

-Approved-



CITY OF LAKE OSWEGO

Development Review Commission Minutes

January 6, 2014

CALL TO ORDER

Chair Don Richards called the meeting of the Development Review Commission (Commission) to order at 6:00 p.m. in the Council Chambers of City Hall, 380 A Avenue.

ROLL CALL

Members present: Chair Don Richards, Vice Chair Gregg Creighton, Brent Ahrend, Ann Johnson, Bob Needham and David Poulson. Frank Rossi was not present.

Staff present: Hamid Pishvaie, Assistant Planning Director; Johanna Hastay, Associate Planner; Erica Rooney, Assistant City Engineer; Amanda Owings, Traffic Engineer; Evan Boone, Deputy City Attorney; and Janice Reynolds, Administrative Support

MINUTES

None.

FINDINGS

None.

PUBLIC HEARING

LU 13-0043: The applicant is requesting approval of the following:

- A Development Review Permit to construct a 1,057 sq. ft. Goodwill donation center and a 6,416 sq. ft. retail commercial building;
- Two Minor Variances: 2-foot reductions to the 20-foot front and street side yards setbacks;
- A Hardship Variance to allow a direct access point onto Boones Ferry Road (an arterial street); and,
- The removal of seven trees to accommodate the proposed development.

The site is located at: 17150 Boones Ferry Rd. (Tax Lot 4000 of Tax Map 21E 18BA).

Chair Richards opened the hearing. Mr. Boone outlined the applicable criteria and procedure. Mr. Poulson (civil engineer), Vice Chair Creighton (licensed architect), and Chair Richards (landscape architect/certified arborist) each reported a site visit. The other two Commissioners reported his/her employment/occupation: Mr. Needham (retired lawyer), and Ms. Johnson (retired housing program manager). Mr. Ahrend (traffic engineer) entered the meeting during the staff report and thereafter disclosed that he worked on a regular basis with the attorney representing the applicant and from time to time with their civil engineer, but that would not affect his decision in this case. No one challenged any Commissioner's right to hear the application.

Staff Report

Ms. Hastay reported that the applicant proposed to build a retail building and the Goodwill donation center on an approximately one-acre site in the IP Overlay District (IPO). She pointed out on the

site plan the proposed 35-space parking lot and two access points. Staff found the proposal complied with all IP Zone dimensional standards, except for the front and street side yards setbacks. The applicant was asking for minor variances to those setbacks. Staff found they met the criteria for variances to those setbacks and for removal of the trees. Staff agreed that the site was a prime retail location. Ms. Hastay then discussed the proposed design and the hardship variance the applicant was asking for that would allow them to have direct access onto Boones Ferry Road.

Staff did not agree with how the applicant applied the following standard regarding building design: *Complementary in appearance to adjacent structures of good design with regards to materials, setbacks, rooflines, height and overall proportions.* Ms. Hastay advised that *Complementary* was not defined in the Code, but it did not mean copying the design of adjacent buildings of good design. In past cases, staff had found that a design should complete the visual image of the universe being considered. The design should create an aesthetically pleasing relationship between the on- and off-site design elements. *Adjacent* was defined in the code to mean *touching across the public right-of-way from; across an easement from; or across a small stream or creek from.* In past cases staff had broadened that area to include the universe within visual range of the subject site. *Good design* was not defined by the code. In past cases, staff had found that the analysis should include buildings whose design had a positive or desirable quality that improved the adjacent visual universe and should exclude structures that were minor, obsolete, or in a state of disrepair.

The applicant had provided photographs of three adjacent buildings: Les Schwab Tire Center, an auto service center; and the State Farm building across Boones Ferry Road. They were all single story structures constructed out of CMU blocks. Staff found those buildings were obsolete and should not be considered examples for this analysis. Staff advised in applying this standard and looking for the adjacent visual universe the applicant should focus on a different inventory of buildings: The Lake Grove Vet Clinic; the office building at The Crossing center; the Taylor Made Labels building; and the Oswego Place Assisted Living Facility. They were recent examples within the general neighborhood of good design that had gone through a similar development review process and were subject to the same building design standard. Ms. Hastay highlighted details on those buildings, including materials, such as brick, wood and gray CMU siding, and extensive fenestration. She advised that the primary upper wall siding of sandstone-color, 4" x 16" CMU, block that the applicant proposed did not complement any adjacent buildings of good design. In fact, it created an aesthetic relationship with buildings of obsolete design. Staff recommended two conditions related to building design. One called for a base of standard size red brick (instead of sandstone CMU blocks), augmented by areas of narrow horizontal lap siding. Staff advised that would be a unique combination, but it would establish a complementary aesthetic relationship to adjacent buildings of good design. The other recommended condition required more fenestration and glass doors on the north elevation (complementary to The Crossing building) instead of the windowless stucco wall facade and metal doors the applicant proposed.

Ms. Hastay discussed the hardship variance criteria. Criterion 1 was that the variance was necessary to prevent an unnecessary hardship. Staff found this criterion was not met because there was no unnecessary hardship that precluded reasonable use of the site. The code listed four factors to be considered in determining whether or not the hardship existed. The applicant had included an additional factor: Negative traffic impacts from a single access point from Pilkington Road. Ms. Hastay discussed those factors:

- *Physical circumstances related to the site create an unnecessary hardship.* The applicant argued the site was small and unusually shaped. Staff found there were no physical constraints because the site was relatively flat and generally large in comparison to other

sites within the IPO District; it was vacant; and there were no major stands of trees to be preserved on the site.

- *Reasonable use similar to like properties cannot be made of the property without a variance.* The applicant cited The Crossing as a like property with two accesses. Staff found it could not be considered “like” property because one of the accesses was a nonconforming driveway on Boones Ferry Road that predated the Access standard. The applicant contended that reasonable use of the site would be impossible with a single access point due to Goodwill truck-maneuvering needs. Staff found that such infrequent use should not drive a hardship variance request. In any case, staff found that reasonable use of the site could be made without granting the variance as the applicant was only proposing 18% lot coverage; more than double the required open space and landscaping; reduced setbacks on two sides; and a voluntarily large parking lot.
- *The hardship is not a self-created hardship.* Staff found the hardship was self-created. They addressed the applicant’s statement that by not allowing maximum build-out they had a hardship. Staff found that tenancy of the retail center was subject to market forces and future turnover so maximum build-out was impossible to define or predict. Not all allowed uses in any combination would be suitable for the site, regardless of access. This site and required parking could have been developed with hypothetical uses with lower parking demands and then space for on-site truck maneuvering could have been provided. An alternate site plan was therefore possible, but it was simply not desired.
- *The economic impact on the applicant if the variance is not granted.* Staff found this factor was to be an extraordinary economic impact akin to precluding or approaching substantial prohibition of development. They reported the applicant stated there were three major economic impacts from a single access point: un-leasable retail space; redesign costs; and discouragement of donations. Staff found given the sheer number of possible tenants allowed in the IPO District there was no direct evidence that the retail building would be un-leasable or financially unstable with a differently-configured or slightly smaller parking lot and a single access point. They advised that redesign costs were financial risks that the applicant voluntarily undertook by pursuing the requested variance against staff’s advice. Finally, it was unlikely that the out-of-direction travel to the Pilkington Road access point would prove a significant discouragement to someone who was specifically coming to the site to donate.
- *Negative traffic impacts from a single access point.* Staff noted the applicant had provided a detailed traffic impact analysis of how the proposed Boones Ferry Road access did not conflict with the traffic system (Exhibit F-7). Kittleson & Associates’ Hardship Variance Sensitivity Analysis on page 252 of the staff report analyzed the traffic impacts from a single access point. The staff report included a detailed discussion of it. Highlights of that discussion were that the applicant’s traffic analysis found that with a single access point the Boones Ferry Road/Pilkington Road intersection would continue to operate at Level of Service C, remaining unaffected by the additional vehicles using this intersection during the peak hour. During the busiest 15 minutes of that peak hour the left turn queue from Pilkington Road onto Boones Ferry Road would increase by about one car length for 5% of the time. Fire access was only provided through the Pilkington Road driveway and parking lot as it was proposed today, so denial of the hardship variance did not render the site noncompliant with the Fire Access standards. Staff noted that the applicant’s traffic analysis demonstrated that with a single access point the development posed no significant impacts to the surrounding street system.

Ms. Hastay reported that staff found the applicant had technically met Criterion 2, which was that granting the variance would not be injurious to the neighborhood. Consolidating and relocating two existing nonconforming access points along Boones Ferry Road further from the intersection did not injure the neighborhood, but it also did not remove access points as directed by Code. Criterion 3 was that the variance was the minimum necessary to make reasonable use of the property. Staff found the applicant could make reasonable use of the site without the Boones Ferry Road access driveway. Criterion 4 was that the request was not in conflict with the Comprehensive Plan. Staff advised that with regard to the ability to make the request, a hardship variance was not in conflict with the Comprehensive Plan; however, the request conflicted with Goal 12 Transportation policies that were codified in the Access standards.

Ms. Hastay concluded that a hardship variance was a means to allow development on a uniquely constricted property to achieve minimal reasonable use. Staff found the site was not uniquely constricted; that the hardship was self-created because alternative site plans were available that still allowed reasonable use of the property; that there were no unforeseen economic impacts that arose from not granting the variance; that traffic impacts from the single access point were minimal; that the requested variance conflicted with Comprehensive Plan Goal 12 policies that were codified by the Access standard. Therefore, staff recommended denial of the hardship variance.

Ms. Hastay pointed out the recommended conditions in the staff report offered two decision options, depending upon whether or not the Commission found the hardship variance could be approved. Since the Boones Ferry Road access point was fundamental to the proposed design and staff had not seen a design with just a Pilkington Road access (which would have to be substantially different) they recommended that the Commission deny the hardship variance and therefore deny the entire application. If the Commission found that the hardship variance criteria were met and the application could be approved, staff had recommended conditions of approval that the Commission could impose on the application.

Questions of staff

Ms. Hastay clarified for Mr. Poulson that staff and the applicant had been discussing the proposal, including the Boones Ferry Road access point, for almost a year and the applicant was continuing to pursue the hardship variance contrary to staff's advice.

Applicant

Jerry Baysinger, Baysinger Partners Architecture P.C., 1006 SE Grand Ave., Ste. 300, Portland, Oregon 97214; Diego Arguea, P.E., Kittleson & Associates, Inc., Portland, Oregon; and Steve Pfeiffer, Perkins Coie, 1120 NW Couch, Portland, Oregon 97209, represented the applicant.

Mr. Baysinger advised that Goodwill had a tremendous impact on the community and the region. In 2012 it had served over 52,000 clients; connected 11,481 clients to employment; and paid \$52 million in wages and benefits. He said this site would be similar to the one in Lake Oswego on State Street which received more donated goods than any other center in their system. He pointed out on an aerial photograph where the applicant would dedicate about 2,000 s.f. for additional improvements along Pilkington Road. He explained that the applicant wanted drivers to be able to go into the site from whichever direction they were coming from on Pilkington or Boones Ferry Road. He related they had heard that they might have a better chance of getting the hardship variance if they proposed a shared driveway with the property to the south off Boones Ferry Road. It would be right-in-only until the adjacent property developed and then it would become a two-way driveway.

Mr. Baysinger referred to a sketch of the donation center and retail building to discuss materials. He indicated the polished CMU they had proposed was very high end material similar to that on the

Whole Foods market near Bridgeport Village. He said he did not believe that anyone would think the Whole Foods building was an outdated building. Nonetheless, he said the applicant would acquiesce to the City's finding and use structural brick that was 3.5 inches high rather than 2.5 inches high for durability reasons. He recalled that 'complementary' did not mean identical and that there was a range of brick in the neighborhood. He explained that brick color CMU as upper material would make the applicant's building substantially smaller in appearance. They now proposed Goldenrod color CMU. He provided a sample and showed an illustration of how that color CMU would look. He discussed the stucco material and he pointed out that the cover page of the applicant's presentation showed the stucco wall on the north elevation. He said they objected to changing that. He discussed the locations of shear walls and sprinkler rooms. He clarified that 12% of the total building perimeter was stucco; and 31% of the Pilkington elevation was stucco. He noted the storefront was predominantly brick; enhanced by canopies, variation of materials, and changes in height; and there was a nice park with a fountain to activate the corner. He indicated he could not imagine what would be objectionable about the awning, the variations of texture, material, height, and color, and with significant landscape and fountain area next to it.

Mr. Baysinger reported that PGE wanted the transformer installed above grade so the applicant had located it in the large landscaped area. He asked the Commission to not require something that PGE would not do and was out of the applicant's control. In regard to driveway width, he indicated the required width was not an issue unless they did not get the hardship variance. Then it would require a revised site plan.

Mr. Arguea discussed the access issue. He reported they had had looked at similar sites; potential development of the parcel to the south; and the corridor as a whole. He compared the site with a property at Bryant/Boones Ferry Road, which he said was approximately the size and shape of the applicant's site and near a congested intersection. He said if that site were to redevelop and the same condition applied to it, its two existing accesses on Boones Ferry Road would be closed and the result would be more congestion. He pointed out that the site currently featured several existing accesses along both streets. He discussed movements into and out of all of the driveways that were possible today. Northbound cars waiting for the signal could block two of those driveways. He advised that the record showed that safety and operations was not an issue there. He reported that the proposed plan would mean all the driveways would be closed or consolidated into two. He noted the impacts that development of the site would have on the Boones Ferry Road/Pilkington intersection were marginal, but the Commissioners should think about the greater context of what would happen to Pilkington if the site to the south was redeveloped and the existing congestion got worse. He advised it would be a huge benefit to the site and to the entire corridor to have the site and the property to the south share the proposed access to Boones Ferry Road. He noted it was not uncommon to see cars queuing on Pilkington during the peak hour. He had observed near accidents at a driveway there during the peak hour. He advised that if the site only had the one access onto Pilkington it would add to the current problems on that road. If large delivery trucks could access the site from Boones Ferry Road it could reduce some truck traffic coming from I-5 and turning onto Pilkington. He indicated this was a unique opportunity to address potential vehicle, pedestrian and bike conflicts ahead of time for the benefit of the transportation system. He explained that if they did not have the proposed Boones Ferry Road access the site would need more improved surface to accommodate vehicles turning around. He addressed the staff finding that this was a self-created hardship by opining that any reasonable developer would fight for access rather than minimize the size of their development. He showed the Commissioners what the alternative access would look like. He indicated that having direct access to Boones Ferry Road not only benefited the site, but the system as a whole, because it was a much more efficient way to move vehicles through the site. There would be no need to construct a turnaround so vehicles could enter, circle through, and exit at Pilkington.

Mr. Arguea concluded that the applicant felt the site was uniquely shaped and asked for the hardship variance. They were consolidating two driveways into one. Future consolidation with the two driveways on the boatyard property to the south would improve the corridor and advance the access management goals of the City. Emergency and heavy industrial vehicles would benefit from the direct route and there would be a more efficient system. The intersection would benefit in terms of congestion and safety. He advised the Commission that anything they could do to reduce potential congestion was a good thing. He clarified that staff had reported the LOS of the intersection would stay the same, but what the applicant was focused on was the northwest-bound approach from Pilkington to Boones Ferry Road that would deteriorate from LOS C to LOS D with just the applicant's proposal. In the long term they did not want a congestion situation like there was on Bryant.

Mr. Baysinger pointed out the applicant had submitted evidence of economic hardship in the form of a letter from commercial real estate broker Lisa Lamanna (Exhibit F-15). He had asked her if limiting access would change the value of the applicant's property. Her answer was that prohibiting access would have an adverse impact on contract rent achievable, and therefore, the value of the asset. He said what that meant was instead of having top tier retailers they were likely going to get lower-paying second and third tier retailers, which would mean higher turnover, higher vacancy rates, higher risk for the developer and the community, and lower assessed value than if the site had appropriate access.

Mr. Baysinger discussed the Access standard calling for reduction of direct access points on arterials. He indicated their proposal, with the hardship variance, accomplished that by reducing curb cuts on the subject site and the property to the south from four accesses that were 33% of the frontage to one access that was 4% of the total frontage. He noted that Mr. Arguea had pointed out it reduced congestion and delay on Boones Ferry Road and on Pilkington and allowed the intersection to function at a higher capacity. He said that benefitted everybody.

Mr. Baysinger discussed the criterion that the variance was necessary to prevent an unnecessary hardship. He indicated the proposed project met the standards of access and prevented an unnecessary hardship in the transportation system; and, it prevented economic hardship to the property owner. In regard to the criterion that granting the variance would not be injurious to the neighborhood, he said what they proposed improved safety; reduced queue lengths on Boones Ferry Road and on Pilkington; improved the function of the intersection; reduced congestion; and reduced potential pedestrian turning conflicts. In regard to the criterion that the requested variance was the minimum necessary to make reasonable use of the property, he indicated they had demonstrated that the site was greatly impacted by the lack of access onto Boones Ferry Road; that the district would be retail-oriented; and that as such it needed to have appropriate access. He reported that seven out of eight properties in the immediate vicinity of the site were retail or office oriented. He anticipated that would continue to be the use pattern, so they needed to provide the ability to have the highest and best use at this intersection. He said the site was very small and triangular in shape which also made it quite difficult. The shape itself introduced a hardship not of the applicant's making. He said they believed that what they proposed was the minimum necessary: consolidating four accesses on Boones Ferry Road into one; reducing curb cuts to just 4% of the frontage; and sharing the access between multiple properties. He advised the variance was not in conflict with the transportation goal in that there would be controlled access; reduced and shared curb cuts; and it allowed the transportation system to operate at its highest capacity now and in the future.

Mr. Pfeiffer indicated that the applicant and staff did not disagree about the facts, but about what the code criteria really involved. He indicated that staff's interpretation of the criterion related to economic impact was that it was such a high bar that the Commission would essentially have to

find a “taking” in order to approve the variance. He said that was not the only interpretation available and it was not even the most reasonable interpretation. He noted the criterion only required evidence of an ‘economic impact.’ He related that some cities, including Portland, had eliminated the variance hardship criteria and substituted an adjustment process which allowed them to approve a proposal that equally or better met the criteria at issue. He said the applicant’s perspective was that the variance process was a tool to be applied one site/application at a time, without any precedent or any predetermination for subsequent applications, to decide if a specific standard warranted modification based on the facts. The variance did not violate the Comprehensive Plan because the code implementing the Plan allowed the variance process and it was clear that access management on Boones Ferry Road was to be controlled through the design review process. It did not say it was to be upheld at all costs, unless an applicant can prove a taking. He argued that the record showed there was a hardship without the variance. There would be a lesser quality private development and a related detriment on the public side. Lack of efficient and easy access to the site would mean lesser quality tenants, higher turnover, and vacancies one saw in places that were difficult to lease. He stressed it was an auto-oriented site on an arterial, not in the middle of a pedestrian district. He noted staff conceded that granting the variance was not injurious to the neighborhood. What was left then was the decision regarding whether the request was the minimum variance necessary to make reasonable use of the property. The key term was ‘reasonable.’ The variance would allow the applicant to have higher quality tenants, fewer vacancies, and a better project. He noted they had provided testimony from an expert that a lesser quality retail product would result from lack of access to Boones Ferry Road.

Mr. Baysinger pointed out that page 31 of the applicant’s presentation [Exhibit F-16] suggested specific language for conditions of approval related to the CMU and stucco if the Commission was inclined to approve the hardship variance.

Questions of Applicant

Mr. Baysinger clarified that the applicant and the adjacent property owner had discussed a shared access agreement (that had not yet been finalized) and what the site would look like when they had a shared, two-way access, which would be when the other property redeveloped. He had a slide to show that. In the meantime, the applicant proposed a one-way access with a full width apron to accommodate trucks making the turn. He clarified that if they did not have the Boones Ferry Road access, the site plan would have to be significantly changed to make more room on the site for truck maneuvering and they might request a second driveway onto Pilkington. He confirmed that a great deal of the frontage was open access now. He pointed out the locations of those existing driveways. He clarified the applicant had not discussed a shared access to Rosewood with the other properties to the south. He agreed with Chair Richards that there was potential access from Boones Ferry Road via Rosewood after those two roads were connected.

Chair Richards asked the applicant to detail their suggested conditions of approval related to the stucco and the Pilkington façade, which was currently proposed without any windows and with painted metal doors. Mr. Baysinger referred them to Exhibit F-16. He said it was well fenestrated; it featured three bays of storefront and two bays of stucco facing Pilkington; and it was mitigated by the fountain and extensive landscaping. He noted that the side of The Crossing development they were relating to was all stucco and there was a blank wall along their entire south property line. The applicant had held theirs in and created four sides to their building. He confirmed to Ms. Johnson that the applicant still wanted the metal doors on the Pilkington side. His experience was that tenants tended to block glass facing the street because they needed back rooms. The City did not have a requirement for amount of clear glass, so they had done the best job they could of minimizing the structural necessity to have a shear wall. They thought they had done a good job of mitigating the fact that some small part of their building would not have windows.

Mr. Baysinger confirmed that he thought they had enough room between the building and Pilkington to screen the transformers if PGE would not allow them to be subsurface. Mr. Boone

advised the code called for utilities to be underground unless exempted by the City Manager and if they were above ground they had to be screened. Mr. Baysinger explained two deciduous trees were proposed to be removed because the arborist had reported they were in poor condition (see Exhibit F-5).

Mr. Arguea clarified that the applicant's position was that if they did not get the access to Boones Ferry Road now, and the Rosewood connection to Boones Ferry Road never happened, or was not there when they started construction, their site would be constrained. He agreed that if they got the access, when it was time to make it a full movement access it should be aligned with the Les Schwab driveway and they should minimize conflicts.

Ms. Hastay was asked and explained that the Lake Grove Shopping Center property at Boones Ferry Road/Bryant had kept its existing nonconforming access to Boones Ferry Road because no changes were proposed to them. She confirmed that this applicant could probably have kept their Boones Ferry Road access point if they had kept their improvements to under 50%, but after scraping the site, relocating and consolidating driveways, and intensifying the proposed use on the site, it was no longer an option. Ms. Rooney related the City Council had just approved the intent to vacate and realign the Rosewood connection to Boones Ferry Road. Development on properties to the south would have to construct those right-of-way improvements. She clarified they had not yet proposed a land use application.

Mr. Baysinger was asked to comment on drivers' visual access to the retail building, especially those driving south on Boones Ferry Road. He said with only 18% lot coverage it was a pretty wide open site, but where the building blocked the view they would put a monument sign at the corner. He agreed with Mr. Poulson that the Goodwill donation center was a destination facility and clarified there was no retail business conducted there. To him the access to the retail components was the access to the 6,400 s.f. shops located at the perimeter of the site. They were more dependent on drivers being able to see the building. The applicant could put a sign up indicating individual tenants. If the hardship variance was approved, drivers could turn left into the site. He said that would be the only driveway in over 600 feet of frontage between Rosewood and Pilkington. People typically looked for such a driveway into a business. If they missed it they would someday have the opportunity to turn left on Rosewood and go back around the block to Pilkington. He said having the access made the best of a challenging site.

Proponents

Mike Duyn, Lake Oswego testified that he was a commercial real estate broker and owned the adjacent property, which was currently leased to R&M Marine, a boat repair facility. He anticipated and looked forward to the area eventually becoming some sort of a mixed-use employment center that would allow higher densities and more commercial activity. He said the frontage on Boones Ferry Road and Pilkington was critical for creating enhanced value of the area and those properties would be raised to higher use – to first class quality sites. He advised that retail users demanded exposure, access, a flowing way in and out of properties and slower paced traffic. He said a total of five smaller properties on a total of 5.7 acres, including his property, the Stuttgart Motors property and an apartment complex, were all in play, all ready to be developed as individual small developments, and they could all potentially go general commercial. Under that scenario there had to be flow so drivers could get in and out - not just one-way-in and one-way-out. He indicated he would like to see flow-through parking lots to create some quality projects. He noted the area was the City's front door. He related he had two driveways to Boones Ferry Road and two access points to Rosewood. He had anticipated that he was going to lose some, but he had found out at the pre-application conference that the City was going to close all of the driveways and allow no access Boones Ferry Road, not even the one proposed to be shared between the two properties. He said that greatly diminished the value of his property and affected the kind of tenants and

financing he was going to get, so it was a very important issue. He related that he had recently discussed selling his property to a grocer who wanted the access point. If the area became a commercial zone there could be a big restaurant, financial center, medical center and all kinds of potential uses, but keeping the flow coming in and out of the site was critical. He said he was upset to find out the City was recommending closure of access points on Boones Ferry Road. He hoped a compromise could be found that would allow the Commission to grant the hardship variance that would allow one access point that would serve both of their properties. That was fair and it allowed the whole neighborhood to breathe easier from a traffic perspective.

Paul Schultz, Lake Oswego, related that he was familiar with the area from childhood and he regularly drove through the intersection. His perspective was that the area had been underserved by development and had never been the best part of the City he would like it to be. He indicated that he would like to see a development like the applicant proposed, with a park-like setting and a fountain. He questioned why the City would drive traffic onto Pilkington, which was near the skate park and where kids still rode their bikes to Plaid Pantry to buy candy. He urged the Commission to decide to allow access onto Boones Ferry Road to keep traffic going where it should and keep Pilkington as family-friendly today as it was for him when he was a kid.

Opponents

None.

Neither for nor Against

David Emami, Lake Oswego, related that he had developed many projects in Lake Oswego. He owned the large complex on the other side of Pilkington at 7040 SW Pilkington. He related that his experience having Goodwill as a tenant was they were good tenants, but they had a costly problem that people dumped garbage. He indicated he was sure that the right-in/right-out access off Boones Ferry Road could be full of couches in the mornings. They did not have sufficient staff at a Goodwill collection center to pick up all of those items without help. He said the building was too small. It should be much larger to hide the junk people dumped there until it could be hauled away. The area where people would dump and run should be screened. He indicated that his experience at a location at Hall/Highway 99W was that right-in only was the solution for the time being because it would do no harm, but left-in would be quite dangerous and there would be many accidents. He recalled the engineer had said there could not be a median out of fairness to the other side of the street, but eventually there would be a median. He related that his complex across the street had a secondary exit route that was right-out turn only. There was a "No left turn" sign there and police enforced it. He advised another problem with the site was that there was not enough parking. He had 26 restaurants in his buildings. He estimated that there would only be enough parking for 1,500 s.f. of restaurant use at the applicant's site. He anticipated that the only services that could be there were very minimal services which were already available in the area, so it would be a vacant building. He related that he would make the retail building much smaller with much more parking so they could have some food services. He concluded that his experience told him this project needed lots of fine tuning.

Rebuttal

Mr. Baysinger explained that Goodwill prided itself on minimalizing how much stuff it had to haul to the landfill. In fact, it was able to derive value from 90% of the donations. He said Goodwill had trucks that went around during non-business hours to areas where illegal dumping had been a problem. He said that was not a challenge in Lake Oswego. As for left turns from Boones Ferry Road, he said the project was small and there would not be high volume until the other properties redeveloped and until the IP zoning (which limited types of uses) changed to general commercial. He related that parking after subtracting employee spaces was about 33 spaces. He said Mr. Emami was right that they had limited parking if they got quick-serve restaurants. He said they had

tried to find a blend that would maximize the site utility and make it attractive to potential tenants. They believed they could accommodate at least one quick-serve, but not a Starbucks, because Starbucks typically wanted to have a drive-up and they did not have a way to give them one. He said they thought the parking was adequate and pretty reasonable for a project of this size.

Deliberations

No one who had testified asked for the record to be kept open for additional testimony and evidence. Mr. Baysinger clarified that the applicant was not asking for a continuance and was not asking for additional time in which to submit a final written argument.

Chair Richards opened deliberations and asked staff to clarify the variance requests. Ms. Hastay clarified the applicant was asking for minor (2-foot) variances that would allow them to reduce the required 20-foot street front and street side yard setbacks to 18 feet. That was likely because they wanted to have deeper eaves on the buildings and some design amenities. They were also asking for a hardship variance to allow the Boones Ferry Road access.

The Commissioners discussed the hardship variance. Chair Richards recalled they had heard a lot of testimony about things that he thought were out of the Commission's purview because of the way the Code was written. An example was whether or not it created the highest and best use of the property. He said he thought that reasonable use, without the variance, was arguable, but the difference between 'reasonable' and 'maximum' use were key components here. He indicated he had some concern about whether or not allowing left turns from Boones Ferry Road into the site would be consistent with eventual implementation of the Boones Ferry Road plan that would be implemented farther up the road and might eventually be implemented farther down the road. Another aspect of granting the access was safety. There were existing entrances to the site and there could be a left turn there now, but there were too few left turns now to test the safety of left turns because there was not an existing destination point. Another aspect to consider was they would be moving onto Boones Ferry Road close to the signal at Pilkington. If there were many cars coming out of the Boones Ferry Road access then there would be a queue. He recalled testimony suggested making the access right turn in only with no exit onto Boones Ferry Road. Then the exit would have to be on Pilkington. He indicated that changed the whole complexion of the request for the hardship variance in his mind. Mr. Poulson asked him to clarify that he meant right-in only and no right-out at the Boones Ferry Road access. Chair Richards clarified that was what he meant. Drivers on Boones Ferry Road could turn into the site at the Boones Ferry Road access, but they would have to exit the site via Pilkington and drive to the intersection where there was a signal. They could not exit at the Boones Ferry Road access. Mr. Ahrend said he understood the applicant's proposal was to make the Boones Ferry Road access inbound-only until a future time when the boat storage facility was redeveloped. Then it would become a wider driveway that provided two-way flow. Chair Richards confirmed that was what he had heard.

Vice Chair Creighton noted there was a discussion on page 209 that indicated the owner of the parcel to the south had apparently agreed to eliminate his two current accesses onto Boones Ferry Road and that would reduce the total number of accesses along [that part of] Boones Ferry Road from four to one [see the letter from Mr. Pfeiffer in Exhibit F-4]. He commented that was a pretty significant concession. Ms. Johnson said she understood that if that adjacent property was redeveloped it would not have any access to Boones Ferry Road – just as the applicant's site had no access to Boones Ferry Road - and it would have to take access from Rosewood. Mr. Poulson noted that would be the case unless they applied for a hardship variance.

Mr. Ahrend said his position was that in regard to traffic flow/circulation having an access to Boones Ferry Road would be good; and, it should be lined up with the driveway across the street. However, the code clearly said that no access was allowed to Boones Ferry Road if they had

alternate access. He agreed that staff was correct that this did not meet the criteria for approving a hardship variance. He explained another perspective was that they were starting with a property that was not allowed to have Boones Ferry Road access where granting access would increase its value. They were not starting with a property that was allowed access to Boones Ferry Road and trying to make the access work in order to maintain its value. He observed that the potential Rosewood connection to Boones Ferry Road would immensely improve circulation. All of the affected parcels would have that connection to use sometime in the future. He related that he was inclined to not approve the request for the Boones Ferry Road access.

Vice Chair Creighton related that he saw significant hardship and he was inclined to allow the access to Boones Ferry Road. As an architect, he would have given his client the same advice. The site had more than 50% frontage on roadways. One of them was a major arterial. He was also seeing economic impact. He had read Ms. Lamanna's information with interest. He said he thought Mr. Arguea had made a compelling argument when he described how Goodwill's trucks would need to circulate and back into the collection center if they had to enter and leave the site via Pilkington. He anticipated that if the Boones Ferry Road access was denied the applicant would have to change the entire site plan to the point the Commissioners would not recognize it if it came back.

Mr. Poulson said he had a code-efficacy problem. The Code wanted to make Boones Ferry Road a thoroughfare and get people from point A to point B without stopping, but the land use (small sites with a lot of commercial development) wanted access and a lot of interaction with Boones Ferry Road. He related that he did not know how to resolve that other than to use common sense. He said he was inclined to support an access onto Boones Ferry Road to support the commercial environment as long as it was done safely. Chair Richards asked him to clarify if when he said 'safely' he meant right-in only and no left turn. Mr. Poulson clarified that he would not limit it that way because he thought that engineers should carefully look to see if a left hand approach was possible because it would bring new customers to retail on the site. Vice Chair Creighton anticipated that by the time a driver driving south on Boones Ferry Road and approaching the intersection in a through lane saw the Goodwill signage they would have already missed the opportunity to go there if the access point was not there. They would not go there. Mr. Poulson responded that he did not like the site layout, but the Commission did not get a say about that. If someone was driving south and wanted to go into the shops they could actually drive past them before they noticed the access on the other side of the Goodwill store. That made it more of a planned destination facility. Vice Chair Creighton observed that if people were driving by and saw it, but had no opportunity to go into the site from southbound Boones Ferry Road, that lost traffic amounted to an economic hardship.

Ms. Johnson inquired if the applicant had considered a different mix of uses, did they think it would require the Boones Ferry Road access. Mr. Poulson reasoned that if it was more of a destination business it would not require that access, but if it was a retail establishment that depended in part upon attracting drive-by traffic then the access to Boones Ferry Road was a critical component. Mr. Ahrend agreed that any user of that site would like to have that driveway. However, the way he read the Code it did not allow it. He indicated that he thought the Code probably should be changed. He advised that ODOT was loosening access rules because the legislature called for them to do that. If the City Council said it was too restrictive to not allow access to Boones Ferry Road and directed staff to draft some new rules he would totally support that.

Vice Chair Creighton indicated he thought the Commission had some latitude under the Code. He pointed out that the first hardship variance criterion meant they could evaluate reasonable use. As far as self-created hardship there were physical constraints because it was a weird site. There was economic impact.

Mr. Needham related he was familiar with the traffic flow in the area and made left and right turns to get in and out of the vet clinic across the street. While it did take some care, he had never had a problem turning left. However, the access closest to the Starbucks in the center at Bryant/Boones Ferry Road was very problematic. The City did not have the ability to close it. He said he thought there was good evidence that not allowing the Boones Ferry Road access would create an economic hardship for the applicant's project. However, he thought that was because of the way the project was designed. The hardship was for the most part created by the applicant. That conclusion would mean the Code would not allow them to grant the hardship variance. He acknowledged it was a really hard question.

Mr. Needham explained that as a rule he did not like to grant minor variances unless there was something significant about the property that really demanded granting the variance. He could not agree to the proposed minor variances. He noted the applicant was asking for 2-foot variances when they had a large property. He did not see how that was necessary when they could alter the project in a minor way so they did not need those variances. Mr. Ahrend said he understood Mr. Needham's point, but he was inclined to approve them in this case. Chair Richards indicated that variance requests should be looked at on a case by case basis and sometimes they did make sense in the overall design. Ms. Johnson observed the overall design was predicated on the Boones Ferry Road access. If they were not going to grant the Boones Ferry Road access then the minor variances would not matter because the applicant would have to change the entire plan. She suggested they might be trying to put too many uses on a small property.

Chair Richards discussed the Pilkington façade. He recalled the applicant contended that the small amount of change in material to stucco on the north elevation was probably not going to be significant in the overall design and that the painted metal doors should be allowed because the viewers' eyes would be drawn to the fountain, or they would be screened or something. However, he did not see it that way. It was still part of the face of the building, just like the Boones Ferry Road elevation. He would not have it be significantly different. He indicated that he did not have a problem with the change from red brick to the lighter color brick and the change to the 3.5-inch size. He thought it was a reasonable design that met the standard. Mr. Needham referred to the stucco side of the building. He said it might not be his first choice, but he thought the retail tenants needed storage. He commented that he did not like to see windows blacked out along State Street because the areas were being used for storage. Chair Richards commented that the lack of fenestration bothered him more than the stucco did.

Mr. Ahrend indicated that he was okay with the brick the applicant proposed. He reasoned that a retail building could not have all sides be the front because they needed storage area. As for providing more glass on that side of the building, he would not want it to look like there was a public entrance there. He said he thought what the applicant proposed was a good compromise. Vice Chair Creighton agreed with Mr. Ahrend. He said he did not have a problem with the metal doors, they were screened behind a fairly sizeable water feature. They had to have some wall area - not blacked out windows. Chair Richards commented that there were actually five sides to the building and the Pilkington side was only the "back side" because of the way it was placed on the property with this design.

Vice Chair Creighton asked if anyone had any issues with the design the donation center. Mr. Poulson explained that he generally did not like it, and he did not see why it could not be moved away from Boones Ferry Road so the retail side was more visible. He noted Goodwill was a destination facility and it did not need to have that visibility. Mr. Needham indicated he was inclined to accept it because it worked well on State Street. Drivers just pulled in and allowed Goodwill personnel to collect the donations out of the car and give them a receipt, and then they

drove off. At this site, without the Boones Ferry Road access, they would have to drive around via Pilkington.

Chair Richards conducted a straw poll related to how each Commissioner stood on the application as proposed and then observed that four Commissioners would deny the application. He announced a five-minute recess and thereafter reconvened the hearing.

After Mr. Boone advised the process was past the time when the applicant could request that the record be kept open for seven days for submittal of additional information, Mr. Pfeiffer related that the applicant wanted the Commission to vote that night.

Ms. Johnson **moved to deny LU 13-0043** based on the fact that they were declining the hardship variance. Mr. Ahrend **seconded** the motion and it **passed** 4:2. Mr. Ahrend, Ms. Johnson, Mr. Needham, and Chair Richards voted for the motion. Mr. Poulson and Vice Chair Creighton voted against. Mr. Boone announced the vote on the findings and final recommendation would be conducted on January 22, 2014, at 6:00 p.m.

GENERAL PLANNING AND OTHER BUSINESS

None.

ADJOURNMENT

There being no other business Chair Richards adjourned the meeting at approximately 8:30 p.m.

Respectfully submitted,

/s/ Janice Reynolds

Janice Reynolds
Administrative Support