



520 SW Yamhill St.  
Suite 235  
Portland, OR 97204  
Christopher P. Koback

503-205-8400 main  
503-205-8404 direct

[chriskoback@hkcllp.com](mailto:chriskoback@hkcllp.com)

November 17, 2015

**VIA EMAIL**

City of Lake Oswego  
City Council  
Kent Studebaker, Mayor  
Joe Buck, Councilor  
Charles Collins, Councilor  
Jeff Gudman, Councilor  
Jon Gustafson, Council  
Jackie Manz, Councilor  
Skip O'Neill, Councilor  
380 A Avenue, Third Floor  
Lake Oswego, OR 97034

Re: File No.: LU 15-0019-1877

Dear Mayor and Council Members:

This firm represents the owners of the properties identified as 7 Centerpointe Drive and 8-10 Centerpointe Drive. The properties are currently improved with a restaurant - Oswego Grill and retail shops - Centerpointe Shops. The properties share a common entrance driveway and parking lot. We enclose a recent aerial photograph that depicts the properties as Exhibit 1 to this letter.

We are writing to respectfully request that the Council direct Staff to further revise the new sensitive lands map to remove from an area designated as sensitive lands, existing and approved development on our clients' properties. Specifically, the revised sensitive lands map under consideration extends the sensitive lands onto the driveway and a small portion of the parking lot that serves the uses on our clients' properties. In the alternative, we are requesting that because the existing development was approved under the code at the time, that there be a written acknowledgment that our clients' existing development that may be included within the revised sensitive lands map be exempted from any sensitive lands code provisions.

Our clients' basic position is that because all development existing on their properties was approved under the City's regulations, including any environmental regulations, they should not have to bear the risk that in the future City regulations may be applied to restrict or prohibit the modification, repair or redevelopment of that part of their property. Further, they are concerned that if they wanted to sell the property, the sensitive lands overlay would create uncertainty in the minds of potential buyers and impact the market value.

The area in question is where the driveway comes off Centerpointe Drive. As we compared the revised sensitive lands map to the existing development, a significant amount of the driveway and some of the parking lot north and east of it, are included in the sensitive lands.

We note that one concern that precipitated the new natural resource program was that areas that may not be significant resources were being over-regulated. The objective was to create a new program that ensured a balanced, equitable and environmentally sound approach that employs appropriate regulations.

### Prior Approvals

Our clients believe that the history behind the development of their properties demonstrates that the most appropriate result is to remove the existing development on their properties from the revised map.

We completed a public records request design to obtain all of the relevant material related to prior land use approvals affecting our clients' properties. Our historical recitation is based upon the records we received from the City. We cannot assure that we received every record that was generated during the processes that were applied in those prior actions. In fact, it appears that we did not receive a number of exhibits referenced in some of the approvals.

The first approval we know of was a 1982 Overall Development Plan for a 35 acres parcel of property that included our clients' property. ODPS 1-82. What we understand to be the final map of the approved plan is enclosed as part of Exhibit 2, which also contains relevant pages of the ODPS approval. Our clients' property comprises the area labeled "Phase II" on the map. The plan included 9 acres of open space, four acres of which are in "Area A", adjacent to our clients' property. There appears to be two stream corridors reflected on the map, one in Area A and one in Area C. A description of the proposal noted that storm water on the overall site was carried by the two stream corridors and called for constructing storm water detention facilities in both corridors. Exhibit 2, p. 2.

The decision noted in the findings that stream corridor protection was not sufficiently defined at that time. The decision went on to require that the Conservancy Commission review the final plan prior to Staff or Commission approval. It further noted that the Conservancy Commission would review development applications for each phase prior to review by the Development Review Board. Exhibit 2, p. 3.

We received records related to an application to modify the 1982 ODPS that was filed in 1986. We did not receive any records related to any intervening Conservancy Commission review that the original ODPS suggested would take place. However, the 1986 decision includes the following statement: "The Planning Commission found that no development was proposed in the already preserved "stream corridor" adjacent to Lot 1. This stream corridor was found to be the drainage swale and storm water detention area preserved in open space Tract A (see Exhibits 4 and 5)." Copies of the relevant pages of that decision are enclosed as Exhibit 3.

We did not receive the exhibits referenced so we cannot confirm that Tract A is the same as Area A on the 1982 map, but it would seem that that has to be the case. The point is that the stream corridors on the 35 acre parcel that was the subject of the ODPS were reviewed for the appropriate level of protection. The City permitted at least one stream corridor, the one we believe is adjacent to our clients' property, to be used for storm water detention facilities.

The records we received included a 1989 approval for an office building that was to be on the property. The diagram in the decision reflects that the proposed building would have backed up to the hill leading down to the "stream corridor". We enclosed copies of the relevant pages of that decision and the above referenced drawing as Exhibit 4. The proposed driveway for the proposed development appears to be in exactly the same place as the current driveway. The approval also included drawings submitted by the applicant that depicts the use of the stream corridor as a water quality treatment facility. The drawings also reveal that at some time after 1982, the open space designated as "Area A" was improved with man-made development, including paved trails. Exhibit 4, p. 5.

The point of including the 1989 approval, which obviously, did not get constructed, is to illustrate that since 1982, Area A was evaluated by the City in connection with development. Under the 1989 approval, development was approved in the area we are asking the Council to remove from the proposed revised sensitive lands map. However, as we will address later, and relevant to our clients alternative request, it does not appear that prior approvals determined what, if any protection of resources was required. However, there were no conditions specific to protecting resources in the decision.

The Development Review Board approved the construction of the restaurant on our clients' property in 1990. At that time it was a Chili's restaurant. The 1990 approval includes a few items worth noting. First, it appears that the development was required to construct its storm water treatment facilities in the existing stream corridor. We enclosed a copy of the first page of that approval and the relevant drawings, including storm water treatment plan from that approval as Exhibit 5. Second, the drawings reflect that there were areas designated in the corridor for non-disturbance. However, there was no specific discussion on protecting resources. Lastly, the drawing confirms that in the area near the driveway, the existing stream, or drainage ditch, was not in a natural state but was piped under Centerpointe Drive. The 1990 decision does not reveal that any additional protection was required within Area A.

In 2008, our clients processed a minor development application to modify the exterior of the existing restaurant. That was to change the restaurant from a Chili's to the current use. Again, there was no additional resource protection deemed necessary and no discussion of that topic.

#### Requested Action

Our clients are requesting a further minor revision to the proposed sensitive lands map to remove from areas shown as being sensitive lands, the existing development on their properties that was reviewed and approved by the City. Our clients understand that under the proposed code revisions, they will not be required to remove or change their current development. That is not the point of their request. They own development that has been fully reviewed and approved under the

applicable regulations. They feel that they should have the right to continue their ownership without the uncertainty that future regulations that affect sensitive lands will negatively impact the use and value of that development. Moreover, they do not believe under the circumstances and in light of the prior approvals, they should have to undergo any environmental review to repair, replace or modify their existing development. Any such review could lead to conditions that were not imposed in the prior approvals and affect the future use of their property.

Our clients do not feel that their request takes away from the goals the City seeks to accomplish in implementing its new program. The prior approvals for the property evaluated the protection needs within the corridor and approved decisions accordingly. Adequate protection has been implemented. Indeed, in the area in question, it is hard to imagine why more should be done to protect an intermittent stream that serves as a drainage facility and is within a man-made culvert.

As an alternative, if Council determines that it cannot further revise the proposed map as requests, our clients request that Council direct staff to confirm in writing that the existing development we identified is exempt from the Sensitive Lands Code Provisions. As we read the proposed code revisions, development within sensitive lands designations, are subject to Sensitive Lands Development Review, with certain exceptions. As we read the proposed code revisions, one exception is for resources located in the boundaries of a development permit approved prior to August 1997, if the resource was identified and protected pursuant to regulations in place at the time, and there were conditions in the approval protecting the resources.

Our clients are concerned that the existing development may not fall within the exception because the prior decisions do not appear to include any specific condition protecting resources. Although the prior approvals address the area now designated as sensitive lands, none of the approvals we reviewed include any discussion of required setbacks or other protection measures. Thus, our clients feel that it is reasonable to request and obtain confirmation that their existing development is exempt from Sensitive Lands Review under the proposed code revisions.

Very truly yours,

HATHAWAY KOBACK CONNORS LLP



Christopher P. Koback

CPK/pl

Enclosures

cc (w/encl.): Scot Siegel

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OSWEGO**[Explorer](#) | [Property](#) | [Maps](#) | [Projects](#) | [Crime](#) | [Census](#) | [Environmental](#) |  
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[Zoning](#) | [Zip Code](#) | [Public Art](#)**Aerial Photo****2013** / '12 / '11 / '10 / '09 / '08 / '07 / '06 / '05 / '04 / '03 / '02 / '01 6" / 2' / 4' / 10' / 20' Streets:  Lots:  Dot: 

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City of Portland, Corporate GIS

9/9/2015

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BEFORE THE PLANNING COMMISSION  
OF THE  
CITY OF LAKE OSWEGO

|   |                       |   |
|---|-----------------------|---|
| A REQUEST FOR APPROVAL OF OVERALL<br>DEVELOPMENT PLAN AND SCHEDULE<br>(ODPS) FOR HIGHWAY COMMERCIAL<br>SITE AT NORTHEAST CORNER OF KRUSE<br>WAY AND I-5 NORTHBOUND ACCESS RAMPA | )<br>)<br>)<br>)<br>) | ODPS 1-82<br><br>FINDINGS, CONCLUSIONS<br>AND ORDER |
|---|-----------------------|---|

NATURE OF APPLICATION

This application is an application for Overall Development Plan and Schedule for a 35-acre property located at the NE corner of the intersection of Kruse Way and the northbound I-5 access ramp. The proposal would allow office, hotel and retail uses. The property is described as the southwest 35 acres of Tax Lot 100 of Map 2 1E 6. Legal description attached.

HEARING

The Planning Commission held a public hearing and considered this application at its meeting of December 27, 1962.

Following the presentation of exhibits and testimony at that hearing, the Planning Commission voted 6-0 to approve the preliminary Overall Development Plan and Schedule with conditions.

FACTS

The following is a summary of the facts and testimony presented which were found most relevant to this decision. These facts are presented in more detail in the staff report dated December 16, 1962 the applicant's proposal, Exhibit B and the minutes of the hearing.

1 18% of current ridership is willing to walk 1/4 mile to  
2 transit.

3 7. Water and sewer are available to the site and have  
4 capacity to serve the proposed development.

5 8. Storm drainage is carried by the two stream corridors on  
6 the property. Storm detention facilities will be  
7 necessary in both corridors. The Ball Creek corridor  
8 carries drainage from off-site as well as on-site. The  
9 unnamed corridor on the southern end of the property  
10 carries drainage from this site and the Westlake  
11 Residential area only.

12 9. The Westlake PUD locates multi-family land to the north  
13 and east; and a small amount of single family generally  
14 to the north. Review of the buffering of residential  
15 from commercial uses will need to occur at some stage of  
16 development approval.

17 10. Off-site street improvements will include an improved  
18 left turn lane on Kruse Way and construction of a  
19 traffic signal. These improvements could be financed  
20 through the LID process.

21 CRITERIA

22 The request under consideration was a quasi-judicial procedure,  
23 the conduct of which is regulated by LOC 49.610-49.620.

24 Applicable requirements of the Lake Oswego Comprehensive Plan,  
25 LCDC Goals and City Codes and Ordinances were applied. The  
26

Page 3 (ODPS 1-82)

- 1           1. The required open space be more clearly indicated on  
2           the final ODPS by defining the two stream corridors,  
3           and by indicating that a larger portion of the  
4           conifer forest be preserved. The Conservancy  
5           Commission is to review the final ODPS prior to  
6           Staff or Commission approval. The Conservancy  
7           Commission will also review development applications  
8           for each phase prior to review by the Development  
9           Review Board.
- 10          2. Traffic generation shall be limited to the same or  
11          less than that relied upon in the approval under ZC  
12          6-79 until such time as the 1982 Buttke Kruse Way  
13          Traffic Study is adopted, establishing a functioning  
14          traffic management program for the Kruse Way  
15          Corridor. If no trip assignments are adopted for  
16          this parcel, the approval of ZC 6-79 remains in  
17          effect.
- 18          3. The location of the interior street and pedestrian  
19          network will be generally indicated on the final  
20          ODPS. The pedestrian network will connect phases  
21          with each other and include transit stops.
- 22          4. That the access point from the collector street to  
23          Phase III be located sufficient distance from the  
24          intersection with Kruse Way to allow the most  
25          intensive use proposed, at peak hour traffic flows.
- 26          5. That storm detention sites be generally indicated on  
Page          the final ODPS with final design of the northerly

6 (ODPS 1-82)





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BEFORE THE PLANNING COMMISSION  
OF THE  
CITY OF LAKE OSWEGO

REQUEST FOR MODIFICATION OF ) ODPS 1-82(MOD. 8/86)-426  
THE CENTERPOINTE OVERALL )  
DEVELOPMENT PLAN & SCHEDULE) FINDINGS, CONCLUSIONS & ORDER

NATURE OF APPLICATION

This application is a request by OTAK, Inc. (Applicants) and Birtcher, Frank, McDonald (Owners) to modify the originally approved 1982 Centerpointe ODPS to allow the construction of a 152 room courtyard hotel and to modify the open space configuration to allow .21 acre of the required 1.0 acre to be located outside of the drawn boundaries of the conifer forest. The property is described as Tax Lots 500 - 1400 of Tax Map 2 1E 6, located within the Centerpointe Office Campus.

HEARINGS

The Planning Commission held public hearings and considered this application at its meetings of December 22, 1986 and January 12, 1987.

CRITERIA AND STANDARDS

Zoning code:

|                 |                               |
|-----------------|-------------------------------|
| LOC 48.300-.305 | Commercial Districts          |
| LOC 48.315(8)   | I-5/Kruse Way Site            |
| LOC 48.315(10)  | Traffic Management            |
| LOC 48.315(11)  | Development Intensity Allowed |

PAGE 1 ODPS 1-82(Mod. 8/86)-426  
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letter presented new evidence or addressed specific criteria for approval.

2. At the December 22, 1986 meeting a letter, Exhibit 15, was received from Wilma McNulty which raised questions about natural features on the site and the need for Conservancy Commission review. The Planning Commission agreed with the staff analysis illustrated on page 4 of the staff report of January 5, 1987, and with the applicant's supplemental application (Exhibit 17), which addressed those issues on pages 4 and 5.

3. Also submitted at the December 22, 1986 meeting was a letter, Exhibit 16, from Linda Simpson which questioned the change from "gross" to "net" square footage, the impact to traffic, the labeling of open space exhibits which appeared to conflict, the preservation of a stream corridor adjacent to Lot 1, the actual size of parcels relative to the percentage of open space, the ability of the Conservancy Commission to review the proposal, and whether the hotel could be permitted to have a restaurant.

The Planning Commission agreed that the Findings of ODPS-1-82-102 (Exhibit 11) explained the change from "gross" to "net" square feet and that the traffic update (Exhibit 10) illustrated that there would actually be a small net reduction in the number of cars utilizing the intersection of Kruse Oaks Boulevard and Kruse Way. The Commission also relied on the January 12, 1987 testimony of Nawzud Othman, representing the applicant, to support the findings with respect to the square footage of uses and trip generation.

The applicant submitted a supplemental application (Exhibit 17) which clarified the acreage of the proposed lots and open space tracts. The Planning Commission

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ODPS 1-82(Mod. 8/86)-426  
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reviewed the supplemental application, together with a conifer forest boundary map (Exhibit 18), and a map showing the .21 acre open space area proposed for reforestation (Exhibit 19). These two maps were submitted by the applicant at the January 12, 1987 meeting. The Commission found that these exhibits clarified the applicant's proposal.

The Planning Commission found that no development was proposed in the already-preserved "stream corridor" adjacent to Lot 1. This stream corridor was found to be the drainage swale and storm water detention area preserved in open space Tract "A" (see Exhibits 4 and 5).

Regarding Conservancy Commission review, the Planning Commission agreed with the staff analysis illustrated on page 4 of the staff report of January 5, 1987 and with the applicant's supplemental application (Exhibit 17) which addressed the issue on pages 4 and 5.

The Commission reviewed the applicant's supplemental application (Exhibit 17, page 7) which discussed the proposal's compliance with the Zoning Code. The Commission agreed that restaurants accessory to hotels or motels were permitted within the Highway Commercial Zone (LOC 48.305).

4. The applicant presented slides of the Conifer Forest area and the .21 acre proposed addition to the area (See Exhibit 20) at the January 12, 1987 meeting. These slides, together with photographs of the same area (Exhibit 21), provided a basis for the Planning Commission to find that the Conifer Forest Boundary should also include the .21 acre open space area proposed for

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4 ODPS 1-82(Mod. 8/86)-426  
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BEFORE THE DEVELOPMENT REVIEW BOARD  
OF THE  
CITY OF LAKE OSWEGO

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A REQUEST FOR APPROVAL TO) DR 27-89\VAR 45-89-756  
CONSTRUCT A FOUR AND ONE-) (Birtcher Frank Properties)  
HALF STORY OFFICE ) FINDINGS, CONCLUSIONS & ORDER  
BUILDING WITH A TWO- )  
LEVEL PARKING STRUCTURE )

NATURE OF APPLICATION

The applicant is requesting approval to construct a 94,000, four and one-half story office building with a two-level parking structure. The parking structure requires a variance to the aisle dimensions of the Parking Standard. The site is located at 7 Centerpointe (Tax Lot 01100 of Tax Map 2 1E 06).

HEARINGS

The Development Review Board held a public hearing and considered this application at its meeting of February 21, 1990.

CRITERIA AND STANDARDS

A. City of Lake Oswego Comprehensive Plan:

Impact Management Policies  
General Policy II

Commercial Land Use Policies  
General Policy V

B. City of Lake Oswego Zoning Ordinance:

LOC 48.300-48.315 Commercial Districts  
LOC 48.315(8) Kruse Way Commercial Site

C. City of Lake Oswego Development Code:

LOC 49.300 Major Development Procedures  
LOC 49.510 Variances  
LOC 49.615 Criteria for Approval

PAGE

1 DR 27-89\VAR 45-89-756

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D. City of Lake Oswego Development Standards:

|                 |  |
|-----------------|--|
| 2.005 - 2.040   | Building Design                              |
| 5.005 - 5.040   | Street Lights                                |
| 6.005 - 6.040   | Transit System                               |
| 7.005 - 7.040   | Parking & Loading Standard                   |
| 8.005 - 8.040   | Park and Open Space                          |
| 9.005 - 9.040   | Landscaping, Screening and Buffering         |
| 10.005 - 10.040 | Fences                                       |
| 11.005 - 11.040 | Drainage for Major Development               |
| 14.005 - 14.040 | Utility Standard                             |
| 16.005 - 16.040 | Hillside Protection and Erosion Control      |
| 18.005 - 18.040 | Access Standard                              |
| 19.005 - 19.040 | Site Circulation - Private Streets/Driveways |
| 20.005 - 20.040 | Site Circulation - Bikeways and Walkways     |

E. City of Lake Oswego Prior Approval:

ODPS 1-82

CONCLUSION

The Development Review Board concludes that DR 27-89\VAR 45-89 can be made to comply with all applicable criteria by the application of certain conditions.

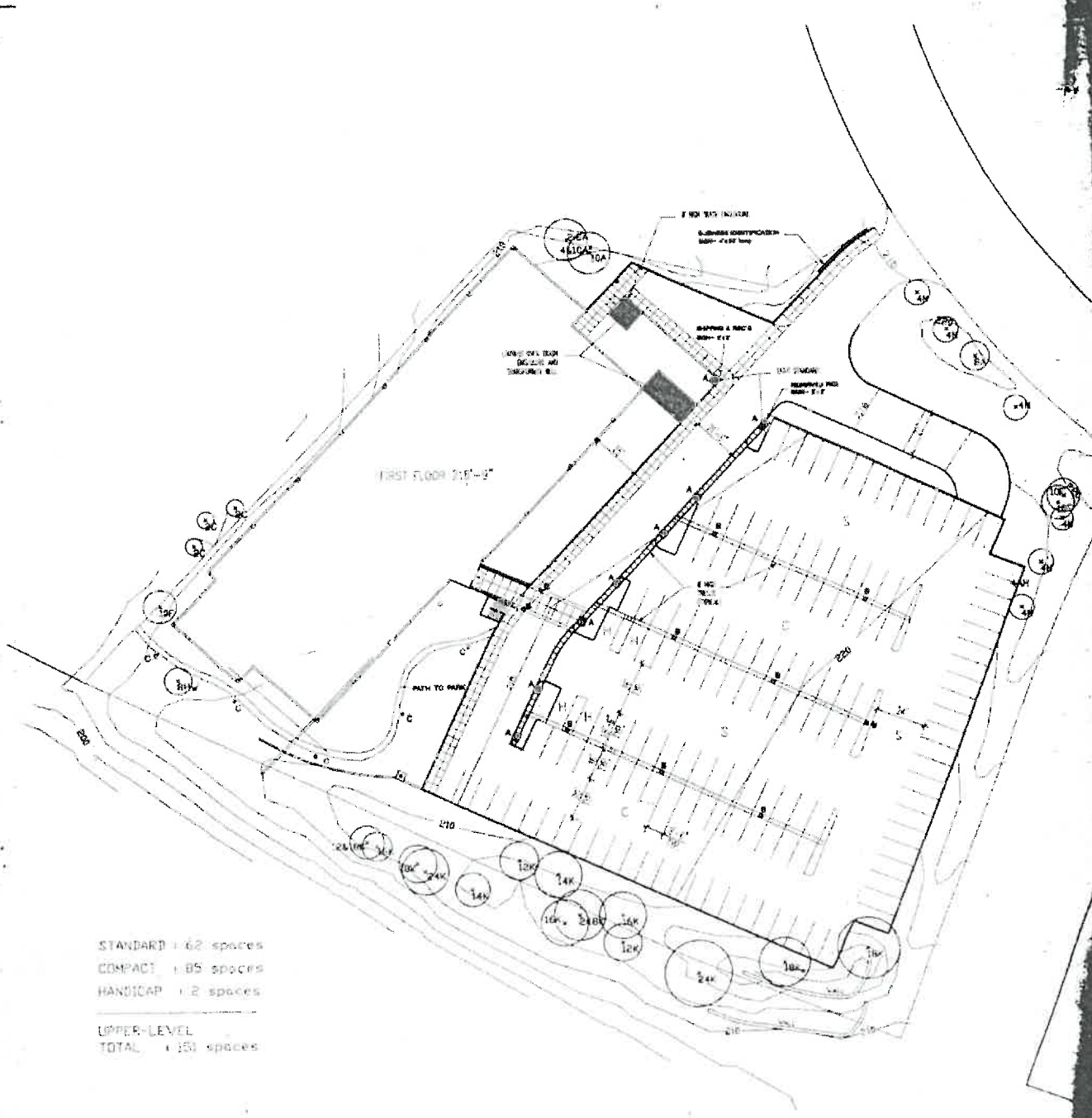
FINDINGS AND REASONS

The Development Review Board incorporates the February 9, 1990 staff report on DR 27-89\VAR 45-89 as support for its decision, supplemented by the following:

1. The applicant testified that the variance request for the parking aisle dimension should be granted to avoid a hardship and that the hardship was due to the size and shape of the property and this need to preserve trees in a significant setback area along Kruse Way. The applicant also cited the saving of the trees and the ability to safely utilize the parking structure as reasons why no injury would result by the granting of the variance.

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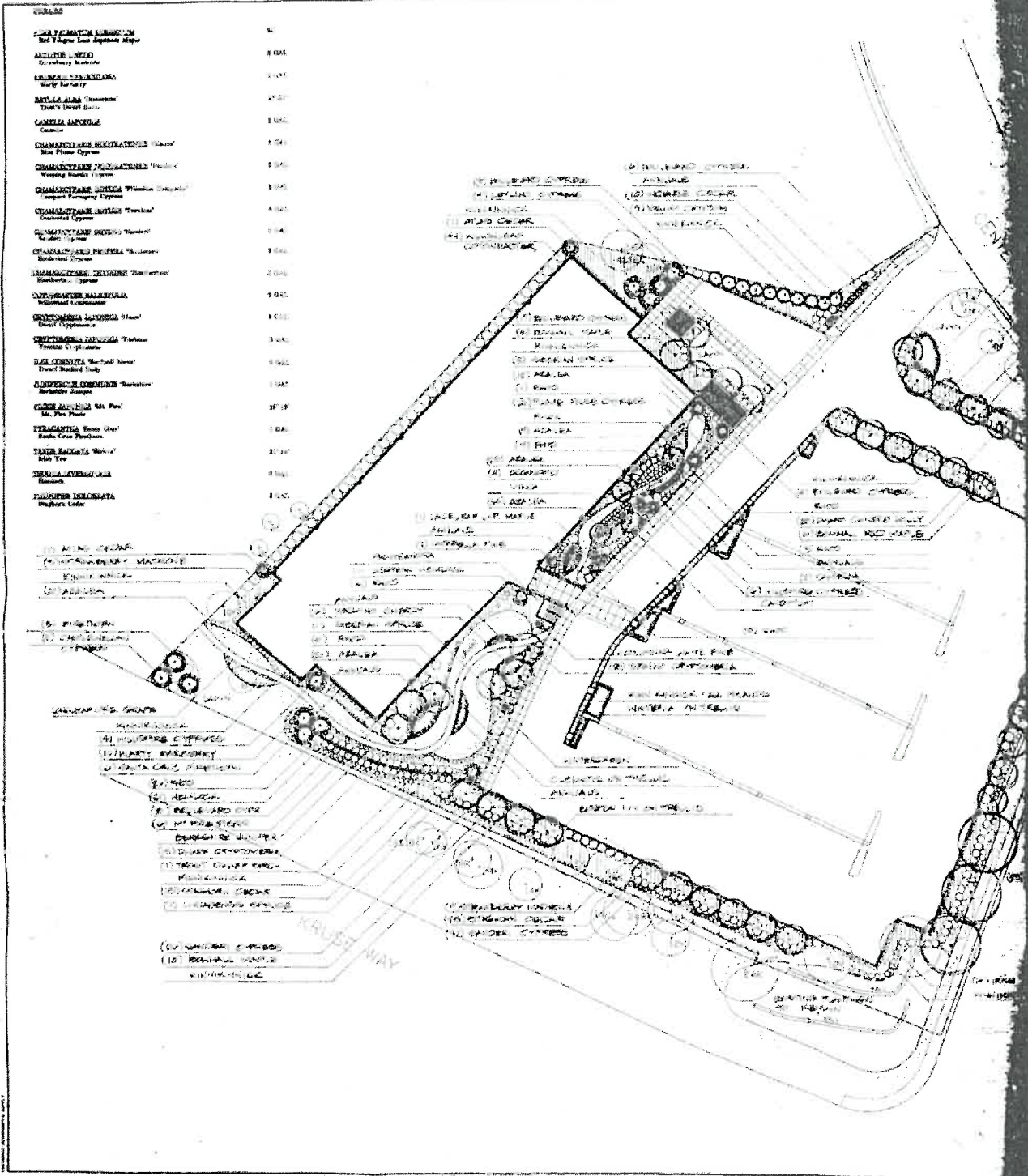
2 DR 27-89\VAR 45-89-756



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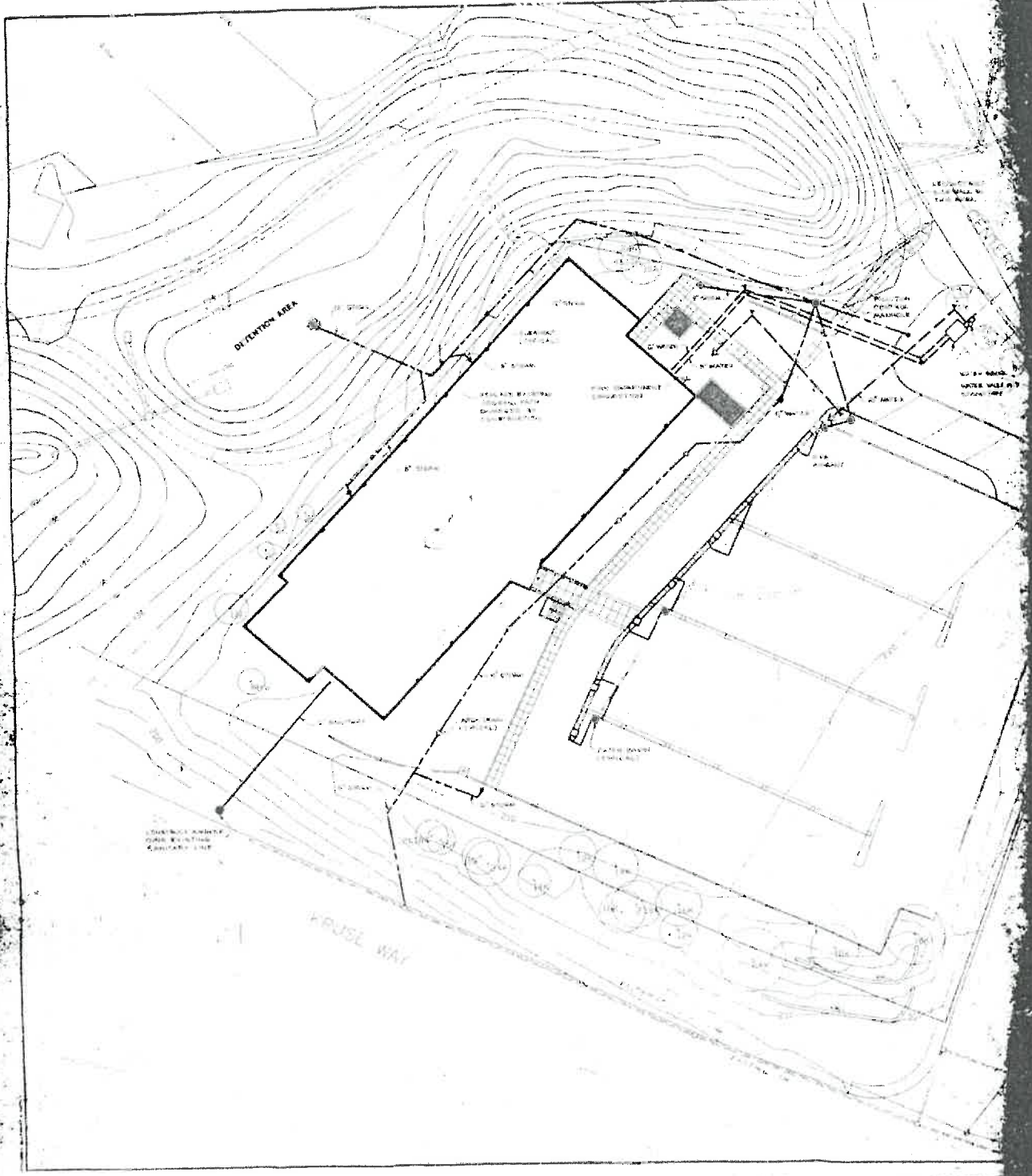
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BEFORE THE DEVELOPMENT REVIEW BOARD  
OF THE  
CITY OF LAKE OSWEGO

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5 A REQUEST FOR APPROVAL TO )  
6 CONSTRUCT A 6,000 SQ. FT. )  
7 RESTAURANT. THE PARKING )  
8 LOT IS PROPOSED TO SERVE )  
9 AN ADDITIONAL 7,500 SQ. )  
10 FT. RESTAURANT WHICH WILL )  
11 BE SUBMITTED SEPARATELY. )  
12 THE PARKING LOT REQUIRES )  
13 A VARIANCE TO THE AISLE )  
14 DIMENSIONS OF THE PARKING )  
15 STANDARD [7.020(7)]. )

DR 19-90\VAR 29-90-838  
(Bircher Frank Properties)  
FINDINGS, CONCLUSIONS & ORDER

16 NATURE OF APPLICATION

17 The applicant is requesting approval to construct a 6,000 sq. ft. restaurant. The parking lot is  
18 proposed to serve an additional 7,500 sq. ft. restaurant which will be submitted separately. The  
19 parking lot requires a variance to the aisle dimensions of the Parking Standard [7.020(7)]. The  
20 site is adjacent to Kruse Way, Kruse Oaks Boulevard and Centerpointe Drive, (Tax Lot 1100 of  
21 Tax Map 2 1E 6).

22 HEARINGS

23 The Development Review Board held a public hearing and considered this application at its  
24 meeting of November 19, 1990.

25 CRITERIA AND STANDARDS

26 A. City of Lake Oswego Comprehensive Plan:

27 Impact Management Policy Element  
28 Natural Resource Policy Element  
29 Commercial Land Use Policy Element  
30 Transportation Land Use Policy Element

31 B. City of Lake Oswego Zoning Ordinance:

32 LOC 48.300-48.315 Commercial Districts  
33 LOC 48.315(8) Kruse Way Commercial Site  
34 LOC 48.530 Vision Clearance

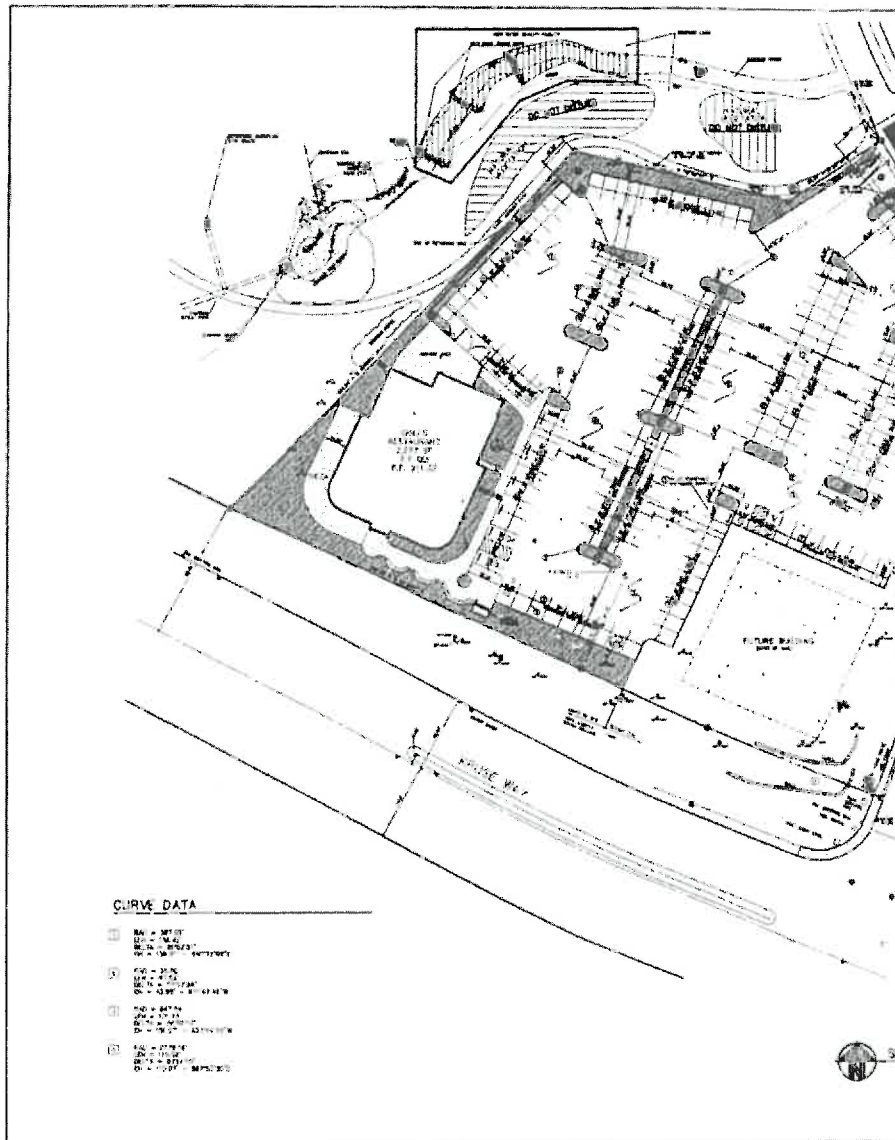
35 C. City of Lake Oswego Development Code:

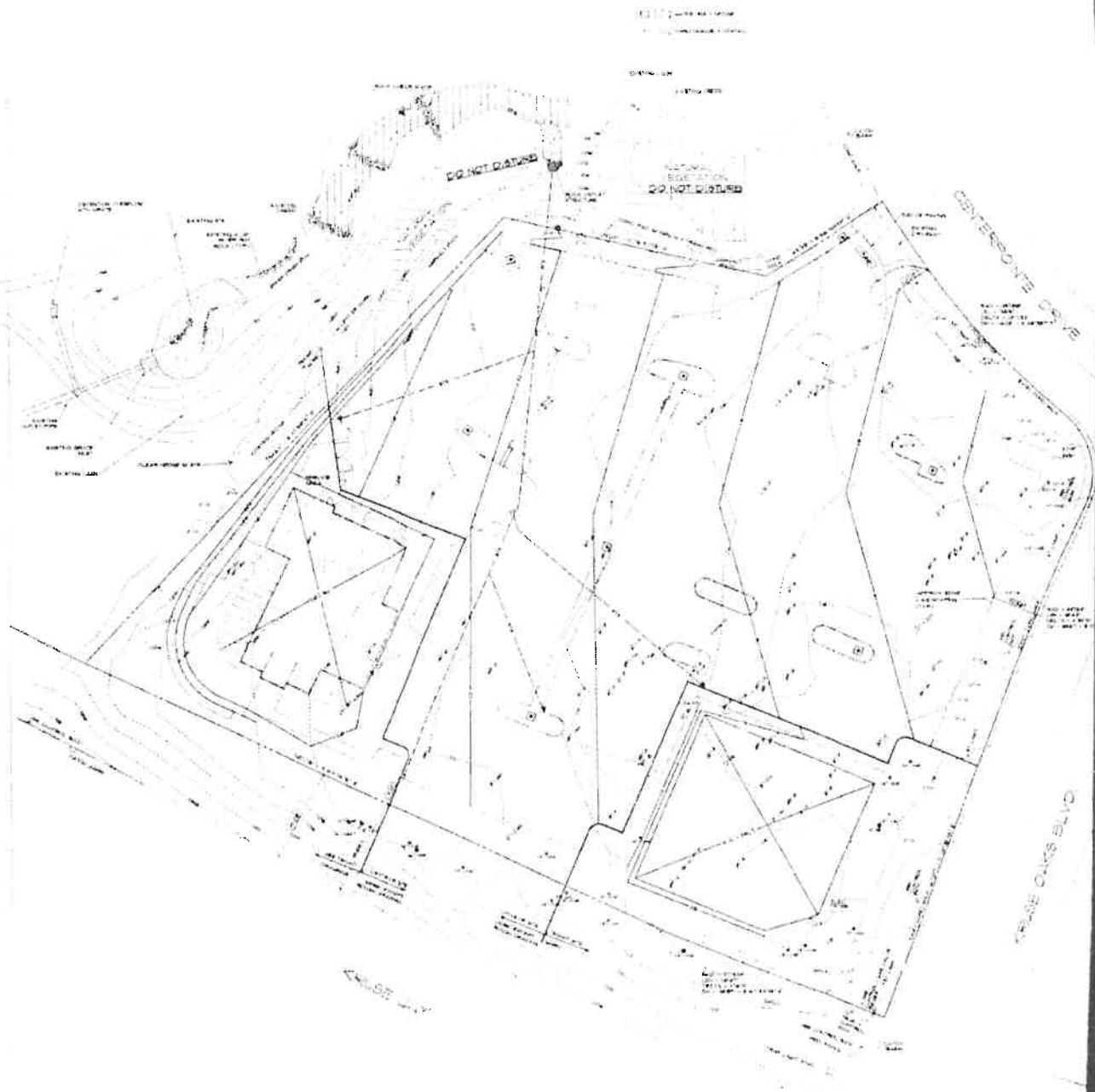
36 LOC 49.300 Major Development Procedures  
37 LOC 49.510 Variances  
38 LOC 49.615 Criteria for Approval  
39 LOC 49.620 Conditional Approvals

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