized to the Pacific Northwest is encouraged where possible.**
3. **Deciduous trees shall be species having an average mature spread of crown greater than fifteen (15) feet and having trunks, which can be maintained in a clear condition with over five feet of clear wood (without branches). Trees having a mature spread of crown less than fifteen (15) feet may be substituted by grouping the same so as to create the equivalent of a fifteen (15) foot crown spread.**
4. **Deciduous trees shall be balled and burlapped, and a minimum of seven feet in overall height or one and one-half inches in caliper measured six inches above the ground, immediately after planting. Bare root trees will be acceptable to plant during their dormant season.**

5. **Coniferous trees shall be a minimum five feet in height above ground at time of planting.**
6. **Shrubs shall be a minimum of one gallon in size or two feet in height when measured immediately after planting.**
7. **Hedges, where required to screen and buffer off-street parking from adjoining properties shall be planted with an evergreen species maintained so as to form a continuous, solid visual screen within two years after planting.**
8. **Vines for screening purposes shall be a minimum of one gallon in size or thirty (30) inches in height immediately after planting and may be used in conjunction with fences, screens, or walls to meet physical barrier requirements as specified. English Ivy is not permitted.**
9. **Groundcovers shall be fully rooted and shall be well branched or leafed. If used in lieu of turf in whole or in part, groundcovers shall be planted in such a manner as to provide complete coverage in two years.**
10. **Turf areas shall be planted in species normally grown as permanent lawns in western Oregon. Either sod or seed are acceptable. Acceptable varieties include improved perennial ryegrass and fescues used within the local landscape industry.**

Response: As delineated on the Landscape Planting Plan, more than 75% of the overall landscape area is planted with a combination of tree, shrubs, and groundcover. The specific plants have been selected by a licensed Landscape Architect with knowledge of plants acclimatized to the Pacific Northwest. As noted on the planting plan, all trees will be balled and burlapped and those deciduous trees shall be a minimum of seven-feet or 1 1/2" in caliper immediately after planting. All shrubs are proposed in 1 gallon containers or larger.

H. Revegetation in Unlandscaped or Natural Landscaped Areas.

1. **Areas where natural vegetation has been removed or damaged through grading or construction activity in areas not affected by the landscaping requirements and that are not to be occupied by structures or other improvements shall be replanted as required by the City or by applicable conditions of approval.**
2. **Plant material shall be watered at intervals sufficient to assure survival and growth.**
3. **The use of native plant materials or plants acclimatized to the Pacific Northwest is encouraged to reduce irrigation and maintenance demands.**

Response: All areas impacted by the proposed scope of work will be replanted. As shown on the Landscape Planting Plan, all areas of site disturbance will be planted with trees, shrubs, groundcover, or a combination thereof.

- I. Landscaping Between Public Right-of-Way and Property Lines. Except for portions allowed for parking, loading, or traffic maneuvering, a required setback area abutting a public street and open area between the property line and the roadway in the public street shall be landscaped. That portion of the landscaping within the street right-of-way shall not count as part of the lot area percentage to be landscaped.**

Response: All areas between the public ROW and property line are shown as landscaped. This includes the frontages along SE Sunnyside Road and SE Forest Creek

Court. See the Landscape Planting Plan under Sheet L1.0 for specific plantings within the public ROW.

J. Buffer Planting—Parking, Loading and Maneuvering Areas.

1. Buffer plantings are used to reduce building scale, provide transition between contrasting architectural styles, and generally mitigate incompatible or undesirable views. They are used to soften rather than to block viewing. Where required, a mix of plant materials shall be used to achieve the desired buffering effect.
2. Any use which is required to provide off-street parking for five or more vehicles shall provide buffering of the parking areas on all sides which face directly upon and are within one hundred (100) feet of any property line of the subject site. Buffering shall include, in addition to required street trees for the project as a whole, fencing or plantings at the immediate perimeter of the parking area which shall be of sufficient height and density, year around, to obscure sight lines to the parked vehicles and negate the impacts of headlights.
3. Boundary plantings shall be used to buffer these uses from adjacent properties and the public right-of-way. On-site plantings shall be used between parking bays, as well as between parking bays and vehicle maneuvering areas. A balance of low-lying groundcover and shrubs, and vertical shrubs and trees shall be used to buffer the view of these facilities.
4. Decorative walls and fences may be used in conjunction with plantings, but may not be used by themselves to comply with buffering requirements.

Response: The Planting Plan does show buffer plantings along the public ROWs for SE Sunnyside Road and SE Forest Creek Court. These plantings buffer the McDonald's and associated parking stalls and drive aisles from adjacent properties. For additional reference note the Landscape Planting Plan shown on Sheet L1.0.

Chapter 16.43 PARKING AND LOADING

16.43.020 Applicability.

All developments involving land division or subject to site design review, including development of parking facilities, shall comply with the standards in this chapter.

Response: As this project involves a design review major, the parking and loading provisions do apply. The following narrative sections will address all applicable code sections.

16.43.030 Automobile parking standards.

A. General Requirements for Off-Street Parking and Loading.

1. **Provision and Maintenance.** The provision of required off-street parking for motor vehicles and bicycles, and loading facilities for motor vehicles, is a continuing obligation of the property owners. Building permits or other permits will only be issued after review and approval of site plans showing location of permanent access, parking and loading facilities.
2. **No area shall be considered a parking space unless it can be shown that the area is accessible and usable for that purpose, and has maneuvering area for the**

vehicles, as determined by the Planning Commission or appropriate and designated body or agent.

3. **New Structure or Use.** When a structure is constructed or a new use of land is commenced, on-site vehicle and bicycle parking and loading spaces shall be provided in accordance with subsection B of this section or as otherwise modified through a planned development or specific area plan.
4. **Alteration of Existing Structures.** When an existing structure is altered to the extent that the existing use is intensified, on-site vehicle and bicycle parking shall be provided in the amount required for such intensification.
5. **Increased Intensity.** When increased intensity requires no more than two vehicle spaces, no additional parking facilities shall be required. However, the effects of changes, additions, or enlargements shall be cumulative. When the net effect of one or more changes generates a need for more than two spaces, the additional required spaces shall be provided. Additional spaces shall be required for the intensification but not for the original use.
6. **Change in Use.** When an existing structure or use of land is changed in use from one use to another use as listed in subsection B of this section, and the vehicle and bicycle parking requirements for each use type are the same, no additional parking shall be required. However, where a change in use results in an intensification of use in terms of number of vehicle and bicycle parking spaces required, additional parking space shall be provided in an amount equal to the difference between the number of spaces required for the existing use and number of spaces required for more intensive use.
7. **Time of Completion.** Required parking spaces and loading areas shall be improved and available for use prior to issuance of a temporary occupancy and/or final building inspection.
10. **Availability of Parking Spaces.** Required vehicle and bicycle parking spaces shall be unobstructed and available for the parking of vehicles and bicycles of residents, customers, patrons, and employees only. Parking spaces shall not be used for the storage of vehicles or materials or for parking of vehicles and bicycles used in conducting the business or use, and shall not be used for sale, repair, or servicing of any vehicle or bicycle.

Response: The proposed Sunnyside Plaza McDonald's does provide off-street parking and loading facilities to meet the code requirements for minimum number of stalls provided, at dimensions specified by the City of Happy Valley design standards. The required parking spaces and loading areas will be approved and available for use prior to issuance of temporary occupancy and/or final building inspection.

B. Minimum Off-Street Parking Space Requirements and Calculations.

1. **Unspecified Requirements.** Vehicle and bicycle parking requirements for uses not specified in this chapter may be determined by the Planning Official based upon the requirements for similar specified uses.
2. **Tandem parking** (where two spaces are directly behind one another) may be counted as two parking spaces.

3. On-street parking within three hundred (300) feet of a use along its property frontage may be counted as part of the minimum spaces required.
4. Structured parking, fleet parking, spaces that are user paid (at a market rate approved by the City), on-street parking spaces and market rate surface parking lots are exempt from the maximum parking ratios.
5. If the applicant demonstrates that too many or too few parking spaces are required, applicant may seek a variance from the minimum or maximum by providing evidence that the particular use needs more or less than the amount specified in this Code.
6. Mixed Uses. In the case of mixed uses, shared parking between uses is encouraged. Where shared parking is not an option, the total required vehicle and bicycle parking shall be the sum of requirements of individual uses computed separately.
7. Transit. Existing development shall be allowed to redevelop a portion of their existing parking area for transit-oriented uses, including bus stops and pullouts, bus shelters, park and ride stations, and similar facilities, where appropriate. The redevelopment shall not result in greater than ten (10) percent reduction in the number of required on-site vehicle parking spaces.
8. Where uses are mixed in a single building, parking shall be a blend of the ratio required less ten (10) percent for the minimum number of spaces. The maximum number of spaces shall be ten (10) percent less than the total permitted maximum for each use.
9. Fractions. When the sum of the required vehicle or bicycle parking spaces is a fraction of a space the fraction shall be rounded down to the nearest whole number.
10. Maximum Parking Allowed. A maximum number of vehicular parking spaces allowed exists if provided for in Table 16.43.030-1.
11. Parking Table. The following parking table shall be interpreted with the following notation: All square footage measurements are gross square feet of total floor area. Eighteen (18) lineal inches of bench shall be considered one seat.

Table 16.43.030-1 [Reduced list for this narrative]

<i>Proposed Use</i>	<i>Minimum Parking Spaces</i>	<i>Maximum Parking Spaces (if nothing is noted, there is no maximum)¹</i>		<i>Bicycle Spaces</i>
		<i>Zone A</i>	<i>Zone B</i>	
Restaurant (with drive-through)	9.9 spaces per 1,000 sq. ft. of gross floor area	19.1 per 1,000 sq. ft.	23.0 per 1,000 sq. ft.	1 space per 1,000 sq. ft. of gross floor area

NOTES:

¹ Parking maximums are based on A and B Zone designations, pursuant to Metro Functional Plan Title 2, Regional Parking Policy, and as listed in the Regional Parking Ratios Table and illustrated in the Regional Parking Maximum Map. The zones are based on access to transit. Areas with twenty (20) minute peak hour transit service available within a one-quarter mile walking distance for bus transit or one-half mile walking distance for light rail transit shall be within Zone A. Cities and counties should designate Zone A parking ratios in areas with good pedestrian access to commercial or employment areas (within one-third mile walk from adjacent residential areas).

2 Enclosed outdoor seating area shall count as floor area in determining parking requirement for restaurants without drive-through.

3 Visitor parking for attached dwellings containing four or more dwelling units is required in addition to the minimum

off-street parking required by this subsection. If on-street parking is available within five hundred (500) feet, this requirement may be waived.

Response: Based on Table 16.43.030-1, the minimum parking requirement would necessitate 43 parking spaces for the McDonald's. There are 43 standard parking spaces and 2 ADA compliant stalls provided on-site for a total of 45 spaces. Bicycle parking would require 4 spaces for the restaurant. Therefore, the project does provide adequate parking to meet the standard.

C. Shared Use of Parking Facilities.

- 1. Except for residential uses, required parking facilities may be located on an adjacent parcel of land or separated by a maximum of two hundred (200) feet (measured as a direct pedestrian route).**
- 2. The right to use the off-site parking must be evidenced by a recorded deed, lease, easement or similar written instrument.**
- 3. Required parking facilities for two or more uses, structures, or parcels of land may be satisfied by the same parking facility used jointly, to the extent that it can be shown by the owners or operators that the needs of the facilities do not materially overlap (e.g., uses primarily of day time versus night time uses) or typically provide services to many of the same patrons within the same development, and provided that such right of joint use is evidenced by a deed, lease, contract or similar written instrument establishing such joint use.**
- 4. Any change in use which would produce a need for additional parking in a shared situation shall require additional review pursuant to Section 16.62.040.**

Response: The applicant is aware of the shared use of parking facilities provision. Shared parking is not proposed at this time, although both parcels are under the same ownership, which would simplify the coordination and right to use process.

D. Carpool, Hybrid/Electric Car and Vanpool Parking. New industrial, commercial, and institutional uses with more than twenty (20) employee parking spaces on site shall meet the following minimum requirements for carpool, hybrid/electric car and vanpool parking.

- 1. For this section, a hybrid car is defined as an automobile that is powered by two fuel sources (i.e., gas and electricity) and achieves a combined EPA gas mileage of forty-five (45) miles per gallon or more.**
- 2. Five spaces or five percent of the parking spaces on site, whichever is less, must be reserved for carpool/hybrid/electric car use during normal working hours. More spaces may be reserved, but they are not required.**
- 3. The spaces will be those closest to the building entrance or elevator, but not closer than the spaces for disabled parking and those signed for exclusive customer use.**
- 4. Signs must be posted indicating these spaces are reserved for carpool/hybrid/electric car use during normal working hours and those hours must be included on the sign.**

Response: This site does not provide more than twenty employee parking spaces on-site. Therefore, this provision does not apply.

E. Parking Location.

1. Vehicle parking required for residential uses shall be provided on the development site of the primary structure. Required parking for all other uses shall be provided only on streets, within garages, carports, and other structures, or on driveways or parking lots that have been developed in conformance with this code.
2. No off-street parking shall be allowed in the landscaped yard areas of any lot.
3. Bicycle parking required for all uses in all districts shall be provided on the development site in accordance with Table 16.43.030-1 of this section.
4. Parking areas, which abut a residential zoning district, shall meet the setback of the most restrictive adjoining residential zoning district.
5. Required parking shall not be located in a required front or side yard setback area abutting a public street except in industrial districts. For single-family and two-family dwellings, required parking may be located in front of a garage.
6. Parking areas shall be setback from a lot line adjoining a street the same distance as the required building setbacks. Regardless of other provisions, a minimum setback of ten feet shall be provided along the property fronting on a public street. The setback area shall be landscaped as provided in this code.

Response: All parking is provided within an off-street parking area located adjacent to the McDonald's. The parking area is setback from all lot lines at least 10-feet.

F. Parking Area Design, Size, Layout and Access. All off-street parking facilities, vehicular maneuvering areas, driveways, loading facilities, accessways, and private streets shall conform to the standards set forth in this section.

1. All areas used for parking and maneuvering of cars shall be surfaced with asphalt, concrete or other approved impervious, permeable, or semi-permeable surface, and shall provide for suitable drainage;
2. The following table states the minimums for parking space size:

**Table 16.43.030-2 Off-Street Parking Matrix
Required Space and Aisle Dimensions in Feet**

Angle	Standard Size Vehicles					Compact Size Vehicle				
	Stall Width	Stall Depth	Aisle Width	Module Width	Bumper Overhang	Stall Width	Stall Depth	Aisle Width	Module Width	Bumper Overhang
0° (parallel)	8.0	24.0	N/A	N/A	N/A	8.0	20.0	N/A	N/A	N/A
45°	9.0	17.5	12.0	47.0	2.0	8.0	15.5	11.0	42.0	2.0
60°	9.0	19.0	16.0	54.0	2.5	8.0	17.0	14.0	48.0	2.5
75°	9.0	19.5	23.0	62.0	2.5	8.0	17.5	21.0	56.0	2.5

3. **Parking Lot Layout.** Parking area setbacks shall be landscaped with major trees, shrubs, and groundcover as specified in Section 16.42. Wheel stops, bumper guards, or other method to protect landscaped areas shall be provided. No vehicle may project over a property line or a public right-of-way. Parking may project over an internal sidewalk, but a minimum clearance of five feet for safe pedestrian circulation is required. Parking areas, driveways, aisles and turnarounds shall be paved with concrete, asphalt or comparable surfacing, constructed to City standards for off-street vehicle areas.
4. **Groups of more than three parking spaces shall be permanently marked.**
5. **Backing and Maneuvering.** Except for a single-family dwelling or two-family dwelling, groups of more than three parking spaces shall be provided with adequate aisles or turnaround areas so that all vehicles enter the right-of-way (except for alleys) in a forward manner. Parking spaces shall not have backing or maneuvering movements for any of the parking spaces occurring across public sidewalks or within any public street, except as approved by the Public Works Director. Evaluations of requests for exceptions shall consider constraints due to lot patterns and impacts to the safety and capacity of the adjacent public street, bicycle and pedestrian facilities.
6. **Parking Lot Lighting.**
 - a. **Artificial lighting shall be provided in all required off-street parking areas.**
 - b. **Lighting shall be directed into the site and shall be arranged to not produce direct glare on adjacent properties.**
 - c. **Light elements shall be shielded and shall not be visible from abutting residential properties.**
 - d. **Lighting shall be provided in all bicycle parking areas so that all facilities are thoroughly illuminated and visible from adjacent sidewalks or vehicle parking lots during all hours of use.**
7. **Parking stalls for sub-compact vehicles shall not exceed thirty-five (35) percent of the total parking stalls required by Table 16.43.030-1. Stalls in excess of the number required by Table 16.43.030-1 can be subcompact stalls.**

Response: All off-street parking facilities, vehicular maneuvering areas, driveways, loading facilities, accessways, and private streets do conform to the standards set forth in this section. As shown on the Site Plan, the proposed parking stalls are all designed to the 18.5' x 9' standard parking space dimension, with some stalls in the central portion of the site dimensioned to include 2.5-feet of overhang into the bioswale. The enclosed Photometric Plan (Sheet EPH1.0) shows the internal parking lot lighting as well as the light candling throughout the site. All parking is provided adjacent to the McDonald's. The parking area is setback from all lot lines at least 10-feet.

G. Accessible/Handicapped Parking Facilities. Disabled person accessible parking shall be provided for all uses consistent with the requirements of the Oregon State Structural Specialty Code and/or Federal requirements, whichever is more restrictive.

Response: There are 2 total ADA compliant parking stalls located adjacent to the closest row of parking to the primary McDonald's entrance.

16.43.040 Bicycle parking standards.

Bicycle parking requirements are provided in the parking Table 16.43.030-1. Additional standards for bicycle parking facilities for multifamily developments, industrial, commercial and community service uses, transit transfer stations, and park and ride lots shall be met.

A. Location and Design.

1. Bicycle parking shall be located on-site, convenient to building entrances, and have direct access to both the public right-of-way and to the main entrance of the principal structure.
2. Bicycle parking should be no further from the main building entrance than the distance to the closest vehicle space, or fifty (50) feet, whichever is less. Long-term bicycle parking (i.e., covered) should be incorporated whenever possible into building design. Short-term bicycle parking, when allowed within a public right-of-way, should be coordinated with the design of street furniture, as applicable.
3. For facilities with multiple buildings or parking lots, bicycle parking shall be located in areas of greatest use and convenience to bicyclists.
4. Bicycle parking shall not impede or create a hazard to pedestrians. The location of bicycle parking facilities shall not conflict with vision clearance standards.
5. Bicycle parking may be provided within the public right-of-way in areas without building setbacks, subject to the approval of the appropriate governing official and provided it meets the other bicycle parking requirements.
6. If the bicycle parking area is located within the vehicle parking area, the bicycle facilities shall be separated from vehicular maneuvering areas by curbing or other barrier to prevent damage to parked bicycles.
7. Curb cuts shall be installed to provide safe, convenient access to bicycle parking areas.

Response: A bicycle parking area is shown along the front elevation, adjacent to the primary restaurant entrance. The bicycle parking area is shown on the Site Plan.

B. Bicycle Parking Space Dimensions.

1. Each required bicycle parking space shall be at least two and one-half feet by six feet. If covered, vertical clearance of seven feet must be provided.
2. An access aisle of at least five feet wide shall be provided and maintained beside or between each row of bicycle parking. Vertical or upright bicycle storage structures are exempted from the parking space length.

Response: The applicant is aware of the bicycle parking space dimension requirements and will provide design detail pending completeness review.

C. Security.

1. **Bicycle parking facilities shall offer security in the form of either a lockable enclosure in which the bicycle can be stored or a stationary object (i.e., a "rack") upon which the bicycle can be located.**
2. **Racks requiring user-supplied locks shall accommodate both cable and U-shaped locks. Racks shall be designed and installed to permit the frame and both wheels to be secured, with removal of the front wheel, or the frame and one wheel to be secured, if both wheels remain on the bicycle.**
3. **Bicycle racks shall be securely anchored to the ground or a structure and shall be designed to hold bicycles securely by means of the bicycle frame.**
4. **One hundred (100) percent of all required bicycle parking spaces for multifamily residential and industrial categories shall be covered. These required bicycle parking spaces may be provided within a building. Bicycle parking spaces for employees of commercial and institutional uses are encouraged to be covered and secured. Cover for bicycle parking may be accommodated by building or roof overhangs, awnings, bicycle lockers, bicycle storage within buildings or dwelling units or freestanding shelters.**
5. **Required bicycle parking inside a building shall be provided in a well illuminated, secure location within fifty (50) feet of a building entrance.**
6. **Outdoor bicycle parking spaces shall be clearly visible from the building entrance or the public right-of-way and shall be located within fifty (50) feet of the public entrance to the building unless clustered pursuant to Section 16.31.030, in which case the parking spaces shall be no more than one hundred (100) feet from a public entrance.**
7. **If the outdoor vehicle parking area for a use has lighting, then the bicycle parking areas associated with that same use are required to be lit to the same extent.**

Response: The applicant is aware of the secure bicycle parking requirements. A secure bicycle rack will be provided for the McDonald's.

D. Signing. Where bicycle facilities are not directly visible and obvious from the public right-of-way, entry or directional signs shall be provided to direct bicyclists from the public right-of-way to the bicycle parking facility.

Response: The proposed bicycle parking racks will be located in close proximity to the McDonald's entrance, which is not directly visible and obvious from the public ROW. The applicant will work with the City to provide entry or directional signs for bicycle users.

Chapter 16.44 SPECIAL STANDARDS FOR CERTAIN USES

When drive-up or drive-through uses and facilities are allowed, they shall conform to all of the following standards, which are intended to calm traffic, and protect pedestrian comfort and safety.

Sunnyside Plaza- McDonald's

Cardno

A. The drive-up/drive-through facility shall orient to an alley, driveway, or interior parking area, and not a street (Figure 16.44.090-1);

Response: The proposed drive-thru facility is oriented to the south side of the building, adjacent to SE Sunnyside Road. However, based on the site topography, retaining wall design and additional landscape screening, the drive-through will not be screened from vehicle and pedestrian traffic on SE Sunnyside Road. Additionally, the pedestrian access from Sunnyside will wind up the primary entrance and cross the drive-through egress at a point that is safe and visible to pedestrians.

B. None of the drive-up, drive-in or drive-through facilities (e.g., driveway queuing areas, windows, teller machines, service windows, kiosks, drop-boxes, or similar facilities) are located within twenty (20) feet of a street and shall not be oriented to a street corner. Walk-up only teller machines and kiosks may be oriented to a street or placed adjacent to a street corner;

Response: The drive-thru facility is located within twenty feet of a street but it is not oriented to a street corner. Based on the site topography and steep grade transition from the edge of the site down to SE Sunnyside, retaining walls are installed with additional landscape screening to limit the drive-through visibility to pedestrian and vehicle traffic on SE Sunnyside Road.

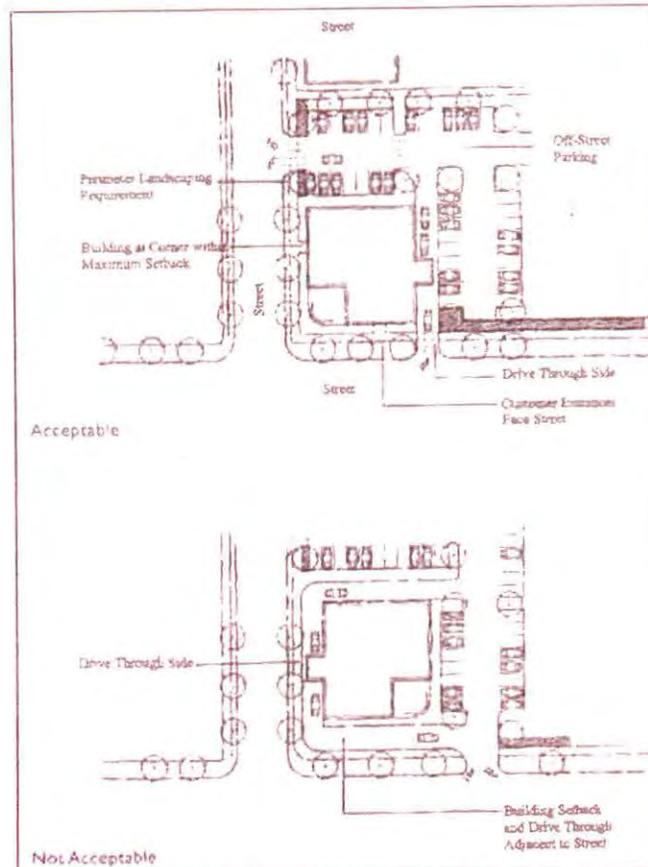
C. Drive-up/in queuing areas shall be designed so that vehicles do not obstruct a driveway, fire access lane, walkway, or public right-of-way; and

Response: The drive-thru queuing area is designed to avoid any conflict with on-site driveways, fire access lanes, walkways, and public ROWs. There is a proposed pedestrian crossing across the drive-thru lane, but that pathway is located past the vehicle queuing area, at the point of vehicle egress after receiving food orders. The queuing lane areas and pedestrian access points are shown on the Site Plan attached with this narrative.

D. No more than one drive-up, drive-in, or drive-through facility shall be permitted for a distance of four hundred (400) linear feet along the same block face (same side of street).

Response: There is only one drive-through facility proposed at this time. The McDonald's drive-through is oriented so that there is no conflict with any other drive-through facilities for a distance of more than 400-feet along the same block face.

Figure 16.44.090-1 Drive-Up and Drive-Through Facilities



Chapter 16.46 HAPPY VALLEY STYLE DESIGN STANDARDS

16.46.010 Happy Valley Style design standards.

- A. **Purpose.** The purpose of the Happy Valley Style design review standards is to guide building siting and design and to promote a comprehensive identity for nonresidential developments within the community that are three stories or below in height through the application of the Happy Valley Style (Appendix B) and the standards of Chapter 16.46 so that:
1. The location, size, shape, height and spatial and visual arrangement of the uses and among buildings, building entrances, existing and proposed structures are compatible with each other, with consideration given to increased setbacks, building heights, shared parking, common driveways and other similar design considerations; and
 2. That there are interrelationships between transit stops, transit facilities and routes, parking and loading areas, vehicular and pedestrian circulation, open spaces, landscaping and related activities and uses on the site.

Response: The applicant is aware of the purpose behind the Happy Valley Style design standards. The proposed McDonald's is situated to provide for compatible development and architectural styling, as well as a parking area complete with parking lot landscaping, stormwater infiltration and detention areas, and drive aisles.

B. Relationship to Other Standards. The standards of this section apply in addition to other standards of this title. Where standards in this section conflict with standards in other sections of this Code, the standards of this section shall govern.

Response: The applicant is aware of this provision and will look to adhere to the design standards identified in these code sections.

C. Applicability.

1. The Happy Valley Style design standards apply to all mixed-use commercial, retail commercial, office and institutional buildings that are three stories in height or less, except as exempted in subsection D of this section.
2. New buildings shall be designed using building design elements of the Happy Valley Style to create distinctive buildings with richly textured, visually engaging façades and that are pedestrian friendly. Expansion or substantial exterior remodeling of existing nonresidential development which is greater than fifty (50) percent of the building's gross floor area shall be designed to maintain or increase the building's overall compliance with the Happy Valley Style standards.
3. Buildings that are greater than three stories in height are encouraged to utilize practical design elements from the Happy Valley Style.

Response: This project represents a commercial development, so the applicability of the Happy Valley Style design standards are relevant. Generally, the new building will have visually engaging facades with ample pedestrian amenities for access into and through the site.

D. Exemptions to the Happy Valley Style.

1. Residential dwellings are exempt from the standards of Chapter 16.46. However, single-family attached and/or multifamily dwellings are encouraged to utilize the Happy Valley design standards;
2. Master Plan areas over ten (10) acres in size within the employment district of the Rock Creek employment area containing specific design standards;
3. The Eagle Landing Sub-Area Plan area; and
4. Buildings designed for manufacturing or other industrial uses and buildings in the Hwy. 212/224 Industrial Corridor.

Response: This proposal is not subject to the exemptions options outlined above.

E. Character of the Happy Valley Style. As described in more detail in Section 2 of Appendix B, the Happy Valley Style promotes a residential character for projects by drawing on features from certain historical architectural styles as well as through the use of complex massing and varied rooflines. Materials of the Happy Valley Style draw on the Pacific Northwest's natural resource heritage. Equally important to incorporating a residential character, the Happy Valley Style also promotes a pedestrian friendly environment, using façade design that creates a storefront appearance at the ground level. The overall development pattern should contribute to a sense of arrival and departure to and from the City core. Happy Valley's unique topography and natural features should be incorporated into project design where feasible. While it is influenced by historic architectural styles, the goal of the Happy

Valley Style is not a literal replication of historic residential buildings, but appropriate contemporary interpretation of time-tested and proven design principles. The Happy Valley Style is also flexible enough to allow for variety, acknowledging different needs and preferences of various uses. Projects do not need to include all features that make up the Happy Valley Style. However, projects should reflect the Style's characteristic elements in varying combinations.

Response: The defined character of the Happy Valley Style is captured at this site through the use of building articulation and materials that creates a greater sense of place and pedestrian scale. The proposed McDonald's does reflect the Happy Valley Style's characteristic elements. Please refer to the building elevations provided with this application.

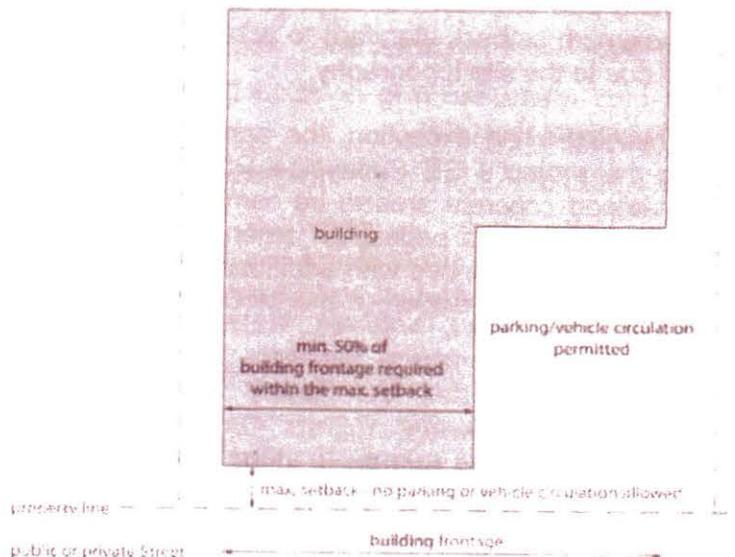
F. Pedestrian-Oriented Building Siting Standards. In order to orient buildings to the pedestrians walking on the pedestrian network and to activate the pedestrian environment and emphasize pedestrian movements, development shall meet the minimum standards in this section. Additional recommendations for pedestrian-oriented building siting are included in Section 3 of Appendix B:

1. Maximum Setback.

- a. At least fifty (50) percent of the building frontage must meet the maximum setback of eight feet from a property line along a public street.
- b. Surface parking facilities and vehicular circulation facilities, such as driveways and queues, are prohibited between the fifty (50) percent of the building frontage regulated by this section and the street.

2. Multiple Frontages. In scenarios involving multiple frontages, the developer shall have the option to designate and orient the front, side and rear façades of a structure. In no case shall buildings be required to have dual front façades. However, where development is proposed on a corner lot, buildings shall be located to preserve or create strong building edges at public street corners.

Figure 16.46.010-1: Maximum Setback



3. **Exceptions.** The Design Review Board may approve a modification to the maximum setback standards in the following circumstances provided the modification is the minimum necessary and the proposed design accomplishes the intent of the Happy Valley design standards:
- a. The proposed building is interior to a development site and the maximum setback is met by other buildings on the site.
 - b. An increase in the maximum setback is necessary for the protection of natural resource, or to accommodate topographic constraints or required utility easements.
 - c. To allow for the placement of pedestrian amenities within the maximum setback, including, but not limited to, seating areas, water features, and plazas. Plazas shall include construction materials that differ from the surrounding sidewalk, and shall be approved by the Design Review Board. Materials include (but are not limited to), paving bricks, stamped concrete, etc.
 - d. The proposed building has been oriented to a private street which has been designed and built to function as a public street.

Response: The proposed McDonald's is located along SE Sunnyside Drive, a public street. Therefore, the retail pad is subject to the pedestrian-oriented building siting standards outlined above. However, based on existing topography and steep slopes at the site transition from the finished floor elevations down to SE Sunnyside Road, the applicant is seeking a modification to the setback and vehicle circulation requirement. The applicant is proposing a restaurant drive-through to be located on the south side of the building, which will orient the drive-through away from the central parking area and pedestrian access to the McDonald's from both Sunnyside Road and the parking area. Added landscaping and retaining walls along the SE Sunnyside frontage will provide a screen to limit the drive-through visibility to both pedestrians and vehicles using Sunnyside Road. It should be noted that the elevation change from Sunnyside up to the building pad and drive through is approximately 10-feet. Thus, the intent of the maximum setback standard to achieve pedestrian-oriented building siting is limited due to the site topography.

To offset the building siting exception, the applicant is proposing a pedestrian amenity along the project's SE Sunnyside Road frontage. The applicant is proposing a stamped concrete area to be combined with a Tri-Met bus station bench and cover to create a pedestrian amenity for users accessing the site. This bus station will be enhanced with additional landscape plantings and direct pedestrian access from the station to the McDonald's via the central driveway entry.

G. Building Massing.

1. **Complex Massing Required.** New buildings shall use massing characteristic of the Happy Valley Style and asymmetrical composition to avoid the monolithic expanse of frontages and roof lines and break up building sections using elements including variable planes, projections, bays, dormers, setbacks,

canopies, awnings, parapets, changes in the roof line, materials, color, or textures (see 4.1, Appendix B).

Response As shown on the building elevation provided by the project architects, the proposed McDonald's does show massing characteristics to break up the larger building sections. Elements used to break up the building sections include changes in building materials, vertical projections to break up horizontal massing, dormers, awnings, parapets and pitched roofs. The elevations do show a good differentiation of the building massing through the use of varying materials, canopies, parapets, and roof lines.

2. Street Corners. Where development is proposed on a corner lot, the following standards shall be met:

- a. **Buildings shall be designed to preserve or create strong building edges at public street corners (see 4.2, Appendix B).**
- b. **Buildings shall reinforce street corners by repeating façade elements such as signs, awnings and window and wall treatments on both sides of the building facing the corner.**
- c. **Buildings located on public street corners shall contain an architectural corner element which exceeds the eave height of the primary roof by at least five (5) feet (see Figure 16.46.010-2). If the façade of the corner element exceeds 25 feet in height, then windows are required to provide the appearance of a habitable second story (see Figure 16.46.010-3). Additional façade details such as cornice lines and material changes are encouraged.**
- d. **Two-story building elements, which shall be located to reinforce the corner, include, but are not limited to:**
 - i. **Tower;**
 - ii. **Enclosed porch;**
 - iii. **Entrance pavilion.**

Response: As the future retail pad is located in the corner of a lot that abuts SE Sunnyside Road and SE Forest Creek Court, the standards for street corner design are applicable. However, as the existing topography and site grading will create a taller (8 to 10-foot) two-tiered retaining wall at the corner of the site, limiting pedestrian access and interaction with the building frontage. To create greater visibility, the applicant is proposing a tower element in the predominate corner of the building. This tower extends 7-feet from the bottom of the roof eave, 2-feet taller than the minimum requirement. The façade of the corner element is just under 25-feet at 24'6". Reference the scaled building elevations and perspective renderings included with this submittal under Exhibit B.

3. Roof Forms.

- a. **Roof forms shall promote architectural diversity and interest.(see 4.3, Appendix B). While pitched roofs are desired to support the Happy Valley Style's residential character, larger building footprints make flat roofs often the only practical solution. However, the edges of flat roofs can be**

articulated to make large buildings more compatible with the desired character. To address the wide range of building sizes permissible in non-residential developments, the roof standards are divided into two distinct types based on a building's roof span. For the purpose of these standards, the "roof span" shall mean the shortest horizontal distance between the outside faces of the walls supporting the roof.

b. Roofs shall meet the following standards:

- (i) Roof spans of less than 45 feet are required to have pitched (gabled or hipped) roofs;
- (ii) Roof spans greater than or equal to 45 ft. may have pitched (gabled or hipped) roofs or flat roofs.

c. Requirements for Pitched Roofs.

Dormers, cupolas and similar roof elements that break up and project from the primary roof shall be provided to create variety to the massing of structures and relieve the effect of a single, long roof. Secondary roof elements shall be provided in the quantity specified below. Secondary roof elements may be located anywhere on the roof, although groupings or orderly arrangements are preferred. In contrast to the roof span, the roof length is the longer horizontal distance between the outside faces of the walls supporting the roof.

Roof Length	Number of Secondary Roof Elements
Less than 30 feet	None required
30 – 45 feet	1
46 – 90 feet	2
91 feet and greater	4

d. Requirements for Flat Roofs.

(i) All rooflines (span or length) facing a public street or clearly visible from a public right-of-way shall be detailed with either an applied pitch or parapet, as follows:

1. **Applied Pitch:** An "applied pitch" gives a flat roof the general appearance of a pitched roof in terms of materials, pitch, and overhang, but does not extend all the way from the eave of the building to the ridge of the roof as a typical pitched roof. The applied pitch shall extend at least 12 feet horizontally from the eave. The applied pitch shall extend vertically above the plane of the flat roof sufficiently to effectively screen all roof mounted equipment from public viewpoints.
2. **Parapet:** A parapet is a vertical extension of the façade above the plane of a flat roof. The parapet shall extend vertically above the plane of the flat roof sufficiently to effectively screen all roof mounted equipment from public viewpoints. The parapet may have a simple edge or may be adorned with

an articulated cornice. The parapet may, but is not required to, be distinct from the façade in terms of materials.

- ii. To avoid the effect of a single, long roofline and to create variety to the massing, variations to any roofline (span or length) facing a public street or clearly visible from a public right-of-way shall be provided at intervals of forty-five (45) feet or less. These variations may be achieved through combination of the following techniques:
 1. Vertical offset. Change in the height of the eave by at least three feet.
 2. Horizontal offset. Change in the horizontal position of the eave of at least three feet.
 3. Varying use of parapet and applied pitch roof edges.
 4. Attached or applied Shed, Gable or Hip. Building elements that are attached to a building's façade and covered with a shed roof, a gabled roof, or a hipped roof may be used to articulate the roofscape and break up the perceived façade length. Those building elements can be used in combination with parapets or applied pitches and may include covered walkways or porches, vestibules or covered entrances, bays projecting from the building façade, tower elements projecting above the primary roof line.
- e. The Design Review Board may approve a modification of this standard only where the building façade otherwise provides the variations and offsets necessary to avoid a monolithic appearance.

Response: The roof forms for McDonald's do feature offsets and changes in the roof lines to promote architectural diversity and interest. The building elevations and rendered perspectives provided with this narrative show a combination of parapets and pitched roofs to achieve the Happy Valley Style standards. The variations to the roofline along both Sunnyside and Forest Creek Court are provided to avoid the effect of a single, long roofline and to break up the building massing. The roof span along the north and south sides of the building (the longest portions of the building) are just over 100-feet long, allowing for either pitched or flat roofs.

H. Building Design.

1. Entrances.

- a. To encourage increased pedestrian activity on public and private streets and sidewalks, primary building entrances should be oriented to, or be at an angle no more than forty-five (45) degrees from the street (public or private), to the maximum extent practicable. For multi-tenanted buildings or buildings with multiple entrances, or both, only one primary entrance must comply with this standard. In addition, for buildings with multiple frontages, only one primary entrance on one building frontage must comply with this standard (see 5.1, Appendix B).

b. Primary building entrances shall be architecturally emphasized.

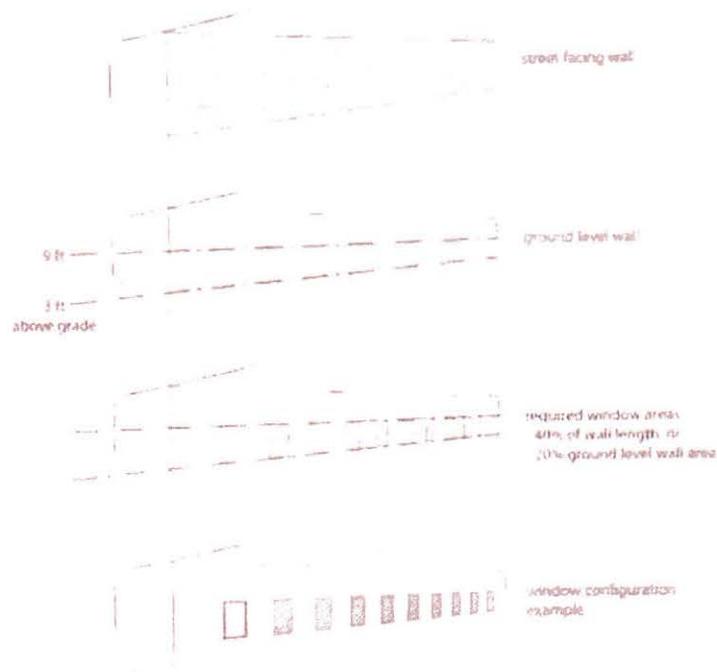
Response:

While the applicant is aware of the benefit of increase pedestrian activity on both public and private streets, this site is limited by the topography and steep slopes at the transition from the site down to SE Sunnyside Road. Therefore, the primary building entrance is oriented to the north and northeast, where both vehicles and pedestrians gain entry to the site from the driveway access from SE Sunnyside Road. As shown on the Site Plan, the primary building entrance is oriented to the main driveway entrance into the site.

2. Storefront Appearance for Commercial and Office Buildings. Commercial and office buildings fronting on public or private streets shall create a storefront appearance on the ground floor by implementing the following standards:

- a. **Changing buildings planes, materials or window patterns, or by creating a break in awning or canopy construction at intervals not exceeding forty (40) feet in length; and**
- b. **Ground Floor Windows. To avoid blank walls and create a storefront appearance at the ground level, exterior building walls facing a public or private street shall incorporate ground floor windows.**
 - i. **Required Window Areas. Windows must be a minimum of forty (40) percent of the length and twenty (20) percent of the ground level wall area. Ground level walls include all exterior walls from three feet above finished grade up to nine feet above the finished grade.**
 - ii. **Qualifying Window Features. Required window areas must either be windows that allow views into working areas or lobbies, pedestrian entrances, or display windows set into the wall. Display cases attached to the outside wall do not qualify. The bottom of the windows must be no more than three feet above the adjacent exterior grade.**

Figure 16.46.010-2: Required Window Area



Response:

As addressed above, site topography does place some constraint on pedestrian access and general scaling to the buildings. In the building elevations provided with this narrative, storefront appearances on the ground floor do feature changes in materials and glazing, building projections, awnings and canopies, and parapets and roof lines. The primary entrance and elevation to the McDonald's is oriented inward to the central parking area, but that ground-level wall area does provide glazing along almost 40% of the ground level wall area. A breakdown of the glazing requirements and percentage provided is as follows:

Elevation Location	Building Length	Total Building Level Wall Area	Required Window Areas (40% Required)	Proposed Window Areas (40% Required)	Required Windows Ground Level	Proposed Windows Ground Level
Front	46'	276 SF	18.4'	34.5'	55.2 SF	233.5 SF
Non Drive-Through Side	97.58'	585.5 SF	39.12'	36.4'	117 SF	210.5 SF
Rear	46'	276 SF	18.4'	18.5'	55.2 SF	111.3 SF
Drive-Through Side	97.58'	585.5 SF	39.12'	47.58'	117 SF	275 SF

The applicant does meet all minimum window area requirements, aside from the proposed length of windows provided along the non drive-through (north) side of the building. Based on the architect's feedback, an additional 3-feet of glazing can be provided, but that treatment would look "added on" and not cohesive with the design.

3. Façade Design.

- a. **Buildings shall include changes in relief on façades facing public or private streets for pedestrian interest and scale. Relief changes may include (see 5.2, Appendix B):**
 - i. **Cornices;**
 - ii. **Bases;**
 - iii. **Fenestration;**
 - iv. **Fluted masonry;**
 - v. **Other treatments.**

Response: The McDonald's facade does include ample relief changes through varying roof lines, cornices, a stone base and fenestrations combined with both flat and sloped roof forms.

- b. **Buildings with two or more stories shall have a strong ground floor cornice designed to separate the ground floor functions and materials from the upper story or stories and to provide continuity with cornice placement on abutting buildings (see 5.2, Appendix B).**

Response: The McDonald's is a single-story structure, although the extended parapets and roof projections do give the impression of a second-story.

- c. **Ornamental Devices. Ornamental devices characteristic of the Happy Valley Style, such as molding, entablature and friezes, are required at the roofline. Where such ornamentation is present in the form of a linear molding or board, the band must be at a thickness in proportion to the height of the wall (see 5.2, Appendix B).**

Response: Based on the summary of the Happy Valley Style Documentation, 5.2—Façade Design and Ground Floor Appearance, proposed molding does provide a well-articulated building façade to meet the intent of Section 5.2.

4. Awnings and Weather Protection.

- a. **Except as required by subsection (H)(4)(b), buildings shall provide awnings or canopies extending a minimum of two feet from window walls (see 5.2, Appendix B). Awnings may have a front valance.**

Response: The building trellis will project 4-feet from the building over windows, meeting the intent of the provision.

- b. **Where window walls are adjacent to walkways, buildings shall provide awnings or canopies for weather protection extending a minimum of six feet from window walls (see 5.2, Appendix B). Awnings may have a front valance.**

Response: Canopies are provided at the building entrances shown on the front elevation and non-drive-through elevation. Trellises are shown where window walls are adjacent to walkways, projecting 4-feet from the building.

- c. **Weather protection shall be provided at building entries/exits extending a minimum of six feet from the entry/exit.**

Response: 6-foot canopies are provided at the building entrances shown on the front elevation and non-drive-through elevations.

5. Materials. Building materials shall reflect the Happy Valley Style (see 5.3, Appendix B).

- a. **Primary Materials. A “primary material” is the predominant building material that covers a minimum of sixty (60) percent of the building’s exterior walls. Acceptable primary materials are identified in Table 16.46.010-1.**

Response: As shown on the elevations provided with this submittal, siding is proposed as the primary building material, with stone used as a secondary material. As summarized in Table 16.46.010-1, both wood siding as a primary material and masonry as a secondary material are allowed on a building façade. A summary of the material types and coverage is provided below:

Elevation Location	Elevation Coverage Area (not including glazing)	Required Primary Material (60% Coverage)	Proposed Primary Material	Required Secondary Material (40% Coverage)	Proposed Secondary Material
Front	678 SF	407 SF	320 SF	271 SF	300 SF
Non Drive-Through Side	1,554 SF	932 SF	886 SF	621 SF	454 SF
Rear	597 SF	418 SF	340 SF	278 SF	277 SF
Drive-Through Side	1,439 SF	864 SF	499 SF	576 SF	539 SF

The summary of materials shows a deficiency in the primary material coverage for each of the elevations, while there is a deficiency in the secondary material for the non-drive-through elevation. These deficiencies are a result of providing more building glazing and secondary stone material. Based on input received from City Staff, the additional stone material was seen as a quality design material that could be used more prevalently through the building elevations.

- b. **Secondary Materials.** A “secondary material” is not the predominant building material. Any one secondary material shall not cover more than forty (40) percent of the building’s exterior walls. Acceptable secondary materials are identified in Table 16.46.010-1.

Response: As shown on the elevations provided with this submittal, stone is proposed as a secondary material. A summary of the material types and coverage is provided below:

Elevation Location	Elevation Coverage Area (not including glazing)	Required Primary Material (60% Coverage)	Proposed Primary Material	Required Secondary Material (40% Coverage)	Proposed Secondary Material
Front	678 SF	407 SF	320 SF	271 SF	300 SF
Non Drive-Through Side	1,554 SF	932 SF	886 SF	621 SF	454 SF
Rear	697 SF	418 SF	340 SF	278 SF	277 SF
Drive-Through Side	1,439 SF	864 SF	499 SF	576 SF	839 SF

The summary of materials shows a deficiency in the primary material coverage for each of the elevations, while there is a deficiency in the secondary material for the non-drive-through elevation. These deficiencies are a result of providing more building glazing and secondary stone material. Based on input received from City Staff, the additional stone material was seen as a quality design material that could be used more prevalently through the building elevations.

- c. **Base Materials.** The building base shall be defined as the lower portion of a wall just above where it meets ground, often an extension of the foundation wall above grade. For the purpose of these standards, the base shall not extend beyond 24 inches above grade. The base typically is exposed to water for extended periods and is at higher risk of physical impacts. Consequently, the base materials may differ from the materials used for the remainder of the façade in order to withstand these conditions. Base materials are identified in Table 16.46.010-1. Use of these materials shall be limited to the building base unless the material is also identified as an acceptable primary or secondary material. Where a foundation wall extends beyond 24 inches above grade, for instance on a sloped site, the portion of the foundation wall above 24 inches shall be finished with permitted primary and/or secondary materials. In all cases, foundations and base materials shall be designed to match the scale of the building being supported.

Response: The base of the McDonald's does not include an extension of the foundation

wall. All base elements are treated with masonry stone, as shown on the building elevations and rendered perspectives shown under Exhibit B.

- d. **Multiple-Story Buildings.** When buildings have two or more stories, the material used at the ground level shall differ from that used at upper levels in order to create a clear distinction between the ground and upper levels.

Response: The McDonald's is a single-story building with higher building elevations to give the appearance of a second-story. In order to differentiate between the "first floor" elevation and the higher elevations, the architect has employed a mix of awnings, canopies, and change in material across the horizontal plane to create a clear distinction between the ground and upper levels.

- e. **Roof.** New buildings or substantial remodeling that involve modifications to the roof shall use the following roofing materials:
- i. **Slate, tile, shakes or wood shingles, or synthetic materials (e.g., concrete, pressed wood products, metal or other materials) that are designed to and do appear to be slate, tile, shake or wood shingles.**
 - ii. **If a new or remodeled building utilizes a flat roof, materials that will not cause roof repairs (patching) to be readily visible.**

Response: The proposed roof material will be either wood shingles or shake shingles.

6. Enclosure or Screening of Mechanical Equipment and Other Appurtenances.

- a. **Roof mounted mechanical equipment on flat roofed structures shall be screened by parapet walls to the maximum degree possible. Site located mechanical equipment shall be installed in below grade vaults where possible or screened by a site obscuring fence or landscaping. Other building mounted mechanical equipment shall be screened from view to the maximum degree possible.**
- b. **Trash enclosures shall be located away from the primary vehicular and pedestrian entries and shall be screened by a site obscuring fence or landscaping.**

Response: There is no roof mounted mechanical equipment included with this submittal. If roof mounted mechanical equipment is required as building plans progress, the applicant will work to provide adequate screening through the use of parapet walls. Otherwise, mechanical equipment located on the site will either be installed in below grade vaults or screened by a site obscuring fence or landscape screen.

A proposed covered trash enclosure is located along the northern portion of the parking area within a parking island. The trash enclosure will be screened with additional landscape plantings shown on the Landscape Planting Plan.

- I. **Landscape Design.** The following standards apply in addition to the landscaping standards in Chapter 16.42.

1. Where new or substantially remodeled buildings are set back from property lines and sidewalks, intervening landscaping shall be designed to invite the public in, not to provide separation.
2. Where non-pedestrian space is placed between a building and a sidewalk, benches, low sitting walls or other street furniture shall be placed in order to enliven the sidewalk.
3. Small areas of landscaping and paving in courtyards, entryways, building nooks and other areas shall use materials and designs similar to adjacent public spaces where such use will make the area appear larger or more inviting. This requirement is intended to minimize the transition from public to private space, but is not intended to restrict changes in material where it is functionally necessary or where it will avoid visual monotony.
4. Drinking fountains, display windows or other street furniture shall be located in stopping areas created outside of pedestrian circulation areas. Stopping areas may be created by an enclosure, a change in grade or a change in paving materials.
5. Decorative iron gates and hangers for signs, flags and hanging baskets may be required as part of the landscape plan.

Response: As shown on the Landscape Planting Plan (Sheet L1.0) site topography from east to west does inhibit public interaction and direct view into the on-site buildings. The already installed tiered retaining walls along SE Sunnyside Road and SE Forest Creek Court will feature attractive landscaping and wall elements to buffer the sheer face of the slopes. To offset this issue, the applicant does provide pedestrian pathways into the site along the western side of the primary driveway entrance, which crosses the drive aisle to meet up with the McDonald's pedestrian pathway crossing at the drive-through egress. These elements, combined with the general landscaping provided in the parking area and along the property boundaries, do create an inviting environment for the public.

- J. Additional Parking Requirements. Parking shall be designed to provide adequate, but not excessive, space.**
1. The number of parking spaces may be modified as follows:
 - a. High turnover eating or drinking establishments such as coffee shops, ice cream parlors and "take-and-bake" food services may vary from the parking requirements for restaurants by providing evidence that demonstrates the short term nature of their employee and patron parking needs. In no case, however, shall parking be reduced below the number of spaces that would be required for an equal size retail store.
 - b. Retail uses within one thousand (1,000) feet of one hundred (100) or more residential units may further reduce their total parking requirements to 0.9 of the total spaces required.
 2. Employee and Patron Parking Restrictions. Employee and patron parking shall be restricted to available parking as follows:
 - a. On-site parking;

- b. **Owned or easement parking for patrons within five hundred (500) feet of the business site;**
- c. **Owned or easement parking for employees within one thousand (1,000) feet of the business site;**
- d. **On street parking along the property frontage.**

Response: As addressed in an earlier portion of this narrative, the proposed off-street parking spaces provided on-site totals 45 spaces, which is over the minimum requirement of 43 spaces. Therefore, the applicant is not seeking any parking modifications or interpretations.

K. Street, Alley and Sidewalk Design. Street, sidewalk and alley design shall safely and efficiently provide for vehicular and pedestrian travel while enhancing the character of the commercial and institutional developments within the community through compliance with the following design standards. These standards shall apply in addition to any other City requirements for street, alley or sidewalk design, located in the adopted transportation system plan. In the event of a conflict, the provisions of this section shall control.

1. **Intersection Design. Curb extensions shall be created at all intersections where feasible from a traffic management standpoint and unless such extensions would interfere with the turning and stopping requirements of emergency service vehicles (e.g., fire trucks, ambulances), buses or delivery vehicles. Such extensions will be designed to accommodate the turning and stopping requirements of such vehicles.**
2. **Sidewalks. Sidewalk design shall consider and encourage opportunities for outdoor cafés, pushcart vendors, seasonal sidewalk sales, festivals and similar uses and activities which enliven pedestrian walkways.**
3. **Alleys. Alleys shall be incorporated into design plans where feasible as pedestrian and vehicular accessways.**
4. **Protecting Pedestrians. In areas of potential vehicle/pedestrian conflict, street furniture or bollards (see Section 6 of Appendix B for examples) shall be used to help create a “protected zone” for the pedestrian.**
5. **Street Furniture and Lighting. New and substantially remodeled buildings shall incorporate street furniture and lighting within the public right-of-way and in private areas open to public pedestrian activity (see Section 6 of Appendix B).**
6. **Street Trees. Street trees shall be required to be installed in compliance with Chapter 16.42, Landscaping, Street Trees and Buffering, as a condition of approval.**

Response: Curb extensions are called out on the Site Plan and shown at the primary entrance and intersection with SE Sunnyside Road. These curbs do not conflict or interfere with emergency truck turning radii, as a fire truck radius is shown on the plans as the truck enters the central parking area drive aisles. The proposed sidewalk design promotes connectivity both within and through the project site. On-site street lighting is provided for all areas of pedestrian and vehicle traffic, as well as all public ROWs. As shown on the Landscape Planting Plan, street trees are shown along SE Sunnyside Road and SE Forest Creek Court.

L. Exceptions to the Happy Valley Design Standards.

1. **The Planning Official or designee may allow exceptions to these standards without the need to obtain a formal variance pursuant to Chapter 16.71. For each standard for which a design exception is sought, the applicant shall demonstrate that at least one of the following circumstances is met:**
 - a. **The physical characteristics of the site or existing structure (e.g., steep slopes, wetlands, other bodies of water, trees or other significant natural features of the site, buildings or other existing development, utility lines and easements, etc.) make compliance with the standard impractical; or**
 - b. **The alternative design better complies with the following:**
 - i. **The purpose of the Happy Valley Style design standards in 16.46.010.A;**
 - ii. **The Character of the Happy Valley Style in Section 2 of Appendix B; and**
 - iii. **The intent of the standard as outlined in Appendix B.**

Response: The applicant is filing for a Class C variance request, as the McDonald's does not meet the minimum 0.25:1 FAR ratio. While the minimum FAR is not achieved, the appearance and massing of the building does give the impression of a larger, two-story structure to meet the intent of the FAR provision. Also, a design modification is sought to address the setback requirement defined under Section 16.44.090.B.

2. **A request for exception under this provision may be processed as part of the underlying application or separately as a Design Review II application.**

Response: The applicant is filing for a variance request to address FAR minimum requirement not met by the proposed site design.

ARTICLE 16.6 ADMINISTRATION OF LAND USE AND DEVELOPMENT

Chapter 16.62 LAND USE REVIEW AND DESIGN REVIEW

16.62.030 Design review.

O. General Design Review Criteria.

1. **Applicability. The following criteria apply to design review projects except for single-family detached and duplex residential development.**

Response: The proposed commercial development is subject to the design review criteria outlined below. A response to each applicable standard is included in this project narrative.

2. **Relationship to Other Standards. The criteria of this section apply in addition to other standards of this title. Where requirements conflict with standards in other sections of this title, the standards of this section shall govern; except that Happy Valley Style Design Review standards in Chapter 16.46 shall supersede, and where applicable, the multifamily standards in Section 16.44.010 shall supersede.**

Response: The applicant is aware that the design review standards supersede standards in other sections of the code.

3. Criteria.

- a. **The proposed development preserves significant natural features such as natural drainageways, wetlands, and trees outside the construction area as defined in Section 16.42.050, to the maximum extent feasible, and conforms to the provisions of Sections 16.35.050 and 16.35.020.**

Response: Based on the site topography, all existing trees located within the Phase 1 area of impact will be removed. Mitigation for tree removal is addressed in the Landscape Planting Plan.

- b. **Phased projects shall be designed to the greatest degree possible so that each phase, in and of itself, is complete in its functional, traffic, parking, visual, drainage and landscaping aspects.**

Response: This is a phased project that does achieve a safe and efficient site layout to accommodate traffic, parking, visual, drainage and landscaping aspects. The central driveway entrance to the site is designed to provide future driveway connectivity to the Phase 2 parcel(s) to the east, but all other site design elements are done to support the bank pad and McDonald's restaurant under the Phase 1 scope of work.

- c. **Where appropriate, the design includes a parking and circulation system that includes a pedestrian and vehicular orientation including separate service area(s) for delivery of goods.**

Response: The site layout and design does include a parking and circulation system that provides both pedestrian and vehicular accessways. The Site Plan included with this application demonstrates an efficient circulation system for both pedestrian and vehicle users.

- d. **The location, size, shape, height and spatial and visual arrangement of the uses and structures are compatible, with the consideration given to increased setbacks, building heights, shared parking, common driveways and other similar considerations.**

Response: In combination with the already reviewed and approved bank pad, the proposed McDonald's will make use of a common, centrally located parking area with parking, drive aisles and a central driveway entrance from SE Sunnyside Road.

- e. **That there is desirable, efficient and functional interrelationship among buildings, building entrances, existing and proposed transit stops, transit facilities and routes, parking, loading area, circulation, open spaces, landscaping and related activities and uses on the site.**

Response: The McDonald's and bank building are located at the south and north end of the property in order to most efficiently provide for parking and site circulation. The McDonald's and bank building will share similar architectural elements outlined within the Happy Valley design standards to create an interrelationship among buildings and building entrances.

- f. **Utilize landscaping in parking areas to direct and control vehicular movement patterns, screen headlights from adjacent properties and streets, and lessen the visual dominance of pavement coverage.**

Response: The proposed Landscape Planting Plan does provide parking area landscaping to direct and control vehicular movement patterns, to buffer and screen headlights from adjacent properties and streets, and to lessen the visual and "heat island" effect of pavement and sidewalk coverage.

- g. **The proposed development meets all other applicable provisions of this Land Development Code.**

Response: As addressed in the responses provided in this narrative, the proposed development does meet all other applicable provisions of this Land Development Code.

- h. **The proposed development can be adequately served by Level 1 services.**

Response: The proposed development is within the City of Happy Valley services district and can be adequately served by Level 1 services.

- i. **Provide safe pathways for pedestrians to move from parking areas to building entrances.**

Response: A safe pedestrian pathway is shown along the western side of the driveway that connects to the building and parking area, while also providing access to adjacent properties and streets via Sunnyside Road.

- j. **All building exterior improvements approved through the design review process shall be continually maintained including necessary painting and repair so as to remain substantially similar to the original approval through the design review process.**

Response: The applicant is aware of this provision and will work with a property management group to ensure continual maintenance and upkeep is sustained.

- k. **A landscape plan shall be approved consistent with design standards in Chapter 16.42 in a manner that will assure the maintenance and visual integrity of the site.**

Response: A Landscape Planting Plan is enclosed with this project narrative and does address all design standards in Chapter 16.42. The proposed plantings will assure the maintenance and visual integrity of the site.

- l. **All plans shall comply with the purpose statement in Section 16.62.010.**

Response: As already addressed above, all plans shall comply with the purpose statement. Any deviation from the design standards will be addressed in the form of a variance request.

ARTICLE 16.7 EXCEPTION TO CODE STANDARDS

Chapter 16.71 VARIANCES

16.71.020 Applicability and application requirements.

- A. Exceptions and Modifications versus Variances. A Code standard or approval criterion ("Code section") may be modified without approval of a variance if the**

Sunnyside Plaza- McDonald's

Cardno

applicable Code section expressly allows exceptions or modifications. If the Code section does not expressly provide for exceptions or modifications, then a variance is required to modify that Code section and the provisions of Chapter 16.71 apply. Except that a variance shall not be approved that would vary the "permitted uses" or "prohibited uses" of a land use district.

Response: Based on input received from City Staff at the time of the initial submittal and completeness review, the proposed FAR minimum requirement should be processed as a Class C variance. No exceptions or modifications are sought with this application.

B. Combining Variances With Other Approvals—Permit Approvals by Other Agencies. Variance requests may be combined with and reviewed concurrently by the City approval body with other land use and development applications (e.g., development review, site design review, subdivision, conditional use, etc.), however, some variances may be subject to approval by other permitting agencies, such as ODOT in the case of State Highway access.

Response: This project narrative includes a Design Review Major and a Class C variance request all submitted concurrent.

C. Types of Variances. There are three types of variances (Class A, B, or C). The type of variance required depends on the extent of the variance request and the discretion involved in the decision-making process. Regulations described in the following sections of this chapter pertaining to applicability of the type of variance should be considered a guide only. Ultimately, it is at the discretion of the Planning Official to determine whether a variance proposal is processed as a Class A, B, or C.

Response: The applicant is submitting for a single Class C variance request to the minimum 0.25:1 FAR requirement.

D. Application. The variance application shall conform to the requirements for Type I, II, or III applications (Chapter 16.61), as applicable. In addition, the applicant shall provide a narrative or letter explaining the reason for his or her request, alternatives considered, how the stated variance criteria are satisfied, and why the subject standard cannot be met without the variance.

Response: The variance application is being submitted concurrent with a Type II Design Review Major application. This project narrative is provided as supporting evidence for the variance requests.

16.71.050 Class C variances.

- A. Applicability.** Class C variance requests are those that do not conform to the provisions of Sections 16.71.030 and 16.71.040 (Class A and Class B), and that meet the criteria in subsections (B)(1) through (5) below. Class C variances shall be reviewed using a Type III procedure, in accordance with Chapter 16.61.
- B. Approval Criteria.** The City shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:
1. The variance requested is required due to the lot configuration, or other conditions of the site;

2. That the condition requiring the variance has not been intentionally created to circumvent the Land Development Code;
3. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use or development of adjacent property;
4. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the development provisions which are in question;
5. The variance will not result in violation(s) of any other adopted ordinance or Code standard; each Code standard to be modified shall require a separate variance request;
6. In granting the variance, the City Administrator or appropriate and designated body or agent may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this title.

Response: The variance request to the minimum 0.25:1 FAR requirement is requested to site a McDonald's within a 1.183 acre parcel. The 4,386 SF bank is designed to appear larger or more dense in massing, building façade does feature an elevated roof line and articulation to give the impression of a second-story structure. Even with this goal of creating a larger structure, the building only achieves a 0.085 FAR, well below the 0.25:1 FAR minimum. Based on the tenant needs to site a restaurant with a drive-thru facility and vehicle parking area, the building size required under the 0.25:1 FAR would be a 14,500 SF structure. This is well above the tenant needs. Also, the parking requirements associated with a structure of that size would make the project unfeasible. As such, the applicant requests a Class C variance to adequately site a bank pad on the proposed parcel.

CONCLUSION

The proposed McDonald's located at the Sunnyside Plaza commercial center represents a project that considers both functional site layout as well as architectural styling to create a vibrant site to meet the vision and intent of both the development code and the Happy Valley Style Guide. The site takes into consideration the existing topography and road network in order to create a site that provides vehicle and pedestrian circulation, with enhanced landscaping amenities to create a sense of place that will define the remainder of the proposed Phase 2 development. As shown on the Site Plan, Landscape Planting Plan, Photometric Plan, and enclosed building elevations for the McDonald's, all elements have been considered in designing Sunnyside Plaza. The requested Class C variance is submitted to address FAR requirements that are well above the site and user needs. As such, the applicant is requesting approval of both the Design Review Major and a variance applications. All applicable materials are included with this narrative application.

City's response letter Enclosure #3

Planning Packet for Planning
Commission Variance Meeting

VAR02-14

Variances for Walgreens

Floor Area Ratio ("FAR") Variance
Retaining Wall Height Variance

Note: This cover sheet was not included in the original mailing from the city.

Mayor
Honorable Lori DeRemer



City Manager
Jason A. Tuck

CITY OF HAPPY VALLEY

STAFF REPORT TO THE PLANNING COMMISSION

CLASS "C" VARIANCE APPLICATION

FLOOR AREA RATIO AND MAXIMUM RETAINING WALL HEIGHT (VAR-02-14)

OCTOBER 14, 2014

City staff has reviewed the subject application requesting Class "C" variances to the minimum floor area ratio (FAR) required for nonresidential development within the City's Mixed Use Commercial land use district and the maximum allowable retaining wall height. One of the proposed variances is to allow for a 14,500 square-foot "Walgreens", which is currently under Design Review, to have a FAR of 0.19:1, which falls below the minimum requirement of 0.25:1. A second Class "C" variance has been proposed to allow for a retaining wall to be constructed as part of the site improvements associated with "Walgreens" to have a maximum height of 13 feet, exceeding the maximum allowable height of eight feet. The subject site can be described as Clackamas County Assessor Map Numbers 22E03AA: Tax Lots 700, 800, 900 and 1000. It has been determined that the proposed application (VAR-02-14) complies with the requirements of the City's Land Development Code. **Therefore, staff recommends the Planning Commission APPROVE the applicant's proposal subject to the findings and conclusions in this report.**

I. GENERAL INFORMATION

APPLICANT AND PROPERTY OWNER:

RPS Development Company, Inc.
2653 High Heaven Road
McMinnville, OR 97128

APPLICANT'S REPRESENTATIVE:

Cardno
5415 SW Westgate Drive, Suite 100
Portland, OR 97221

16000 SE Misty Drive, Happy Valley, Oregon 97086-4288
Telephone: (503) 783-3800 Fax: (503) 658-5174
happyvalleyor.gov

DEVELOPMENT DISTRICT:

The subject site has a plan designation/land use zone of Mixed Use Commercial (MUC). The MUC designation/zone was applied to the site when the subject properties were annexed into the City in 2014.

PROPERTY LOCATION:

The subject property is located east of the intersection of 119th Drive and Sunnyside Road, and is further described as Clackamas County Assessor Map Numbers 22E03AA: Tax Lots 700, 800, 900 and 1000.

APPLICABLE CRITERIA:

Sections 16.23.010 (Mixed Use Commercial and Employment Districts); 16.42.060 Fencing Walls and Screening); and 16.71.050 (Class “C” variances) of Title 16 of the City’s Municipal Code – Land Development Code (LDC).

EXHIBITS:

- A. Staff Report and Findings of Fact
- B. Applicant’s Preliminary Plan Set
- C. Applicant’s Narrative

OBSERVATIONS:

BACKGROUND:

- The applicant has proposed the subject variance requests to facilitate the Design Review of a 14,500 square-foot Walgreens Drug Store with a drive-through facility. A public hearing will be held before the City’s Design Review Board to evaluate the aforementioned drug store’s building design and site improvements (landscaping, parking, access drives, etc.) on October 27, 2014 (Local File Number: DR-09-14). The applicant intends to further develop the subject site beyond the “Walgreens” project, to the east, and has included their conceptual development plan for this area as part of this application. It should be noted that the applicant has processed a lot line adjustment with the City to reconfigure the boundaries between Tax Lots 500, 700, 800, 900 and 1000 (the previous configuration is shown in Exhibit B, Sheet C1.0 and the revised boundary is shown in Exhibit B, Sheet C4.0).

PROPOSED VARIANCES:

- Per Section 16.71.050 (Class “C” Variance) of the LDC, the applicant is proposing a variance to the City’s requirements found in Table 16.23.010-2 (Development Standards for MUC, MUE and RCMU Districts) specifically in regard to the minimum FAR for nonresidential development, which per this code section is 0.25:1. This variance is being requested due to the proposed “Walgreens” having a projected FAR of 0.19:1. The proposed FAR is due to a combination of factors related to the proposed “use” and the building/site design.

Given the size of the proposed development area (1.78 acres), the applicant would need to propose an approximately 19,500 square-foot structure to meet the minimum FAR that is required by the LDC. The LDC would “in-turn” require an approximately 19,500 square-foot drug store to have 78 automobile parking spaces. The applicant has proposed 58 parking stalls as part of the 14,500 square-foot “Walgreens” and would not have enough land area to design a 78-stall parking lot in conjunction with a 19,500 square-foot single-story structure on the proposed development site. To facilitate a development scenario where the applicant meets the minimum parking requirements of the LDC, while designing a building that is appropriately sized for the future owner’s needs, the applicant deemed it necessary to apply for the subject FAR variance. Staff concurs with the applicant that the proposed Class “C” variance to the minimum FAR requirement is appropriate for the subject development and has therefore recommended approval.

- The applicant has also proposed a second Class “C” variance to the maximum allowed retaining wall height (as set-forth in Section 16.42.060.D of the LDC). The proposal is to construct a retaining wall system near the northern boundary of the subject site that would be approximately 180 feet in length and have a maximum height of 13 feet (Exhibit B, Sheets C2.0 and D06), exceeding the eight-foot maximum height that is allowed through the applicable provisions found in the LDC. The applicant has requested the retaining wall height variance to achieve a level development site that is at a similar elevation to that of Sunnyside Road. Since the aforementioned retaining wall will face the direction of the development site and would only be partially visible from the surrounding street system, staff has determined the impact of the requested variance would be minimal and has recommended approval of the subject retaining wall height variance.

PUBLIC COMMENTS:

- The City's Planning Division received no correspondence pertaining to VAR-02-14 from neighboring property owners or other interested parties during the public comment period.

II. FINDINGS OF FACT

CITY OF HAPPY VALLEY DEVELOPMENT CODE:

The following sections of Title 16 of the Happy Valley Municipal Code (Land Development Code - LDC) are applicable to this request:

“16.23.010 Mixed Use Commercial and Employment Districts.

[...]

C. Development Standards. The development standards in Table 16.23.010-2 apply to all uses, structures, buildings, and development in the MUC, MUE and MUE-NC Districts.

Table 16.23.010-2 Development Standards for MUC, MUE and RCMU Districts

Standard	MUC	MUE	RCMU
<i>Residential density:¹</i>			
<i>Low density (maximum)</i>	<i>24 du/net acre</i>	<i>24 du/net acre</i>	<i>24 du/net acre</i>
<i>Low density (minimum)</i>	<i>15 du/net acre²</i>	<i>15 du/net acre²</i>	<i>15 du/net acre²</i>
<i>Medium density (maximum)</i>	<i>34 du/net acre</i>	<i>NA</i>	<i>34 du/net acre</i>
<i>Medium density (minimum)</i>	<i>25 du/net acre²</i>	<i>NA</i>	<i>25 du/net acre²</i>
<i>High density (maximum)</i>	<i>50 du/net acre</i>	<i>NA</i>	<i>50 du/net acre</i>
<i>High density (minimum)</i>	<i>35 du/net acre²</i>	<i>NA</i>	<i>35 du/net acre²</i>
<i>Lot size (minimum)</i>	<i>Variable³</i>	<i>Variable³</i>	<i>Variable³</i>
<i>Lot width (minimum)</i>	<i>Variable³</i>	<i>Variable³</i>	<i>Variable³</i>
<i>Lot depth (minimum)</i>	<i>Variable³</i>	<i>Variable³</i>	<i>Variable³</i>
<i>Floor area ratio</i>			
<i>Nonresidential FAR (minimum)</i>	<i>0.25:1⁴</i>	<i>0.25:1⁴</i>	<i>0.25:1⁴</i>
<i>Nonresidential FAR (maximum)</i>	<i>5:1</i>	<i>2:1</i>	<i>5:1</i>
<i>FAR for mixed use building with residential uses (minimum)</i>	<i>0.25:1</i>	<i>0.25:1</i>	<i>0.25:1</i>
<i>FAR for mixed use building with residential uses (maximum)</i>	<i>5:1</i>	<i>3:1</i>	<i>5:1</i>
<i>Landscaping (minimum)</i>	<i>Variable⁵</i>	<i>Variable⁵</i>	<i>Variable⁵</i>
<i>Building setbacks (minimum)</i>	<i>Variable³</i>	<i>Variable³</i>	<i>Variable³</i>
<i>Building height (maximum)</i>	<i>65 feet³</i>	<i>65 feet³</i>	<i>Variable³</i>
NOTES:			
¹ Density calculations shall be made pursuant to Section 16.63.020(F).			
² Minimum density of eighty (80) percent of each sub-area is required.			
³ Building height is measured pursuant to Chapter 16.12, Definitions. Standards are flexible and shall be determined through the master plan process or a design review.			
⁴ Must include a shadow plan to establish future development.			
⁵ Pursuant to Section 16.42.030, fifteen (15) percent of the net developable area must be usable open space.			

[...]

Staff Response:

Rather than providing a “shadow plan” illustrating the development of the subject site, the applicant has provided their actual development plan (Exhibit B, Sheet DR1), that illustrates the “constraints” of the subject property. With the approval of the subject variance, the minimum FAR of 0.25:1 will be reduced to 0.19:1. Therefore, per the provisions of this variance, this criterion is addressed by the subject request.

16.42.060 Fencing, Walls and Screening.

D. For any development of a structure, yard or any facility requiring the utilization of retaining walls, retaining walls over four feet in height require the approval of a building permit and engineering of the retaining wall, including provisions for stormwater management. Within any zoning district, on property immediately abutting existing residences or residential districts, the maximum single-face retaining wall height within an individual existing lot of record, parcel or lot (as created after any retaining walls necessary for public or private infrastructure such as streets, stormwater detention facilities, etc.) shall have a maximum height of eight feet, as measured from the downslope face of the retaining wall. Retaining walls may be terraced up the slopes of existing lots of record, parcels or lots, but shall have a minimum distance between walls of the height of the downslope retaining wall, as measured from the upslope side of the lower retaining wall to the downslope side of the upper retaining wall. All retaining walls abutting other single-family residences or zoning districts shall provide solid vegetative screening along the entire linear face of the lowest retaining wall. Fences or decorative walls may exist atop retaining walls, and are measured in height independent of the retaining wall. Said facilities may exist to the maximum height allowed in the front, interior side, exterior side (corner lot) or rear setback area.
[...]

Staff Response:

The applicant has proposed a second Class “C” variance to the maximum allowed retaining wall height (as set-forth in the above section). The proposal is to construct a retaining wall system near the northern boundary of the subject site that would be approximately 180 feet in length and have a maximum height of 13 feet (Exhibit B, Sheets C2.0 and D06), exceeding the eight-foot maximum height that is allowed per the above section. The applicant has requested the retaining wall height variance to achieve a level development site that is at a similar elevation to that of Sunnyside Road. Since the aforementioned retaining wall will face the direction of the development site and would be only partially visible from the surrounding street system, staff has determined the impact of the requested variance would be minimal and has recommended approval of the subject variance. Per the provisions of the applicant’s variance, this criterion has been satisfied.

16.71.050 Class C variances.

A. Applicability. Class C variance requests are those that do not conform to the provisions of Sections 16.71.030 and 16.71.040 (Class A and Class B), and that meet the criteria in subsections (B)(1) through (5) below. Class C variances shall be reviewed using a Type III procedure, in accordance with Chapter 16.61.

Staff Response:

The applicant’s proposal is for two variances to standards found within the LDC and is for amounts that exceed the “thresholds” of a Class “A” or “B” variance. As a result, the applicant has applied for a Class “C” variance. The subject variance request is being processed by means of the City’s Type “III” review procedure, which requires a public hearing before the City’s Planning Commission. This criterion is satisfied by the subject request.

B. Approval Criteria. The City shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:

1. *The variance requested is required due to the lot configuration, or other conditions of the site;*

Staff Response:

The variances that have been requested are due to a combination of factors, including lot configuration, building/site design and topography. This criterion is satisfied by the subject request.

2. *That the condition requiring the variance has not been intentionally created to circumvent the Land Development Code;*

Staff Response:

The challenges associated with lot configuration, building/site design and topography were not created to circumvent the provisions of the Development Code. This criterion is satisfied by the subject request.

3. *That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use or development of adjacent property;*

Staff Response:

The variances will not alter the essential character of the neighborhood because the reduced building footprint of the drug store, a result of the proposed FAR variance, would work to provide for a smaller-scale building that will better “fit” into the surrounding neighborhood. Also, since the aforementioned retaining wall will face the direction of the development site and would only be partially visible from the surrounding street system, staff has determined the impact of both the requested variance would be minimal. Furthermore, the proposed variances will not impair the appropriate use or development of adjacent properties as it only relates to the FAR and the onsite improvements associated with the drug store. This criterion is satisfied by the subject request.

4. *That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the development provisions which are in question;*

Staff Response:

The proposed variances represent significant deviations from the applicable minimum FAR and maximum retaining wall height standards and required the applicant to submit for a Class “C” variance. Due to the topography of the subject site and the size of the parking lot associated with the 14,500 square-foot drug store, the requested variances are for amounts that are the minimum necessary to facilitate the “Walgreens” project. This criterion is satisfied by the subject request.

5. *The variance will not result in violation(s) of any other adopted ordinance or Code standard; each Code standard to be modified shall require a separate variance request;*

Staff Response:

The proposed variances do not result in any “violation”, as no other standard requires variation. This criterion is satisfied by the subject request.

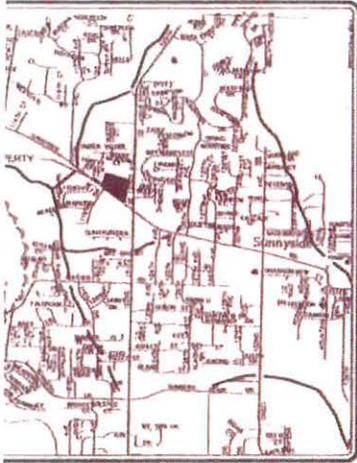
6. In granting the variance, the Planning Official or designee may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this title.”

Staff Response:

No conditions are proposed. This criterion is not applicable to the subject request.

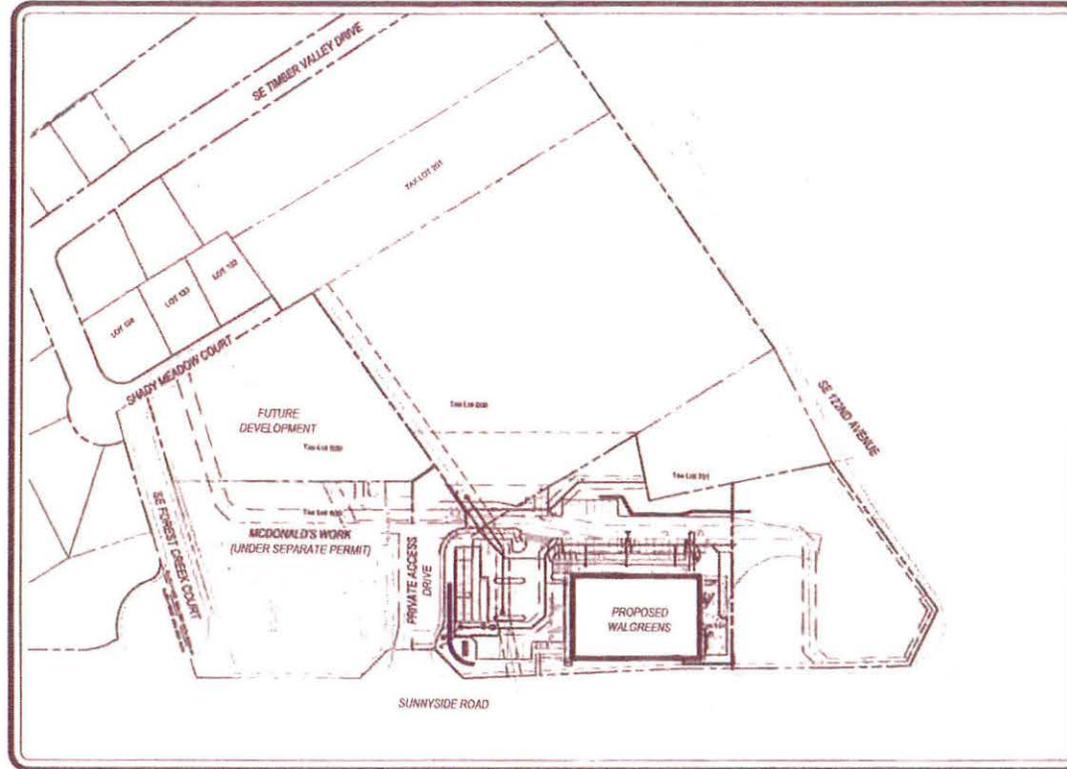
III. CONCLUSION AND RECOMMENDATION

The applicant has submitted an application for two Class “C” variances that will fulfill the criteria associated with the applicable policies and sections of the Happy Valley Comprehensive Plan and Land Development Code. Therefore, based on the findings of fact, the conclusionary findings for approval and the materials submitted by the applicant, staff hereby recommends that the Planning Commission **approve** VAR-02-14.



VICINITY MAP

SCALE: NTS



SITE MAP

SCALE: NTS



INDEX OF SHEETS

C0.0	COVER SHEET
C1.0	EXISTING CONDITION
C1.1	TREE REMOVAL PLAN
C2.0	GRADING PLAN
C3.0	COMPOSITE UTILITY PLAN
C4.0	PRELIMINARY COUNTY
L1.0	LANDSCAPE PLANTING
DR01	SITE PLAN
DR02	PEDESTRIAN CIRCULATION
DR03	LIGHTING PLAN
DR04	PROJECT AERIAL
DR05	DETAILED SITE PLAN
DR06	ELEVATIONS
DR07	PERSPECTIVE VIEWS
DR08	ROOF PLAN

BASIS OF BEARINGS

THE BASIS OF BEARINGS WAS DERIVED FROM THE FOUND AND HELD MONUMENTS #128 AND #127 MARKING THE CENTERLINE OF SUNNYSIDE ROAD AT STATIONS (11+828.432M) 388+07.19 AND (12+143.535M) 398+40.99 PER SURVEY NO. 2005-164, CLACKAMAS COUNTY SURVEY RECORDS, BEING NORTH 53°22'30" WEST

VERTICAL DATUM

3.14" BRONZE DISK IN A MONUMENT WELL PER USRT 2002-093
ELEVATION = 396.80 (NGVD '89)

SUNNYSIDE ROAD AT
IF AND SE SUNNYSIDE
800, 500, 1000, AND A

SOUTH, RANGE 2 EAST.

OREGON UTILITY
NOTIFICATION CENTER
503.332.2244



ATTENTION: OREGON LAW REQUIRES YOU TO FOLLOW RULES OF OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE 952.001-0010 THROUGH OAR 952.001-0040. YOU MAY OBTAIN CALLING THE CENTER. (NOTE: THE TELEPHONE NUMBER FOR NOTIFICATION CENTER IS (503) 232-1987)

ARCHITECT

BENNER STANGE ASSOCIATES
ATTN: JEFFREY A. BENNER

SURVEYOR

CARDNO
ATTN: ERIC LYNCH, PLS

GEOTECHNICAL ENGINEER

HART CROWSER, INC.
ATTN: GREG A. LANDAU, PE, GE

CIVIL ENGINEER

CARDNO
ATTN: SETH GAREY, PE

127°17'30" E 141.87'
 100.00' 31.17'
 127°17'30" E 141.87'
 100.00' 31.17'

- (4) SANITARY SEWER MANHOLE
RIM = 545.00'
R.C. (R.C. 201) = 330.00'
- (5) SANITARY SEWER MANHOLE
RIM = 550.00'
R.C. (R.C. 201) = 335.00'
R.C. (R.C. 201) = 340.00'
- (6) SANITARY SEWER MANHOLE
RIM = 540.00'
R.C. (R.C. 201) = 330.00'
R.C. (R.C. 201) = 335.00'
- (7) SANITARY SEWER MANHOLE
RIM = 535.00'
R.C. (R.C. 201) = 325.00'

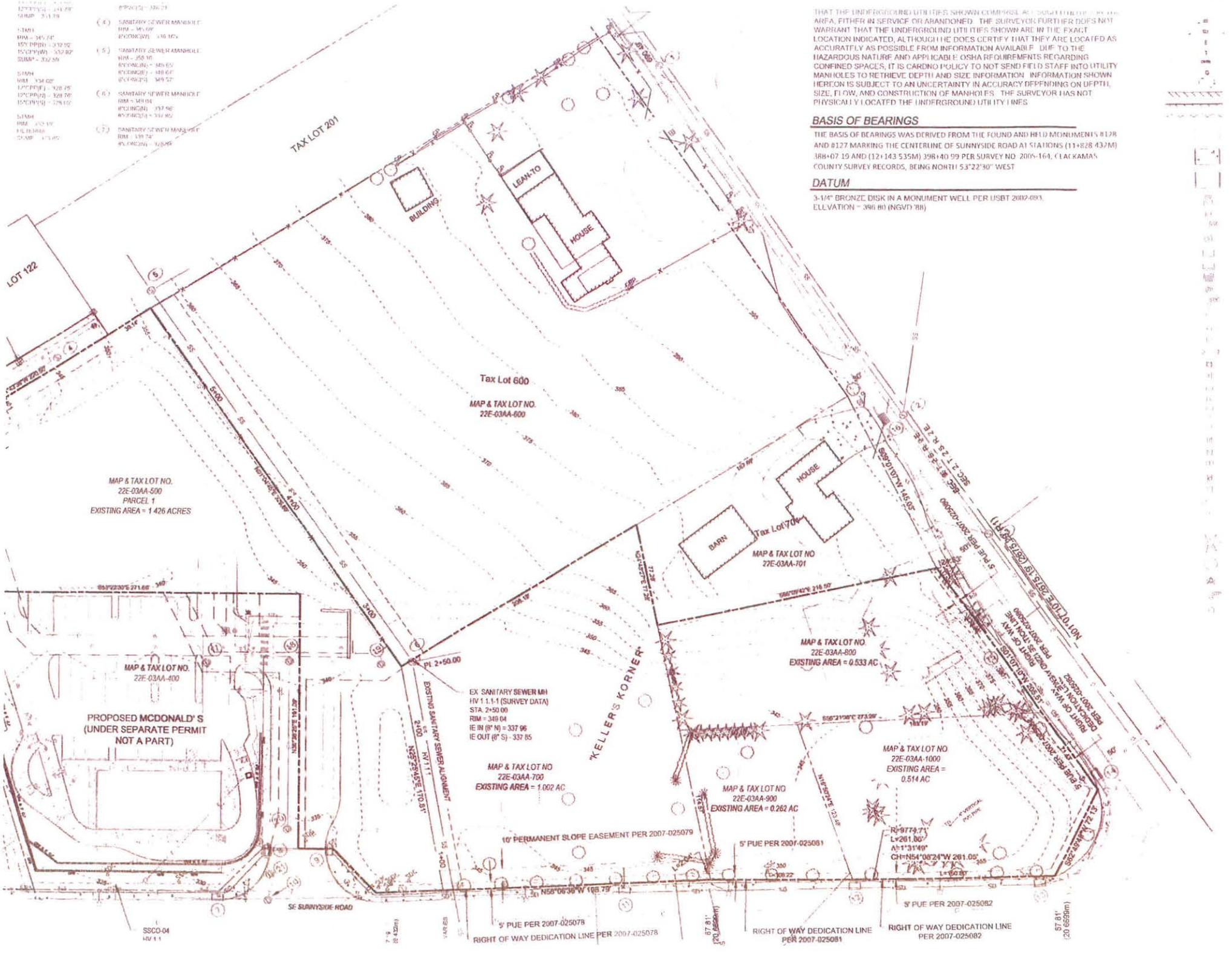
THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL UTILITIES KNOWN TO BE IN SERVICE, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED, ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. DUE TO THE HAZARDOUS NATURE AND APPLICABLE OSHA REQUIREMENTS REGARDING CONFINED SPACES, IT IS CARDNO POLICY TO NOT SEND FIELD STAFF INTO UTILITY MANHOLES TO RETRIEVE DEPTH AND SIZE INFORMATION. INFORMATION SHOWN HEREON IS SUBJECT TO AN UNCERTAINTY IN ACCURACY DEPENDING ON DEPTH, SIZE, FLOW, AND CONSTRUCTION OF MANHOLES. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITY LINES.

BASIS OF BEARINGS

THE BASIS OF BEARINGS WAS DERIVED FROM THE FOUND AND HEI1 MONUMENTS #128 AND #127 MARKING THE CENTERLINE OF SUNNYSIDE ROAD AT STATIONS (11+828.432M) 388+07.19 AND (12+143.535M) 398+40.99 PER SURVEY NO. 2005-164, CLACKAMAN COUNTY SURVEY RECORDS, BEING NORTH 53°22'30" WEST

DATUM

3-1/4" BRONZE DISK IN A MONUMENT WELL PER USBT 2002-083,
 ELEVATION = 396.80 (NGVD '88)



MAP & TAX LOT NO.
 22E-03AA-500
 PARCEL 1
 EXISTING AREA = 1.426 ACRES

MAP & TAX LOT NO.
 22E-03AA-400

PROPOSED MCDONALD'S
 (UNDER SEPARATE PERMIT
 NOT A PART)

EX SANITARY SEWER MH
 HV 1.1-1 (SURVEY DATA)
 STA 2+50.00
 RIM = 348.04
 IE IN (R' S) = 337.96
 IE OUT (R' S) = 337.85

MAP & TAX LOT NO.
 22E-03AA-700
 EXISTING AREA = 1.092 AC

MAP & TAX LOT NO.
 22E-03AA-900
 EXISTING AREA = 0.262 AC

MAP & TAX LOT NO.
 22E-03AA-1000
 EXISTING AREA = 0.514 AC

SSCO-04

RIGHT OF WAY DEDICATION LINE PER 2007-025078

RIGHT OF WAY DEDICATION LINE PER 2007-025081

RIGHT OF WAY DEDICATION LINE PER 2007-025082

87.81' (20.6690m)



DECIDUOUS TREE
TO BE REMOVED

PROTECTION ZONE, INCLUDING, BUT NOT LIMITED TO
PPHES, SOIL WASTE ITEMS, EQUIPMENT, OR PARKED

EROSION, OR EXCESSIVE WELTING RESULTING FROM
INSTRUCTION MATERIALS OR PERMIT VEHICLES TO
MAIN. PROTECT ALL PLANT GROWTH, INCLUDING ROOT
ALLY INJURIOUS MATERIAL OR LIQUIDS, AND CONTINUAL
D CUTTING, BREAKING, OR SKINNING OF ROOTS AND
RE'S ON SITE.

TION PROCESS. IMMEDIATELY REPAIR ANY AT TERAION
AT AT TERAIONS TO PROTECTION MEASURES.
MONITOR MAINTENANCE MEASURES DAILY.

T.S. TO REMAIN

ANY EXISTING TRILL SHALL BE RESTRICTED TO MANUAL
S OR ANY OTHER TYPE OF MACHINERY/POWER

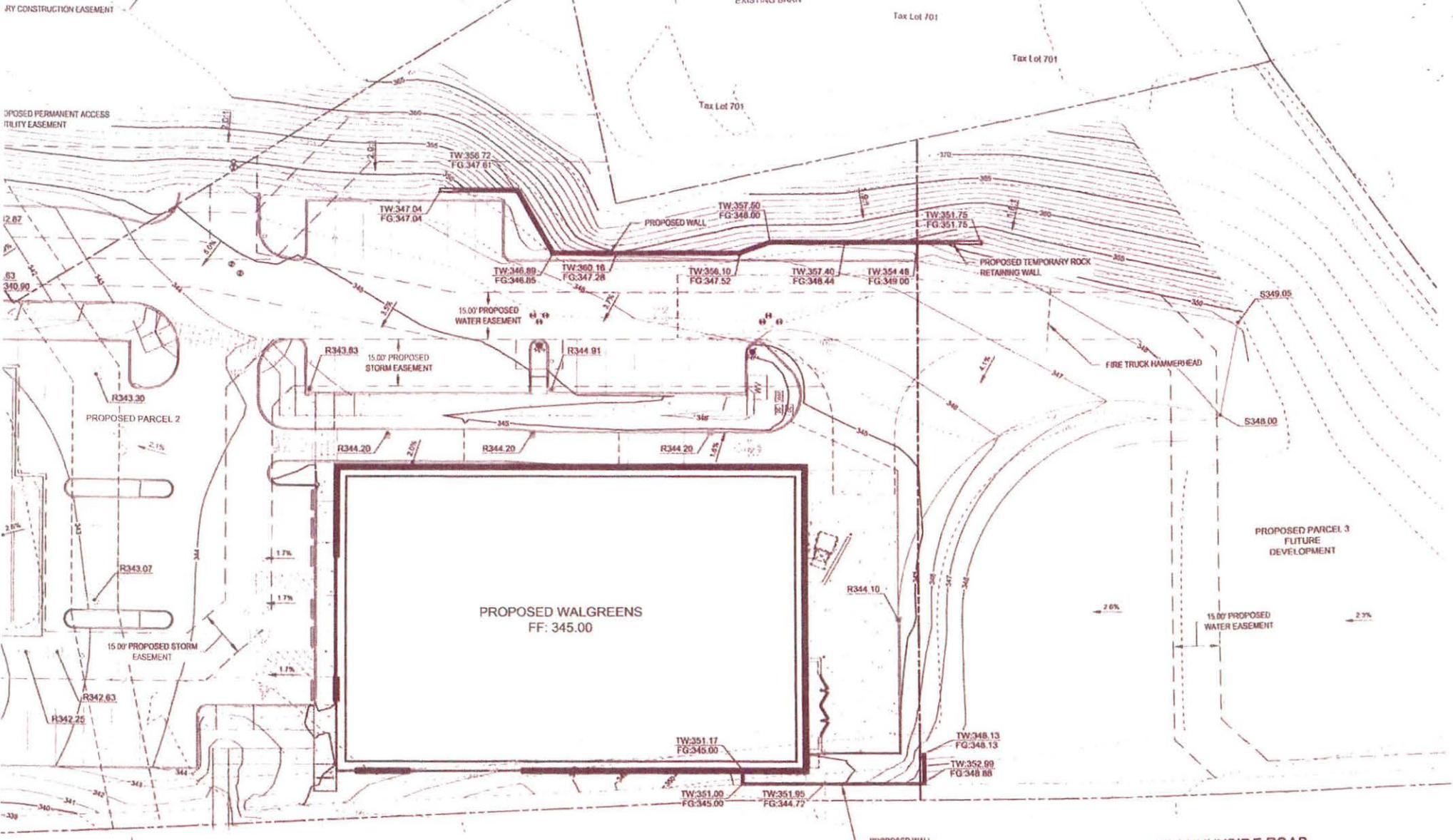
WITH ARBORIST OR OWNER'S REPRESENTATIVE.
S. ALL TREE PRUNING OR ROOT CUTTING SHALL BE
DO NOT BREAK, CHOP, OR TEAR. ALL ROOTS 2 INCHES
DONE BY A STATE CERTIFIED ARBORIST. NO
THE ARBORIST OR OWNER'S REPRESENTATIVE.



3300	377 01	4900 35	10694 70	10 LOCUST	2485	355 10	9273 30	10470 91	TRC 16 FIR	2632	373 1
5234	375 57	9104 66	10594 35	8 FIR	2486	355 01	9273 30	10470 91	TRC 12 FIR	2633	377 1
					2497	356 50	9276 66	10480 66	TRC 12 FIR	2634	378 1
					2498	356 62	9270 29	10481 48	TRD 24 MAPLE	2635	379 1
					2499	357 59	9269 82	10487 28	TRC 15 FIR	2636	378 1
					2500	358 24	9264 08	10482 02	TRC 15 FIR	2637	378 1
					2501	358 73	9260 06	10486 47	TRC 15 FIR	2639	386 1
					2502	359 58	9261 57	10493 25	TRC 24 FIR	2640	385 1
					2503	361 70	9270 10	10509 57	TRC 12 FIR	2681	359 1
					2504	364 33	9258 90	10516 75	TRC 16 FIR	2682	364 1
					2505	362 78	9244 01	10524 17	TRD 18 COTTON WOOD	2710	353 1
					2506	360 75	9378 79	10501 30	TRD 18 CHERRY	2711	352 1
					2507	359 62	9409 79	10467 28	TRC 16 CEDAR	2712	356 1
										2713	358 1
										2714	360 1
										2715	347 1

TREE INVENTORY TO BE REMOVED

Point #	Elevation	Northing	Eastng	Description	Point #	Elevat
2237	346 26	9464 58	10710 98	TRD 40 WALNUT	2638	378 2
3433	342 26	9482 63	10185 99	3 MAPLE	3101	362 5
3514	343 77	9447 25	10709 06	3 MAPLE	3102	363 4
3515	345 11	9432 68	10730 90	3 MAPLE	3103	391 2
3516	346 73	9416 00	10256 00	3 MAPLE	3104	393 0
3517	348 00	9399 45	10290 66	4 MAPLE	3268	395 8
3518	348 60	9394 05	10304 32	3 MAPLE	3269	400 9
3519	350 17	9367 55	10328 77	2 MAPLE	3270	402 9
3520	351 00	9351 91	10360 86	4 MAPLE	3711	403 7
3521	352 18	9332 21	10377 39	4 MAPLE	3739	401 5
3522	353 51	9313 40	10402 86	3 MAPLE	3740	400 2
3523	354 29	9287 72	10438 62	4 MAPLE	3741	398 0
3527	364 58	9215 48	10565 38	3 MAPLE	3742	397 0
					3743	395 6
					3744	393 0
					3745	397 8
					3746	399 4
					3747	400 9
					3748	379 0
					3749	374 8
					3750	377 6
					3751	387 5
					3752	388 0



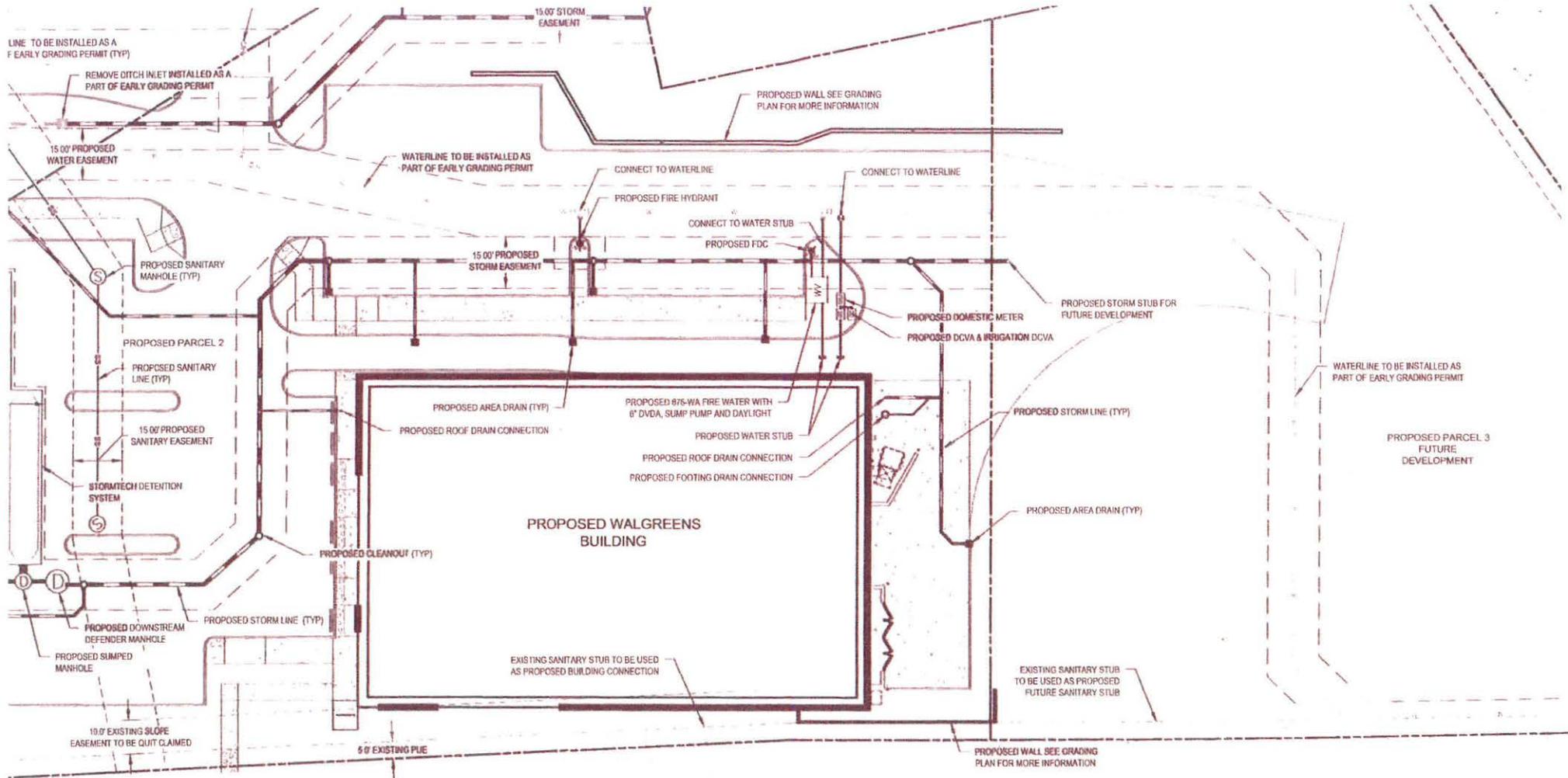
SE SUNNYSIDE ROAD

LEGEND

	EXISTING PROPERTY LOT LINE
	PROPOSED PROPERTY LOT LINE
	EXISTING MAJOR CONTOUR LINE
	EXISTING MINOR CONTOUR LINE
	PROPOSED MAJOR CONTOUR LINE
	EXISTING MINOR CONTOUR LINE
	PROPOSED RIDGE LINE

ABBREVIATIONS

S - SPOT ELEVATION

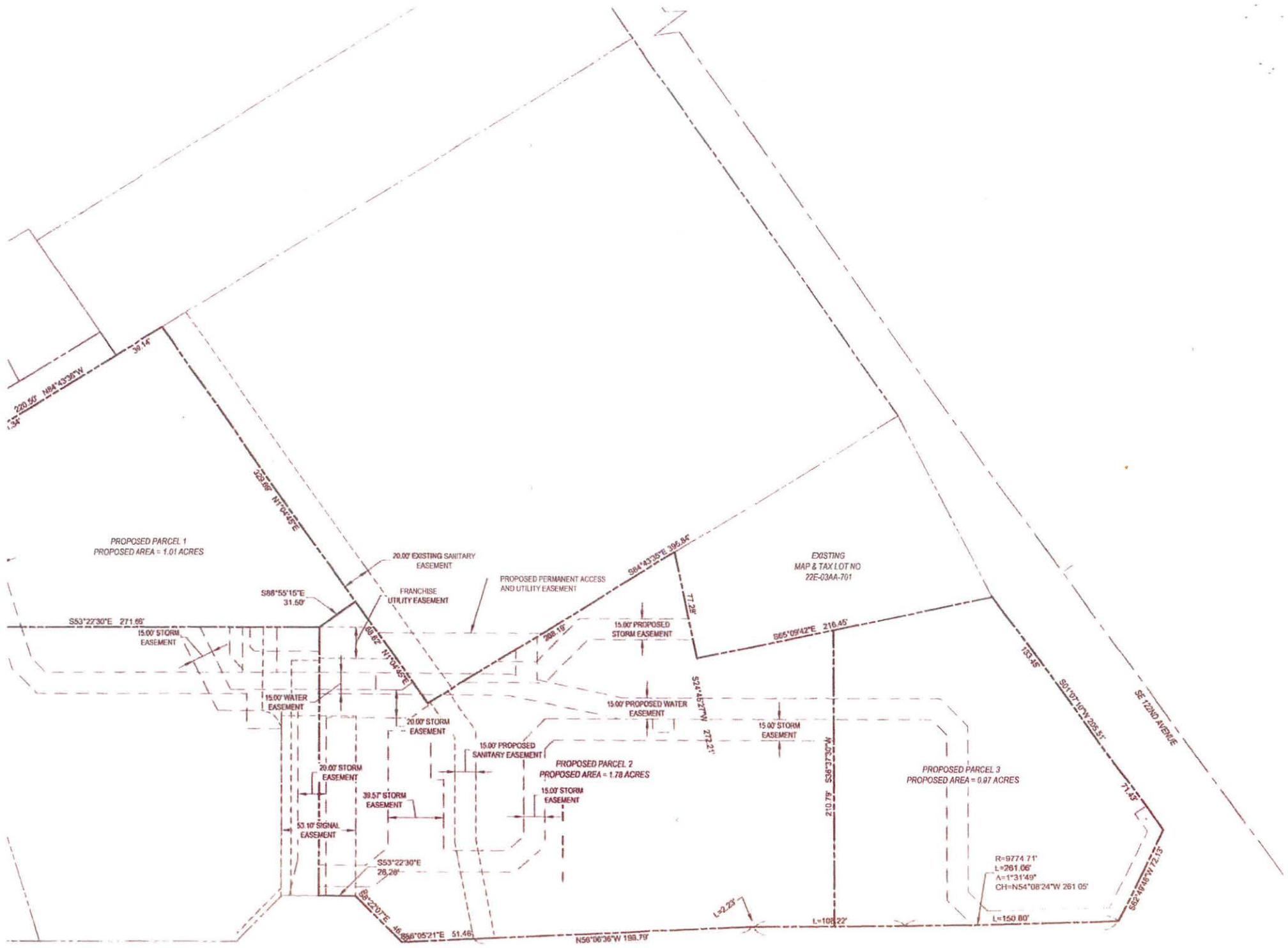


PROPOSED WALL SEE GRADING PLAN FOR MORE INFORMATION

SE SUNNYSIDE RD

LEGEND

- - - - - EXISTING BOUNDARY LINE
- - - - - EXISTING RIGHT OF WAY LIT
- - - - - EXISTING PROPERTY LOT LI
- - - - - PROPOSED PROPERTY LOT
- - - - - PROPOSED EASEMENT LINE
- - - - - EXISTING STORM DRAINAGE
- - - - - EXISTING WATER LINE
- - - - - EXISTING SANITARY SEWER
- - - - - PROPOSED STORM DRAINAGE
- - - - - PROPOSED WATER LINE
- - - - - EXISTING CATCH BASIN
- - - - - EXISTING STORM DRAIN MANHOLE



PROPOSED PARCEL 1
PROPOSED AREA = 1.01 ACRES

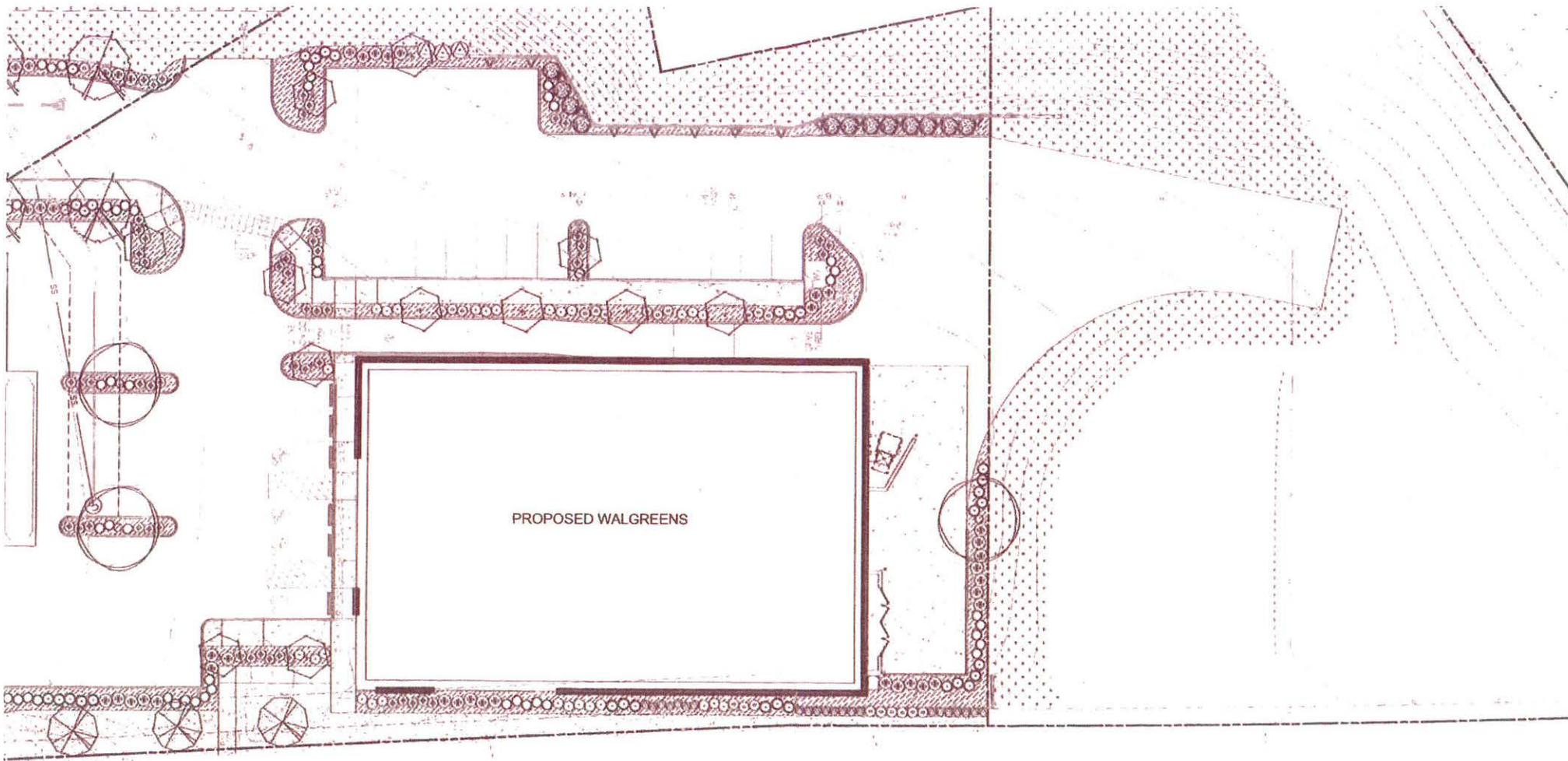
EXISTING
MAP & TAX LOT NO
22E-03AA-701

PROPOSED PARCEL 2
PROPOSED AREA = 1.78 ACRES

PROPOSED PARCEL 3
PROPOSED AREA = 0.97 ACRES

R=9774.71'
L=261.06'
A=1°31'49"
CH=N54°08'24"W 261.05'
L=150.80'

SE SUNNYSIDE ROAD



SE SUNNYSIDE ROAD

LANDSCAPE PLANT MATERIAL SCHEDULE

SYMBOL	TREES ITEM	SIZE	QTY.
	ACER GRISEUM PAPERBARK MAPLE	1-1/2" CAL / B&B / AS SHOWN	3
	CRATAEGUS x LAVALLEI LAVALLE HAWTHORNE	1-1/2" CAL / B&B / AS SHOWN	8
	PYRUS CALLERANA 'CAPITAL' CAPITAL FLOWERING PEAR	1-1/2" CAL / B&B / AS SHOWN	12
	FRAXINUS PENNSYLVANICA 'PATMORE' PATMORE GREEN ASH	1-1/2" CAL B&B / AS SHOWN	3
	EXISTING DECIDUOUS TREE TO REMAIN CONTRACTOR TO PROTECT IN PLACE		
	EXISTING EVERGREEN TREE TO REMAIN CONTRACTOR TO PROTECT IN PLACE		
SHRUBS & ORNAMENTALS			
ITEM	SIZE	QTY.	
	PRUNUS L. 'OTTO LUYKEN' OTTO LUYKEN CHERRY/LAUREL	3 GAL / 24" HT 4'-0" O.C.	67
	MAHONIA AQUIFOLIUM OREGON GRAPE	3 GAL / 24" HT 3'-6" O.C.	55
	VIBURNUM DAVIDII DAVID'S VIBURNUM	3 GAL / 24" HT 3'-0" O.C.	78
	MAHONIA AQUIFOLIUM 'COMPACTA'	3 GAL	62

	MISCANTHUS SINENSIS 'LITTLE KITTEN' LITTLE KITTEN MAIDEN GRASS	1 GAL
	PINUS MUGO 'PUMILL O' DWARF MUGO PINE	24" W x 18" H / UNSHARED
	CHAMAECYPARIS OBTUSA 'NANA GRACILIS' DWARF HINOKI CYPRESS	4' HT / B&B / AS SH
	PIERIS JAPONICA 'MOUNTAIN FIRE' MOUNTAIN FIRE PIERIS	2 GAL. @ 4'-0" C
GROUNDCOVERS		
ITEM	SIZE	
	ARCTOSTAPHYLOS UVA-URSI 'MASS.' KINNIKINICK	4" CONT 3'-0" O.C.
	PROTIME 303 SUN MIX HOBBS & HOPKINS - PORTLAND	SEED @ 8 LBS / 1,000 S.F.
	PROTIME 700 LOW PROFILE EROSION HOBBS & HOPKINS - PORTLAND	SEED @ 150 LBS / ACF
VINES		
ITEM	SIZE	
	PARTENOCISSUS TRICUSPIDATA BOSTON IVY	1 GAL / 3'-0" H AS SHOWN

TYPE PLAN

TYPE STANDARDS ESTABLISHED UNDER HAPPY

TYPE OF BARK MULCH

TYPE WITH A FULLY AUTOMATIC UNDERGROUND

TYPE SHALL MEET THE AMERICAN NURSERYMAN'S

TYPE FOR ALL PLANT MATERIAL SUBSTITUTIONS

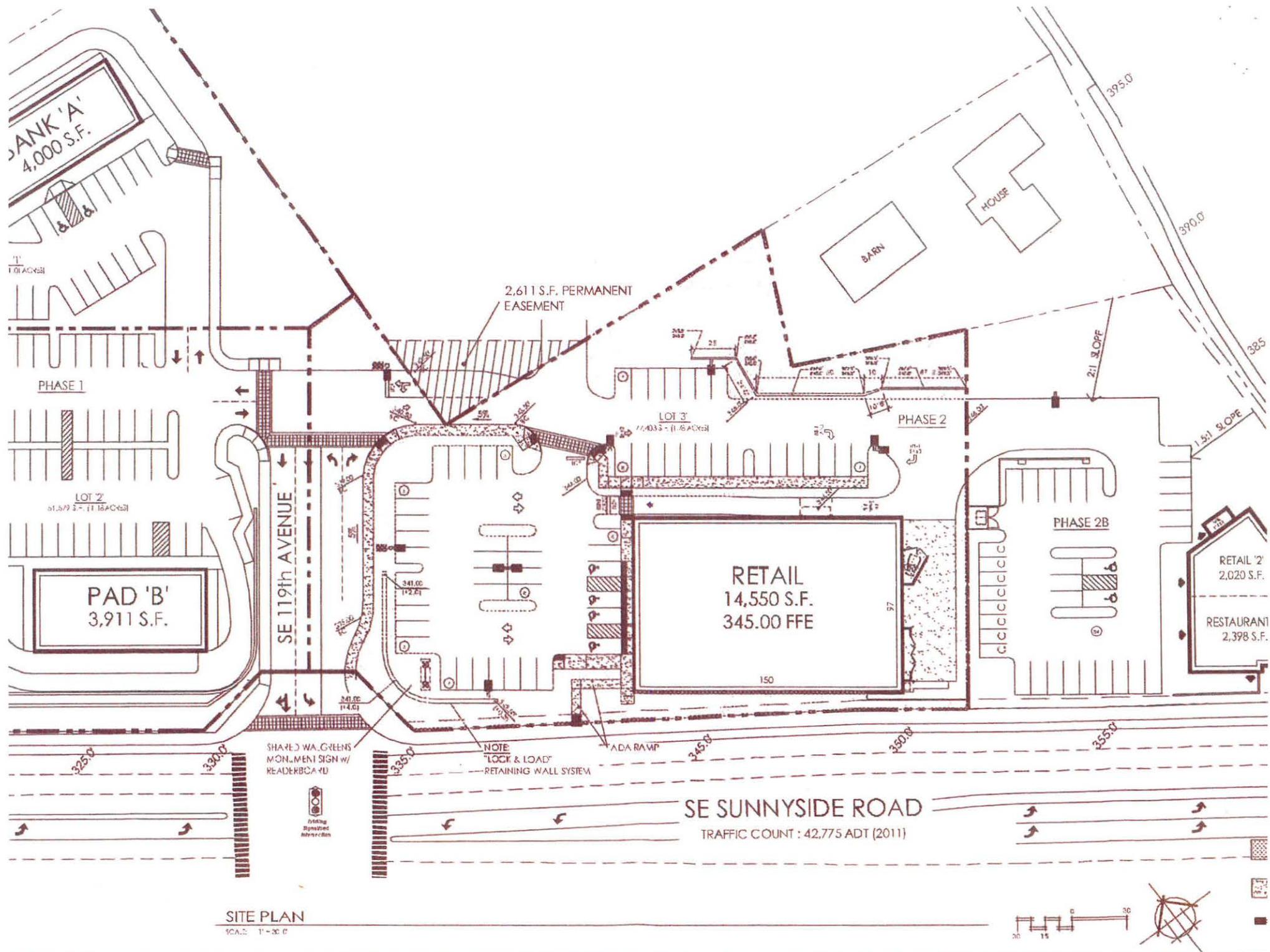
TYPE NOT COMPLY WITH THE DRAWINGS AND

TYPE REPLACED WITH PLANT MATERIALS THAT

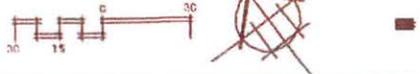
TYPE MENDED TOPSOIL AND ANY EXPOSED SIPIPES

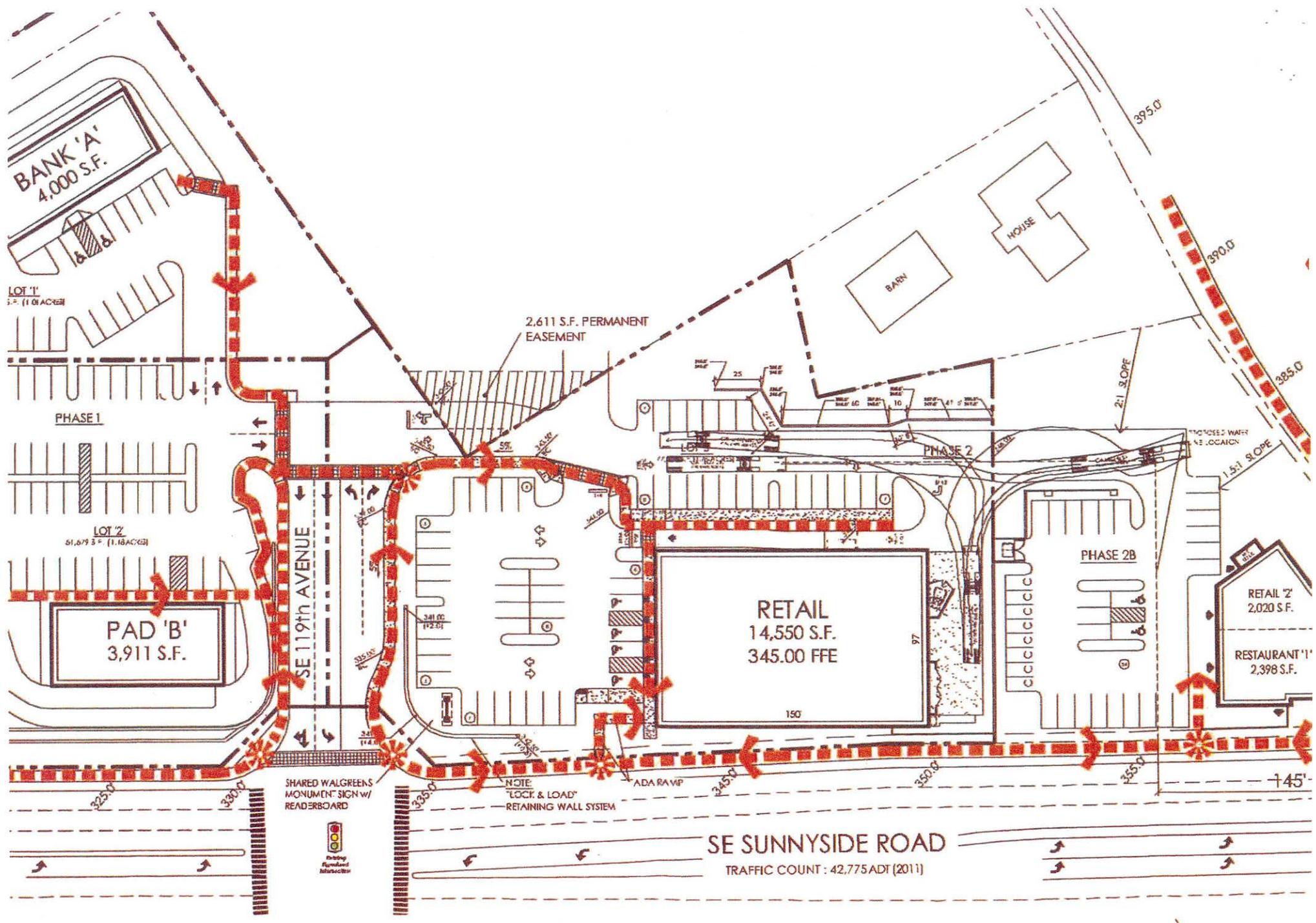
LANDSCAPE SUMMARY

TOTAL SITE & EASEMENT AREA	= 80,014 S.F.
REQUIRED LANDSCAPE AREA	= 12,002 S.F. (15%)
PROPOSED ON-SITE LANDSCAPE AREA	= 21,679 S.F. (+27%)
EXCESS LANDSCAPE AREA	= 9,677 S.F.



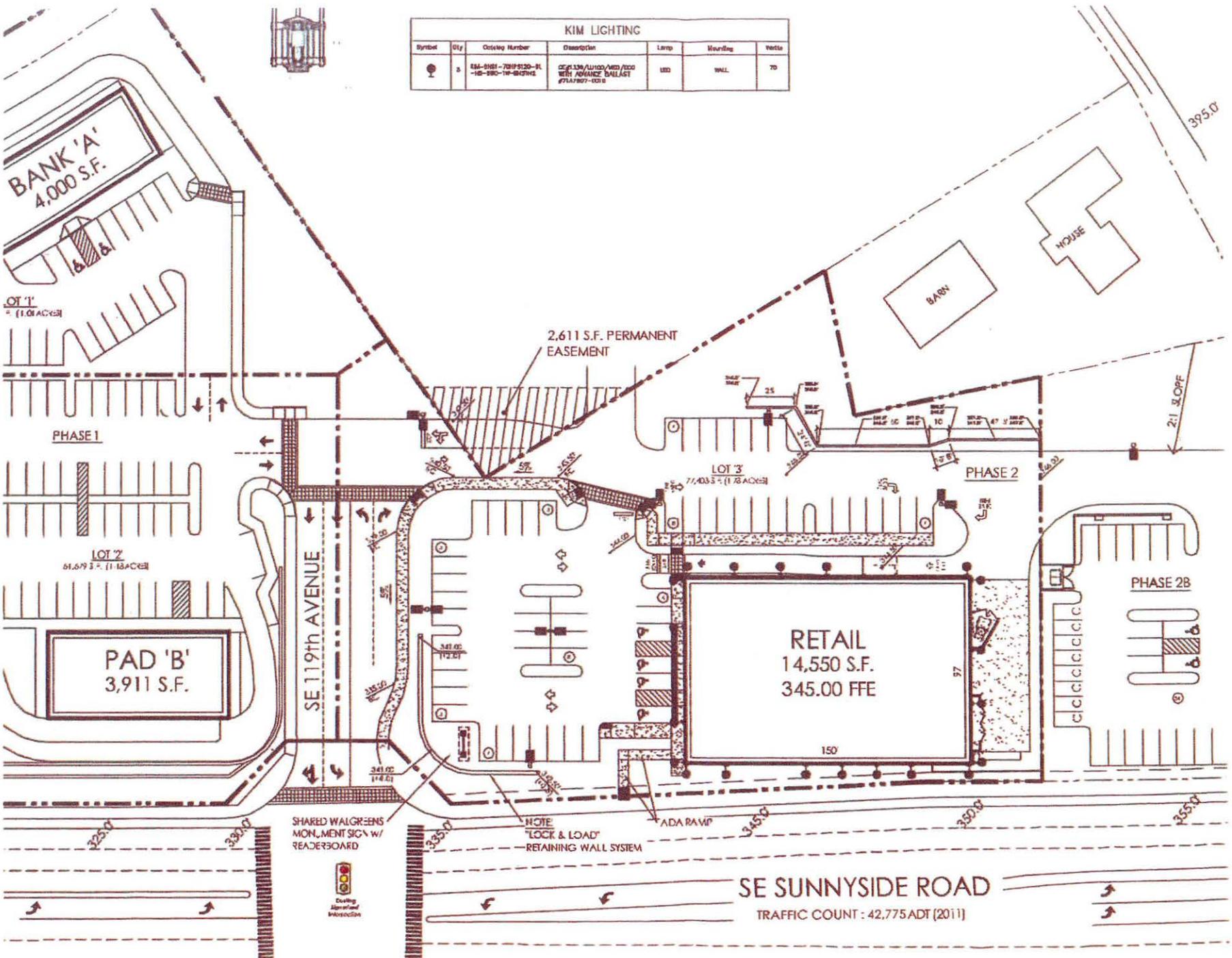
SITE PLAN
SCALE: 1" = 30' 0"





PEDESTRIAN CIRCULATION PLAN
 SCALE: 1" = 30'





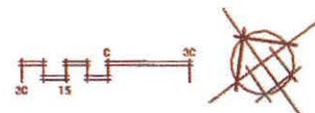
KIM LIGHTING						
Symbol	Qty	Ordering Number	Description	Lamp	Mounting	Fixture
	2	884-0181-7019/8120-01 -16-580-19-042743	CEFL330/41100/MID/1000 WITH ADVANCE BALLAST #71A7807-1018	LED	WALL	70

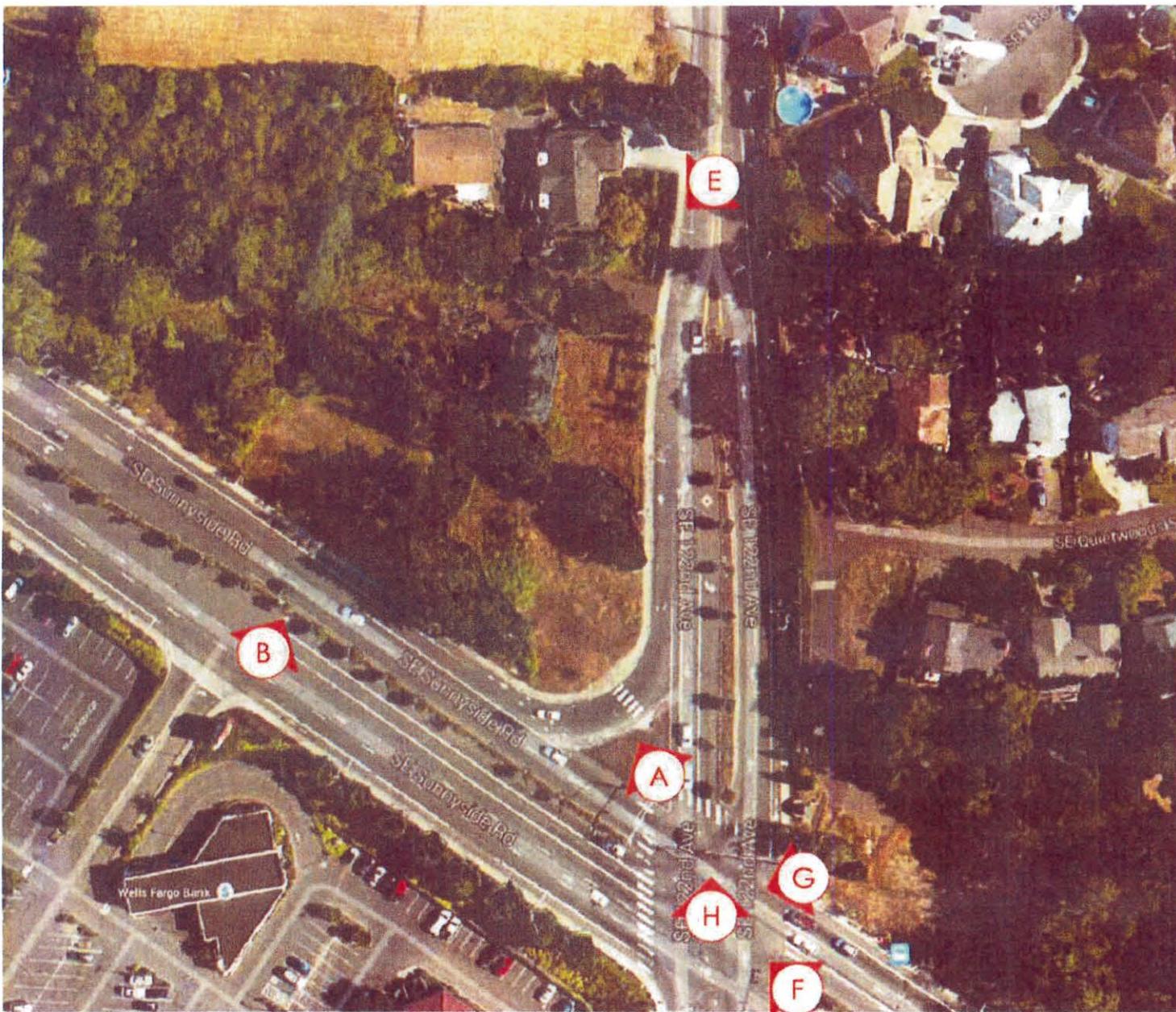
SEE 5' LIGHTING NOTE

LITHONIA (AC)		
Symbol	Qty	Ordering Number
	9	881-160-400-1000- -714-1000-1-001-00
	4	881-160-400-1000- -714-1000-1-001-00
	3	881-160-400-1000- -714-1000-1-001-00

PLAN

SE SUNNYSIDE ROAD
TRAFFIC COUNT : 42,775 ADT (2011)





(A) CONTEXTUAL VIEW



(B) CONTEXTUAL VIEW



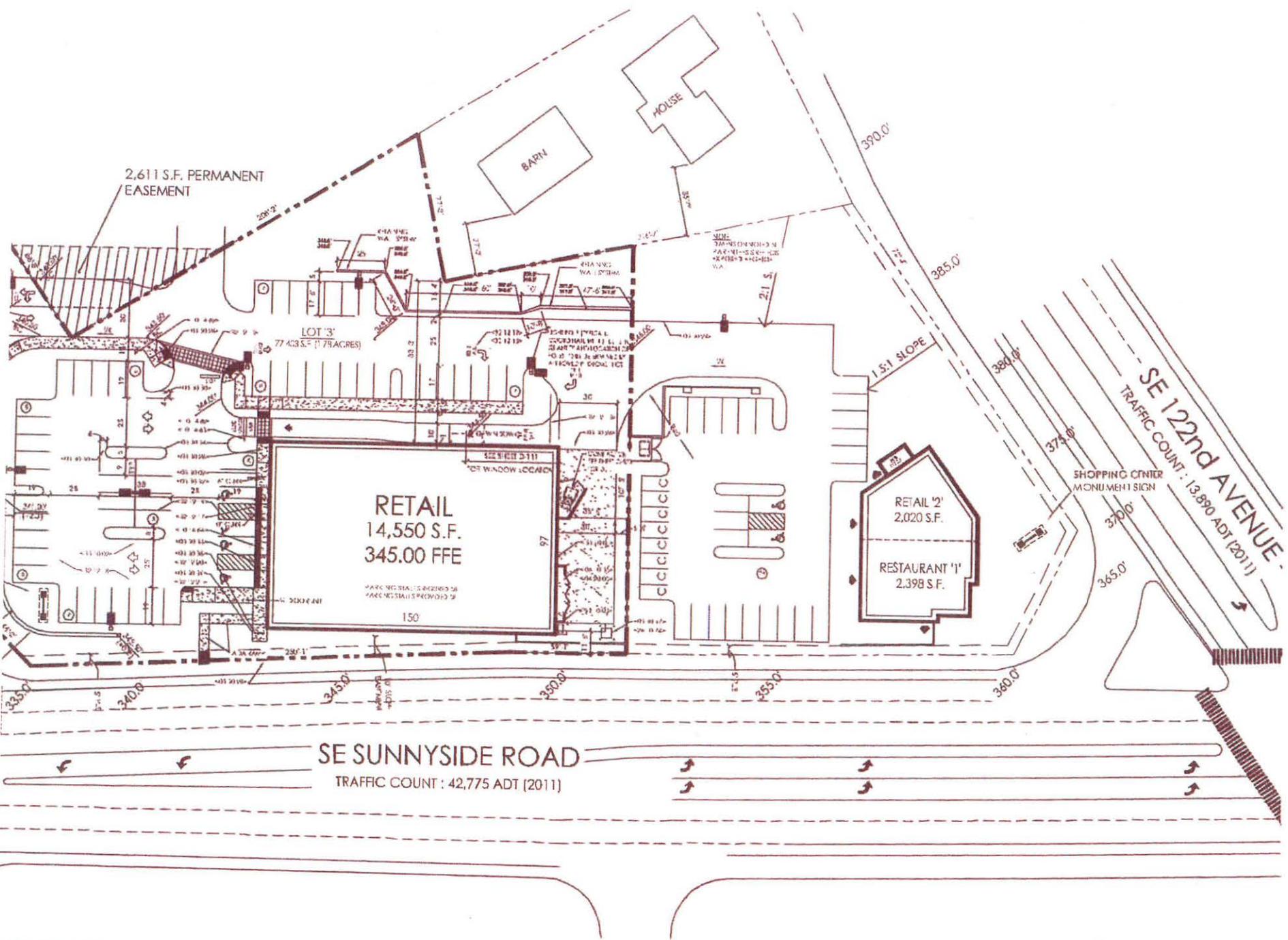
(C) CONTEXTUAL VIEW



(D) CONTEXTUAL VIEW

RIAL

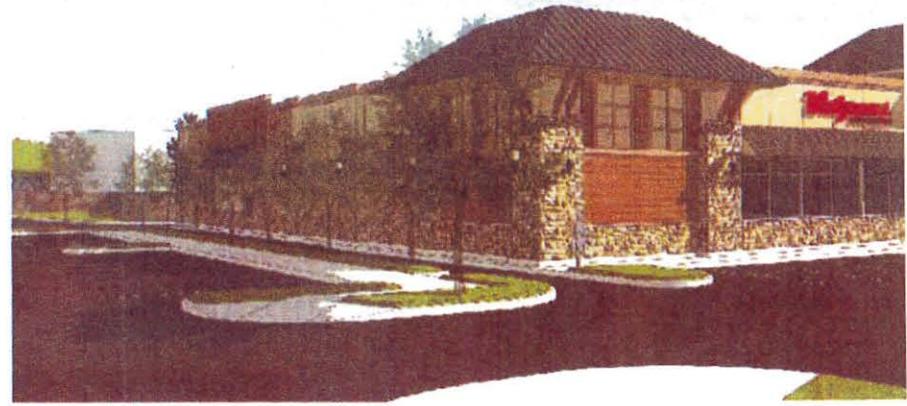




01 90 20	CONCRETE
05 00 00	ASPH/CON
01 90 00	WOOD
01 90 30	STEEL
01 90 40	GLASS
01 90 50	PAINT
01 90 60	MECHANICAL
01 90 70	ELECTRICAL
01 90 80	PLUMBING
01 90 90	LANDSCAPE
02 00 00	FOUNDATION
02 00 10	RETAINING WALL
02 00 20	CONCRETE
02 00 30	ASPH/CON
02 00 40	WOOD
02 00 50	STEEL
02 00 60	GLASS
02 00 70	PAINT
02 00 80	MECHANICAL
02 00 90	ELECTRICAL
02 01 00	PLUMBING
02 01 10	LANDSCAPE
02 01 20	FOUNDATION
02 01 30	RETAINING WALL
02 01 40	CONCRETE
02 01 50	ASPH/CON
02 01 60	WOOD
02 01 70	STEEL
02 01 80	GLASS
02 01 90	PAINT
02 02 00	MECHANICAL
02 02 10	ELECTRICAL
02 02 20	PLUMBING
02 02 30	LANDSCAPE
02 02 40	FOUNDATION
02 02 50	RETAINING WALL
02 02 60	CONCRETE
02 02 70	ASPH/CON
02 02 80	WOOD
02 02 90	STEEL
02 03 00	GLASS
02 03 10	PAINT
02 03 20	MECHANICAL
02 03 30	ELECTRICAL
02 03 40	PLUMBING
02 03 50	LANDSCAPE
02 04 00	FOUNDATION
02 04 10	RETAINING WALL
02 04 20	CONCRETE
02 04 30	ASPH/CON
02 04 40	WOOD
02 04 50	STEEL
02 04 60	GLASS
02 04 70	PAINT
02 04 80	MECHANICAL
02 04 90	ELECTRICAL
02 05 00	PLUMBING
02 05 10	LANDSCAPE
02 05 20	FOUNDATION
02 05 30	RETAINING WALL
02 05 40	CONCRETE
02 05 50	ASPH/CON
02 05 60	WOOD
02 05 70	STEEL
02 05 80	GLASS
02 05 90	PAINT
02 06 00	MECHANICAL
02 06 10	ELECTRICAL
02 06 20	PLUMBING
02 06 30	LANDSCAPE
02 06 40	FOUNDATION
02 06 50	RETAINING WALL
02 06 60	CONCRETE
02 06 70	ASPH/CON
02 06 80	WOOD
02 06 90	STEEL
02 07 00	GLASS
02 07 10	PAINT
02 07 20	MECHANICAL
02 07 30	ELECTRICAL
02 07 40	PLUMBING
02 07 50	LANDSCAPE
02 07 60	FOUNDATION
02 07 70	RETAINING WALL
02 07 80	CONCRETE
02 07 90	ASPH/CON
02 08 00	WOOD
02 08 10	STEEL
02 08 20	GLASS
02 08 30	PAINT
02 08 40	MECHANICAL
02 08 50	ELECTRICAL
02 08 60	PLUMBING
02 08 70	LANDSCAPE
02 08 80	FOUNDATION
02 08 90	RETAINING WALL
02 09 00	CONCRETE
02 09 10	ASPH/CON
02 09 20	WOOD
02 09 30	STEEL
02 09 40	GLASS
02 09 50	PAINT
02 09 60	MECHANICAL
02 09 70	ELECTRICAL
02 09 80	PLUMBING
02 09 90	LANDSCAPE
02 10 00	FOUNDATION
02 10 10	RETAINING WALL
02 10 20	CONCRETE
02 10 30	ASPH/CON
02 10 40	WOOD
02 10 50	STEEL
02 10 60	GLASS
02 10 70	PAINT
02 10 80	MECHANICAL
02 10 90	ELECTRICAL
02 11 00	PLUMBING
02 11 10	LANDSCAPE
02 11 20	FOUNDATION
02 11 30	RETAINING WALL
02 11 40	CONCRETE
02 11 50	ASPH/CON
02 11 60	WOOD
02 11 70	STEEL
02 11 80	GLASS
02 11 90	PAINT
02 12 00	MECHANICAL
02 12 10	ELECTRICAL
02 12 20	PLUMBING
02 12 30	LANDSCAPE
02 12 40	FOUNDATION
02 12 50	RETAINING WALL
02 12 60	CONCRETE
02 12 70	ASPH/CON
02 12 80	WOOD
02 12 90	STEEL
02 13 00	GLASS
02 13 10	PAINT
02 13 20	MECHANICAL
02 13 30	ELECTRICAL
02 13 40	PLUMBING
02 13 50	LANDSCAPE
02 13 60	FOUNDATION
02 13 70	RETAINING WALL
02 13 80	CONCRETE
02 13 90	ASPH/CON
02 14 00	WOOD
02 14 10	STEEL
02 14 20	GLASS
02 14 30	PAINT
02 14 40	MECHANICAL
02 14 50	ELECTRICAL
02 14 60	PLUMBING
02 14 70	LANDSCAPE
02 14 80	FOUNDATION
02 14 90	RETAINING WALL
02 15 00	CONCRETE
02 15 10	ASPH/CON
02 15 20	WOOD
02 15 30	STEEL
02 15 40	GLASS
02 15 50	PAINT
02 15 60	MECHANICAL
02 15 70	ELECTRICAL
02 15 80	PLUMBING
02 15 90	LANDSCAPE
02 16 00	FOUNDATION
02 16 10	RETAINING WALL
02 16 20	CONCRETE
02 16 30	ASPH/CON
02 16 40	WOOD
02 16 50	STEEL
02 16 60	GLASS
02 16 70	PAINT
02 16 80	MECHANICAL
02 16 90	ELECTRICAL
02 17 00	PLUMBING
02 17 10	LANDSCAPE
02 17 20	FOUNDATION
02 17 30	RETAINING WALL
02 17 40	CONCRETE
02 17 50	ASPH/CON
02 17 60	WOOD
02 17 70	STEEL
02 17 80	GLASS
02 17 90	PAINT
02 18 00	MECHANICAL
02 18 10	ELECTRICAL
02 18 20	PLUMBING
02 18 30	LANDSCAPE
02 18 40	FOUNDATION
02 18 50	RETAINING WALL
02 18 60	CONCRETE
02 18 70	ASPH/CON
02 18 80	WOOD
02 18 90	STEEL
02 19 00	GLASS
02 19 10	PAINT
02 19 20	MECHANICAL
02 19 30	ELECTRICAL
02 19 40	PLUMBING
02 19 50	LANDSCAPE
02 19 60	FOUNDATION
02 19 70	RETAINING WALL
02 19 80	CONCRETE
02 19 90	ASPH/CON
02 20 00	WOOD
02 20 10	STEEL
02 20 20	GLASS
02 20 30	PAINT
02 20 40	MECHANICAL
02 20 50	ELECTRICAL
02 20 60	PLUMBING
02 20 70	LANDSCAPE
02 20 80	FOUNDATION
02 20 90	RETAINING WALL
02 21 00	CONCRETE
02 21 10	ASPH/CON
02 21 20	WOOD
02 21 30	STEEL
02 21 40	GLASS
02 21 50	PAINT
02 21 60	MECHANICAL
02 21 70	ELECTRICAL
02 21 80	PLUMBING
02 21 90	LANDSCAPE
02 22 00	FOUNDATION
02 22 10	RETAINING WALL
02 22 20	CONCRETE
02 22 30	ASPH/CON
02 22 40	WOOD
02 22 50	STEEL
02 22 60	GLASS
02 22 70	PAINT
02 22 80	MECHANICAL
02 22 90	ELECTRICAL
02 23 00	PLUMBING
02 23 10	LANDSCAPE
02 23 20	FOUNDATION
02 23 30	RETAINING WALL
02 23 40	CONCRETE
02 23 50	ASPH/CON
02 23 60	WOOD
02 23 70	STEEL
02 23 80	GLASS
02 23 90	PAINT
02 24 00	MECHANICAL
02 24 10	ELECTRICAL
02 24 20	PLUMBING
02 24 30	LANDSCAPE
02 24 40	FOUNDATION
02 24 50	RETAINING WALL
02 24 60	CONCRETE
02 24 70	ASPH/CON
02 24 80	WOOD
02 24 90	STEEL
02 25 00	GLASS
02 25 10	PAINT
02 25 20	MECHANICAL
02 25 30	ELECTRICAL
02 25 40	PLUMBING
02 25 50	LANDSCAPE
02 25 60	FOUNDATION
02 25 70	RETAINING WALL
02 25 80	CONCRETE
02 25 90	ASPH/CON
02 26 00	WOOD
02 26 10	STEEL
02 26 20	GLASS
02 26 30	PAINT
02 26 40	MECHANICAL
02 26 50	ELECTRICAL
02 26 60	PLUMBING
02 26 70	LANDSCAPE
02 26 80	FOUNDATION
02 26 90	RETAINING WALL
02 27 00	CONCRETE
02 27 10	ASPH/CON
02 27 20	WOOD
02 27 30	STEEL
02 27 40	GLASS
02 27 50	PAINT
02 27 60	MECHANICAL
02 27 70	ELECTRICAL
02 27 80	PLUMBING
02 27 90	LANDSCAPE
02 28 00	FOUNDATION
02 28 10	RETAINING WALL
02 28 20	CONCRETE
02 28 30	ASPH/CON
02 28 40	WOOD
02 28 50	STEEL
02 28 60	GLASS
02 28 70	PAINT
02 28 80	MECHANICAL
02 28 90	ELECTRICAL
02 29 00	PLUMBING
02 29 10	LANDSCAPE
02 29 20	FOUNDATION
02 29 30	RETAINING WALL
02 29 40	CONCRETE
02 29 50	ASPH/CON
02 29 60	WOOD
02 29 70	STEEL
02 29 80	GLASS
02 29 90	PAINT
02 30 00	MECHANICAL
02 30 10	ELECTRICAL
02 30 20	PLUMBING
02 30 30	LANDSCAPE
02 30 40	FOUNDATION
02 30 50	RETAINING WALL
02 30 60	CONCRETE
02 30 70	ASPH/CON
02 30 80	WOOD
02 30 90	STEEL
02 31 00	GLASS
02 31 10	PAINT
02 31 20	MECHANICAL
02 31 30	ELECTRICAL
02 31 40	PLUMBING
02 31 50	LANDSCAPE
02 31 60	FOUNDATION
02 31 70	RETAINING WALL
02 31 80	CONCRETE
02 31 90	ASPH/CON
02 32 00	WOOD
02 32 10	STEEL
02 32 20	GLASS
02 32 30	PAINT
02 32 40	MECHANICAL
02 32 50	ELECTRICAL
02 32 60	PLUMBING
02 32 70	LANDSCAPE
02 32 80	FOUNDATION
02 32 90	RETAINING WALL
02 33 00	CONCRETE
02 33 10	ASPH/CON
02 33 20	WOOD
02 33 30	STEEL
02 33 40	GLASS
02 33 50	PAINT
02 33 60	MECHANICAL
02 33 70	ELECTRICAL
02 33 80	PLUMBING
02 33 90	LANDSCAPE
02 34 00	FOUNDATION
02 34 10	RETAINING WALL
02 34 20	CONCRETE
02 34 30	ASPH/CON
02 34 40	WOOD
02 34 50	STEEL
02 34 60	GLASS
02 34 70	PAINT
02 34 80	MECHANICAL
02 34 90	ELECTRICAL
02 35 00	PLUMBING
02 35 10	LANDSCAPE
02 35 20	FOUNDATION
02 35 30	RETAINING WALL
02 35 40	CONCRETE
02 35 50	ASPH/CON
02 35 60	WOOD
02 35 70	STEEL
02 35 80	GLASS
02 35 90	PAINT
02 36 00	MECHANICAL
02 36 10	ELECTRICAL
02 36 20	PLUMBING
02 36 30	LANDSCAPE
02 36 40	FOUNDATION
02 36 50	RETAINING WALL
02 36 60	CONCRETE
02 36 70	ASPH/CON
02 36 80	WOOD
02 36 90	STEEL
02 37 00	GLASS
02 37 10	PAINT
02 37 20	MECHANICAL
02 37 30	ELECTRICAL
02 37 40	PLUMBING
02 37 50	LANDSCAPE
02 37 60	FOUNDATION
02 37 70	RETAINING WALL
02 37 80	CONCRETE
02 37 90	ASPH/CON
02 38 00	WOOD
02 38 10	STEEL
02 38 20	GLASS
02 38 30	PAINT
02 38 40	MECHANICAL
02 38 50	ELECTRICAL
02 38 60	PLUMBING
02 38 70	LANDSCAPE
02 38 80	FOUNDATION
02 38 90	RETAINING WALL
02 39 00	CONCRETE
02 39 10	ASPH/CON
02 39 20	WOOD
02 39 30	STEEL
02 39 40	GLASS
02 39 50	PAINT
02 39 60	MECHANICAL
02 39 70	ELECTRICAL
02 39 80	PLUMBING
02 39 90	LANDSCAPE
02 40 00	FOUNDATION
02 40 10	RETAINING WALL
02 40 20	CONCRETE
02 40 30	ASPH/CON
02 40 40	WOOD
02 40 50	STEEL
02 40 60	GLASS
02 40 70	PAINT
02 40 80	MECHANICAL
02 40 90	ELECTRICAL
02 41 00	PLUMBING
02 41 10	LANDSCAPE
02 41 20	FOUNDATION
02 41 30	RETAINING WALL
02 41 40	CONCRETE
02 41 50	ASPH/CON
02 41 60	WOOD
02 41 70	STEEL
02 41 80	GLASS
02 41 90	PAINT
02 42 00	MECHANICAL
02 42 10	ELECTRICAL
02 42 20	PLUMBING
02 42 30	LANDSCAPE
02 42 40	FOUNDATION
02 42 50	RETAINING WALL
02 42 60	CONCRETE
02 42 70	ASPH/CON
02 42 80	WOOD
02 42 90	STEEL
02 43 00	GLASS
02 43 10	PAINT
02 43 20	MECHANICAL
02 43 30	ELECTRICAL
02 43 40	PLUMBING
02 43 50	LANDSCAPE
02 43 60	FOUNDATION
02 43 70	RETAINING WALL
02 43 80	CONCRETE
02 43 90	ASPH/CON
02 44 00	WOOD
02 44 10	STEEL
02 44 20	GLASS
02 44 30	PAINT
02 44 40	MECHANICAL
02 44 50	ELECTRICAL
02 44 60	PLUMBING
02 44 70	LANDSCAPE
02 44 80	FOUNDATION
02 44 90	RETAINING WALL
02 45 00	CONCRETE
02 45 10	ASPH/CON
02 45 20	WOOD
02 45 30	STEEL
02 45 40	GLASS
02 45 50	PAINT
02 45 60	MECHANICAL
02 45 70	ELECTRICAL
02 45 80	PLUMBING
02 45 90	LANDSCAPE
02 46 00	FOUNDATION
02 46 10	RETAINING WALL
02 46 20	CONCRETE
02 46 30	ASPH/CON
02 46 40	WOOD
02 46 50	STEEL
02 46 60	GLASS
02 46 70	PAINT
02 46 80	MECHANICAL



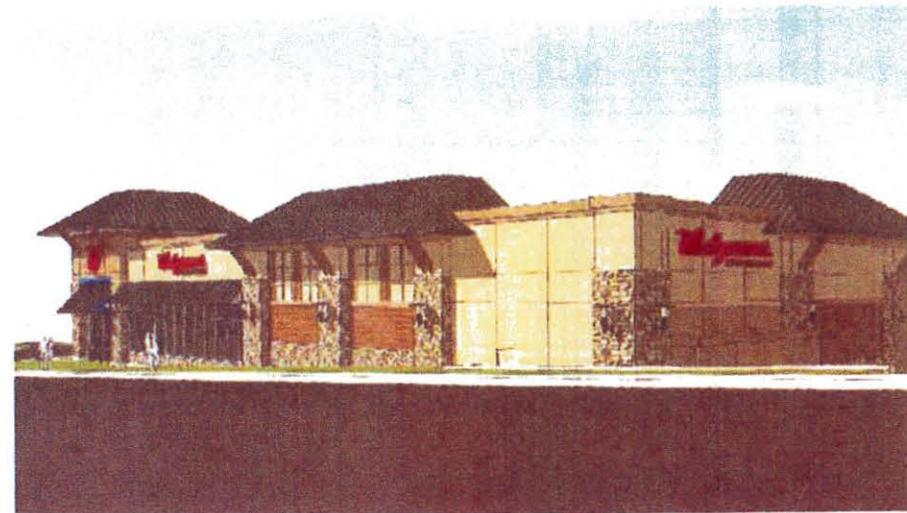
LOOKING EAST



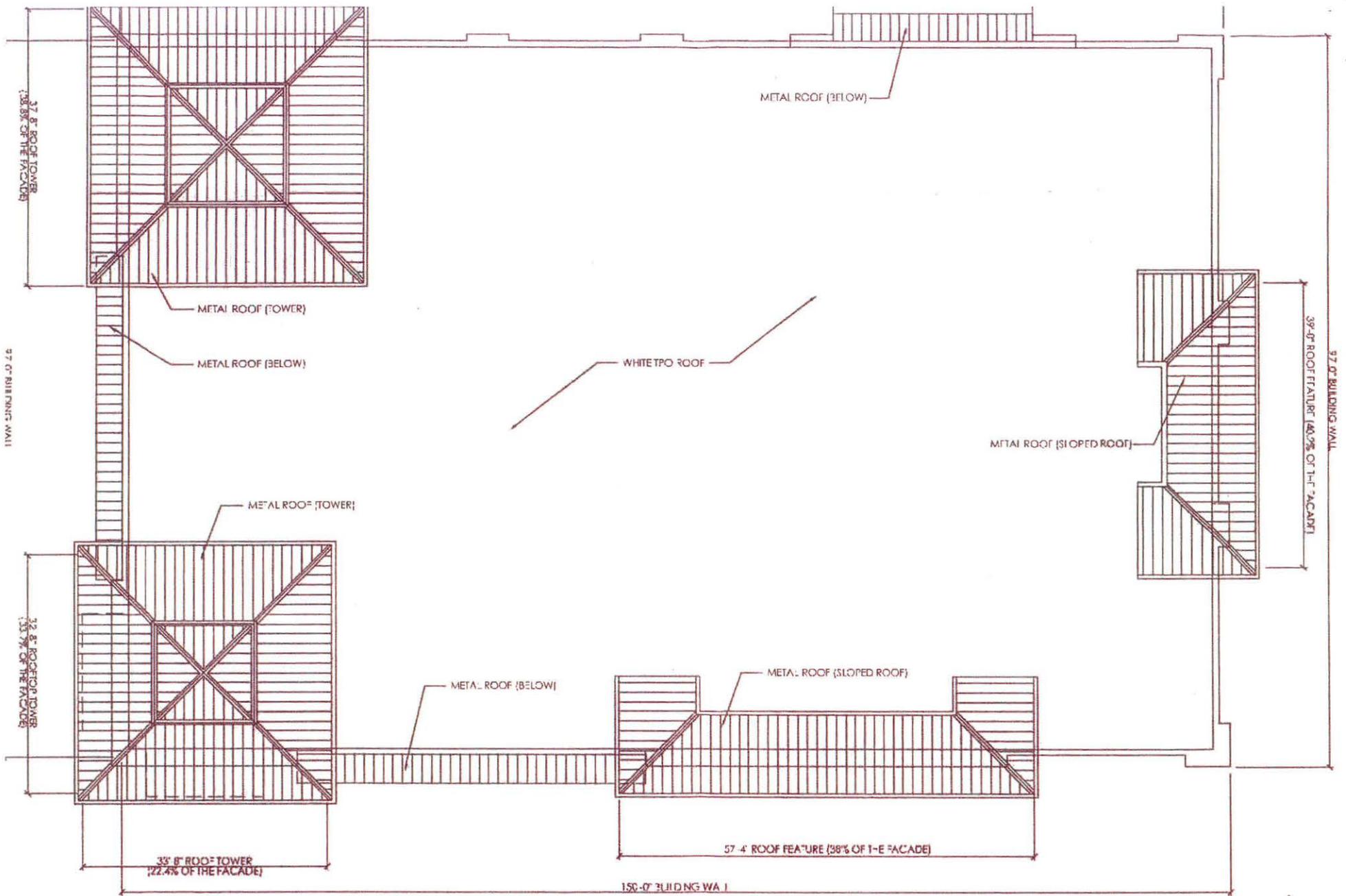
PERSPECTIVE
VIEW LOOKING SOUTH



LOOKING WEST



PERSPECTIVE
VIEW LOOKING NORTH



ROOF PLAN

SCALE: 1/8" = 1'-0"



TITLE 16 LAND DEVELOPMENT CODE

ARTICLE 16.2 LAND USE DISTRICTS

Chapter 16.21 Land Use District Administration

16.21.010 Land Use District Map

All development districts contained in this chapter are based on designations formulated for and contained in the Happy Valley revised Comprehensive Plan. The officially adopted land use map in the plan shall be the item used exclusively for the determination of the districts, their boundaries and their designations. The titles and descriptions of districts contained in this chapter are based directly upon the designations on the map. No separate zoning map shall exist. (Ord. 389 § 1(Exh. A), 2009)

Response: The Site was recently annexed into the City of Happy Valley from Clackamas County, shown in Exhibit D. The project site will be designated as Mixed Use Commercial (MUC). This narrative addresses the proposed development and project site as a MUC designation in preparation for the finalized annexation.

16.23.010 Mixed Use Commercial and Employment Districts.

B. Permitted Uses. Table 16.23.010-1 identifies the land uses that are allowed in the MUC, MUE and RCMU Districts. [Complete table omitted from this narrative]

Table 16.23.010-1 Mixed Use Districts (MUC, MUE, RCMU) Permitted Uses [table reduced for this narrative]

<i>Use</i>	<i>MUC</i>
Drug stores	P
Restaurants full service	P
Restaurants—Drive-through	P
Retail and service commercial uses similar to those above but not listed elsewhere in this section upon administrative determination through the design review process	P
Professional and administrative offices	P
Medical office buildings	P

Response: The proposed drug store on the retail commercial pad is a permitted use within the MUC mixed-use district. The proposed retail and restaurant pad for Phase 2b development will likely be a use summarized in the above table which is permitted outright.

C. Development Standards. The development standards in Table 16.23.010-2 apply to all uses, structures, buildings, and development in the MUC, MUE and RCMU Districts.

Table 16.23.010-2 Development Standards for MUC, MUE and RCMU Districts

<i>Standard</i>	<i>MUC</i>
Lot size (minimum)	Variable ³
Lot width (minimum)	Variable ³
Lot depth (minimum)	Variable ³
Floor area ratio	
Nonresidential FAR (minimum)	0.25:1 ⁴
Nonresidential FAR (maximum)	5:1
FAR for mixed use building with residential uses (minimum)	0.25:1
FAR for mixed use building with residential uses (maximum)	5:1
Landscaping (minimum)	Variable ⁵
Building setbacks (minimum)	Variable ³
Building height (maximum)	65 feet ³

NOTES:

¹ Density calculations shall be made pursuant to Section 16.63.020(F).

² Minimum density of eighty (80) percent of each sub-area is required.

³ Building height is measured pursuant to Chapter 16.12, Definitions. Standards are flexible and shall be determined through the master plan process or a design review.

⁴ Must include a shadow plan to establish future development.

⁵ Pursuant to Section 16.42.030, fifteen (15) percent of the net developable area must be usable open space.

Response: The new proposed lot dimensions shown on the Property Line Adjustment (PLA) preliminary plat (Sheet C4.0) show a lot size of 1.01 acres for Parcel 1, 1.78 acres for Parcel 2 and 0.97 acres for Parcel 3. Generally, the minimum lot width is approximately 208-feet for Parcel 1, 268-feet. for Parcel 2 and 217-feet for Parcel 3. The proposed drug store has an FAR of 0.19, below the 0.25:1 FAR minimum requirement. A Class C variance is included with this application to address the FAR requirement.

As shown on Sheet L1.0 Planting Plan, 21,679 SF of landscaping is provided, representing approximately 27% of the overall site area. At the smallest distance, the retail commercial pad is setback approximately 20-feet from the proposed PLA eastern property line.

The proposed maximum building height is 35" for the roof line at the primary entrance to the building. This height is well below the 65-foot maximum height restriction.

16.42.060 Fencing, Walls and Screening

- D. For any development of a structure, yard or any facility requiring the utilization of retaining walls, retaining walls over four feet in height require the approval of a building permit and engineering of the retaining wall, including provisions for stormwater management. Within any zoning district, on property immediately abutting existing residences or residential districts, the maximum single-face retaining wall height within an individual existing lot of record, parcel or lot (as created after any retaining walls necessary for public or private infrastructure such as streets, stormwater detention facilities, etc.) shall have a maximum height of eight feet, as measured from the downslope face of the retaining wall. Retaining walls may be terraced up the slopes of existing lots of record, parcels or lots, but shall have a minimum distance between walls of the height of the downslope retaining wall, as measured from the upslope side of the lower retaining wall to the downslope side of the upper retaining wall. All retaining walls abutting other single-family residences or zoning districts shall provide solid vegetative screening along the entire linear face of the lowest retaining wall. Fences or decorative walls may exist atop retaining walls, and are measured in height independent of the retaining wall. Said facilities may exist to the maximum height allowed in the front, interior side, exterior side (corner lot) or rear setback area.**

Response: A single retaining wall is proposed along the backside of the proposed development. The wall height exceeds the maximum of eight (8) feet outlined above. The proposed wall height ranges from nine (9) to thirteen (13) feet. The grade of the site necessitates the use of the wall to maintain support of the land. If the standard were to be met, there would be less developable land across the site. The wall will not be facing a residential property and blocked from view from Sunnyside Rd by the proposed building. Furthermore, it will be sufficiently screened with the Capital Flowering Pear, a deciduous tree, and shrubs and ornamentals, Otto Luyken Cherrylaurel, Oregon Grape, Compact Oregon Grapeholly, slender Hinoki Cypress and Parney Cotoneaster. To add additional screening, the section of the wall that extends furthest out will be screened with Boston Ivy. Therefore, the applicant is seeking a variance for the excess wall height, included in Exhibit A. There is a "lock and load" retaining wall system proposed along the southwest corner of the proposed development site, fronting SE Sunnyside Road on the south side as shown on the Site Plan. Currently, there is a 10 ft. easement for the public ROW located at the southern property line. With the construction of the retaining wall, the need for this easement will be eliminated.

- F. Screening of Service Facilities. Site-obscuring shrubbery or a berm, wall or fence shall be placed along a property line between residential and commercial and industrial zones and around unsightly areas such as trash and recycling areas, gas meters, ground level air-conditioning units, disc antennas exceeding thirty-six (36) inches in diameter and equipment storage or an industrial or commercial use with outside storage of equipment or materials.**

Response: The proposed trash receptacle area is screened by a Concrete Masonry Unit wall, located on the east side of the building, furthest away from the primary customer and employee parking area.

Response: All new lots delineated do conform to the applicable lot standards of the MUC land use district, including lot area, dimensions, setbacks, and coverage, and no resulting lot is wholly comprised of a flood hazard area or jurisdictional wetland.

3. **Access and Road Authority Standards.** All lots and parcels conform to the standards or requirements of Chapter 16.41 Access and Circulation, and all applicable road authority requirements are met. If a lot is nonconforming to any City or road authority standard, it shall not be made even less conforming by the property line adjustment.

Response: All lots and parcels adjusted will conform to the standards and requirements of Chapter 16.41.

4. **Any adjustment or removal of a property line or public easement involving a parcel in a recorded partition plat or lot line in a recorded subdivision shall be performed by means of the “re-plat” process specified in ORS 92.180 to 92.190, subject to final review and approval by the Clackamas County Surveyor (see Chapter 16.61, Types of Review Procedures).**

Response: The applicant is aware of this procedural process.

ARTICLE 16.7 EXCEPTION TO CODE STANDARDS

Chapter 16.71 VARIANCES

16.71.020 Applicability and application requirements.

- A. **Exceptions and Modifications versus Variances.** A Code standard or approval criterion (“Code section”) may be modified without approval of a variance if the applicable Code section expressly allows exceptions or modifications. If the Code section does not expressly provide for exceptions or modifications, then a variance is required to modify that Code section and the provisions of Chapter 16.71 apply. Except that a variance shall not be approved that would vary the “permitted uses” or “prohibited uses” of a land use district.

Response: The proposed FAR minimum requirement and the proposed retaining wall height are both subject to a Class C variance. No exceptions or modifications are sought with this application.

- B. **Combining Variances With Other Approvals—Permit Approvals by Other Agencies.** Variance requests may be combined with and reviewed concurrently by the City approval body with other land use and development applications (e.g., development review, site design review, subdivision, conditional use, etc.), however, some variances may be subject to approval by other permitting agencies, such as ODOT in the case of State Highway access.

Response: This project narrative includes a Design Review Major, PLA, and two Class C variance requests all submitted concurrent.

- C. **Types of Variances.** There are three types of variances (Class A, B, or C). The type of variance required depends on the extent of the variance request and the discretion involved in the decision-making process. Regulations described in the following
- Sunnyside Plaza - Walgreens Cardno

sections of this chapter pertaining to applicability of the type of variance should be considered a guide only. Ultimately, it is at the discretion of the Planning Official to determine whether a variance proposal is processed as a Class A, B, or C.

Response: The Applicant is submitting for two Class C variance requests to the minimum 0.25:1 FAR requirement and the retaining wall height limit of 8 feet.

D. Application. The variance application shall conform to the requirements for Type I, II, or III applications (Chapter 16.61), as applicable. In addition, the applicant shall provide a narrative or letter explaining the reason for his or her request, alternatives considered, how the stated variance criteria are satisfied, and why the subject standard cannot be met without the variance.

Response: The variance application is being submitted concurrent with a Type II Design Review Major application. This project narrative is provided as supporting evidence for the variance requests.

16.71.050 Class C variances.

A. Applicability. Class C variance requests are those that do not conform to the provisions of Sections 16.71.030 and 16.71.040 (Class A and Class B), and that meet the criteria in subsections (B)(1) through (5) below. Class C variances shall be reviewed using a Type III procedure, in accordance with Chapter 16.61.

B. Approval Criteria. The City shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:

1. The variance requested is required due to the lot configuration, or other conditions of the site;

Response: The variance request to the minimum 0.25:1 FAR requirement is requested to site a retail commercial building pad within a 1.78 acre parcel. The 14,550 SF retail commercial building is designed to appear larger or denser in massing, as the central entry does feature an elevated roof line and articulation to give the impression of a second-story structure. Even with this goal of creating a larger structure, the building only achieves a 0.19 FAR, below the 0.25 FAR minimum. Based on the tenant needs to site a drug store with a drive-thru facility and vehicle parking area, the building size required under the 0.25 FAR would be a 19,384 SF structure. This is well above the tenant needs. Also, the parking requirements associated with a structure of that size would make the project unfeasible. As such, the applicant requests a Class C variance to adequately site a retail commercial pad on the proposed parcel. The variance request to the minimum FAR is requested to allow for the proposed use which includes a drive thru and parking, meeting this standard is impractical on the site without the use of structured parking. The variance to the retaining wall height is requested as a result of the existing topography of the site which requires significant grading to facilitate development. Denial of the wall request would actually reduce the buildable area of the site resulting in a lower FAR than what is currently requested. The applicant has taken care in siting the building and using landscaping tools to screen the wall from view.

2. That the condition requiring the variance has not been intentionally created to circumvent the Land Development Code;

Response: The proposed FAR variance is a result of the use proposed to be developed on the site. Property values and market conditions within the community do not support the ability to develop and finance dense development that is envisioned by the minimum FAR. The proposed retaining wall variance is necessary to facilitate efficient development of the site. The standard sought to be adjusted is mitigated by building placement, landscaping and topography.

3. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use or development of adjacent property;

Response: The variance requested to the FAR will allow for development that is consistent with surrounding commercial and residential development. The FAR variance will not impair the development of remaining portions of the site. Approval of the wall variance is consistent with existing development adjacent the subject property and along the Sunnyside Corridor. Approval of the wall variance allows facilitates development of subsequent phases and the adjacent property consistent with this requirement.

4. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the development provisions which are in question;

Response: Both the FAR and Wall variances are the minimum necessary to afford relief to the subject property. The applicant has designed the proposed wall to minimize height while facilitating future development of adjacent property. Approval of a lesser variance for the FAR will result in more building on site that could be found to be incompatible with adjacent residential development.

5. The variance will not result in violation(s) of any other adopted ordinance or Code standard; each Code standard to be modified shall require a separate variance request;

Response: The variances will not result in violations of the adopted ordinance and a separate request was made for each of the two (2) variances requested.

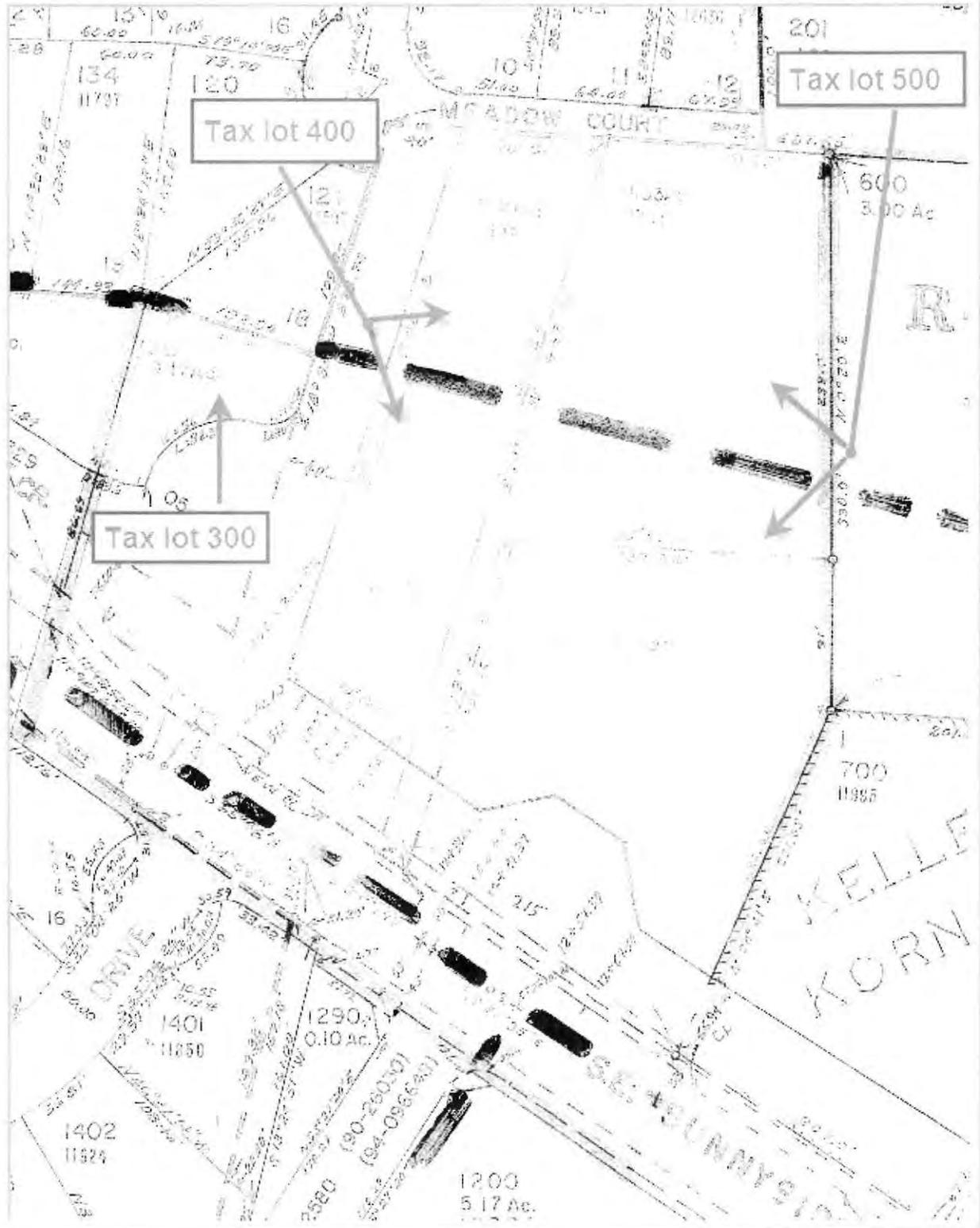
6. In granting the variance, the City Administrator or appropriate and designated body or agent may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this title.

Response: The applicant understands these provisions.

Proof #1:

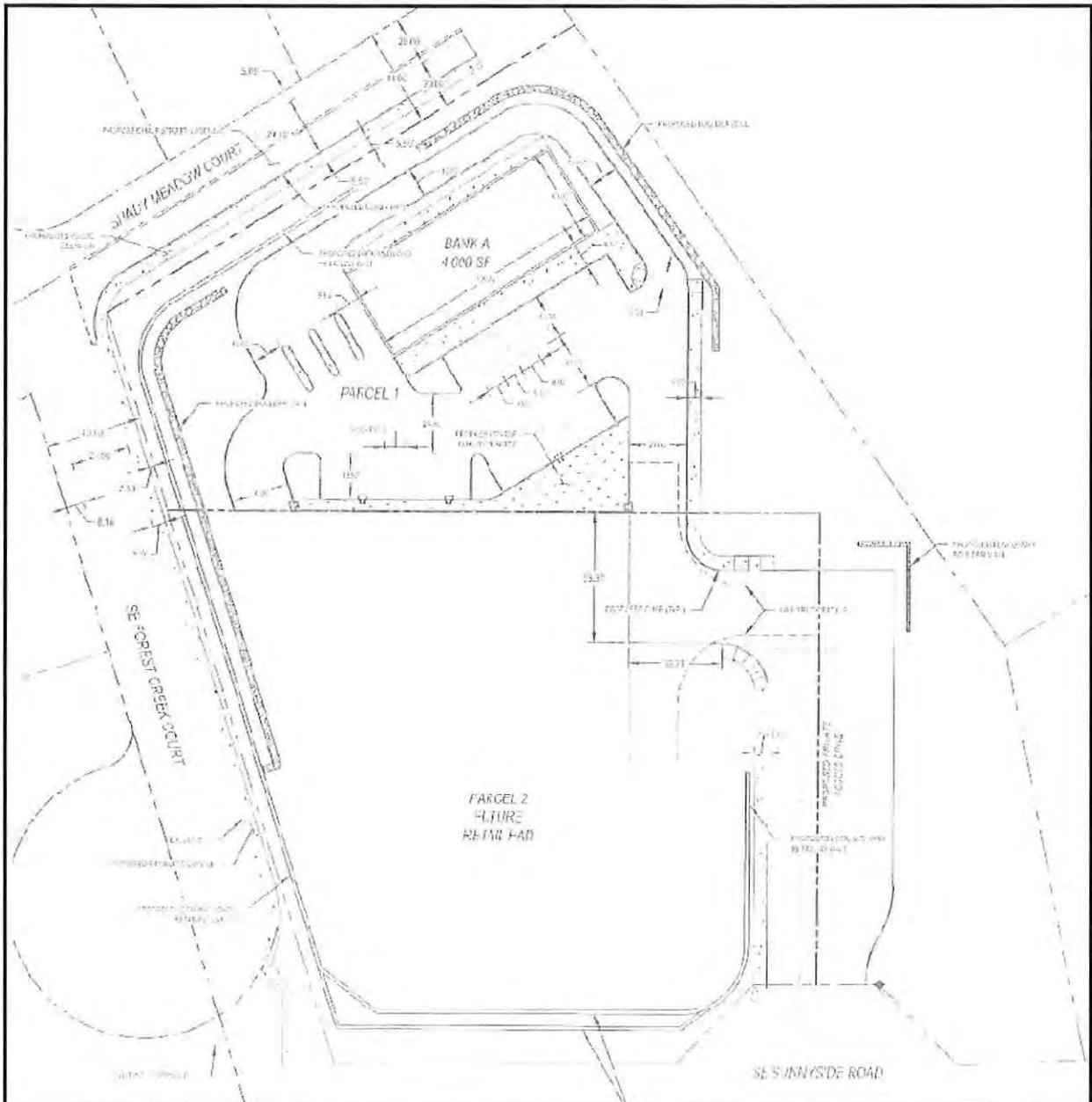
McDonalds and Bank variances
were self-imposed due to
desires of the developer, not
due to lot configuration or
other conditions of the site

The lots on which the McDonalds was built and which the bank was proposed to be built were originally in Clackamas County (tax lots 400 and 500). The northern portion of the land in yellow was zoned R-10 (residential), and the southern portion of the land was zoned as OA (Office Apartment). Tax lot 300 was annexed at the same time, by the same owner, but isn't related to this discussion in any other way.



In 2013, the developer subdivided the lot into two different parcels, and submitted the map below in their proposal for the bank. At that time the developer did not reveal that the southern portion of the land would be for a McDonalds, but had been planning the McDonalds so know about the variances required for both lands.

At this point in the development process, the property lines were not yet legally recorded. The Class C variances were not required due to the lot configuration or other conditions of the site - they were caused by the developer redrawing the lots within the development, and by the developer's desired uses of the lots. The developer was not forced to build a drive-through bank or drive-through restaurant.



As can be seen above, the developer caused the variance by creating two parcels because they wanted to make more money by overbuilding the combined lots. Instead of building just the McDonalds with a smaller percentage variance, or build another type of building that would require no variances at all, they decided to split the lots and created two separate properties that could not support the desired structures without Class C variances.

Prior to the McDonalds development design review, the bank development was scrapped. Because of this, the entire property was available for use by the McDonalds. However, the city did not require the land to be developed as a single property, even though there is still no proposed use for the northern portion of the land where the bank was situated.

Rather than require the developer to submit a plan that would fit into the combined lots, the city approved the development, ignoring the facts that the development would require twice the number of Class C variances, and that both of the variances would be far more severe than if only one property were developed.

Had the property not been split, then the FAR variance would have required a structure that was approximately 27,000 square feet with no variances at all. Even with the larger building size, the number of required parking spaces would likely have fit into the space, because a shopping center and other retail spaces require 60% less parking than that of a drive-through restaurant.

With allowances for Class A and Class B variances, the developer could have built just 70 parking spaces for the reduced building size. The designs for the bank and McDonalds had a combined 65 parking spaces (19 for the bank, 46 for the McDonalds), so the parking would have easily fit on the combined lots after removing the drive-through structures and placing another type of building on the site.

The Class C variances were not required due to the lot configuration or other conditions of the site; the Class C variances were only required because of the developer's desired use of the site.

Proof #2:

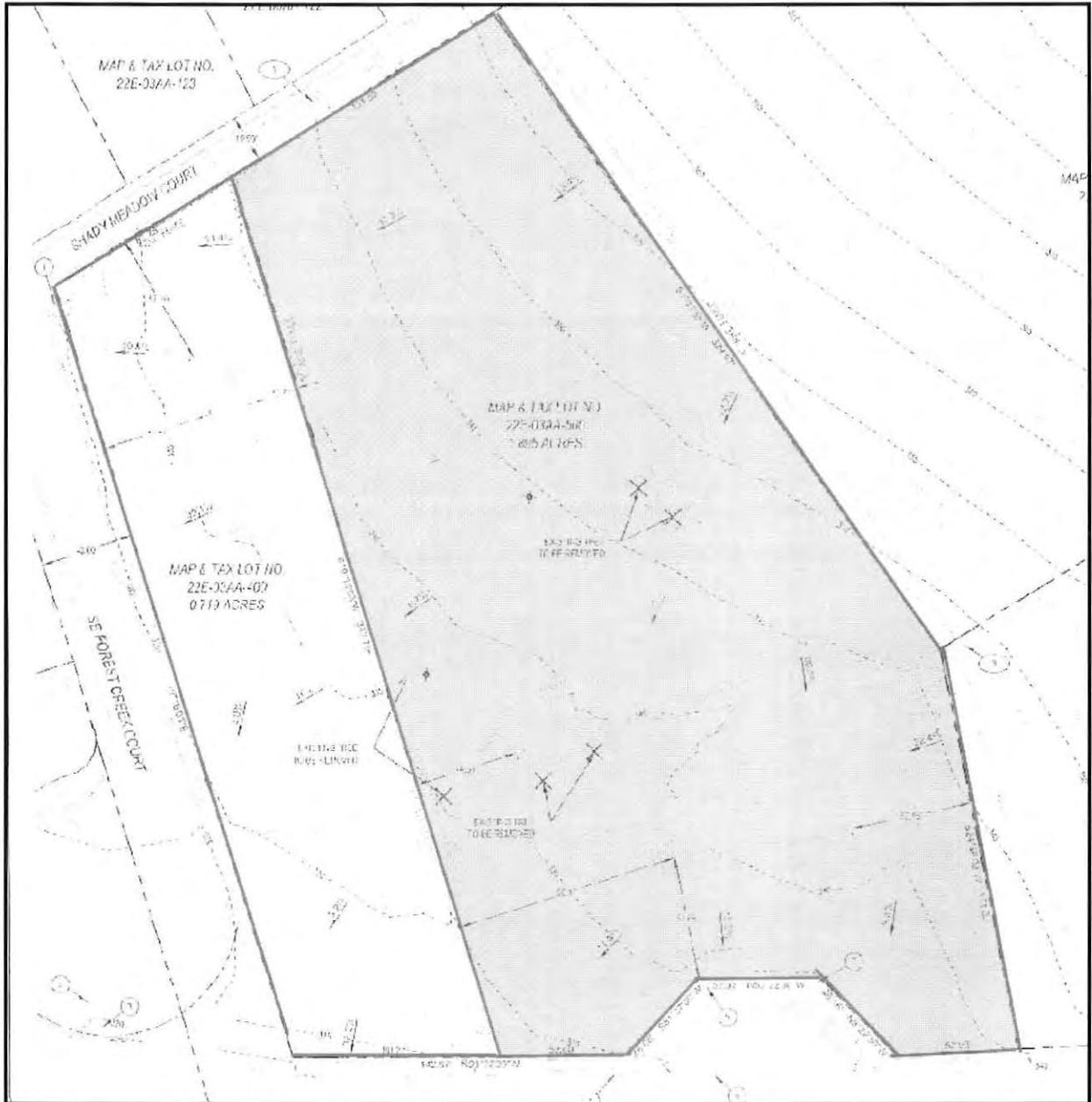
The Walgreen variances were self-imposed due to desires of the developer, not due to lot configuration or other conditions of the site

The land on which the Walgreens is being built was originally in Clackamas County. The map below shows the lots.

In 2014, this land was annexed into Happy Valley. As with the McDonald's property, the original lot configuration did not lend itself to easy commercial development, so the property lines were redrawn.

Shortly afterward, the city approved major excavation of the property, what they called grading. According to the developer's plans, approximately 37,000 cubic yards of soil were scheduled to be removed.

Tax lot 400 on the left is 0.719 acres while tax lot 500 on the right was 1.896 acres, for a total lot size of 2.615 acres.



As can be seen above, the developer caused the variance by creating two parcels because they wanted to make more money by overbuilding the combined lots. Instead of building just the McDonalds with a smaller percentage variance, or build another type of building that would require no variances at all, they decided to split the lots and created two separate properties that could not support the desired structures without Class C variances.

Prior to the McDonalds development design review, the bank development was scrapped. Because of this, the entire property was available for use by the McDonalds. However, the city did not require the land to be developed as a single property, even though there is still no proposed use for the northern portion of the land where the bank was situated.

Rather than require the developer to submit a plan that would fit into the combined lots, the city approved the development, ignoring the facts that the development would require twice the number of Class C variances, and that both of the variances would be far more severe than if only one property were developed.

Had the property not been split, then the FAR variance would have required a structure that was approximately 27,000 square feet with no variances at all. Even with the larger building size, the number of required parking spaces would likely have fit into the space, because a shopping center and other retail spaces require 60% less parking than that of a drive-through restaurant.

With allowances for Class A and Class B variances, the developer could have built just 70 parking spaces for the reduced building size. The designs for the bank and McDonalds had a combined 65 parking spaces (19 for the bank, 46 for the McDonalds), so the parking would have easily fit on the combined lots after removing the drive-through structures and placing another type of building on the site.

The Class C variances were not required due to the lot configuration or other conditions of the site; the Class C variances were only required because of the developer's desired use of the site.

Chapter 16.32 - Steep Slopes Development Overlay

Chapter 16.32 of the City of Happy
Valley Land Use code

Chapter 16.32 STEEP SLOPES DEVELOPMENT OVERLAY ZONE

16.32.010 Purpose.

Slope constrained lands are regulated by the steep slopes development overlay (SSDO). The purpose of the SSDO is to:

- A. Contribute to compliance with Statewide Planning Goal 7 (Areas Subject to Natural Disasters and Hazards). For Goal 7, the SSDO specifically minimizes seismic and landslide hazards and soil erosion associated with development on steep or unstable slopes.
- B. Regulate development and provide special protection on lands within “conservation slope areas” and “transition slope areas” as follows:
 1. Except as exempted pursuant to Section 16.32.045, development activities on conservation slope areas are prohibited. Except as allowed by Section 16.32.040(D)(1), conservation slope areas include:
 - a. Slopes twenty-five (25) percent and greater (for designation as conservation slope area, the minimum contiguous extent for slopes twenty-five (25) percent and greater shall be one thousand (1,000) square feet);
 - b. Potentially Hazardous Analysis Areas (lands within twenty-five (25) feet of the top or toe of slopes twenty-five (25) percent and greater);
 - c. Areas containing potentially rapidly moving landslide hazard areas mapped by the Oregon Department of Geology and Mineral Industries (DOGAMI).
 2. Within transition slope areas, conservation and development are balanced. Except as allowed by Section 16.32.040(D)(2), transition slope areas include: Slopes 15 to 24.99 percent (for designation as transition slope area, the minimum contiguous extent for slopes 15 to 24.99 percent shall be one thousand (1,000) square feet and the land must not be otherwise designated as a conservation slope area).
- C. Limit the potential residential density and facilitate transfer of development away from slope constrained lands. Within conservation slope areas and transition slope areas, a maximum density of two dwelling units per acre applies.
- D. Slope constrained lands in Happy Valley require special protection because they:
 1. Are generally more difficult and expensive to serve with urban infrastructure as compared to less steep lands;
 2. Provide wildlife habitat, tree canopy, and other environmental benefits;
 3. Are located at the headwaters of watersheds that provide clean drinking water to downstream users, including Happy Valley residents;
 4. Contribute to the scenic landscape of Happy Valley which is a strong part of the City’s identity and livability;
 5. Are often adjacent to regulated natural resource areas and/or public green spaces; and
 6. Can, if developed, cause harm to persons and/or structures via stormwater runoff, landslide, mudslide, tree windthrow and other natural actions that may pose a hazard to the public health, safety and welfare.

(Ord. 389 § 1(Exh. A), 2009)

16.32.020 Applicability.

The regulations of the steep slopes development overlay shall apply to any existing lot of record with slopes greater than fifteen (15) percent (with a minimum contiguous extent greater than one thousand (1,000) square feet), potentially hazardous analysis areas, and/or DOGAMI landslide hazard areas except as allowed by Section 16.32.040(D). This section shall apply only to activities and uses that require a building, grading, tree removal and/or land use permit and per ORS 92.040, shall not apply to parcels or lots created within ten (10) years of April 21, 2009 but shall apply to all existing lots of record and parcels or lots created more than ten (10) years prior to April 21, 2009.

The steep slopes development overlay will be overlaid on any and all applicable parcels within the City limits at the time of development application and, upon being overlaid, will take precedence in density calculations over the base zoning district illustrated on the City's Comprehensive Plan map/zoning map, and actual site specific conditions shall take precedence over any aerial topography mapping or other non-survey specific datum. (Ord. 427 § 1, 2012; Ord. 389 § 1(Exh. A), 2009)

16.32.030 General provisions.

No person shall develop property in areas within the steep slopes development overlay without first demonstrating compliance with this section.

- A. As a condition of permit issuance or land use approval, the applicant shall agree to implement the recommendations of approved studies and to allow all inspections to be conducted.
- B. Where a bond, letter of credit, or other guarantee is required, the permit shall not be issued until the bond or guarantee has been obtained and approved. (Ord. 389 § 1(Exh. A), 2009)

16.32.040 Designation of buildable lands.

A. For the purposes of the SSDO, buildable lands include:

1. Lands not designated conservation slope area or transition slope area; and
2. Buildable portions of transition slope areas according to the sliding scale as described in Section 16.32.040(D), below.

B. In addition to the Happy Valley Steep Slopes and Natural Resources Overlay Zone Map, the text provisions of this section shall be used to determine whether applications may be approved within the SSDO. The following maps and documents may also be used as references for identifying areas subject to the requirements of this section:

1. Locally adopted studies or maps;
2. City of Happy Valley slope analysis maps;
3. Mapped DOGAMI potentially rapidly moving landslide hazard areas.

C. Sliding Scale. Transition slope areas are intended to provide for limited development in balance with slope protection measures, therefore, the amount of development within transition slope areas shall be based on a sliding scale of impact intended to allow limited development within those parcels that are more encumbered with sloped lands. The sliding scale determines the amount of buildable and unbuildable transition slope area for a given site as follows:

1. If a parcel has fifty (50) percent or more of its total site area in transition slope area and conservation slope area, a maximum of fifty (50) percent of the transition slope area is designated buildable and may be developed;

2. If a parcel has 20—49.99 percent of its total site area in transition slope area and conservation slope area, a maximum of forty (40) percent of the transition slope area is designated buildable and may be developed;
3. If a parcel has 0—19.99 percent of its total site area in transition slope area and conservation slope area, a maximum of thirty (30) percent of the transition slope area is designated buildable and may be developed.

D. Designation of Isolated Conservation Slope or Transition Slope Areas as Buildable. Through a Type II Environmental Review, an isolated pocket of conservation slope or transition slope Area on a property may be designated as buildable land. The applicant must demonstrate the following:

1. For Conservation Slope Areas or for areas with a combination of Conservation Slope Area and Transition Slope Area:
 - a. The contiguous extent of the area is three thousand (3,000) square feet or less;
 - b. There are no other conservation slope areas or transition slope areas within fifty (50) feet; and
 - c. The required special studies and reports have been prepared in accordance with Section 16.32.080, evaluating the site conditions and determining that the conservation slope area can be safely developed.
2. For transition slope areas:
 - a. The contiguous extent of the area is six thousand (6,000) square feet or less;
 - b. There are no other conservation slope areas or transition slope areas within fifty (50) feet; and
 - c. The required special studies and reports have been prepared in accordance with Section 16.32.080, evaluating the site conditions and determining that the transition slope area can be safely developed.

(Ord. 389 § 1(Exh. A), 2009)

16.32.045 Exceptions.

- A. An activity that avoids conservation slope areas and transition slope areas.
- B. The following activities, regardless of location:
 1. An excavation that is less than three feet in depth, or which involves the removal of a total of less than fifty (50) cubic yards of volume;
 2. A fill that does not exceed three feet in depth or a total of fifty (50) cubic yards of fill material;
 3. New construction or expansion of a structure resulting in a net increase in ground floor area of less than one thousand (1,000) square feet that does not involve grading;
 4. Emergency actions required to prevent an imminent threat to public health or safety, or prevent imminent danger to public or private property, as determined by the public works director;

5. Any land use or activity that does not require a building permit or grading permit, or land use approval; or
- C. An activity that is determined by the planning official to be reasonably similar to the exceptions listed in this section. (Ord. 389 § 1(Exh. A), 2009)

16.32.050 Permitted uses.

A. Permitted uses within conservation slope areas and unbuildable transition slope areas are limited to the following:

1. Open space and trails constructed consistent with the provisions of Title 16 of the Engineering Design and Standard Details Manual;
2. Removal of refuse and permitted fill;
3. Planting of native vegetation and removal of non-native/invasive species, dead or dying trees or vegetation that is hazardous to the public;
4. Construction, re-construction or expansion of public utilities and infrastructure (including both public roads and private streets) that is necessary to support permitted development;
5. Construction, re-construction or expansion of a single-family residence on a legal lot of record under the following prescribed conditions:
 - a. The applicant must demonstrate that the lot has received prior planning approval from either the City of Happy Valley, or if annexed, from Clackamas County, and that there is insufficient buildable land on the same lot to allow the proposed construction or expansion;
 - b. The engineering, building permit, erosion control, water quality, and re-vegetation standards of this title have been fully satisfied;
 - c. The residence or addition has been sited so as to minimize excavation and disturbance to native vegetation within the steep slopes development overlay area;
 - d. The maximum impervious surface coverage from development shall be three thousand five hundred (3,500) square feet. This standard may be exceeded to allow a private driveway design and location that reduces adverse impacts to protected areas if the applicant demonstrates that a longer driveway will facilitate driveway construction that will either more closely follow hillside contours, and thereby reduce overall cut and fill area by at least twenty (20) percent; or avoid tree clusters and thereby reduce by at least twenty (20) percent the number of trees (six-inch caliper at breast height or greater) that must be removed; and
6. Development shall not result in cuts or fills in excess of three feet except for basement construction unless specifically approved by the Building Official and City Engineer, and
7. Repair or stabilization of unstable slopes.

B. Permitted uses within the buildable lands, as defined by this title are limited to the following:

1. All uses within conservation slope areas; and
2. Uses permitted in the base zone in approved buildable areas.

(Ord. 389 § 1(Exh. A), 2009)

16.32.060 Platting of new parcels or lots.

No new parcel or lot shall be platted or approved for development exclusively within conservation slope areas. (Ord. 389 § 1(Exh. A), 2009)

16.32.070 Minimum buildable site size.

The minimum buildable site size shall be equal to ten thousand (10,000) square feet. (Ord. 389 § 1(Exh. A), 2009)

16.32.080 Required maps, studies, and reports.

A. Maps. To determine the location of potentially slope constrained areas, the applicant shall submit a scaled topographic map at two-foot contour intervals for the subject property (site) for lands less than fifteen (15) percent in slope, and at five-foot contours for lands fifteen (15) percent and greater in slope and for land within one hundred fifty (150) feet of the site perimeter. This map shall be prepared by a licensed, professional engineer or land surveyor and shall show:

1. Slopes of twenty-five (25) percent and greater;
2. Potentially hazardous analysis areas, including the analysis area parallel to and within twenty-five (25) feet of the top of the twenty-five (25) percent slope break and the analysis area parallel to and within twenty-five (25) feet of the toe of the slope;
3. Mapped DOGAMI potentially rapidly moving landslide hazard areas;
4. Transition slope areas; and
5. The area (in square feet) for each category listed above for the subject property.

B. Studies and Special Reports. The City Engineer may require, when known or perceived site or area circumstances indicate such particular need, the submittal of one or more of the following studies and/or special reports for any permit or development located within the SSDO. The requirement for such studies will be in writing and will be tied to specific code standards, criteria and/or requirements:

1. Studies.
 - a. Geological Assessments. Geological assessments are prepared and stamped by a Certified Engineering Geologist and describe the surface and subsurface conditions of a site, delineate areas of a property that may be subject to specific geologic hazards, and assess the suitability of the site for development. Geological assessments shall be conducted and prepared according to the requirements and recommendations of the Oregon State Board of Geologist Examiners, and shall make recommendations as to whether further studies are required, and may be incorporated into or included as an appendix to the geotechnical report;
 - b. Engineering Geology Reports. Engineering geology reports are prepared and stamped by a Certified Engineering Geologist and provide detailed descriptions of the geology of the site, professional conclusions and recommendations regarding the effect of geological conditions on the proposed development, and opinions and recommendations covering the adequacy of the site to be developed. Engineering geology reports shall be

prepared in accordance with the requirements of the Guidelines for Preparing Engineering Geology Reports in Oregon adopted by the Oregon State Board of Geologist Examiners and may be incorporated into or included as an appendix to the geotechnical report; and

c. Geotechnical Reports. Geotechnical reports are prepared and stamped by a Geotechnical Engineer, evaluate site conditions, and recommend design measures necessary to reduce the development risks and facilitate safe and stable development. Geotechnical reports shall be conducted and prepared according to the requirements and recommendations of the Oregon State Board of Geologist Examiners, and may be incorporated into or included as an appendix to the Engineering Geology Report.

2. Special Reports.

a. Hydrology and Soils Report. This report shall include information on the hydrological conditions on the site, the effect of hydrologic conditions on the proposed development, the proposed development's impact on surface and groundwater flows to wetlands and streams, and any hydrological or erosion hazards. This report shall also include soils characteristics of the site, their suitability for development, carrying capacity, and erosion or slumping characteristics that might present a hazard to life and property, or adversely affect the use or stability of a public facility or utility. Finally, this report shall include information on the nature, distribution and strength of existing soils; the adequacy of the site for development purposes; and an assessment of grading procedures required to impose the minimum disturbance to the natural state. A licensed, professional engineer registered in Oregon shall prepare the hydrology and soils report;

b. Grading Plan. The grading plan shall be specific to a proposed physical structure or use and shall include information on terrain (two-foot intervals of property), drainage, direction of drainage flow, location of proposed structures and existing structures which may be affected by the proposed grading operations, water quality facilities, finished contours or elevations, including all cut and fill slopes and proposed drainage channels. Project designs, including but not limited to, locations of surface and subsurface devices, walls, dams, sediment basins, storage reservoirs, and other protective devices, shall form part of the submission. The grading plan shall also include: (i) construction phase erosion control plan consistent with the provisions of Title 15 of the City's Municipal Code; and (ii) schedule of operations. A licensed, professional engineer registered in Oregon shall prepare the grading and erosion control plan; and

c. Native Vegetation Report. This report shall consist of a survey of existing vegetative cover, whether it is native or introduced, and how it will be altered by the proposed development. Measures for re-vegetation with native plant species will be clearly stated, as well as methods for immediate and long-term stabilization of slopes and control of soil erosion. A landscape architect, landscape designer, botanist or arborist with specific knowledge of native plant species, planting and maintenance methods, survival rates, and their ability to control erosion and sedimentation shall prepare the vegetation report. The applicant shall be responsible for replacing any native plant species that do not survive the first two years after planting, and for ensuring the survival of any replacement plants for an additional two years after their replacement.

C. Compliance with Study Conclusions and Recommendations.

1. Professional Standards. The City Engineer shall determine whether Geological Assessments, Engineering Geology Reports, or Geotechnical Reports have been prepared in accordance with this title. The City Engineer may require additional information or analysis necessary to meet study requirements.
2. Peer Review. The City Engineer may require peer review of any required report, in which case regulated activities and uses shall be reviewed and accepted through the peer review process before any regulated activity will be allowed. The cost of such peer review shall be borne by the applicant. If peer review is required, the City Engineer shall provide the applicant, in writing, the reasons for the peer review.
 - a. A professional or professional firm of the City's choice that meets the qualifications listed in this chapter shall perform the review.
 - b. The review shall be at the applicant's expense.
 - c. Review of report submittals shall determine whether required elements are completed, geologic report procedures and assumptions are accepted, and all conclusions and recommendations are supported and reasonable.
3. Review Criteria. The approval authority shall rely on the conclusions and recommendations of the required reports, as modified by peer review, as well as any rebuttal material supplied by the applicant, to determine compliance with this section.
4. Conditions of Approval. After review of the peer review report(s) and any rebuttal materials submitted by the applicant, conclusions and recommendations stated in approved reports shall be directly incorporated as permit conditions or provide the basis for conditions of approval for the regulated activity or use.
5. Expiration. Where an approved assessment or report as defined by this chapter has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, that report may be utilized and a new report is not required. Should environmental conditions associated with the site or surrounding the site change, or if the proposed land use activity or development has materially changed, the applicant shall
 - submit an amendment to the required assessment or report, which may be reviewed and approved through the peer review process.

(Ord. 389 § 1(Exh. A), 2009)

16.32.090 Environmental review permit.

Development proposals that are subject to the provisions of Chapter 16.32 require an environmental review permit application. Environmental Review Permits will be reviewed through a Type II procedure, pursuant to Section 16.61.030. (Ord. 389 § 1(Exh. A), 2009)

16.32.100 Density and density transfers.

Within conservation slope areas and transition slope areas, a maximum density of two dwelling units per acre applies. Except as exempted pursuant to Section 16.32.045, development activities on conservation slope areas are prohibited. Density calculations shall be made pursuant to Section 16.63.020(F). Density may be transferred from conservation slope areas and unbuildable transition slope areas to buildable

portions of the parcel in accordance with the requirements of Section 16.63.020(F). (Ord. 389 § 1(Exh. A), 2009)

16.32.110 Site design criteria.

Development within the SSDO shall comply with the following site design criteria:

- A. Development is sited on lands less than fifteen (15) percent slope lands within the same parcel or on other parcels which are a part of the application, to the greatest degree practicable;
- B. Significant trees and other resources are protected and/or incorporated into the site design;
- C. Lands that remain undeveloped are coordinated with open space in adjacent parcels and natural resource areas, so that such areas, in combination, form as continuous an open space system as is practicable;
- D. Opportunities for linking wildlife corridors and pedestrian trails are implemented;
- E. Provision of access and internal circulation routes are as short as possible and designed to work with the natural topography, maintain minimum grades and require minimum cut and fill;
- F. Creation of open space tracts between proposed developments and existing developed parcels or open space tracts shall be coordinated so that such areas, in combination, will form as continuous an open space system as is practicable; and
- G. Opportunities for shared access are utilized wherever practicable, and if possible may be required by the City Engineer pursuant to Section 16.41.030, Vehicular access and circulation. A variance to vehicular access and circulation standards may be granted pursuant to Section 16.71.040, Class B variances. (Ord. 389 § 1(Exh. A), 2009)

Chapter 16.23.010 Mixed Use Commercial and Employment Districts

Chapter 16.23.010 of the City of Happy Valley Land Use code.

This includes Table 16.23.010-1, Mixed Use Districts
(MUC, MUE, RCMU) Permitted Uses.

Table 16.23.010-1 shows the permitted uses of the MUC
(multi-use commercial), the base zone for the bank,
McDonalds and Walgreen buildings described in this letter,
showing that the MUC zone is not restricted to restaurants
and banks.

Happy Valley Municipal Code

- [Up](#) [Previous](#) [Next](#) [Main](#) [Search](#) [Print](#) [No Frames](#)
- [Title 16 LAND DEVELOPMENT CODE](#)
- [ARTICLE 16.2 LAND USE DISTRICTS](#)
- [Chapter 16.23 COMMERCIAL AND EMPLOYMENT DISTRICTS](#)

16.23.010 Mixed Use Commercial and Employment Districts.

A. Purpose.

1. Mixed Use Commercial (MUC). Mixed use commercial will provide for convenience commercial needs of residential neighborhoods and office workers in locations adjacent to and mixed in with residential and office areas. The location of services and offices near residential units and major transportation networks should promote use of alternative modes of transportation such as bus ridership, bicycle and pedestrian activity. Retail uses should be primarily located on the ground floor to encourage an interesting and active streetscape. Buildings should be oriented toward the street or accessway with clearly marked entrances. Blank frontage walls at street level are discouraged. Development boundaries and patterns are not defined by type of use (i.e., retail and office); instead the district allows a variety of permitted uses to occur throughout the commercial district. The commercial uses are meant to provide a concentration of commercial and office uses to create an active area.
2. Mixed Use Employment (MUE). The mixed use employment district will provide for development of office, employment and low density multifamily residential uses. The MUE neighborhood commercial subdistrict provides for neighborhood scale retail needs.
3. Regional Center Mixed Use (RCMU). The regional center mixed use district will provide for urban development within the boundaries of the Clackamas Regional Center. A wide range of uses is permitted within the district. The district is intended to create a quantifiable sustainable mixed use area with high employment and housing densities, structured parking, and significant amenities in an urban design that is accessible by a range of transportation modes. To ensure that the mix of uses and urban form are consistent with the objectives of the district, master plan approval is required prior to development. The RCMU District implements the planned mixed use policies of the Clackamas Regional Center Area Design Plan.

B. Permitted Uses. Table 16.23.010-1 identifies the land uses that are allowed in the MUC, MUE and RCMU Districts.

Table 16.23.010-1 Mixed Use Districts (MUC, MUE, RCMU) Permitted Uses

P=Permitted; C=Conditional Use; X=Prohibited

Use	MUC	MUE	RCMU ¹
Commercial—Retail Uses			
Art and craft supply stores, studios	P	P	P
Bakeries	P	P	P
Banks, savings and loan associations, loan companies, ATMs	P	P	P
Barber shops, beauty salons	P	P	P
Bed and breakfast inns	P	P	P
Bicycle sales, supplies, repair service	P	P	P
Book stores	P	P	P

Use	MUC	MUE	RCMU ¹
Camera stores	P	P	P
Coffee shops, cafés, sandwich shops and delicatessens	P	P	P
Drug stores	P	P	P
Dry cleaners and tailors	P	P	P
Florists	P	P	P
Hardware and garden supplies	P	P	P
Home furnishing stores	P	P	P
Gift stores	P	P	P
Grocery, food, specialty foods, and produce stores	P	P	P
Hotels	P	P	P
Indoor health and recreation facilities, such as racquetball court, gymnasiums, health and exercise spas, swimming pools, and similar uses and associated facilities	P	P	P
Exercise and tanning studios	P	P	P
Interior decorating shops, sales and service	P	P	P
Laundromats	P	P	P
Music shops, sales and service	P	P	P
Optometry and optical goods, sales and service	P	P	P
Photo finishing, photography studios	P	P	P
Rental stores, without outdoor storage	P	P	P
Restaurants full service	P	P	P
Restaurants—Drive-through	P	C	P
Apparel and secondhand stores	P	P	P
Service stations	C	C	C
Shoe sales and repair stores	P	P	P
Sporting goods, sales and service	P	P	P
Stationery stores	P	P	P
Taverns, bars and cocktail lounges (prohibited 1,500 feet from school uses)	C	C	C
Theaters or assembly halls	C	C	P
Yogurt and ice cream stores	P	P	P
Vehicular service	P	P	P
Veterinarian services and pet supplies	P	P	P
Video rental stores	P	P	P
Retail and service commercial uses similar to those above but not listed elsewhere in this section upon administrative determination through the design review process	P	P	P
Commercial—Offices			

Use	MUC	MUE	RCMU ¹
Professional and administrative offices	P	P	P
Medical office buildings	P	P	P
Residential			
Low density	p ^{2, 3}	P	P
Medium density	p ^{2, 3}	X	P
Senior housing	P	P	P
Skilled nursing facility	P	P	P
Congregate housing	P	P	P
Home occupation (Section 16.69.020)	P	P	P
Industrial			
Manufacturing and production	X	P	C
Industrial services	X	P	X
Flex-space	X	P	X
Wholesale sales	X	P	X
Institutional			
Churches, synagogues, temples or places of worship	C	C	P
Public park, usable open space	C	C	P
Public and private schools (includes day care)	C	C	P
Commercial day care centers (adult and child care facilities)	P	P	P
Community service	P	P	P
Hospitals, including helipads ⁴	P	C	P
Civic Uses			
Libraries, post offices, community centers, etc.	P	P	P
Other			
Construction of new streets and roads, including the extensions of existing streets and roads, that are included with the adopted transportation system plan	P	P	P
Wireless communication facilities	Per Section 16.44.020	Per Section 16.44.020	Per Section 6.44.020
NOTES:			
¹ Uses in the RCMU district are subject to additional standards in Section 16.23.010(D).			
² Residential uses on upper floors of mixed use buildings are permitted. In such cases, Note 3 below does not apply.			
³ Freestanding residential uses at densities greater than the minimum SFA density of ten (10) du/acre and not to exceed the maximum MUR-M2 density of thirty-four (34) du/acre (ten (10) to thirty-four (34) du/acre) may be permitted in the MUC zone when nonresidential uses occupy the street side(s) of the parcel. The footprint of such freestanding residential uses (including associated parking and accessory uses) may not exceed twenty-five (25) percent of the MUC zoned area of the parcel or subject property.			
⁴ Subject to applicable FAA rules and regulations.			

C. Development Standards. The development standards in Table 16.23.010-2 apply to all uses, structures, buildings, and development in the MUC, MUE and RCMU Districts.

Table 16.23.010-2 Development Standards for MUC, MUE and RCMU Districts

Standard	MUC	MUE	RCMU
Residential density: ¹			
Low density (maximum)	24 du/net acre	24 du/net acre	24 du/net acre
Low density (minimum)	15 du/net acre ²	15 du/net acre ²	15 du/net acre ²
Medium density (maximum)	34 du/net acre	NA	34 du/net acre
Medium density (minimum)	25 du/net acre ²	NA	25 du/net acre ²
High density (maximum)	50 du/net acre	NA	50 du/net acre
High density (minimum)	35 du/net acre ²	NA	35 du/net acre ²
Lot size (minimum)	Variable ³	Variable ³	Variable ³
Lot width (minimum)	Variable ³	Variable ³	Variable ³
Lot depth (minimum)	Variable ³	Variable ³	Variable ³
Floor area ratio			
Nonresidential FAR (minimum)	0.25:1 ⁴	0.25:1 ⁴	0.25:1 ⁴
Nonresidential FAR (maximum)	5:1	2:1	5:1
FAR for mixed use building with residential uses (minimum)	0.25:1	0.25:1	0.25:1
FAR for mixed use building with residential uses (maximum)	5:1	3:1	5:1
Landscaping (minimum)	Variable ⁵	Variable ⁵	Variable ⁵
Building setbacks (minimum)	Variable ³	Variable ³	Variable ³
Building height (maximum)	65 feet ³	65 feet ³	Variable ³

NOTES:

¹ Density calculations shall be made pursuant to Section 16.63.020(F).

² Minimum density of eighty (80) percent of each sub-area is required.

³ Building height is measured pursuant to Chapter 16.12, Definitions. Standards are flexible and shall be determined through the master plan process or a design review.

⁴ Must include a shadow plan to establish future development.

⁵ Pursuant to Section 16.42.030, fifteen (15) percent of the net developable area must be usable open space.

D. Additional Standards for the RCMU District.

1. Location. The RCMU District may only be located within the boundaries of the Clackamas Regional Center and may only be applied to land within the Eagle Landing Plan Area (areas designated RCMU and PMU6) as designated on Happy Valley Comprehensive Plan Map X-CRC-2.
2. Master Plan Required.

- a. The RCMU District is a planned mixed use area and is subject to the master plan requirements of Chapter 16.65 except as modified by this section.
 - b. The master plan shall include the entire Eagle Landing Plan Area (areas designated RCMU and PMU 6) as designated on Happy Valley Comprehensive Plan Map X-CRC-2.
3. Mix of Uses Required. A mix of uses is required. At a minimum, the following uses shall be accommodated within the master plan:
 - a. Five hundred eighty-four (584) dwelling units within the Eagle Landing Plan Area.
 - b. Six hundred thousand (600,000) square feet of office or commercial development within the RCMU District.
4. Phasing Plan. For multi-phased developments where the required mix of uses is proposed to be achieved in phases, a Development Phasing Plan shall be submitted as a part of the master plan application.
 - a. The Development Phasing Plan shall demonstrate:
 - i. How the required mix of uses will be provided through phasing, including the approximate locations, amount in square feet (a size range may be provided), and timing of each use.
 - ii. How on-site circulation, parking, landscaping and other on-site improvements will function, after the completion of each phase and following complete build-out of the development site.
 - iii. If a size range(s) for a use(s) is provided, the Development Phasing Plan shall demonstrate how both the minimum and maximum amounts enabled by the range meet the requirements of this section.
 - b. The Development Phasing Plan shall also identify in what order and how proposed public utilities, public facilities and other improvements and amenities necessary to support the project will be constructed, dedicated or reserved.
5. Development Standards. The master plan for the Eagle Landing Plan Area shall be designed to implement the policies and elements of the adopted Clackamas Regional Center Area Design Plan. In addition, the master plan and subsequent development within the RCMU District shall be subject to the following standards:
 - a. Buffering. When existing residential uses are located adjacent to a RCMU master plan site, such uses shall be buffered from the RCMU master plan site with landscaped buffers or by the location of streets, parks, plazas, greenways, or lower density residential uses in the RCMU master plan.
 - b. Access and Circulation. Circulation on site must meet the minimum requirements shown on the Urban Design Elements map, and in addition:
 - i. Internal Circulation. An internal circulation system shall include a network of public, private and internal streets. Private streets shall function like local streets, with curbs, sidewalks or raised walking surfaces on both sides, street trees, pedestrian scale lighting, and connections to state, county or public streets. This internal street network shall create developable sites defined by streets. In addition, the internal circulation system may include a range of secondary facilities, including service roads, driveways, drive aisles, and other similar facilities. The overall intent is to provide a pattern of access and circulation that provides a clear and logical network of primary streets that have pedestrian orientation and amenities. A secondary network of pedestrian ways and vehicular circulation will supplement this system.
 - ii. Driveways. Internal driveways shall not be located between buildings and the streets to which building entrances are oriented.
 - iii. On-Street Parking. Parking in the travel way may be provided on private or internal streets. This parking will not count as surface parking under the maximum parking ratio requirements of

Section 16.43.030, but may be counted toward minimum parking requirements.

- iv. Off-Street Paths. The internal circulation system may provide for off-street bicycle paths, pedestrian paths, and greenway paths to link civic spaces, retail centers, and neighborhoods.
- c. Pedestrian-Oriented Areas. The master plan shall include pedestrian-oriented areas which do not front solely on arterial streets and parking fields. The purpose of this standard is to enhance the pedestrian experience and “village feel” of the centers. As part of a master plan review, applicants shall demonstrate compliance with this standard by using a combination of the following, or similar, concepts and guidelines:
 - i. Provision of a “main street” and/or village center area that is framed by buildings oriented to both sides of the street or center.
 - ii. On-street parking.
 - iii. Storefront character, with entries oriented to the street, large display windows, and front façades broken into divided bays.
 - iv. Public plazas and promenades.
 - v. Strong corners, as described in Happy Valley Style Architectural Design Standards.
 - vi. Residential uses on upper stories.
 - vii. Public uses in prominent locations.
- d. Building Height. Permitted minimum and maximum building heights shall be established by the approved master plan for all subsequent development. Building heights should emphasize creating a compact urban form in a context-sensitive and sustainable manner.
- e. Building Orientation. New buildings shall have at least one public entrance oriented to a state, county, public, or private street. Buildings shall have first floor windows with views of internal activity or display cases, and the major entrance on the building façade facing the street the building is oriented to. Additional major entrances may also be allowed facing minor streets and parking areas.
- f. Structured Parking Adjacent to Pedestrian Facilities. Parking structures located within twenty (20) feet of pedestrian facilities including public or private streets, pedestrian ways, greenways, a transit station or shelter, or plaza, shall provide a quality pedestrian environment on the façade facing the pedestrian facility. Techniques to use include, but are not limited to:
 - i. Provide retail, office or similar uses on the ground floor of the parking structure with windows and activity facing the pedestrian facility; or
 - ii. Provide architectural features that enhance the first floor of the parking structure adjacent to the pedestrian facility, such as building articulation, awnings, canopies, building ornamentation, and art; or
 - iii. Provide pedestrian amenities in the transition area between the parking structure and the pedestrian facility, including landscaping, trellises, trees, seating areas, kiosks, water features with a sitting area, plazas, outdoor eating areas, and drinking fountains;
 - iv. The above listed techniques and features, and others of similar nature, must be used so that blank walls are not created.
- g. Parking and Loading. Parking and loading shall meet the requirements of Chapter 16.43 and the landscaping requirements of Chapter 16.42.
- h. Drive-Through Window Facilities. Drive-through window facilities are allowed subject to the standards in Section 16.44.090.
- i. Gateways. Provide for a gateway at a key intersection with special design and landscape treatment that are intended to provide a visual announcement that people are entering a special area.
- j. Public Facilities. The city may require the provision of, or participation in, the development of

public facility improvements to implement the Clackamas Regional Area Plan. Such improvements include, but are not limited to, the following:

- i. Road dedications and improvements;
 - ii. Traffic signals;
 - iii. Transit facilities;
 - iv. Sidewalks, crosswalks, bump-outs and other pedestrian improvements;
 - v. Storm drainage facilities;
 - vi. Sewer and water service lines and improvements;
 - vii. Underground utilities;
 - viii. Street lights;
 - ix. Street trees, landscaping; and
 - x. Open space, greenways, plazas and parks.
- k. Maintenance Mechanisms. The city may require the formation of a maintenance agreement or other suitable mechanism to assure that the following maintenance responsibilities are adequately addressed:
- i. To improve, operate, and maintain common facilities, including open space, landscaping, parking and service areas, streets, recreation areas, signing, and lighting.
 - ii. To maintain landscaping, street furniture, storm drainage and similar streetscape improvements developed in the public right-of-way.
- l. Open Space. Master plans shall contain a minimum of ten (10) percent useable open space. Open space shall be integral to the master plan. Plans shall emphasize public gathering places such as plazas, neighborhood parks, trails, and other publicly accessible spaces that integrate land use and transportation and contribute toward a sense of place. Where public or common private open space is designated, the following standards apply:
- i. The open space area shall be shown on the final plan and recorded with the final plat or separate instrument; and
 - ii. The open space shall be conveyed in accordance with one of the following methods:
 - (A) By dedication to a public agency as publicly owned and maintained open space. Open space proposed for dedication must be acceptable to the planning official with regard to the size, shape, location, improvement, environmental condition;
 - (B) By leasing or conveying title (including beneficial ownership) to a corporation, home association or other legal entity. The terms of such lease or other instrument of conveyance must include provisions (e.g., maintenance, property tax payment, etc.) suitable to the city.
- m. Other Applicable Provisions. With respect to the adjacent properties lying south of the proposed RCMU District and east of SE Stevens Road ("Adjacent Properties"), the provisions of the following Clackamas County land use decisions, including conditions of approval, which benefit the adjacent properties and apply or relate to buffering, required setbacks, drainage, and location of any bicycle and pedestrian path, shall remain in effect. The master plan and subsequent development within the RCMU District shall comply with those provisions.
- i. Comprehensive Plan and Zone Change, File Nos. Z0531-98-CP/Z0532-98-Z, dated December 23, 1998;
 - ii. Modification of Conditions of Approval of Comprehensive Plan Amendment and Zone Change, Order No. 2203-29, File No. Z0802-02-CP, Z0803-02-Z, dated February 20, 2003;
 - iii. Decision on Master Plan Review, File No. Z0227-03-AA (Eagle Landing), dated May 29, 2003;

- iv. Final Order for Eagle Landing Golf Clubhouse, Case No. Z0840-03-SL, dated February 25, 2004;
- v. Final Plat Approval for Eagle Landing PUD as evidenced by the Plat of Eagle Landing filed in Plat Book 126, Page 018, Document No. 2004 60414; and
- vi. Final Order on Remand Approving Mt. Scott Village (now known as Eagle Landing Phase II), File No. Z0563-99-SL, dated April 23, 2003.
- n. Design Review. New development in the district shall be subject to Chapter 16.62, Design Review (including Section 16.46.010 and Appendix B, Happy Valley Style).

(Ord. 446 § 1, 2014; Ord. 427 § 1, 2012; Ord. 424 § 1, 2012; Ord. 406 § 1, 2010; Ord. 398 § 1, 2010; Ord. 389 § 1(Exh. A), 2009)

View the [mobile version](#).

16.43.030

Automobile parking standards

Chapter 16.43.030 of the City of Happy Valley Land Use Code

This includes Table 16.43.030-1 (Parking Standards)

Table 16.43.030-1 shows the minimum parking spaces
required for each building type

Happy Valley Municipal Code[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[Title 16 LAND DEVELOPMENT CODE](#)[ARTICLE 16.4 COMMUNITY DESIGN STANDARDS](#)[Chapter 16.43 PARKING AND LOADING](#)**16.43.030 Automobile parking standards.****A. General Requirements for Off-Street Parking and Loading.**

1. **Provision and Maintenance.** The provision of required off-street parking for motor vehicles and bicycles, and loading facilities for motor vehicles, is a continuing obligation of the property owners. Building permits or other permits will only be issued after review and approval of site plans showing location of permanent access, parking and loading facilities.
2. **No area shall be considered a parking space unless it can be shown that the area is accessible and usable for that purpose, and has maneuvering area for the vehicles, as determined by the Planning Commission or appropriate and designated body or agent.**
3. **New Structure or Use.** When a structure is constructed or a new use of land is commenced, on-site vehicle and bicycle parking and loading spaces shall be provided in accordance with subsection B of this section or as otherwise modified through a planned development or specific area plan.
4. **Alteration of Existing Structures.** When an existing structure is altered to the extent that the existing use is intensified, on-site vehicle and bicycle parking shall be provided in the amount required for such intensification.
5. **Increased Intensity.** When increased intensity requires no more than two vehicle spaces, no additional parking facilities shall be required. However, the effects of changes, additions, or enlargements shall be cumulative. When the net effect of one or more changes generates a need for more than two spaces, the additional required spaces shall be provided. Additional spaces shall be required for the intensification but not for the original use.
6. **Change in Use.** When an existing structure or use of land is changed in use from one use to another use as listed in subsection B of this section, and the vehicle and bicycle parking requirements for each use type are the same, no additional parking shall be required. However, where a change in use results in an intensification of use in terms of number of vehicle and bicycle parking spaces required, additional parking space shall be provided in an amount equal to the difference between the number of spaces required for the existing use and number of spaces required for more intensive use.
7. **Time of Completion.** Required parking spaces and loading areas shall be improved and available for use prior to issuance of a temporary occupancy and/or final building inspection.
8. **Inoperative Motor Vehicles.** In any residential district, all motor vehicles incapable of movement under their own power or lacking legal registration shall be stored in a completely screened space, garage, or carport.
9. **Truck Parking.** In residential zoning districts, no overnight parking of commercial vehicles shall be permitted except as allowed through the provisions of a home occupation permit. Vehicles and equipment necessary for farming and truck gardening on the premises where such use is conducted are exempt from the restrictions of this subsection.
10. **Availability of Parking Spaces.** Required vehicle and bicycle parking spaces shall be unobstructed and available for the parking of vehicles and bicycles of residents, customers, patrons, and employees only. Parking spaces shall not be used for the storage of vehicles or materials or for parking of vehicles and bicycles used in conducting the business or use, and shall not be used for sale, repair, or servicing of any vehicle or bicycle.

11. Shared Bicycle Parking. Multifamily dwelling units with more than ten (10) required bicycle parking spaces may provide shared outdoor bicycle parking. The shared bicycle parking shall consist of at least fifteen (15) percent of the total required parking spaces and be located such that they are available for shared use by all occupants and guests of the development.

12. All dwellings shall have direct, impeded access from the required off-street parking spaces to the nearest public street, road or accessway.

B. Minimum Off-Street Parking Space Requirements and Calculations.

1. Unspecified Requirements. Vehicle and bicycle parking requirements for uses not specified in this chapter may be determined by the Planning Official based upon the requirements for similar specified uses.

2. Tandem parking (where two spaces are directly behind one another) may be counted as two parking spaces.

3. On-street parking within three hundred (300) feet of a use along its property frontage may be counted as part of the minimum spaces required.

4. Structured parking, fleet parking, spaces that are user paid (at a market rate approved by the City), on-street parking spaces and market rate surface parking lots are exempt from the maximum parking ratios.

5. If the applicant demonstrates that too many or too few parking spaces are required, applicant may seek a variance from the minimum or maximum by providing evidence that the particular use needs more or less than the amount specified in this Code.

6. Mixed Uses. In the case of mixed uses, shared parking between uses is encouraged. Where shared parking is not an option, the total required vehicle and bicycle parking shall be the sum of requirements of individual uses computed separately.

7. Transit. Existing development shall be allowed to redevelop a portion of their existing parking area for transit-oriented uses, including bus stops and pullouts, bus shelters, park and ride stations, and similar facilities, where appropriate. The redevelopment shall not result in greater than ten (10) percent reduction in the number of required on-site vehicle parking spaces.

8. Where uses are mixed in a single building, parking shall be a blend of the ratio required less ten (10) percent for the minimum number of spaces. The maximum number of spaces shall be ten (10) percent less than the total permitted maximum for each use.

9. Fractions. When the sum of the required vehicle or bicycle parking spaces is a fraction of a space the fraction shall be rounded down to the nearest whole number.

10. Maximum Parking Allowed. A maximum number of vehicular parking spaces allowed exists if provided for in Table 16.43.030-1.

11. Parking Table. The following parking table shall be interpreted with the following notation: All square footage measurements are gross square feet of total floor area. Eighteen (18) lineal inches of bench shall be considered one seat.

Table 16.43.030-1

Proposed Use	Minimum Parking Spaces	Maximum Parking Spaces (if nothing is noted, there is no maximum) ¹		Bicycle Spaces
		Zone A	Zone B	
Residential				

Proposed Use	Minimum Parking Spaces	Maximum Parking Spaces (if nothing is noted, there is no maximum) ¹		Bicycle Spaces
		Zone A	Zone B	
Single-family detached	2 per dwelling			None required
Single-family attached	2 per dwelling ³			None required
Duplexes, triplexes, fourplexes	2 per dwelling ³			None required
Manufactured home park	2 per dwelling			None required
Multifamily dwellings containing five or more units ⁴				
Studio and one bedroom units	1.25 per dwelling			1 space per unit
Two-bedroom units	1.5 per dwelling			1 space per unit
Three or more bedroom units	1.75 per dwelling			1 space per unit
Visitor parking	0.35 per dwelling unit (if less than 100 total units); 35 spaces or 0.25 per dwelling unit, whichever is greater (if 100 or more total units)			75% of bicycle parking in multi-family development shall be covered.
Congregate housing, retirement homes, intermediate care facilities	1 per 3 beds plus 1 space per employee on the largest work shift			1 per 5 beds
Residential care facilities	1 per 4 beds plus 1 space per employee in the largest work shift	2 per unit +.50 per bed	2 per unit +.50 per bed	1 per 5 beds
Community Services, Institutional and Semipublic Uses				
General office, government office	3 per 1,000 sq. ft. gross floor area	3.4 per 1,000 sq. ft.	4.1 per 1,000 sq. ft.	2 or 1 per 20 auto spaces whichever is greater
Community recreation buildings/covered picnic areas	1 per 250 sq. ft., or 1 space per four patrons to the maximum capacity, plus one space per employee on the largest shift			0.3 spaces per 1,000 sq. ft. of floor area
Church, chapel, auditorium	1 per 4 fixed seats or 6 linear feet of bench length or 1 per each 50 sq. ft. of public assembly area where there are no fixed seats			1 space per 40 seats or 1 space per 60 linear feet of bench seating
Library or museums	2 per 1,000 sq. ft. gross floor area			2 or 1.5 spaces per 1,000 gross sq. ft., which is greater with 10 percent required to be covered
Lodge, fraternal and civic assembly with/or without eating and drinking facilities	1 per 4 fixed seats or 1 for each 50 sq. ft. of public assembly area where there are no fixed seats			2 or 1 per 20 vehicle spaces
Hospitals and medical centers	1 per 500			0.2 spaces per 1,000 gross sq. ft.

Proposed Use	Minimum Parking Spaces	Maximum Parking Spaces (if nothing is noted, there is no maximum) ¹		Bicycle Spaces
		Zone A	Zone B	
Medical and dental offices and clinics	4 per 1,000 sq. ft. of gross floor area	4.9 per 1,000 sq. ft.	5.9 per 1,000 sq. ft.	0.4 spaces per 1,000 sq. ft. of floor area
Schools				
Day care/small school	1 per employee and 1 per five students			1.5 spaces per classroom
Preschool/kindergarten	2.5 per 1,000 sq. ft. gross floor area			1.5 spaces per classroom
School—Elementary	2 per classroom, plus recreation facilities, if applicable			2 spaces per classroom
School—Middle school/junior high	2 per classroom, plus recreation facilities, if applicable			4 spaces per classroom
School—Senior high	0.6 per 1,000 sq. ft. gross floor area, plus recreation facilities, if applicable			4 spaces per classroom
School—Vocational or college	3 per 1,000 sq. ft. of gross floor area, plus recreation facilities, if applicable			0.3 spaces per 1,000 sq. ft. of floor area (excluding dorms, for which residential facility standards apply)
Commercial Uses				
Retail sales, general and personal services	4 per 1,000 sq. ft. of gross floor area	5.1 per 1,000 sq. ft.	6.2 per 1,000 sq. ft.	0.3 per 1,000 sq. ft. of gross floor area
Shopping centers	4 per 1,000 sq. ft. of gross floor area	5.1 per 1,000 sq. ft.	6.2 per 1,000 sq. ft.	0.3 per 1,000 sq. ft. of gross floor area
Retail sales, bulky merchandise (examples: furniture or motor vehicles)	1 per 800 sq. ft. of gross floor area			0.3 per 1,000 sq. ft. of gross floor area
Grocery stores	2.9 per 1000 sq. ft. of gross floor area	5.1 per 1,000 sq. ft.	6.2 per 1,000 sq. ft.	0.33 spaces per 1,000 sq. ft. of gross floor area
Convenience market	2.3 per 1,000 sq. ft. of gross floor area			2 spaces per 1,000 sq. ft. of gross floor area
Restaurant (with drive-through)	9.9 spaces per 1,000 sq. ft. of gross floor area	19.1 per 1,000 sq. ft.	23.0 per 1,000 sq. ft.	1 space per 1,000 sq. ft. of gross floor area
Restaurant without drive-through	11 spaces per 1,000 sq. ft. of gross floor area ²	19.1 per 1,000 sq. ft.	23.0 per 1,000 sq. ft.	1 space per 1,000 sq. ft. of gross floor area
Sports club/health spas/recreation facilities	4.3 spaces per 1,000 sq. ft. of gross floor area or field area (see Section 16.43.030(H))	5.4 per 1,000 sq. ft.	6.5 per 1,000 sq. ft.	0.4 spaces per 1,000 sq. ft. of gross floor area

Proposed Use	Minimum Parking Spaces	Maximum Parking Spaces (if nothing is noted, there is no maximum) ¹		Bicycle Spaces
		Zone A	Zone B	
Basketball, tennis and racquetball clubs and courts	2 spaces per 1,000 sq. ft. of floor area; square footage of outdoor courts shall include the area of sport activity only (i.e., not including any sidelines, etc.)			0.4 spaces per 1,000 sq. ft. of gross floor area
Theaters/sports arenas/stadiums	0.3 spaces per seat or 6 linear feet of bench seating	0.4 per seat	0.5 per seat	0.04 spaces per seat or 60 linear feet of bench seating
Service station	3 spaces plus 2 spaces per service bay, if any			2 spaces or 0.2 per 1,000 sq. ft. of gross floor area whichever is greater
Service station with convenience market with gas pumps	2.3 spaces per 1,000 sq. ft. of gross floor area			2 spaces or 0.2 spaces per 1,000 sq. ft. of gross floor area, whichever is greater
Parks and open spaces	None required, except that parking for sport courts, recreation facilities, community recreation buildings and covered picnic areas shall be computed separately. Parking for these facilities may be shared in accordance with Section 16.43.030(C)			4 spaces or 1 space per 20 vehicle parking spaces, whichever is greater
Bank (with drive-through)	4.3 per 1,000 sq. ft. of gross floor area			0.5 space per 1,000 sq. ft. of gross floor area
Bank without drive-through	5 per 1,000 sq. ft. of gross floor area			0.5 space per 1,000 sq. ft. of gross floor area
Industrial Uses				
Manufacturing, processing, packing, assembly, and fabrication	1.6 per 1,000 sq. ft. of gross floor area			0.1 space per 1,000 sq. ft. of gross floor area
Warehousing, freight movement distribution, and storage	0.5 space per 1,000 sq. ft. of gross floor area (if less than 150,000 sq. ft. of floor area)			0.1 space per 1,000 sq. ft. of gross floor area
	0.3 space per 1,000 sq. ft. of floor area (if equal to or greater than 150,000 sq. ft. of floor area)			
Wholesale, retail sales	0.8 space per 1,000 sq. ft. of gross floor area			0.1 space per 1,000 sq. ft. of gross floor area
Industrial, commercial services	0.8 space per 1,000 sq. ft. of gross floor area			0.1 space per 1,000 sq. ft. of gross floor area

Proposed Use	Minimum Parking Spaces	Maximum Parking Spaces (if nothing is noted, there is no maximum) ¹		Bicycle Spaces
		Zone A	Zone B	
Office (relating to industrial uses)	2.7 spaces per 1,000 sq. ft. of gross floor area			0.5 space per 1,000 sq. ft. of gross floor area

NOTES:

¹ Parking maximums are based on A and B Zone designations, pursuant to Metro Functional Plan Title 2, Regional Parking Policy, and as listed in the Regional Parking Ratios Table and illustrated in the Regional Parking Maximum Map. The zones are based on access to transit. Areas with twenty (20) minute peak hour transit service available within a one-quarter mile walking distance for bus transit or one-half mile walking distance for light rail transit shall be within Zone A. Cities and counties should designate Zone A parking ratios in areas with good pedestrian access to commercial or employment areas (within one-third mile walk from adjacent residential areas).

² Enclosed outdoor seating area shall count as floor area in determining parking requirement for restaurants without drive-through.

³ Visitor parking for attached dwellings containing four or more dwelling units is required in addition to the minimum off-street parking required by this subsection.

⁴ In order to address the conversion of garages from parking to storage, in multifamily developments where parking is provided in individual garages an additional one hundred (100) square foot by ten (10) foot high storage area is required per dwelling unit. Alternatively, the applicant may provide a parking management plan. At a minimum, the parking management plan shall include quarterly inspections and sworn affidavits by the multifamily development owner/management company guaranteeing the utilization of garage parking for automobile parking spaces only. Further, the parking management plan shall demonstrate that the parking pricing policies of the multifamily development will not result in additional on-street parking by tenants.

C. Shared Use of Parking Facilities.

1. Except for residential uses, required parking facilities may be located on an adjacent parcel of land or separated by a maximum of two hundred (200) feet (measured as a direct pedestrian route).
2. The right to use the off-site parking must be evidenced by a recorded deed, lease, easement or similar written instrument.
3. Required parking facilities for two or more uses, structures, or parcels of land may be satisfied by the same parking facility used jointly, to the extent that it can be shown by the owners or operators that the needs of the facilities do not materially overlap (e.g., uses primarily of day time versus night time uses) or typically provide services to many of the same patrons within the same development, and provided that such right of joint use is evidenced by a deed, lease, contract or similar written instrument establishing such joint use.
4. Any change in use which would produce a need for additional parking in a shared situation shall require additional review pursuant to Section 16.62.040.

D. Carpool, Hybrid/Electric Car and Vanpool Parking. New industrial, commercial, and institutional uses with more than twenty (20) employee parking spaces on site shall meet the following minimum requirements for carpool, hybrid/electric car and vanpool parking.

1. For this section, a hybrid car is defined as an automobile that is powered by two fuel sources (i.e., gas and electricity) and achieves a combined EPA gas mileage of forty-five (45) miles per gallon or more.
2. Five spaces or five percent of the parking spaces on site, whichever is less, must be reserved for carpool/hybrid/electric car use during normal working hours. More spaces may be reserved, but they are not required.

3. The spaces will be those closest to the building entrance or elevator, but not closer than the spaces for disabled parking and those signed for exclusive customer use.
4. Signs must be posted indicating these spaces are reserved for carpool/hybrid/electric car use during normal working hours and those hours must be included on the sign.

E. Parking Location.

1. Vehicle parking required for residential uses shall be provided on the development site of the primary structure. Required parking for all other uses shall be provided only on streets, within garages, carports, and other structures, or on driveways or parking lots that have been developed in conformance with this code.
2. No off-street parking shall be allowed in the landscaped yard areas of any lot.
3. Bicycle parking required for all uses in all districts shall be provided on the development site in accordance with Table 16.43.030-1 of this section.
4. Parking areas, which abut a residential zoning district, shall meet the setback of the most restrictive adjoining residential zoning district.
5. Required parking shall not be located in a required front or side yard setback area abutting a public street except in industrial districts. For single-family and two-family dwellings, required parking may be located in front of a garage.
6. Parking areas shall be setback from a lot line adjoining a street the same distance as the required building setbacks. Regardless of other provisions, a minimum setback of ten feet shall be provided along the property fronting on a public street. The setback area shall be landscaped as provided in this code.

F. Parking Area Design, Size, Layout and Access. All off-street parking facilities, vehicular maneuvering areas, driveways, loading facilities, accessways, and private streets shall conform to the standards set forth in this section.

1. All areas used for parking and maneuvering of cars shall be surfaced with asphalt, concrete or other approved impervious, permeable, or semi-permeable surface, and shall provide for suitable drainage.
2. The following table states the minimums for parking space size:

**Table 16.43.030-2 Off-Street Parking Matrix
Required Space and Aisle Dimensions in Feet**

Standard Size Vehicles						Compact Size Vehicle				
Angle	Stall Width	Stall Depth	Aisle Width	Module Width	Bumper Overhang	Stall Width	Stall Depth	Aisle Width	Module Width	Bumper Overhang
0° (parallel)	8.0	24.0	N/A	N/A	N/A	8.0	20.0	N/A	N/A	N/A
45°	9.0	17.5	12.0	47.0	2.0	8.0	15.5	11.0	42.0	2.0
60°	9.0	19.0	16.0	54.0	2.5	8.0	17.0	14.0	48.0	2.5
75°	9.0	19.5	23.0	62.0	2.5	8.0	17.5	21.0	56.0	2.5
90°	9.0	18.5	24.0	61.0	2.5	8.0	16.0	20.0	52.0	1.5

3. Parking Lot Layout. Parking area setbacks shall be landscaped with major trees, shrubs, and groundcover as specified in Section 16.42. Wheel stops, bumper guards, or other method to protect landscaped areas shall be provided. No vehicle may project over a property line or a public right-of-way. Parking may project over an internal sidewalk, but a minimum clearance of five feet for safe pedestrian

circulation is required. Parking areas, driveways, aisles and turnarounds shall be paved with concrete, asphalt or comparable surfacing, constructed to City standards for off-street vehicle areas.

4. Groups of more than three parking spaces shall be permanently marked.

5. Backing and Maneuvering. Except for a single-family dwelling or two-family dwelling, groups of more than three parking spaces shall be provided with adequate aisles or turnaround areas so that all vehicles enter the right-of-way (except for alleys) in a forward manner. Parking spaces shall not have backing or maneuvering movements for any of the parking spaces occurring across public sidewalks or within any public street, except as approved by the Public Works Director. Evaluations of requests for exceptions shall consider constraints due to lot patterns and impacts to the safety and capacity of the adjacent public street, bicycle and pedestrian facilities.

6. Parking Lot Lighting.

a. Artificial lighting shall be provided in all required off-street parking areas.

b. Lighting shall be directed into the site and shall be arranged to not produce direct glare on adjacent properties.

c. Light elements shall be shielded and shall not be visible from abutting residential properties.

d. Lighting shall be provided in all bicycle parking areas so that all facilities are thoroughly illuminated and visible from adjacent sidewalks or vehicle parking lots during all hours of use.

7. Parking stalls for sub-compact vehicles shall not exceed thirty-five (35) percent of the total parking stalls required by Table 16.43.030-1. Stalls in excess of the number required by Table 16.43.030-1 can be subcompact stalls.

G. Accessible/Handicapped Parking Facilities. Disabled person accessible parking shall be provided for all uses consistent with the requirements of the Oregon State Structural Specialty Code and/or Federal requirements, whichever is more restrictive.

H. Recreation facilities are public or private facilities used for active recreation activities. They may be indoor or outdoor and include facilities such as athletic fields, swimming pools, miniature golf, and skateboard parks.

1. Parking requirements for athletic fields shall be computed based on the square footage of the area of sport activity (i.e., the field of play not including any sidelines, etc.).

2. In no case shall the number of parking spaces required for an athletic field exceed thirty (30) spaces per field except where the field is part of a stadium or sports arena.

3. Parking requirements recreation facilities other than athletic fields shall be computed based on gross square footage of the building and/or improved or fenced area.

(Ord. 443 § 1, 2013; Ord. 427 § 1, 2012; Ord. 411 § 1, 2011; Ord. 406 § 1, 2010; Ord. 389 § 1(Exh. A), 2009)

View the [mobile version](#).