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**BEFORE THE CITY COUNCIL
OF THE CITY OF LAKE OSWEGO**

A REQUEST FOR A DEVELOPMENT REVIEW) LU 13-0043-1829
PERMIT TO CONSTRUCT A DONATION) GOODWILL INDUSTRIES
CENTER AND A COMMERCIAL BUILDING AT)
17150 SW BOONES FERRY ROAD) FINDINGS, CONCLUSIONS & ORDER

NATURE OF PROCEEDINGS

This matter came before the Lake Oswego City Council on an appeal from a decision by the Development Review Commission denying an application for a development permit to construct a 1,057 square foot Goodwill Donation Center and a 6,416 square foot retail commercial building on premises at 17150 SW Boones Ferry Road in Lake Oswego.

HEARINGS

The Development Review Commission held a public hearing on this application on January 6, 2014. The Commission adopted findings, conclusions and an order denying the application on January 22, 2014. On January 31, 2014, the applicant filed a notice of intent to appeal the Commission’s decision.

The City Council held a public hearing and considered the appeal on March 4, 2014.

CRITERIA AND STANDARDS

A. City of Lake Oswego Comprehensive Plan:

- Goal 2 Land Use Planning
- Goal 6 Air, Water, and Land Resources Quality
- Goal 9 Economic Development
- Goal 12 Transportation

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1 B. City of Lake Oswego Community Development Code (Chapter LOC 50):

2	LOC 50.02.002	Commercial Districts
3	LOC 50.02.002.2.2.b.iv	Site Specific Standards for Industrial Park Zone
4	LOC 50.03.002.3	Use Table
5	LOC 50.04.001.4	Dimensional Standards
6	LOC 50.05.008	Industrial Park Overlay District
7	LOC 50.06.001	Building Design
8	LOC 50.06.002	Parking
9	LOC 50.06.003.1	Access
10	LOC 50.06.003.2	On-Site Circulation - Driveways and Fire Access
11		Roads
12	LOC 50.06.003.3	On-Site Circulation – Bikeways, Walkway and
13		Accessways
14	LOC 50.06.003.5	Transit
15	LOC 50.06.004.1	Landscaping, Screening, and Buffering
16	LOC 50.06.004.2	Fences
17	LOC 50.06.004.3	Lighting
18	LOC 50.06.005	Park and Open Space
19	LOC 50.06.006.3	Drainage Standards
20	LOC 50.06.008	Utilities
21	LOC 50.07.003.1.b	Burden of Proof
22	LOC 50.07.003.5	Conditions of Approval
23	LOC 50.07.003.7	Appeal of Development Decision
24	LOC 50.07.003.14	Minor Development Decision
25	LOC 50.08.002	Minor Variances
26	LOC 50.08.003	Hardship Variances
27	LOC 50.11.002	Appendix B – Industrial Land Use Policy Element

28 C. City of Lake Oswego Streets and Sidewalks Code [LOC Chapter 42]:

29	LOC 42.08.400 - 42.08.470	Streets and Sidewalks
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30 D. City of Lake Oswego Signs Code [LOC Chapter 47]:

31	LOC 47.03.005 - 47.03.030.2	Signs
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32 E. City of Lake Oswego Tree Code [LOC Chapter 55]:

33	LOC 55.02.010 - 55.02.080	Tree Removal
34	LOC 55.02.084	Mitigation Requirements
35	LOC 55.08.020	Tree Protection Plan Required
36	LOC 55.08.030	Tree Protection Measures Required

1 **FINDINGS AND REASONS**

2 As support for its decision, the City Council incorporates the December 27, 2013 Staff
3 Report with all exhibits, and the February 21, 2014 staff Council Report with all exhibits, to the
4 extent that the incorporated materials are consistent with the City Council’s supplemental
5 findings and conclusions. The City Council also incorporates the findings of the Development
6 Review Commission in this case, except for the Commission’s findings relating to the application
7 for a Hardship Variance from the requirements of LOC 50.06.003.1.c.iii. In the event of any
8 inconsistency between the supplemental findings and conclusions herein and the incorporated
9 materials, the matters herein control. To the extent that they are consistent with the approval
10 granted herein, the City Council incorporates by this reference its oral deliberations on this
11 matter.

12 Following are the supplemental findings and conclusions of the City Council:

13 This matter is before the City Council on an appeal by Goodwill Industries of the
14 Columbia Willamette from the Development Review Commission denial of LU 13-0043, an
15 application for approval of:

- 16 • A Development Review Permit to construct a 1,057 square foot Goodwill
17 donation center and a 6,415 square foot retail commercial building;
- 18 • Two Minor Variances consisting of two-foot reductions to the 20-foot front and
19 street side yard setbacks;
- 20 • A Hardship Variance to allow a direct access point onto Boones Ferry Road (an
21 arterial street); and
- 22 • Removal of seven trees to accommodate the proposed development.

23 The Commission found that the applicant failed to demonstrate that the criteria were
24 met for a Hardship Variance excusing compliance with LOC 50.06.003.1.c.iii, which prohibits
25

1 direct permanent access from a development to an arterial street (in this case, Boones Ferry
2 Road) where an alternate access is available. This was the sole basis for the denial. Although
3 the Commission found that all other approval criteria for LU-13-0043 were met, it concluded
4 that, because the entire design and site plan were predicated on having the Boones Ferry Road
5 access point, it was not possible to simply approve the application with a condition prohibiting
6 that access.

7
8 LOC 50.08.003.3. lists the criteria for Hardship Variances:

9 **“a. Hardship Variance Standards**

- 10 i. The request is necessary to prevent unnecessary hardship; and
- 11 ii. Development consistent with the request will not be injurious to the
12 neighborhood in which the property is located or to property established to
13 be affected by the request; and
- 14 iii. The request is the minimum variance necessary to make reasonable use
15 of the property; and
- 16 iv. The request is not in conflict with the Comprehensive Plan.

17 **b. Hardship Variance Factors and Considerations**

- 18 i. In evaluating whether a particular request is to be granted, the granting
19 authority shall consider the following, together with any other relevant facts
20 or circumstances:
 - 21 **(1)** Relevant factors to be considered in determining whether a
22 hardship exists include:
 - 23 **(a)** Physical circumstances related to the piece of property
24 involved.
 - 25 **(b)** Whether a reasonable use similar to like properties can be
26 made of the property without the variance.

1 (c) Whether the hardship was created by the person requesting
2 the variance.

3 (d) The economic impact upon the person requesting the
4 variance if the request is denied.

5 (2) Relevant factors to be considered in determining whether
6 development consistent with the request is injurious include:

7 (a) An analysis of the physical impacts such development will
8 have, such as visual, noise, traffic and the increased potential for
9 drainage, erosion and landslide hazards.

10 (b) The perceptions of residents and owners of property in the
11 neighborhood concerning the incremental impacts occurring as a
12 result of the proposed variance.

13 ii. A determination of whether the standards set forth in subsection 4.b.i of
14 this section are satisfied necessarily involves the balancing of competing and
15 conflicting interests. The considerations listed in subsection 4.b.i(2) of this
16 section are not standards and are not intended to be an exclusive list of
17 considerations. The considerations are to be used as a guide in the granting
18 authority's deliberations."

19 The Commission found that the proposal did not meet these criteria as addressed in
20 more detail in the December 27, 2013, staff report. The Commission concluded that "[w]hile
21 the Code does permit variances to standards, the Commission finds that the applicant failed to
22 demonstrate that an 'unnecessary hardship' exists on the site due to physical circumstances
23 that are not self-created and which prevent reasonable use of the property."

24 The staff materials incorporated by the Commission suggest that nothing about the
25 physical circumstances of the property constrains development or otherwise contributes to a
26 hardship. The City Council finds, however, that there is ample evidence in the record to the
27 contrary. The site is roughly triangular with the northern point touching the signalized
28 intersection of Boones Ferry Road and Pilkington Road (the non-arterial access alternative to

1 the east). Prohibiting Boones Ferry Road access will require delivery vehicles (including heavy
2 vehicles originating from I-5) and customers to use the signalized intersection in order to enter
3 and exit on Pilkington Road. Because Pilkington Road intersection is signalized, right turning,
4 northbound traffic for the development would be impeded in turning at the intersection by
5 the light and crossing pedestrians, thus resulting in a long right-lane queue for right-turning
6 traffic (congestion at the intersection by development is expected to deteriorate the
7 functionality of north-bound Pilkington from Level of Service "C" to "D"). The signalized
8 intersection and traffic generated by the proposed development (which the Council finds to be
9 a reasonable level of development) would have an impact upon Boones Ferry Road beyond
10 that envisioned by the arterial-access prohibition of LOC 50.06.003.c.1. Further, prohibiting
11 Boones Ferry Road access will require delivery vehicles (including heavy vehicles originating
12 from I-5) and customers to perform challenging maneuvering requirements for delivery
13 vehicles within and adjacent to the site at a single Pilkington Road access because of the site's
14 shape and the width of Pilkington Road. As a consequence of the unique shape and locational
15 circumstances of this property, eliminating Boones Ferry Road access per LOC 50.06.003.1.c.iii
16 will have a negative impact on congestion and safety both on the site and in the surrounding
17 area beyond the impacts generally occasioned by LOC 50.06.003.1.c.iii upon properties not
18 subject to these unique circumstances. These hardships are not "self-created," but instead
19 result from unique physical circumstances relating to the subject property.
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23 Rather than resulting only from the applicant's specific proposed use, these hardships
24 would result from development on that site of any of a wide range of the many uses allowed
25 within Industrial Park Zone, most of which generate traffic (See LOC 50.03.002.3 -- Commercial,

1 Mixed Use, Industrial, and Special Purpose Districts Use Table). Here again, the concerns are
2 not “self-created.” Thus the variance is necessary to have “reasonable use” of that particular
3 property, taking into account the city’s policy choice, implemented through the Code, to allow
4 and encourage certain types of uses within the IP Zone.

5 The City Council finds that, in this case, the variance is necessary to allow “reasonable
6 use similar to like properties” because, in general, other IP-zoned properties abutting Boones
7 Ferry Road could redevelop within the range of allowed uses without constraints and impacts
8 similar to those listed above, which result from the unique lot shape and size combined with
9 the adjacent signalized intersection and the configuration of Boones Ferry and Pilkington.
10 Allowing a single Boones Ferry access point (in place of the two existing Boones Ferry
11 driveways) is the minimum variance necessary to allow reasonable use free of those constraints
12 and impacts.
13

14 The Council agrees with the Commission’s findings, through the incorporated staff
15 materials, that development consistent with the variance request will not be injurious to the
16 neighborhood in which the property is located or to property established to be affected by the
17 request, and that the variance request is not in conflict with the Comprehensive Plan.
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19 The Council finds that the requested variance does not conflict with what is cited in the
20 record as Policy 2 of Sub Goal 1 of Goal 12 of the Comprehensive Plan, and now embodied in
21 Policy C-3, Connected Communities, which calls for controlling and consolidating access to
22 major streets (in the current version specifying major collectors and arterials). Allowing access
23 to an arterial under the current Code only where relatively stringent Hardship Variance criteria
24 are met is consistent with the Plan directive to “control” such access. The proposed single
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1 driveway will replace two current Boones Ferry access points, consistent with the Plan objective
2 of consolidating access. In addition, the proposed driveway location along the western
3 boundary of the property creates an opportunity for future consolidation.

4 The Council finds that the criteria listed in LOC 50.08.003.3 are met, and that the
5 applicant should be granted a Hardship Variance to allow a single direct access point onto SW
6 Boones Ferry Road.

7 A neighboring property owner testified as to his concern about potential impacts from
8 illegal after-hours dumping at the Goodwill Donation facility. The applicant stated that
9 Goodwill Industries uses 24-hour surveillance and conducts a daily inspection of all donation
10 sites to ensure immediate removal of any illegally dumped donations. The City Council finds
11 that the applicant's routine procedures are sufficient to address any potential negative impacts.
12

13 The neighboring owner also expressed concern about traffic impacts that would result
14 from allowing egress or left-turn ingress at the Boones Ferry access point. That issue is
15 addressed below.
16

17 There is substantial evidence in the record that left turn access directly to the site from
18 southbound Boones Ferry Road traffic is unsafe. There is also substantial evidence that egress,
19 especially left-turn egress, from the proposed Boones Ferry driveway is unsafe. A condition of
20 approval should be added requiring the applicant to install improvements on the site or within
21 the Boones Ferry Road right-of way, possibly including within the center turn lane, to the
22 satisfaction of the City Engineer, to allow only right-in turning movements at the Boones Ferry
23

1 Road access point.¹ The City Council finds that the analysis relating to Lake Oswego Code
2 Chapter 42, on pages 37 through 40 of the incorporated December 27, 2013 Staff Report,
3 supports the exaction contemplated by this additional condition of approval. The described
4 governmental interest in assuring that new development does not contributed to a degradation
5 of adequate, safe and efficient public transportation facilities warrants conditions assuring that
6 access points be designed to safely accommodate, or to restrict as necessary, ingress and
7 egress to and from the site. LOC 50.07.003.5 authorizes conditions of approval that are
8 reasonably related to the alleviation of a need for public service or facilities created or
9 contributed to by the proposed development. The projected traffic impacts, as described in the
10 incorporated material, together with the creation of a Boones Ferry Road access point, create
11 the need for public facilities that ensure safe ingress and egress, and to minimize any
12 degradation of the traffic flow of Boones Ferry Road. That is accomplished by restricting
13 vehicles from entering from the southbound lanes (right-in ingress only) and from exiting the
14 site at that location. Imposition of a condition requiring construction of such improvements, at
15 most a raised median in the Boones Ferry Road right-of-way, is roughly proportional to, and is
16 justified by, those increased traffic impacts and safety concerns.

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24 ¹ Testimony was received about the potential for an expanded, shared driveway if the property to the west
25 redevelops and qualifies for Boones Ferry access. The Council notes that the issue of whether right-turn *egress*
could be safely accommodated with an expanded, shared driveway is something that may be considered at that
time.

1 **CONCLUSION**

2 Based upon its supplemental findings and the incorporated matters, the City Council
3 finds that LU 13-0043, as modified to be consistent with these findings, complies with all
4 applicable criteria and should be approved.

5
6 **ORDER**

7 **IT IS ORDERED BY THE LAKE OSWEGO CITY COUNCIL that the decision of the**
8 **Development Review Commission is reversed, the appeal is sustained, and LU 13-0043 is**
9 **approved, subject to the following conditions of approval.**

10
11 **A. Prior to Issuance of any Building Permits, the Applicant/Owner Shall:**

- 12 1. Submit final site and building plans for review and approval of staff that are the
13 same or substantially similar to the site plans, floor plans, and building elevations
14 illustrated on Exhibits E3-E26, to the satisfaction of staff, with the following
15 revisions:
- 16 a. A future internal connection as shown on Exhibit E6 between the subject site
17 and the abutting property to the west (Tax Lot 4100 of Tax Map 21E18BA).
 - 18 b. The upper wall CMU siding on both buildings shall be replaced with 3.5 x
19 11.5-inch structural brick siding in a goldenrod color, similar to Exhibit E26.
 - 20 c. An additional covered bike parking space shall be provided for the retail
21 building.
 - 22 d. The 13-foot driveway off of Boones Ferry Road shall be a one-way ingress-
23 only driveway with “entrance only” signage in appropriate locations, to the
24 satisfaction of the City Engineer.
 - 25 e. The Pilkington Road driveway approach shall be a maximum of 24 feet, to the
26 satisfaction of the City Engineer.
2. Provide a revised photometric plan that demonstrates compliance with public
sidewalk lighting standards, including average lighting of less than 0.3 foot-
candles and a maximum uniformity ration of 20:1.

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3. Submit engineered construction drawings for the public and site improvements for review and approval by the City Engineer. Drawings shall conform to the City's designs standards and the drafting specifications found in the City's booklet "CAD Standards and Design Requirements," May 2006 edition. The plans shall include the following design elements:

a. Boones Ferry Road Frontage:

- i. Design of new curb and gutter (full 6-inch curb exposure) and sidewalk across the driveway approaches that will be removed. The new sidewalk shall match the existing sidewalk width along the site frontage. A minimum 5-foot sidewalk clearance width shall be provided around street elements such as tree wells, street lights, utility poles, benches, etc.
- ii. Provide adequate right-of-way dedication (if necessary) to construct the frontage improvements inside of the public right-of-way.
- iii. Design of the new bus shelter in conformance with Tri-met specifications and all applicable ADA and City standards.
- iv. An engineered design to physically limit access to right-in movements only at the Boones Ferry Road access point to the satisfaction of the City Engineer. The improvements may be on site or within the Boones Ferry Road right-of-way (including potentially the center turn lane), also in the determination of the City Engineer.

b. Pilkington Road Frontage:

- i. Design of a 12-foot travel lane, 5-foot bike lane, concrete curb and gutter, and an 8-foot wide sidewalk (excluding the 6-inch width of the top of curb). The 5-foot bike lane shall be measured from the edge of the 8-inch wide white stripe (separating the travel lane and bike lane) and the edge of the concrete gutter pan for the curb. The sidewalk at the south end of the site shall transition back to the existing edge of pavement.
- ii. Construct the driveway approach at a maximum width of 24 feet and in compliance with City and ADA standards.

- iii. Provide a minimum 5-foot sidewalk clearance width around street elements such as tree wells, street lights, utility poles, benches, etc.
 - iv. Provide adequate right-of-way dedication to construct the frontage improvements inside of the public right-of-way.
 - v. Design drainage facilities as necessary to accommodate the frontage improvements.
 - vi. Design to underground the existing overhead utilities along the site frontage. The existing utility pole located at the northeast corner of the site can remain to avoid undergrounding utility lines across Boones Ferry Road. All new utilities shall be installed underground.
 - vii. Design of the private storm service lateral to connect the on-site private storm system to the existing public main in Pilkington Road. A manhole shall be required over the existing public main and a cleanout shall be required at the right-of-way line.
 - viii. Design of the private sanitary service lateral to serve the development. The existing service lateral shall be abandoned per City standards.
 - ix. Design of the private water service. The domestic water service and fire hydrant line shall have separate connections to the mainline and the water meter shall be located behind the sidewalk. The water meter shall be located within a public water easement. The existing water service shall be terminated per City standards. Fire hydrant requirements shall be to the satisfaction of the Fire Marshal.
 - x. Design of street lights along the frontage according to the City's lighting standards. LED lighting will be required for any new street lights.
 - xi. Show underground utility vaults.
- c. Submit a final site plan, storm plan and storm drainage report for the on-site water quality and detention system, prepared by a registered engineer. A trapped catch basin is recommended to be installed at the loading dock at the rear of the donation center.
4. Construct all public improvements required by Condition A(3) above, or provide a financial guarantee to ensure their completion per LOC 50.07.003.9. The financial guarantee shall be 120% of the estimated cost of construction, based on a cost estimate approved by the City Engineer. The applicant/owner shall

1 submit preliminary public improvement construction plans that are far enough
2 advanced to support an itemized estimate of the cost of construction.

- 3
- 4 5. Apply for and obtain a verification tree removal permit for the seven trees
5 approved by this application. The verification tree removal application submittal
6 shall include an 8.5 x 11-inch copy of the tree removal plan and a mitigation plan
7 showing replacement trees on a 1:1 basis. Replacment trees shall not be dwarf
8 or ornamental varieties and shall be at least two inches in caliper if deciduous or
9 at least 6-8 feet tall (excluding the leader) if evergreens.
- 10 6. Submit a final landscape plan for review and approval of staff. The landscape
11 plan shall be the same or substantially similar to Exhibit E10.
- 12 7. Submit a final erosion control plan and evidence of DEQ 1200-C erosion control
13 permit. The erosion control plan shall be designed by a civil engineer.
- 14 8. Pay all applicable System Development Charges pertaining to the proposed
15 development.

16 **B. Prior to Final Building Inspections or Occupancy of any of the Structures, the**
17 **Applicant/Owner Shall:**

- 18 1. Complete all public improvements as required by Condition A(3), above,
19 submit certified "as-built" drawings conforming to the City's standards for
20 record drawings, and receive a certificate of completion and acceptance by
21 the City.
- 22 2. Complete all private utility services, including water, storm, sanitary and
23 franchise utilities.
- 24 3. Submit an Operations and Maintenance Plan for the private on-site storm
25 facilities for review and approval of the City Engineer and record a Declaration of
Covenant for Operation and Maintenance of Surface Water Management
Facilities.
- 26 4. Install all mitigation trees as required by Condition A(5), above.
- 27 5. Install all landscaping as required by Condition A(6), above.
- 28 6. Provide a one-year guarantee (one 12-month growing season from the date of
installation) for all landscape materials, including mitigation planting, pursuant
to LOC 50.06.010.2. The guarantee shall consist of a security in the amount of
five percent of the total landscaping cost.

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C. Prior to Installation of any Signs, the Applicant/Owner Shall:

1. Obtain all necessary sign permits. The applicant/owner shall submit sign plans and elevations in accordance with the Sign Code for review and approval of staff. Colors and material of the signs shall be compatible with the architectural details and colors of the approved building in the following manner:
 - a. The maximum size of any monument sign shall be six feet in height overall and shall be constructed of materials that complement and are consistent with the final exterior siding materials of the donation center and retail buildings.
 - b. Internally lit cabinet signs shall not be allowed.

Code Requirements:

1. **Expiration of Development Permit:** Per LOC 50.07.003.17, the Development Review Permit approved by this decision shall expire three years following the effective date of the development permit, and may be extended by the City Manager pursuant to the provisions of this section.

Notes

1. The applicant is advised to take part in a Post Land Use Approval meeting. City staff offers the applicant an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure the applicant understands all the conditions and to identify other permits necessary to complete the project. If the applicant desires to take advantage of this meeting, it should contact the staff coordinator at (503) 635-0290.
2. The land use approval for this project does not imply approval of a particular design, product, material, size, method of work, or layout of public infrastructure except where a condition of approval has been devised to control a particular design element or material.
3. Development plans review, permit approval, and inspections by the City of Lake Oswego Planning and Building Services Department are limited to compliance with the Lake Oswego Community Development Code, and related code provisions. The applicant is advised to review plans for compliance with applicable state and federal laws and regulations that could relate to the

1 development, e.g., Americans with Disabilities Act, Endangered Species Act, etc.
2 City staff may advise the applicant of issues regarding state and federal laws that
3 the City staff member believes would be helpful to the applicants, but any such
4 advice or comment is not a determination or interpretation of federal or state
5 law or regulation.

6 AYES: Mayor Studebaker, Bowerman, Gudman, Gustafson, Hughes, O'Neill


7 NOES: None

8 ABSENT: None

9 ABSTAIN: None

10 RECUSED: Jordan

11
12 DATED this 15th day of April, 2014.

13 
14 _____
15 Kent Studebaker, Mayor

16 ATTEST:

17 
18 _____
19 Catherine Schneider, City Recorder