

Variations

Examples of Happy Valley's continued violations of code that occurred after Requester's Intent to Petition for Enforcement was mailed to city

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Introduction

The following pages show examples of violations of the Variance land use codes that occurred after the Petitions for Enforcement were sent.

The examples of violations will be limited dates after the Requester's Intent to Petition for Enforcement was mailed, which was:

- Variance: November 16, 2014

The Petitions for Enforcement had little to no impact on the city's continued violation of the code related to variances. Rather than modify their behavior and abide by their own rules, the city continued to violate both Variances and Steep Slopes code, and even expanded the violations to include behavior that had not been present when the Intent to Petition for Enforcement was made.

The new violations described in this document are all related to the code violations of the original petition, and are relevant to the case. The exact violations may not have been described in the Intent to Petition for Enforcement, but are related enough to be included in this document.

The city was made aware of their violating the land use codes on numerous occasions. The planners blindly followed the developer's wishes, even after being made aware of the violations in all stages of the process.

In addition to the variance violations for the property at 122nd and Sunnyside, other land use regulations were violated at that location. This included every type of notice requirement - mailed notice (city failed to send me notice after written request), published notice contents (location of property described only with tax lot numbers and no cross street information, making it virtually impossible to know the location of the land use), and on-site posted notices (one sign posted only on one Sunnyside - behind a chain link fence - and no signs posted on 122nd).

The notice violations were so extreme that it was virtually impossible for me to know about the land use hearings. As such, I didn't find out about them until 2 months after the final decisions. This resulted in my filing a LUBA appeal on the variance.

For more information see the email stream to Mr. Walter in the SSDO examples packet. Although the information in that email pertains to notices and not Class Variances, it shows the extent that the city has gone to exclude me from the land use process.

Violations related to Class C Variances

The city has approved 3 Class C violations for two properties since November 16, 2014. This includes the following. None of these variances should have been approved. That is 100% failure rate. The city approved these 3 variances when none should have even been considered

- June 9, 2015. Approval of Class C variance for FAR, for property corner of 122nd and Sunnyside
- August 11, 2015. Approval of two Class C variances - reduction of landscape buffer, minimum drive-through access island standards for property at 162nd and Sunnyside

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In addition to the approval of Class C variances without merit, the city has also approved a Design Review that by code requires a Class C Variance, yet no Class C variance was submitted.

- May 4, 2015 - Approval of Design Review for food cart without required variances for parking or screening for property at 145th and Sunnyside.

In every case of the approved variances, the requested variance was not required due to the lot conditions; they were all required because the developer wanted to develop the lot in a manner that was the developer's choice. In each case, the developer had clear alternatives that would negate the need for a variance, yet in each case, the variances were approved by the city with no resistance.

The remaining pages summarize the variances approved, and prove that the variances should have been denied, and gives reasonable alternatives that would negate the need for every variance.

June 9, 2015 - Approval of One Class C Variance

For the property at the intersection for 122nd and Sunnyside, the variance was due to a FAR requirement, Floor Area Ratio, which requires that the building's occupied floor space square footage be no less than 25% of the developable area of the lot.

The lot in question has an area of approximately 0.97 acres, or 42,253 square feet. As such the minimum FAR to meet the code is 25% (10,563 square feet, confirmed in the staff report). However, a Class C variance is only required the variance is exceeded by 20%. That means that in order to avoid a class C variance, the FAR can be small as 20% (8,450 square feet). This fact is conveniently omitted in the staff report.

In order to meet the minimum requirement, each floor of occupied space can be added together to satisfy the requirement. The following table gives this information.

Figure 1: Height of Building and required minimum footprints

# of stories in structure	Estimated Building Height in feet ¹	Minimum Structure footprint to meet FAR requirements (25% of lot size)	Minimum structure size to avoid use of a Class C variance (20% of lot size)
1	27.5 ²	10,563 square feet	8,450 square fet
2	40.3	5,282 square feet	4,225 square feet
3	53.1	3,521 square feet	2,816 square feet
4	65.9	2,641 square feet	2,112 square feet

NOTES FOR FIGURE 1

¹ First floor building height was obtained from plans from Design Review staff report, pages 283 and 284. Each additional floor was estimated to add 12.8 feet to the building height, the average for a mixed use commercial building according to the document published by the *Council on Tall Buildings and Urban Habitat Information* obtained from <http://www.ctbuh.org/HighRiseInfo/TallestDatabase/Criteria/HeightCalculator/tabid/1007/language/en-GB/Default.aspx>.

² The minimum code for a building of this size is 35 feet. If the proposed 1-story building were built, another Class C variance would be required because the building would be 7.5 feet short, or 21.4% shorted than required by the code.

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From the prior figure, you can see that the developer could have built a 2-story building with the same footprint as the currently planned building (4,500 square feet) without the need for a Class C variance at all (a Class B variance would have been required instead). The developer even has the option to built a building as high as 4 stories without the need for any variances for height, if desired.

The claims that the developer used in their initial application for the variance, submitted on March 19, 2015, were simply not true, and the city was well aware of this.

In the application submitted to the city (page 43 of the application, page 329 of the Design Review planning packet), the answers given to nearly every answer did not meet the requirements, and the city should have been aware of that fact.

The variance code lists several questions that must be asked and answered. The questions, the developer's response in the application, and the city's response in the staff report are included 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)

Requirement #1: The variance requested is required due to the lot configuration, or other conditions of the site

The response from the developer in their application was as follows:

Response: A variance request to the minimum 0.25:1 FAR requirement is requested to site a commercial building pad within a 0.97 acre parcel. The 4,410 SF building is designed to maximize the massing presentation of the building, as the central entry features an elevated roof line and the building includes a corner tower element to give the impression of a second-story structure. However, due to site topography, the building only achieves a 0.10 FAR, below the 0.25 FAR minimum. Based on the anticipated tenant needs for a casual dining restaurant and other retail use, the building size required under the 0.25 FAR would be a 10,563 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. A

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The response from the city in their staff report is as follows:

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.

Neither of these responses, even when combined together, satisfies the requirement. The developer has failed to prove that a 2-story building cannot be built on the site. The staff failed to prove that the "combination of factors" is relevant to the code, and failed to provide any proof that the lot configuration or other conditions of the site prevents all other buildings that would not require a Class C variance.

The developer argues that the proposed building cannot be developed unless they get a Class C variance for the building, which is correct. However, they cannot prove that the Class C variance is appropriate. They continue their argument stating that "*Based on the anticipated tenant needs for a casual dining restaurant and other retail use, the building size requires under the 0.25 FAR would be 10,563 SF structure*", then later argues "*This is well above the tenant needs*". Tenant needs aren't mentioned in the code as an allowed reason to approve a Class C variance.

However, the developer failed to provide any evidence that the Class C variance was required due to lot configuration or site conditions alone. His listed reasons (tenant needs, desired building use, and requirements for a specific planned building) fail to prove that a Class C variance is allowed in this case. The fact is that other buildings, in particular 2-story buildings, can be built without requiring any Class C variance. The code does not include any language allowing a Class C variance due to the reasons given.

Finally the developer argues "*Also, the parking requirements associated with a structure of that size would make the project unfeasible.*" Once again, the only allowed reasons for a Class C variance are lot conditions or other conditions of the site.

The developer proves beyond any doubt the reasons for the Variance have nothing to do with the lot configuration or lot conditions. In their answer to the question #2 (see next section), they even state "*The proposed FAR variance is a result of the use proposed*" as their reason for needing a variance, not the lot configuration or lot conditions (the only allowed reasons for a Class C variance).

If the lot only supports a 2-story building or taller without relying on a variance, then the only option the developer has is to build a 2-story or taller building. The option to build a 1-story building simply isn't allowed on this lot. If the developer wants to build a 1-story building, they can't do it on this lot, they have to do it somewhere else. If they aren't satisfied with this arrangement, they have every right to sell the property and develop somewhere else.

The developer must prove that the lot configuration or other conditions of the site are the sole reason for needing a Class C variance. Otherwise, the Class C variance cannot be approved.

For these reasons Requirement #1 fails.

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Requirement #2: That the condition requiring the variance has not been intentionally created to circumvent the Land Development Code

The response from the developer in their application was as follows:

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 intended with the minimum FAR. The standard sought to be adjusted is mitigated by building placement, landscaping and topography.

The response from the city in their staff report is as follows:

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.

The prior requirement shows that the conditions requiring the variance is due to the developers wish to build a specific building, not due to lot configuration or other conditions of the site. Despite the staff report response, it is clear that the variance is clearly intended to circumvent the code.

The developer's own response proves that the circumvention is intentional, stating that "*The proposed FAR variance is a result of the use proposed to be developed on the site*"..

For these reasons Requirement #2 fails.

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Requirement #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

The response from the developer in their application was as follows:

<p>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;</p> <p><u>Response:</u> The variance requested to the FAR will allow for development that is more consistent with surrounding commercial and residential development.</p>

The response from the city in their staff report is as follows:

Staff Response:

The proposed variance will not alter the essential character of the neighborhood because the reduced building footprint of the proposed retail building, 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 associated with the proposed restaurant and retail building. This criterion is satisfied by the subject request.

Contrary to what the staff claims, approving this variance, because it allows a building on this lot, would permanently impair the use and development of the adjacent property. The property to the north currently has houses, but is zoned commercial. The extreme slope makes the southern edge of that property useless.

122nd Avenue, adjacent to the property on the east is a very busy road. Due to the extreme slopes caused by the grading, maintenance of the road will be severely restricted. In addition, there is the danger of land movement due to a fault line less than a mile away. With a building on that site, it would be impossible to add any street improvements without risk to the building or to the developers trying to improve the street.

The development on this property already has permanently impaired the appropriate use or development of the properties on the north and east, due to the grading done before any buildings were approved by the city.

For these reasons Requirement #3 fails.

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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

The response from the developer in their application was as follows:

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: The FAR variance is the minimum necessary to afford relief to the subject property. The applicant has designed the proposed building to minimize negative impacts to the surrounding areas and the other buildings located on-site, while also considering the site constraints relating to site topography and grade changes from SE 122nd Ave to the finished floor elevation. If the required minimum FAR were instituted on this site, considering the site topography, the building would be extremely tall and exceed the maximum height provisions, while also being out of character with surrounding development.

The response from the city in their staff report is as follows:

Staff response:

The proposed variance represents a significant deviation from the applicable minimum FAR 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 4,500 square-foot restaurant and retail building, the requested variances are for amounts that are the minimum necessary to facilitate the project. This criterion is satisfied by the subject request.

All of the developer's responses are completely false.

The FAR variance is not the minimum necessary to afford relief for this lot; it is the minimum to afford relief for this specific planned building. As shown earlier, a 2-story building would not require any variance on this lot, zero. Since zero is less than one, no variance would be allowed.

In addition, the developer claims that "the building would be extremely tall and exceed the maximum height provisions while also being out of character with surrounding development". This is a completely false statement, as shown earlier in this document. The building height restrictions are 65 feet in a MUC zone, and even if they built a 4 story building, the height would only be exceeded by 10.8 inches.

The developer has made several arguments for how the Walgreens variance for a 13 foot retaining wall would not be out of character with the surrounding neighborhoods. The developer claimed in the Walgreens design review that because you can't see the code from the street, it doesn't matter how tall the retaining wall would be. Now he's arguing that even though you can see the building from the street, the code doesn't matter.

The difference between a 1-story building and a 2-story building would not make the development out of character with the surrounding buildings. In fact, because the story is a 1-story building, it violates the minimum height requirements because the building is too short. The developer has absolutely no idea what he's talking about in his arguments, as can be seen by his response to the applicable code and

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the condition of approval imposed by the Design Review. As a matter of fact, it can be proven that the developer's claim that a 2-story or more building is too tall is just plain wrong.

As shown in the developer's answer to the question below, the development is aware that his building is too short, and that a 2-story building would actually be preferred to satisfy the code. The height of the proposed building isn't even tall enough to satisfy the requirements of 16.46.010.G.2.c, as shown in the response below where he claims to know the "intent of the defined standard".

c. Buildings located on public street corners shall contain an architectural element at least thirty-four (34) feet or two structural stories in height.

Response: To be consistent with the architectural character of the surrounding area, the building height is 27 ft and 8 inches. This is below the 34 ft minimum defined in the standard. However, due to the topography of the site, the building site has a finished floor elevation below the grade to SE 122nd Ave and SE Sunnyside Rd. This grade, in combination with the height of the building, meets the intent of the defined standard.

The staff did not agree with his assessment and added Condition of Approval #60 in the Design Review:
60. That the applicant shall provide windows on both façades of the tower element to provide the appearance of a habitable second story, consistent with Section 16.46.010.G.2.c and Figure 16.46.010-3 of the City's LDC.

As can be seen, the developer is confusing the land use code with his desired interpretation of the code. Although he knew what the code said literally, he was so arrogant to state that he felt his interpretation, superseded the actual literal text of the law. The simple fact is that his existing structure was 7.5 feet too short. In order to comply with the law, he has to add at least 7.5 feet to the height of the building.

Without the 7.5 foot height, the developer would need yet another Class C variance for the height, because that is 21.4% shorter than the code allows.

For these reasons Requirement #4 fails.

August 11, 2015. Approval of two Class C variances

Two variances were approved for the development on the property at 162nd and Sunnyside. The first variance is a reduction of a landscaped buffer from 10 feet to 5 feet, a 50% reduction. The second variance is a reduction of the drive-through spacing standards from 400 feet to 115 feet, a 71% reduction.

All of the arguments discussed in Class C FAR variance in the prior section apply to this both of these variances. Because the reasons for the Class C violation are the same for these two variances, I will combine the discussions for both.

What's interesting to note is that neither the Design Review packet nor the Agenda were posted on the Happy Valley website for this hearing. It appears Happy Valley has a problem of posting anything that mentions variances or steep slopes.

Requirement #1: The variance requested is required due to the lot configuration, or other conditions of the site

Both variances are due to the desires of the developer, not on the lot configuration or, condition of the site. The property is zoned as MUC, which allows a variety of building types, not just drive-through restaurants.

The developer is confusing his desire to build his specific building on the lot with the right to build an allowed type of building on the lot. Even if the allowed type of building cannot be built on the property, then the building cannot be built if other portions of the land use code prevent it.

In other words, even though the zoning *allows* drive-thru restaurants, it does not *guarantee* that it will be legal to do so. Other land use regulations may prevent the building from being legal on this lot. In this case, the Variance code prevents the building because so many other choices are available. Even though this particular development would require a variance, the variance must fail because desired development is not a basis for approval of a variance.

For these reasons Requirement #1 fails.

Requirement #2: That the condition requiring the variance has not been intentionally created to circumvent the Land Development Code

This requirement fails for both variances for the same reason it failed for the other variances - the variance is both deliberate and intentional. There is absolutely no other way to interpret the facts in this case. Although the variance for the buffer actually has the potential of being due to lot configuration or lot conditions, the drive-thru spacing variance clearly is designed to circumvent the drive-through spacing standard from 400 feet to 115 feet.

For these reasons Requirement #2 fails.

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Requirement #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

In this case, the requirement seems to be met.

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

Without access to the Design review, I don't know for sure if this can be satisfied or not.

In this case, the requirement seems to be met.

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May 4, 2015. Approval of Design Review without filing required variance

No variances were even submitted or filed in the property at 145th and Sunnyside, despite the evidence that the parking spaces for the developer were 50% fewer than required by code. I emailed the information to Steve Koper on April 22, nearly two weeks (12 days) before the Design Review meeting.

The first Design Review for this property was on March 24, 2015. At that time, no permanent building was to be put on the property.

The land use code does not include parking space requirements for food carts, because food carts are supposed to be used in existing underutilized parking lots, not as the main land use. So the staff came up with their own parking calculation based on food cart area and the current drive-thru parking standards.

Due to an exceptionally vague plan, the Design Review Board required that the developer add additional details to the plans, and rescheduled a new meeting on May 4, 2015. The design review should have never been scheduled because the plans were incomplete.

Prior to the second meeting, I obtained a copy of the Design Review Packet, which included updated plans. The new plans showed a permanent structure. With the new building, rather than guess at the floor area to use, the city could use the actual building size.

Using the same method to calculate the parking spaces, I discovered that it would require 82 parking spaces instead of the 57 calculated in the outdated design review. I sent an email showing my calculations to the city.

Because I did receive a reply to the email after 5 days and did not know if my email would be put in the staff report for the design review, I forwarded my email back to the city with the following request: "Please let me know if the email I sent earlier (below) will be in the staff report for the design review for May 4, and if you have any comments on my email."

The city's response was "*Although you did not request your comments to be included in the record, they will be. I do not have any comments.*". Rather than give an opinion, he chose to ignore my analysis.

Because the city gave no comment on my email (and most likely never even looked at the details), there is no evidence that contradicts my analysis. Despite that, and despite testifying at the Design Review, the parking lot calculations were never commented on by staff or the Design Review Board.

If they had looked at what I wrote, they would have discovered that the number of parking spots provided represented only 69% of the number required for a drive-thru restaurant. With the number of calculated parking lots 31% fewer than required, a Class C variance was required.

The city failed with their communications, but more importantly approved a Design Review without a variance when the facts clearly showed the parking was below the standards used in the city's own calculations.

For additional information, please refer to document with the header page Proof #3 Food Cart Parking.

Summary and Conclusion

The land use regulations are clear. Any ONE of the 4 reasons shown is enough to force denying a variance. In the case of the lot on the corner of 122nd and Sunnyside, not just one, but ALL of the 4 reasons should have forced the city to reject the variance.

Even though the last two requirements were met for the last two variances, the variances must fail because two of the requirements failed. It only takes one reason to fail.

Prior violation of drive-thru spacingstandars

When I was reading the drive-thru spacing standards variance, I realized that another property on 147th and Sunnyside had a similar situation. In that case two drive-thru isles were approved in DR-03-11 JACK IN THE BOX - and no variance was even submitted at that Design Review.

The following is from the minutes of the meeting for the Design Review for that property:

The applicant requested an exception to the 400ft spacing within a block face – the site plan was reviewed by a traffic engineer and Clackamas DTD and was determined that this exception would be acceptable – staff granted this exception

Not only does the city approve Class C variances when they are not authorized to do so, but they even skip the entire variance process, such as in the case of the Jack-in-the-Box, and most recently in the case of the Mobile Food Cart Parking Standards.

What's even more disturbing, they're not just ignoring the variance regulations, they're also ignoring many other land use code, including the Steep Slopes Development Overlay ("SSDO"), lack of enforcement of notice requirements, and lack of enforcement of conditions of approval.

The one and only cure to this problem is to invalidate each and every variance included in this list, along with the associated Design Review that required the variance. The design review for the food cart development should also be invalidated because although a variance was required, none was ever made.

Proof #3: Food Cart Parking

This document shows that the parking requirements for the 26-unit food cart were incorrectly calculated by city staff.

It also shows that after the error was pointed out, that both the city staff and Design Review ignored the proof that the minimum parking requirements were calculated incorrectly.

As a result, the land use code relating to minimum parking was not satisfied, and a variance that was required for parking was not submitted as required.

In the staff report submitted for the design review of a proposed 26-stall mobile food unit development (DR-14-14), the parking requirements were describes as follows:

Staff Response:

The applicant has proposed a parking facility that contains spaces for 51 vehicles to provide parking for employees and customers of the proposed development. The applicant's Narrative at Page 9 (Exhibit 2) describes the utilization of a Restaurant without drive-thru as the use/parking ratio for the gross square-footage of the projected food cart size (+/-144 square feet) – a use designation with which staff concurs. However, this scenario “misses” the seating area squarefootage associated with a typical restaurant, which does not easily align with the common area seating illustrated within the plan set (45 seats) – particularly due to the spread out nature of this seating versus typical restaurant seating. As an alternative, staff assumes an anticipated food cart size of 200 square feet to account for said seating. This equation leads to a unit/parking scenario wherein 200 square-foot food carts multiplied by 26 stalls equals 5,200 square feet. 5,200 divided by 1,000 multiplied by 11 (the Restaurant parking ratio), equals 57.2 parking spaces (rounded down to 57). Thus, staff recommends that the subject site be restricted to 26 food carts providing a total of 57 vehicular parking spaces. In addition, the applicant has proposed that the location for the required bicycle parking spaces would be in the southeast corner of the site. Per Condition of Approval Numbers 15 and 69, these criteria have been satisfied.

Because food carts were never designed to be a primary use, the staff had to calculate the parking spaces based on existing code. They decided to simulate the square footage of a restaurant, and use the parking requirements for a restaurant. He accounts for the space used by the food carts (using a typical food cart size of 18x8), and guessing at the amount of space that would be taken used for seating. The guess that was used would be that there would be 56 square feet per food cart used for eating area. That equates to $56 \times 26 = 1,456$ square feet for eating area.

Because restaurants would be used as the basis for allowing the food cart development, the staff member decided to use the minimum parking requirements for a restaurant. In doing so, he used two components in his calculations. (1) The amount of square footage required for the food carts, which would represent the kitche in a restaurant and (2) the amount of dining area required, which would represent the dining area in the restaurant.

There are several problems with the staff member's calculations.

1. The area required for the just the food carts kitchen area was grossly underestimated, the number of parking spaces required should be increased by 19 parking spaces (32% shortage)
 - a. A "typical size" of a food cart is 18' x 8', or $144 \times 26 = 3,744 \text{ ft}^2$, requiring 41 parking spaces
 - b. The maximum size allowed for the food cart is 20'x10.5', or $210 \text{ ft}^2 \times 26 = 5,460 \text{ ft}^2$, requiring 60 parking spaces
 - c. Total underestimate, kitchen area = $60 - 41 = 19$ parking spaces
2. The area for dining was grossly underestimated, the number of parking spaces required by 25 parking spaces (61% shortage)

- a. The area calculated for the dining area, using the staff report calculations, would be 200 ft² minus the area of the food cart, 144 ft². 200 - 144 = 56 ft² of dining area per cart x 26 carts = 1,456 ft², requiring 16 parking spaces
- b. The code for parking includes text describing how square footage should be included for outdoor seating. The enclosure at the time of the first design review meeting was 4,512 ft², which would require 49.632 parking spaces.
- c. The plans were changed from a general outdoor area with playground, to an enclosed area for seating only. The parking space calculations provided by the city staff are for a design that is no longer being used.
- d. By the changed, approved plans, the actual dining area is 40' x 94', or 3,760 ft², requiring 41 parking spaces
- e. Total underestimate, dining area = 41 - 16 = 25 parking spaces

In an email I sent to Mr. Koper, I showed that the calculations were not based on the correct information. The estimates assumed that all food carts would be a typical size, when in fact they could be much larger. I also showed that the parking code included text that shows when calculating parking spaces for restaurants, any enclosed outdoor seating areas must be included in the total square footage of the building. As such, using an estimated eating area was not required, and the actual eating area square footage should be used. I included the section of the code below in my email. See note 2, below.

Table 16.43.030-1

<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>	
[...]				
Commercial Uses				
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
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.				
[...]				

In response to my email, Mr. Koper replied that he had no comment on my calculations. Because the arguments went against what Mr. Koper had written in the staff report, and because acknowledging my argument would prove his initial calculations incorrect and would require additional parking, Mr. Koper chose to ignore the facts and instead provide a "no comment" response. Please see email chain.

Although this email was also included in the Design Review packet given to the Design Review board, and despite my testimony at the meeting repeating this violation, the Design Review board decided to approve the design, even though I had shown that parking was grossly underestimated and required a variance.

In my email, I used an estimate of 4,512 ft² for seating, as provided by the developer. This area calculation was provided by the developer. In addition, the developer stated that there would be no walls or structure for an eating area. This changed by the time the design review, to include a building for internal seating.

As can be seen in the plans for the development in the attached pages (this is from page 157 of the design review packet), the enclosed area was changed to 40 feet by 94 feet, or 3,760 square feet. By itself, the dining area requires 41 parking spaces.

Even if you use the reduced cart size of 144 square feet (smaller than the actual maximum size of the cart), and ignore the area of the restroom, the number of parking spaces required is much higher than the 57 parking spaces of the development:

Using the corrected calculations (restaurant parking is 11 spaces for each 1,000 square feet)

- Kitchen area = 144 square feet per cart x 26 carts = 3,744 square feet. 3,744 square feet x 11 spaces / 1,000 square feet = 41.184 parking spaces
- Dining area = 3,760 square feet eating area x 11 spaces/1,000 square feet = 41.36 parking spaces
- Total parking required: 41.184 + 41.36 = 82.544 parking spaces

The parking in the design includes only 57 parking spaces, which represents only 69% of the parking spaces required by the code. As such, a Class C variance for parking is required.

In addition, because the plans were changed from an outdoor seating area to an enclosed seating area in a building, the parking space calculation should have been redone. Because this would have required extra effort, and because the new calculations would prove that parking was inadequate, no such calculations were made.

The attached plans are from page 157 of the design review packet. The area of the food carts and dining area were expanded so that the details could be read from the drawing.

Jim Phillips

From: Steve Koper [stevek@happyvalleyor.gov]
Sent: Monday, April 27, 2015 10:39 AM
To: Jim Phillips
Cc: Michael Walter, AICP
Subject: RE: Error in parking calculations for food cart development on 145th/Sunnyside

Mr. Phillips –

Although you did not request your comments to be included in the record, they will be. I do not have any comments.

Regards,

Steve Koper, AICP
Senior Planner
[City of Happy Valley](#)
16000 SE Misty Dr.
Happy Valley, OR 97086
Phone: 503-783-3845



Preserving and enhancing the safety, livability and character of our community.

From: Jim Phillips [mailto:jim.phillips@pdxconsultant.com]
Sent: Monday, April 27, 2015 10:29 AM
To: Steve Koper
Cc: Michael Walter, AICP
Subject: FW: Error in parking calculations for food cart development on 145th/Sunnyside

Mr. Koper,

Please let me know if the email I sent earlier (below) will be in the staff report for the design review for May 4, and if you have any comments on my email.

Thanks for your help.

Regards,

Jim

Jim Phillips
jim.phillips@pdxconsultant.com
Work: 503-210-5590
Home: 503-698-4895

From: Jim Phillips [<mailto:jim.phillips@pdxconsultant.com>]
Sent: Wednesday, April 22, 2015 12:23 PM
To: 'Steve Koper'
Subject: Error in parking calculations for food cart development on 145th/Sunnyside

Mr. Koper,

I have reviewed the comments on the parking requirements in the staff report for the proposed food cart on 145th and Sunnyside, and have found several large errors in the calculations.

The staff report is correct in that calculating the total parking is somewhat different than a typical restaurant. However, the calculations shown in the staff report are incorrect.

The following items are included in a traditional restaurant square footage calculation.

- Kitchen area
- Dining area
- Other areas of the building - storage, restrooms, etc.

However, the calculations in the staff report for the first 2 areas are incorrect, and the additional area for the restrooms is completely omitted from the calculations.

Using the corrected calculations:

- Kitchen area = 210 square feet per cart x 26 carts = 5,460 square feet = 60.06 parking spaces
- Dining area = 4,512 square feet eating area = 49.632 parking spaces
- Other areas = 400 square feet for restrooms = 4.4 parking spaces
- Total parking required: 60.06 + 49.632 + 4.4 = 114.092 parking spaces

In order for the site to support 26 food carts, the parking must be doubled to 114 spaces, adding an additional 57 parking spaces to the existing parking spaces.

If the dining and restrooms are to remain the same size, then the number of carts must be reduced substantially:

- Total Dining and Other, not including Kitchen area = Eating area + restrooms = 54 parking spaces
- Kitchen area = 57 available spaces minus 54 spaces for dining and restroom = 3 available parking spaces

Based on these calculations, this site will support only one food cart, since each food cart "kitchen" requires 2.31 parking spaces.

The only alternatives available are to reduce the number of food carts, reduce the size of the outdoor seating area, reduce the size of the food court spaces, or a combination of these items.

See below for details on the calculations.

Please let me know if any of these calculations are incorrect.

Regards,

Jim

Kitchen area

The calculations for the square footage in the staff report is based on a "typical" food cart size of 18x8.

However, the space provided for a food cart is 20.x10.5, or 210 square feet. Unless there is something that prevents a food cart from using the entire area of the space provided, then the maximum size must be used for calculating the "kitchen" area. This also assumes that there will be no part of the "kitchen" that extends beyond the food cart parking spaces, and also that the spaces between the food carts cannot be included in the total area calculations.

Using the actual size of the food cart space, each food cart requires 2.31 parking spaces, not 1.584 parking spaces.

Dining area

The staff report says that the seating was missed in the initial calculation of the parking spaces, and indicates that the seating does not easily align with a typical restaurant's seating square footage. To correct this deficiency, an estimate of the amount of space required for seating is made. This estimate is 56 square feet per cart, or a total of 1,456 square feet.

However, an actual seating area was provided by the developer, so it must be used. As per Note 2 at the bottom of table 16.43.030-1 (see screen shot from staff report, below), enclosed outdoor seating areas shall count as floor area in determining parking requirements for restaurants without drive-through. This seating is considered enclosed because it is within the perimeter of the walls and gates that separated it from the parking lot and other properties.

Page 25 of the developer's design review application has the following, which provides the actual seating area size of approximately 4,512 square feet.

d. Outdoor seating areas, which may have roofs, floors, and railings, but no walls (e.g., decks, picnic shelters), provided that the combined square footage does not exceed two hundred (200) square feet per mobile vending unit and that no single structure exceeds two hundred (200) square feet.

RESPONSE: The outdoor seating area is approximately +/-4,512 square feet and will not have a roof, floor, railings or walls. Therefore, this standard does not apply.

The actual seating area associated with the restaurant requires 49.632 parking spaces.

Other areas of the building - storage, restrooms, etc.

A restaurant includes other internal areas of the building that must be included in the total square footage of the building. There is no storage areas for the proposed development, but there are restrooms.

The calculations of the equivalent total square footage of the restaurant in the staff report does not include the areas for the bathrooms, each of which is 200 square feet. The total square footage of the restaurant must include 400 square feet due to the restrooms. The restrooms require 4.4 parking spaces.

Screen print from staff report

Table 16.43.030-1

<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>	
[...]				
Commercial Uses				
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
<p>NOTES:</p> <p>¹ <i>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).</i></p> <p>² <i>Enclosed outdoor seating area shall count as floor area in determining parking requirement for restaurants without drive-through.</i></p> <p>³ <i>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.</i></p>				

[...]

Jim Phillips
jim.phillips@pdxconsultant.com
 Work: 503-210-5590
 Home: 503-698-4895

This e-mail is a public record of the City of Happy Valley and is subject to the State of Oregon Retention Schedule and may be subject to public disclosure under the Oregon Public Records Law. This e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please send a reply e-mail to let the sender know of the error and destroy all copies of the original message.