

STAFF REPORT
CITY OF LAKE OSWEGO

PLANNING DIVISION

APPLICANT/OWNER:

Goodwill Industries of the Columbia Willamette

FILE NO:

LU 13-0043

APPLICANT'S REPRESENTATIVE

Baysinger Partners Architecture

STAFF:

Johanna Hastay, Associate Planner

LEGAL DESCRIPTION:

Tax Lot 4000 of Tax Map 21E18BA

DATE OF REPORT:

December 27, 2013

LOCATION:

17150 Boones Ferry Road

120-DAY DECISION DATE:

April 11, 2014

COMP. PLAN DESCRIPTION:

IP (Industrial Park)

NEIGHBORHOOD ASSOCIATION:

None

ZONING DESIGNATION:

IP/IP Overlay District

I. APPLICANT'S REQUEST

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.

II. RECOMMENDATION

Staff finds that the criteria for the Hardship Variance to allow the Boones Ferry Road direct access point are not met. Since the proposed development is premised upon approval of the Hardship Variance, and because staff finds that conditions cannot be imposed which would bring the application in conformance with the applicable standards without the Boones Ferry Road access, staff recommends **DENIAL** of the application.

[If the applicant requests the opportunity to revise its application, Staff will support a continuance of the public hearing for re-submittal and re-review. If the Commission finds that the Hardship Variance request meets the approval criteria, staff has provided a complete listing of potential conditions on pages 42 through 45 of this report.]

III. APPLICABLE REGULATIONS

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

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

LOC 50.02.002	Commercial Districts
LOC 50.02.002.2.2.b.iv	Site Specific Standards for Industrial Park Zone
LOC 50.03.002.3	Use Table
LOC 50.04.001.4	Dimensional Standards
LOC 50.05.008	Industrial Park Overlay District
LOC 50.06.001	Building Design
LOC 50.06.002	Parking
LOC 50.06.003.1	Access
LOC 50.06.003.2	On-Site Circulation - Driveways and Fire Access Roads
LOC 50.06.003.3	On-Site Circulation – Bikeways, Walkway and Accessways
LOC 50.06.003.5	Transit
LOC 50.06.004.1	Landscaping, Screening, and Buffering
LOC 50.06.004.2	Fences
LOC 50.06.004.3	Lighting
LOC 50.06.005	Park and Open Space
LOC 50.06.006.3	Drainage Standards
LOC 50.06.008	Utilities
LOC 50.07.003.1.b	Burden of Proof
LOC 50.07.003.5	Conditions of Approval
LOC 50.07.003.7	Appeal of Development Decision
LOC 50.07.003.14	Minor Development Decision
LOC 50.08.002	Minor Variances
LOC 50.08.003	Hardship Variances
LOC 50.11.002	Appendix B – Industrial Land Use Policy Element

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

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

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

LOC 55.02.010 - 55.02.080	Tree Removal
LOC 55.02.084	Mitigation Requirements
LOC 55.08.020	Tree Protection Plan Required
LOC 55.08.030	Tree Protection Measures Required

IV. FINDINGS

A. Background/Existing Conditions:

1. The site is approximately 44,171 sq. ft. in area and is located at the southwest corner of Boones Ferry Road (a major arterial) and Pilkington Road (a major collector) intersection (Exhibit E1). The site was previously developed with an industrial building which has been fully demolished (Exhibit E2 and F1).
2. There is an existing temporary use occupying the site, a Goodwill Donation truck. The donation truck use is not an expressly allowed use but it is allowable on a temporary basis per LOC 50.03.002.1.f, because it is similar to a "Portable Outdoor Storage Units (also referred to as PODS). PODS are subject to separate standards per LOC 50.03.005.1 "Temporary Structures and Uses". A POD may be placed on a lot, including within the setback areas, for not more than 60 days within any 12-month period (LOC 50.03.005.1.f). PODS are allowed in any zone. The 2-month time limit may be extended by six-month increments per LOC 50.03.005.1.f.i. The applicant was notified by E-mail on October 7, 2013, that the donation truck was allowed for two months on the site and that the deadline would be extended indefinitely while there was an active land use application for the permanent redevelopment of the site with the Goodwill Donation Center and retail commercial center. If the application is not diligently pursued, is withdrawn, or is denied, then the temporary use approval for donation truck would expire and the truck would have to be removed.
3. There are seven trees on the site that are five inches in diameter or greater (Exhibit E2). The site slopes from the south and southwest internal property lines towards the street intersection (Exhibit E2).
4. The site is zoned Industrial Park (IP) and is located within the Industrial Park Overlay District (IP Overlay). The abutting properties are all zoned IP, located in the IPO, and are developed as follows:
 - Northwest (across Boones Ferry Road): properties are developed with Les Schwab (a tire retail and service center), the Lake Grove veterinary clinic, and a State Farm insurance office.
 - South: properties are developed with construction offices and an auto service center.
 - Southwest: property is developed with a vehicle storage facility.
 - Northeast (across Pilkington Road): properties are developed as the Crossing, a retail and office commercial center, and Taylor-Made Labels, an industrial facility.

V. REVIEW AND APPROVAL PROCEDURES

A. Neighborhood Meeting

Per LOC 50.07.003.1.f, the applicant has complied with all neighborhood notification and meeting requirements. The minutes of the June 24, 2013, meeting are included in this report as Exhibit F6.

B. Public Notice to Surrounding Area:

Pursuant to LOC 50.07.003.3.e, the City has provided adequate public notice and opportunity to comment on this application. No letters were received as of the date of this report.

C. Burden of Proof:

Per LOC 50.07.003.1.b, the applicant for a development permit shall bear the burden of proof that the application complies with all applicable review criteria or can be made to comply with applicable criteria by imposition of conditions of approval. The applicant has provided sufficient evidence to enable staff to evaluate the proposal. These documents are listed as exhibits at the end this report.

D. Classification of Application

LOC 50.07.003.14.a(6) describes the construction of a structure other than a detached single-family dwelling, duplex, zero lot line dwelling or accessory structure as a minor development. Hardship and Minor Variances are also minor developments per LOC 50.07.003.14.a.ii(16).

E. Minor Development Criteria for Review of Application

Per LOC 50.07.003.14.d, for any minor development application to be approved, it shall first be established that the proposal complies with:

1. The Requirements of the Zone in Which it is Located;

Industrial Park- IP Site Specific Standards [LOC 50.02.002]

The site is located in the IP zone and within the IP Overlay. The request is for two new buildings, a Goodwill Donation Center (a processing use) and a retail commercial center, both of which are permitted uses in the IP Overlay [LOC 50.03.002]. There are four specific policies related to Industrial Park uses in LOC 50.02.002. The applicant's narrative (Exhibit F1) states that the proposed development complies with these requirements as follows:

- 1. Each industrial area identified on the City's Comprehensive Plan Map also is described in LOC 50.11.002: Appendix B. The specific conditions for each area are by this reference made a part of this Code and are conditions and limitations of each zone.*

These policies are addressed, below.

2. *Manufacturing, repairing, compounding, processing or storage uses permitted in the I (Industrial) zone shall operate in continuing compliance with the requirements of Oregon Administrative Rules Chapter 340 and City Codes and regulations.*

This site is located in the Industrial Park (IP) zone and within the IP Overlay; therefore, this standard is not applicable.

3. *Research facilities, testing laboratories, manufacturing, processing or assembling of products, and incidental retail uses in the IP zone shall not emit noise, smoke, glare, vibration, fumes or other environmental effects which adversely affect people, property or uses beyond the property lines of the IP site.*

The proposed project will include approximately 1,060 sq. ft. of a fully enclosed processing use (the Goodwill donation center) and approximately 6,420 sq. ft. of retail use (Exhibit F1). Neither of the proposed uses will emit noise, smoke, glare, vibration, fumes or other environmental effects that will adversely affect abutting properties. This standard is met.

4. *Incidental retail uses in IP sites within 200 ft. of residentially zoned property may be open from 8:00 a.m. to 10:00 p.m. Sunday through Thursday and 8:00 a.m. to 12:00 a.m. on Friday and Saturday.*

The site is more than 200 feet from the nearest residential zone (Exhibits E1 and F1). This standard is not applicable. Even if the site were within close proximity of a residential zone, the IP Overlay allows for a retail use less than 10,000 sq. ft. in size as the primary use, without requiring it to be incidental to an industrial use per LOC 50.03.002.2.

Staff finds that approval or denial of the Hardship Variance to Access standards, discussed below, has no bearing on compliance with these standards.

Industrial Land Use Policy Element [LOC 50.11.002: Appendix B]

The objective of these policies is to encourage industrial development that is compatible with the community in order to increase local employment opportunities and maintain a healthy economy. The following policies are those applicable to the Lake Grove Industrial Area and the proposed development. Staff interprets the applicable policies of Appendix B as the “specific conditions” referred to in LOC 50.02.002.1, and are therefore “conditions and limitations of each zone.”

GENERAL POLICY I: Encourage environmentally compatible industrial development.

The City will:

1. *Establish specific district policies for each industrial district to accommodate the unique conditions existing in each and use these specific district policies as conditions for actual development approval. These areas are:*
 - a. *Lake Grove Industrial Park*

The City has adopted site specific standards for the Lake Grove Industrial Area per LOC 50.02.002.a. As discussed, above, this policy is addressed.

All other General Policies I-IV are either not applicable due to the scope of the proposal or have been incorporated into the Lake Gove Industrial Area specific standards (LOC 50.02.002.a) or Specific District Policies (General Policy V.1, below) and addressed there. General Policy V does apply and is addressed, below.

GENERAL POLICY V: Encourage environmentally compatible industrial development.

The following three sets of specific district policies will guide development in the existing and proposed industrial districts in the Lake Oswego Urban Service Area. Each district has unique conditions, thus individual policies are needed for each.

1. Lake Grove Industrial Park District Policies.

- a. Realign the Jean Road/Boones Ferry Road intersection as part of the Boones Ferry Road widening project to assure adequate truck turning radius.*

This intersection has been realigned as required.

- b. Initiate measures to solve circulation and drainage problems, enhance the area's general appearance, and identify the southwestern entrance to the City.*

This is not a regulatory policy applicable to a site-specific development proposal.

- c. Preserve major stands of trees where feasible.*

There are no major stands of trees on this site (Exhibits E2 and F1). This policy is not applicable.

- d. Encourage developments on small parcels to develop shared access with adjacent parcels wherever feasible.*

The Comprehensive Plan does not define "small parcels". The Plan does not prohibit consolidated access on larger parcels. The Access standard (LOC 50.06.003.1) implements this specific policy but is not limited to it.

The proposal includes an access point on Pilkington Road and a Hardship Variance request to allow a second access point on Boones Ferry Road (Exhibits E3 and F1-F4). The Boones Ferry Road access is configured for now as a 13-foot wide driveway with a small easement on the abutting property to the south (Tax Lot 4100 of Tax Map 21E18BA) and a short retaining wall along that common property line (Exhibits E6 and F1-F2). The applicant states that at the time of redevelopment of the abutting property, the proposed 13-foot shared driveway (and access easement) will be widened to 26 feet and re-graded with an internal driveway connection between the two sites (Exhibits E6-E7 and F1). This policy is addressed.

- e. Assure adjacent residential areas are protected from adverse effects of industrial activities and land use.*

The proposed industrial use on the site is the donation facility, as a "processing" use. The proposed retail use permitted under the overlay zone is not an industrial use. There are no adjacent residential areas in close proximity that would be impacted by the development (Exhibit E1). In addition, staff has already found that there are no adverse effects anticipated with the proposed industrial (processing) use. This policy is addressed.

f. *Revise the existing "IP zone" statutes in the Lake Oswego Code to require:*

- *Compliance with the currently adopted noise performance standards and regulations of the Oregon Department of Environmental Quality.*
- *Levels of maintenance of buildings and grounds.*

This is not a regulatory policy applicable to a site-specific development proposal.

Staff finds that, as applicable, the general and Lake Grove Industrial Park specific policies, which are conditions and limitations of the zone, have been addressed and are met as proposed.

IP Zone and IP Overlay Use Tables [LOC 50.03.002.3 and LOC 50.05.008]

The applicant proposes both an industrial processing use (Goodwill Donation Center) and a retail use on this site. These are allowed uses in the IP zone and IP Overlay, as follow:

IP Zone Allowed Uses

The purpose of the IP zone is to provide lands where primarily light industrial, employment, and accessory uses can occur in a campus-like setting under controls to make activities mutually compatible and also compatible with existing uses bordering the district (LOC 50.02.002). Prior to submittal of this application, the applicant submitted a request for an informal interpretation from the City to determine if a donation center, which is not a listed use, would be considered an industrial processing use, which is outright permitted in the IP zone (Exhibit F12). The City's informal interpretation found that a donation center is primarily a processing use and therefore allowed on this site (Exhibit F13).

IP Overlay Allowed Uses

The purpose of the IP Overlay is to provide land that is available for both standard IP uses and for additional office, business services, and limited retail uses along Lower Boones Ferry Road in the vicinity of Pilkington and Jean Roads. Along with the uses listed in LOC 50.03.002.3 are additional IP Overlay uses listed in LOC 50.05.008.3, including but not limited to: general retail, restaurants without a drive-through, and medical offices, all with some size and use restrictions.

The applicant's materials indicate that while no leases have been secured for the retail space, the possible tenants include a restaurant and medical office (Exhibit F1). Compliance with allowed uses, including required parking minimums, will be determined at the time of ministerial review of uses (business license review and building permit review for any tenant improvements).

This standard is met.

Staff finds that approval or denial of the Hardship Variance to Access standards has no bearing on compliance with this standard. (The applicant asserts that without direct access onto Boones Ferry Road, leasing the retail space will be difficult, if not impossible (Exhibit F3). Whether that is true or not is not a criterion for the zone use analysis.

IP/IP Overlay Zone Dimensional Standards [LOC 50.04.001.4]

The site is a triangular-shaped peninsular lot with a front, street side, and two side yards. Development in the IP zone/IP Overlay is subject to site development limitations, as follows:

IP/IP Overlay Site Limitations for Industrial and Commercial Uses		
	Required	Proposed
Floor Area Ratio	No maximum	7,473 sq. ft.
Lot Coverage	No maximum	7,473 sq. ft. or ~18%
Setbacks Front Yard (Boones Ferry Road) Street Side (Pilkington Road) Side Yards	20 feet 20 feet 10 feet	18 feet ¹ 18 feet ² ~85 feet (retail building) ~18 feet (donation center)
Height	45 feet	30.6 feet (donation center) 25.8 feet (retail building)

The proposed structures comply with the above dimensional standards with the exception that the applicant is requesting Minor Variances for an 18-foot front yard setback and 18-foot street side yard setback (Exhibits E3 and F1). Please see LOC 50.08.003 Variances, below, for review of the Minor Variance requests.

This standard is met.

Staff finds that approval or denial of the Hardship Variance to Access standards has no bearing on compliance with this standard. (If the Hardship Variance is denied and the application is revised by relocating either or both buildings, staff will review compliance with the IP zone dimensional standards when revised site plans are submitted for review.)

Minor Variances [LOC 50.08.002]

Minor Variances are small changes from the Code requirements that will have minimal effect on adjacent properties or users. The minimum front and street side yard setbacks in the IP zone are both 20 feet. The applicant has applied for exceptions to the yard setback requirements and proposes 18-foot setbacks for both. The applicant’s request falls within the parameters of a Minor Variance per LOC 50.08.002.3(b).

Per LOC 50.08.002.2.a, a Minor Variance may be granted if it is established that:

- 1. The granting of the variance will not be detrimental to the public health or safety, or materially injurious to properties or improvements within 300 feet of the property; and*

The applicant’s narrative (Exhibit F1) explains that the proposal is not detrimental to public health or safety as the resulting 18-foot setbacks do not impede accessibility by emergency vehicles, e.g., fire.

¹ The applicant is requesting a Minor Variance to this standard.

² Ibid.

For the Boones Ferry Road setback, both buildings present narrow facades to the street which minimizes the increased proximity of proposed massing as viewed from the sidewalk (Exhibit E11 and E12). On the Pilkington Road setback, the reduced setback for the retail building is minimized by the large landscaped area at the street intersection (Exhibit E4). The reduced setbacks also allow for minimal projections on the donation center and 4-foot eaves on the retail building. The applicant's narrative also states that due to the triangular-shaped peninsular lot, the proposed 18-foot Pilkington Road setback provides a more traditionally shaped building envelope for the southern portion of the retail building (Exhibit F1). Staff agrees with the applicant and finds that the proposed setbacks are not injurious to properties with 300 feet of the property as the 2-foot reductions will be generally imperceptible on both buildings but specifically allow for the proposed retail building design amenities (4-foot deep eaves) that enhance the pedestrian environment. Staff recommends a condition of approval, below, requiring the applicant to submit building elevations which include the proposed deep eaves. As conditioned, below, this criterion is met.

2. *The proposed development will not adversely affect existing physical and natural systems such as traffic, drainage, Oswego Lake, hillsides, designated sensitive lands, historic resources, or parks, and the potential for abutting properties to use solar energy devices any more than would occur if the development were located as specified by the requirements of the zone.*

As discussed in the applicant's narrative (Exhibit F1), an exception to the required front and street side yard setbacks complies with this criterion. There are no traffic impacts, as granting the variances will not increase the number of projected trips generated by the site any more than a proposal that complied with the setbacks would. The site does not abut Oswego Lake, hillsides, designated sensitive lands, historic resources, or parks. All stormwater runoff from new impervious surfaces will be managed on site. Finally, the resulting 18-foot setbacks do not prevent adjacent property owners from utilizing solar energy devices if so desired. Staff agrees with the applicant and finds that the requested Minor Variances will not have an adverse effect on existing physical and natural systems. This criterion is met.

This standard is met.

Staff finds that approval or denial of the Hardship Variance to Access standards has no bearing on compliance with Minor Variance standards.

2. The Development Standards Applicable to Minor Developments;

General Note Regarding Hardship Variance Effect Upon Review of Development Standards: The applicant's proposal is premised on approval of the Hardship Variance to allow a direct access point on Boones Ferry Road, therefore, staff's review of applicant's proposal assumes the same for the sake of the development standards. As noted, below, staff does not recommend approval of the variance. Without the access point on Boones Ferry Road, the proposed site plans (parking lot configuration, building location, drainage, site circulation, etc), would require revisions of a nature staff believes is beyond the scope and ability of the City, per LOC 50.07.003.5, to condition the proposal into compliance with the applicable development standards. Staff's analysis is a recommendation to the Commission. If the Commission finds that the Hardship Variance should be approved (either with or without conditions), staff has provided an analysis and recommended conditions of approval to ensure compliance with

applicable development standards. However, if the Commission finds that the Hardship Variance should not be approved and/or the applicant requests an opportunity to revise its application during the public hearing and the Commission continues the public hearing to permit the applicant to do so, staff will review the revised application and provide to the Commission additional findings and conditions of approval as appropriate for that revised proposal.

Building Design for Industrial and Commercial Uses [LOC 50.06.001.5]

This standard is applicable to development involving structures that do not qualify as ministerial development. The applicant is proposing an industrial building and a retail building (Exhibits E3, E11-E15 and F1). As prescribed by this standard, buildings are to be designed and located to complement and preserve existing buildings, streets and paths and other elements of the built environment, and to assure accessibility for all transportation modes. Buildings are to be designed to be complementary in appearance to adjacent structures of good design with regard to materials, roof lines, height and overall proportions. Buildings are to be designed and located to complement and preserve natural environment.

The intersection of Boones Ferry Road and Pilkington is developed with a mix of older and newer commercial and industrial buildings. Staff agrees with the applicant that this site could be a prime retail location and should be designed as such. In contrast to the applicant’s inventory of adjacent buildings which includes two auto repair buildings and an older office building (Pages 20-23 of Exhibit F1), the review of adjacent buildings of *good* design should focus on properties such as the Lake Grove Vet Clinic (17131 Boones Ferry Road) and the Crossing commercial center (across Pilkington Road). In addition to these projects, there are a number of more recent commercial and office projects within the Boones Ferry and Pilkington Roads universe that should also be used in determining buildings of good design in this area:

- The “Nature’s” building (now Farm to Fresh) at 17711 Jean Way (DR 15-95);
- The medical offices at 17704 and 17720 Jean Way (LU 00-0043);
- “Chow Corner” at 17437 and 17499 Boones Ferry Road (DR 11-97); and,
- Oswego Place Assisted Living at 17450 Pilkington Road (LU 04-0041).

Per LOC 50.06.001.5.b, the proposed design shall:

- i. Design buildings to be complementary in appearance to adjacent structures of good design with regard to materials, setbacks, rooflines, height and overall proportions.*

As noted, above, there is a mix of older and newer buildings in the general vicinity of the site. The buildings also house a mix of uses from industrial to commercial to office. There is no architectural style that dominates in the area, as the surrounding uses were developed over many decades and feature architectural styles and elements that date the construction periods.

The applicant’s “adjacent buildings” inventory (Pages 20-23 of Exhibit F1) includes a number of buildings that are older and would not be considered “good design” due to deterioration, out-dated materials, and/or the pure industrial nature of the structure. Instead, staff will focus on two newer buildings that house commercial uses similar to those proposed: the Lake Grove Vet Clinic (medical) and the Crossing (retail and commercial). In addition, staff will incorporate elements from Taylor-Made Labels (industrial) into the review because of its proximity to the site and its design. Finally, staff will also look at the four projects mentioned, above, as a part of the larger design universe.

The Lake Grove Vet Clinic is a single story, “mansard”-roofed building that is clad primarily in vertical and horizontal wood composite siding. There are also small areas of approximate 2x8-inch red brick siding.

The low profile is broken up and extended by a section of horizontal siding. Windows are smaller white vinyl windows with no molding. The building is located on an internal lot and is oriented with the side



Lake Grove Vet Clinic at 17131 Boones Ferry Road. Exterior cladding is vertical and horizontal siding with some brick.

façade towards Boones Ferry Road with extensive landscaping in the setback area behind the sidewalk.

The Crossing is a commercial center with flat roofs and heights that range from one to three stories. It is primarily sided in stucco veneer panels with decorative columns. The Crossing faces the intersection of Boones Ferry and Pilkington Roads with parking in the front. Between the parking lot and the sidewalk is a large landscaped area. The 3-story office building on the north side of the site has a CMU block base on the ground floor. The Crossing also incorporates decorative metal canopies that are installed along the internal pedestrian walkways and over large window expanses. The large commercial windows are set in dark metal framing.



CMU block base on the Crossing building.

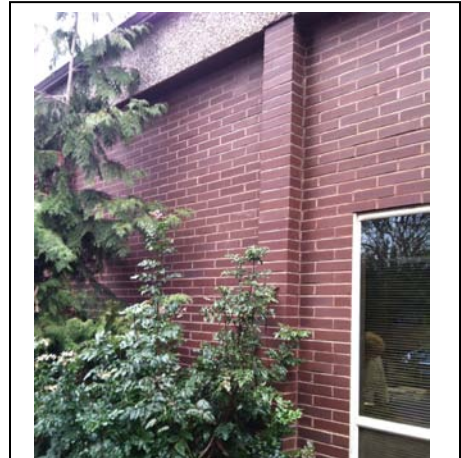


The Crossing, a mixed use office and commercial center. Exterior cladding is stucco with some CMU block at the base of the office building.

Finally, Taylor-Made Labels is a single story industrial building adjacent to the site across Pilkington Road. While the building is older, this development is in the immediate vicinity and incorporates a prominent amount of actual brick siding on a street-facing façade. The red bricks are approximately 2.5 inches tall by 11 inches wide.



Typical 2.5 x 11-inch brick siding on the Taylor-Made Labels facility.



Taylor-Made Labels front brick facade.

Siding

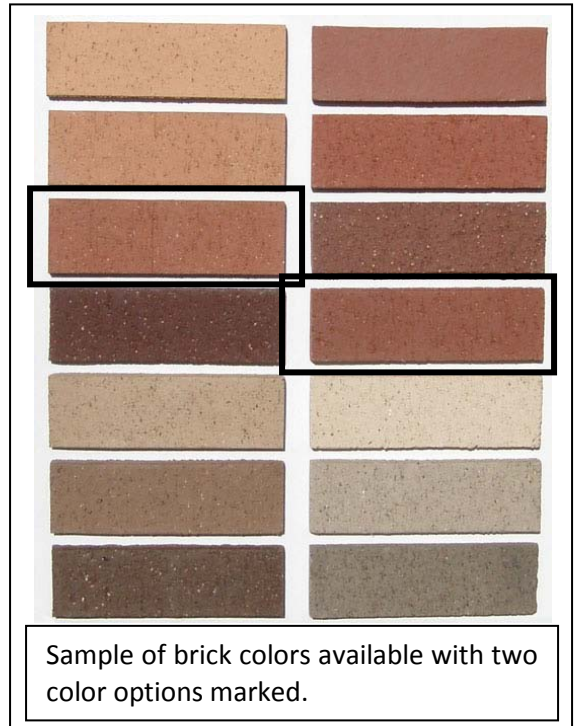
The applicant proposes to clad both buildings primarily in CMU ground face block veneer (Exhibits E14-E15 and F1-F2). There are two different sizes and colors of CMU (Exhibit E25). A 3.5-foot tall base of natural grey CMU block veneer, eight inches high and 16 inches long, is proposed on both buildings. Above that base, the applicant is proposing a sandstone CMU block veneer that is four inches high and 16 inches long. On the retail building, the applicant is proposing large areas of horizontal lap wood composite siding with 4-inch exposure (Exhibit E15). Proposed secondary siding on the retail building is composite stucco (Exhibits E15 and E25). Secondary material on the donation center is small mosaic areas of primarily blue tile (Exhibit E14 and E25).

Staff finds that the horizontal lap wood composite siding is consistent with and complementary to the horizontal siding material of the Lake Grove Vet Clinic. The proposed 8x16 inch natural grey CMU block veneer base on both buildings is also consistent with and complementary to the base of the Crossing office building. The use of the tile mosaics on the donation center’s Boones Ferry Road façade is proposed to provide visual interest and is a part of the Goodwill corporate image. Staff finds that the mosaic areas provide an accent detail that is unique to the building without overwhelming the overall design.

As noted, above, there are two buildings adjacent to the site that incorporate red brick veneer into their facades, with brick sizes ranging from 2x8-inch to 2.5x11-inch bricks.³ Looking at other newer buildings of good design along Boones Ferry Road, listed above, staff finds that red brick siding is a primary material and the typical brick size is the approximate 2x8-inch brick with some variety in color, texture of the brick face, and brick size. Staff notes that in the final pre-application meeting with City staff, both structures were shown to incorporate red brick siding, not sandstone colored CMU veneer. In the addendum narrative, the applicant states that materials and design shown at the final pre-application conference meeting were “preliminary and in no way intended to commit the project to every element shown as all projects experience minor modifications in the final stages of design” (Page 6 of Exhibit F2).

³ Staff notes that brick sizes noted in this report are approximations for simplicity.

The City expects proposed design elements such as primary siding materials to be the same as those reviewed at the final pre-application stage and modifying from reddish brick to the proposed sandstone CMU veneer is not a minor point. Staff finds that the 4x16-inch sandstone CMU veneer is not consistent in color or size with the two adjacent buildings that incorporate brick in their facades, nor is it consistent with the greater universe of brick buildings of good design along Boones Ferry Road. As a condition of approval, staff recommends that the upper wall CMU siding on both buildings be changed to a brick veneer that is similar in size to the standard brick used on adjacent buildings, including but not limited to the office buildings at 17704 and 17720 Jean Way and at “Chow Corner” (17437 and 17449 Boones Ferry Road). In order not to dominate the lighter natural grey base, staff recommends that the brick color be modified from sandstone to a lighter reddish color similar to the two brick colors shown in the graphic, right.



The applicant proposes two areas of stucco siding on the longer Pilkington Road façade to be consistent with the Crossing cladding materials (Exhibits E12, E15, and F1). The overall proposed design already complements the Crossing through the use of the horizontal metal canopies, flat roof forms, and similar general massing. Staff finds that, unlike the Crossing’s design which incorporates large areas of fenestration on street-facing facades, the proposed stucco (and associated metal doors) creates a functional or utilitarian appearance. The proposed siding material is not consistent with and does not complement the Crossing.

The applicant states that future tenants will determine how interior space will be used, including how that retail space does or does not connect to the intersection and landscaping area (Page 9 of Exhibit F2). Staff finds that now is the time to determine compliance with building design standards. Therefore, staff recommends a condition of approval to revise the area of proposed stucco to incorporate more fenestration, specifically a window system similar to the internal retail building’s façade facing the parking lot. The revision from stucco to windows will create a façade that complements to the Crossing. Staff notes that the proposed utility room will likely need to be relocated to accommodate the revision (Exhibit E18).

Roof Materials and Forms

The proposed retail building has a 22.5 to 24.5-foot tall flat roof (Exhibits E12 and E15). Staff finds that the flat roof and the proposed heights are similar to both the Lake Grove Vet Clinic and to the single story portion of the Crossing. For the donation center, the applicant proposes a 30.6-foot gable roof with a roof pitch of roughly 11:14 (Exhibit E14). The gable roof is finished in a metallic silver metal seamed roofing material. Staff finds that the gable roof form is consistent and complementary with the gable roofed Oswego Assisted Living facility south of the site on Pilkington Road and that the form provides a unique design element that is tied to the proposed retail building design through the use of the sloped metal awnings made of the same material (Exhibits E14-E15).

Windows

The applicant proposes the same aluminum and glass storefront window system on both buildings (Exhibits E11-E15 and E22-E23). Due to the variety of architectural styles and uses within the vicinity of the site, there is no one window style with which the proposal should be consistent. Staff finds that the proposed window pattern, percentage of wall plane (with the exception of the retail building's Pilkington Road façade as discussed, above), and lack of tinting work to complement the overall proposed design.

Setbacks

The applicant is requesting Minor Variances to both front and street side yard setbacks so that proposed eaves can be four feet in depth (Exhibits E3 and F1).

Again, due to the variety of architectural styles and dates of construction for buildings within the vicinity of this site, there is no clear pattern of setbacks with which the site could be deemed consistent. The proposed setbacks allow extensive landscaping, public sidewalks, deeper eaves, and street trees along both street frontages. In this matter, the proposed setbacks are consistent with development of good design.

Staff finds that the proposed buildings, with recommended conditions, are complementary in appearance to the adjacent structures of good design.

- ii. Where existing buildings are to remain on site, new development shall be designed to integrate the remaining buildings into the overall design or provide separate landscaping, remodeling or other treatment which establishes a distinct character and function for the remaining buildings.*

All existing buildings on this site were removed. This criterion is not applicable.

- iii. Design bus shelters, drinking fountains, benches, mailboxes, etc., to be complementary in appearance to buildings.*

The applicant's narrative states that the design of the proposed bus shelter will be coordinated with Tri-met and will be complementary to the overall site design (Exhibit F1). The final design of the bus shelter should be submitted for review and approval of staff.

- iv. Design those elements listed below to be complementary in appearance to those buildings or structures upon which they are associated and limit the variety of styles of building elements:*

- *Awnings*
- *Chimneys*
- *Decks and railings*
- *Doors*
- *Downspouts*
- *Foundations*
- *Lights*
- *Mailboxes*
- *Mechanical equipment*
- *Signs*
- *Stairs*
- *Vents*
- *Utility connections and meters*
- *Windows*
- *Weather vanes, aerials, and other appendages attached to the roof or projecting above the roofline*

The proposed design elements include sloped aluminum awnings, horizontal metal canopies, LED exterior light fixtures, decorative poles, clear windows in aluminum frames, a combination of painted metal and glass doors, a CMU block base foundation, screened trash enclosure, and a monument sign.

The horizontal metal canopies with “tie-backs” on the retail building complement the canopies on the Crossing while the interspersed sloped metal awnings mimic the donation center building roof form (Exhibits E11-E15). The LED light fixtures are simple wall sconces and parking lot fixtures of no discernible architectural style which neither detracts nor adds to the overall design (Exhibit E20). The applicant states that the two decorative poles (spires) are an interpretation of the twin flag poles found at all Goodwill locations (Page 10 of Exhibit E2) and are intended to provide visual interest. The base of the poles is proposed to be clad in the same tile mosaic proposed on the donation center front façade (Exhibit E16). The proposed clear windows with an aluminum framing system on both buildings provide a clean and uncluttered appearance (Exhibits E14-E15). The glass doors located within the areas of fenestration complement the uncluttered appearance. Staff has already found that the proposed CMU natural grey block base on both buildings provides a consistent design element for the project site. The trash enclosure is proposed to be screened using a combination of the same CMU block base and simple metallic silver painted steel gates similar to the metallic materials on the two buildings.

Staff finds that the proposed painted metal single and double doors on the Pilkington Road retail building façade will not be complementary in appearance with the previous condition of approval to revise the exterior stucco cladding to windows. Staff recommends a condition of approval to revise these doors to glass doors, similar in appearance to those on the internal façade facing the parking lot.

The applicant is proposing one monument sign for the site (Exhibits E16 and F2). The applicant states that the proposed 8-foot overall height is similar in proportion and size to other monument signs on adjacent sites. The Crossing is the only adjacent multiple building complex with approximately 40,000 sq. ft. of retail and commercial floor area and with heights that range from single story to 41 feet. The Crossing’s existing monument sign is 7.25 feet tall (Exhibit F2). Given that the proposed project is much smaller (approximately 7,500 sq. ft. in area), and both structures are single story, staff finds that an 8-foot sign height is not proportionate. While final design and approval of all site signage is subject to a separate sign permit, to assure that any future monument sign is complementary to the building, staff recommends a condition of approval to limit the height of the proposed monument sign to six feet, or 1/3 the height of the proposed retail building. Further, the proposed sandstone CMU veneer should be revised to match the previously conditioned brick material in color and size. Otherwise, the proposed sign design complements and is consistent with the design elements for the project.

As conditioned, staff finds that the design elements are complementary in appearance to the proposed buildings.

v. Design awnings, signs, and lights to define the first floor or retail cornice height.

Both proposed buildings are single story. The retail building includes canopies, awnings, and cornice areas that help define the retail floor area (Exhibits E15 and F1). The donation center is not a retail use but the façades have clear areas for signage (Exhibit E14). Internally lit cabinet signs are not complementary to the overall design and should not be allowed. Staff recommends this as a condition of approval.

vi. Use trees and other natural elements to help define building proportion relationships and to provide scale to the structure as a whole.

As shown in the proposed landscape plan (Exhibit E10), the applicant proposes numerous street and landscaping trees to help connect and define the buildings' relationship to the pedestrian environment on both street frontages. As both buildings are single story, the mature height of the street and landscaping trees (40 feet for the columnar European hornbeam and 20 feet for the Paperbark maple, respectively) will provide scale for both buildings.

vii. Limit the variety of styles of building elements.

The applicant has reduced the number of proposed building elements to one type of window and window framing system, the same primary exterior cladding materials and paint colors, and the same general metallic silver metal for canopies, awnings, and roof forms (Exhibits E14-E16 and F2). As previously conditioned, and as proposed, the proposal's design elements have a coherent style.

viii. Screen mechanical equipment from view, or place in locations where they will generally not be visible.

The site plan (Exhibit E3) shows a transformer pad along the Pilkington Road façade of the retail building. Per LOC 50.04.003.8.d, transformer vaults should be underground. Otherwise, the applicant states that all mechanical equipment will be screened from view in the roof parapet or by landscaping (Exhibit F1).

Per LOC 50.06.001.5.c, the proposed design shall ensure that buildings shall be designed and located to complement and preserve existing natural land forms, trees, shrubs and other natural vegetation. Staff finds that, as a former industrial site, there are no existing land forms or landscaping of note that should be preserved. The applicant's narrative mistakenly states that three trees will be preserved (Exhibit F1). All trees on the site are proposed to be removed (Exhibit E9). The consulting arborist report finds that the three noted trees are actually in poor condition and would be difficult to preserve given the extensive redevelopment of the site with grading and paving (Exhibit F5).

Per LOC 50.06.001.5.d, the proposed design shall ensure that buildings are designed and constructed to reduce noise impacts on interior occupied spaces and adjacent property. The proposal will not produce any exterior or adverse noise sources, nor is it exposed to any from abutting uses. Besides the possible transformer pad, all mechanical equipment is located in compliance with required setbacks (Exhibit E3 and F1).

Per LOC 50.06.001.5.e, buildings shall be designed and constructed with roof angles, overhangs, flashings and gutters to direct water away from the structure. The applicant has provided a full stormwater management plan that includes directing water away from the structures (Exhibits E8 and F9).

Per LOC 50.06.001.5.f, buildings shall incorporate features such as arcades, roofs, alcoves, porticos, and awnings to protect pedestrians from the elements and any projections shall maintain a height of a minimum of 13.5 feet when over fire lanes. Both proposed buildings include awnings and canopies (Exhibits E14-E15). The only projection over an access point/fire lane is the proposed shallow donation center canopy that is 15.5 feet in height (Exhibit E 3 and F1).

Per LOC 50.06.001.5.g, building orientation shall be designed to encourage pedestrian access from public streets and make the street pedestrian friendly. The following two orientation standards are applicable to this site:

(1) Locating buildings within 30 ft. of a public street except where prevented by topographic constraints, existing natural resources, or where, in multi-building complexes, the configuration of the lot prevents locating all buildings within 30 ft. of a public street.

Both buildings are located within 30 feet of both Boones Ferry and Pilkington Roads (Exhibit E3).

(2) Buildings located on sites with multiple frontages on public and/or transit streets shall provide at least one public entrance within 30 ft. of the transit street.

The applicant states that the donation center is not a “public” building in that there is no retail or customer component that necessitates a public entrance (Exhibit F1). Regardless, there is a public entrance within 30 feet of Boones Ferry Road, a transit street. The retail building has two public entrances within 30 feet of Boones Ferry Road, including one that directly faces the transit street (Exhibit E15).

Staff finds that, as conditioned, the applicant has adequately demonstrated compliance with all the applicable Building Design Standards.

Parking Standards [LOC 50.06.002]

Vehicle Parking

This standard applies to all development that generates a parking need, construction of new structures that increase on-site parking requirements. The number of required parking spaces under this article shall be determined by either the Numerical Method or the Parking Study Method (LOC 50.06.002.2.a.ii). The applicant’s narrative states that the minimum parking requirements will be determined by the numerical method. For a shared parking use site, the parking minimum for each use is calculated separately and then totaled.

An industrial use such as the donation center (a processing facility) has a minimum parking requirement of 1.6 spaces of 1,000 sq. ft. of gross floor area (GFA). The proposed donation center is 1,057 sq. ft. with a minimum parking of 1.7 spaces (Exhibit E18 and F1). The applicant’s narrative states that the parking minimum for the 6,416 sq. ft. of GFA for the retail building was determined using 2,000 sq. ft. of restaurant use and approximately 4,400 sq. ft. of medical office (staff included the utility room sq. ft.) (Exhibit F1). (If the use changes following approval, the on-site parking is reviewed when the change of use is reviewed per LOC 50.07.003.14.a.ii.11.)

Required Parking Analysis			
Use	Proposed GFA	Parking Minimum per 1,000 sq. ft. of GFA	Total spaces required
Industrial	1,057 sq. ft.	1.6 spaces	1.7 spaces
Restaurant	2,000 sq. ft.	13.3 spaces	26.6 spaces
Medical Office	4,400 sq. ft.	3.9 spaces	17.1 spaces
Total			45.4 spaces
Bus shelter modifier (.85)			38.59 spaces.
100 Dwelling units (.90)			34.73 spaces
Total after rounding			35 spaces

The proposed site plan shows 35 spaces (Exhibit E3). This portion of the standard is met. Per LOC 50.06.002.2.a.ii.(3), the maximum number of parking spaces shall not exceed either 125% of the number of parking spaces required under Table 50.06.002-3, prior to applying the Parking Requirement Modifiers. 125 percent of the total number of spaces prior to parking modifiers is 57 spaces. This portion of the standard is met.

The proposed parking stalls shall comply with the minimum dimensional requirements for standard and compact stalls per LOC 50.06.002.2.a.iv. The proposed dimensions are listed in the applicant’s narrative and proposed site plan (Exhibits E3 and F1).

As proposed, this portion of the standard is met.

Finally, sufficient number and size of loading berths must be provided to adequately handle the needs of the development. The applicant is proposing two berths for the donation center and no dedicated berths for the retail building which staff concludes will be adequate (Exhibits E3 and F1).

Bicycle Parking

The parking standard also requires a certain number of covered bicycle spaces for each use per 1,000 sq. ft. of GFA or the minimum of two spaces, whichever number is greater.

Bicycle Parking Analysis				
Use	GFA	Parking spaces per GFA	Parking Spaces Req’d	Proposed
Medical Office	4,400 sq. ft.	2, or 1 per 5,000 sq. ft. GFA	2 spaces	2 spaces
Restaurant	2,000 sq. ft.	2, or 1 per 5,000 sq. ft. GFA	2 spaces	1 space
Manufacturing and Production	1,057 sq. ft.	2, or 1 per 15,000 sq. ft. GFA	2 spaces	2 spaces

The applicant is proposing five covered bicycle parking spaces. As discussed in the applicant’s narrative (Exhibit F1) and shown on Exhibit E3, the applicant mistakenly used “retail sales” to calculate the required number of bicycle parking spaces for 2,000 sq. ft. of proposed restaurant use in the retail building. Staff recommends a condition of approval to include one additional bicycle parking space for the retail building. As conditioned, this portion of the standard is met.

This standard is met.

Access [LOC 50.06.003.1]

This standard is applicable to construction of commercial and industrial development and prescribes standards for the location and configuration of access points. The determination of the location and configuration of an access shall be based on a traffic study. Access design shall be based on the following five criteria: topography; traffic volume to be generated by the development; classification of the public street from which the access is taken (residential, collector or arterial); traffic volume presently carried by such street; and projected traffic volumes. Direct permanent access from a development to an arterial street is prohibited where an alternate access is either available or is expected to be available. A temporary access may be allowed.

The site has frontages on Boones Ferry Road (a major arterial) and Pilkington Road (a major collector) (Exhibit E2). The applicant proposes direct permanent access points off of each frontage (Exhibit E3) and is requesting a Hardship Variance for the Boones Ferry Road access (Exhibits F3 and F4). The applicant has submitted a Transportation Impact Analysis (TIA) prepared by a traffic engineer addressing the requirements of this standard, including an analysis of the access design with and without the requested Hardship Variance for the Boones Ferry Road access point (Exhibits F7).

Pilkington Road Access

The proposed access point is more than 100 feet from the intersection. The safety of the approach is acceptable as there are no visual obstructions. Please see the discussion regarding access approach widths under the On-Site Circulation standard, below.

Boones Ferry Road Access

As noted, below, staff recommends denial of the Hardship Variance to allow a direct access from Boones Ferry Road as the request does not meet the Hardship Variance criteria. If the Commission finds that the Hardship Variance should be approved, staff finds that the access point is more than 100 feet from the intersection. The safety of the approach is acceptable as there are no visual obstructions. Please see the discussion regarding approach and driveway widths under the On-Site Circulations standard, below.

This standard is or can be met.

Hardship Variances [LOC 50.08.003]

Hardship Variances are significant changes from the Code requirements that are likely to create impacts on adjacent properties or users. The purpose of Hardship Variances is to allow development not in conformance with the requirements of the Community Development Code relating to the site. A variance is to permit the owner some exception to the Code requirements in order to elevate the development potential on a site up to a minimum reasonable use of the property.

The applicant is requesting a Hardship Variance to allow direct access off of Boones Ferry Road (a major arterial), which is not permitted by Access standards (LOC 50.06.003.1.c.iii) (Exhibits E5 and F3-F4). The proposed 13-foot wide driveway will provide access to this site and incorporates a shared 13-foot access easement on the abutting property to the west that widens the driveway approach to 26 feet to ensure adequate width for truck turning movement (Exhibit E3). Final build-out width of the proposed access is proposed to be a 26-foot shared driveway partially located on the abutting property when that site redevelops (Exhibits E5, F3-F4, and F10).

As prescribed by LOC 50.08.003.3.a, the granting authority may approve a variance from the requirements if it is established that:

1. *The request is necessary to prevent an unnecessary hardship;*

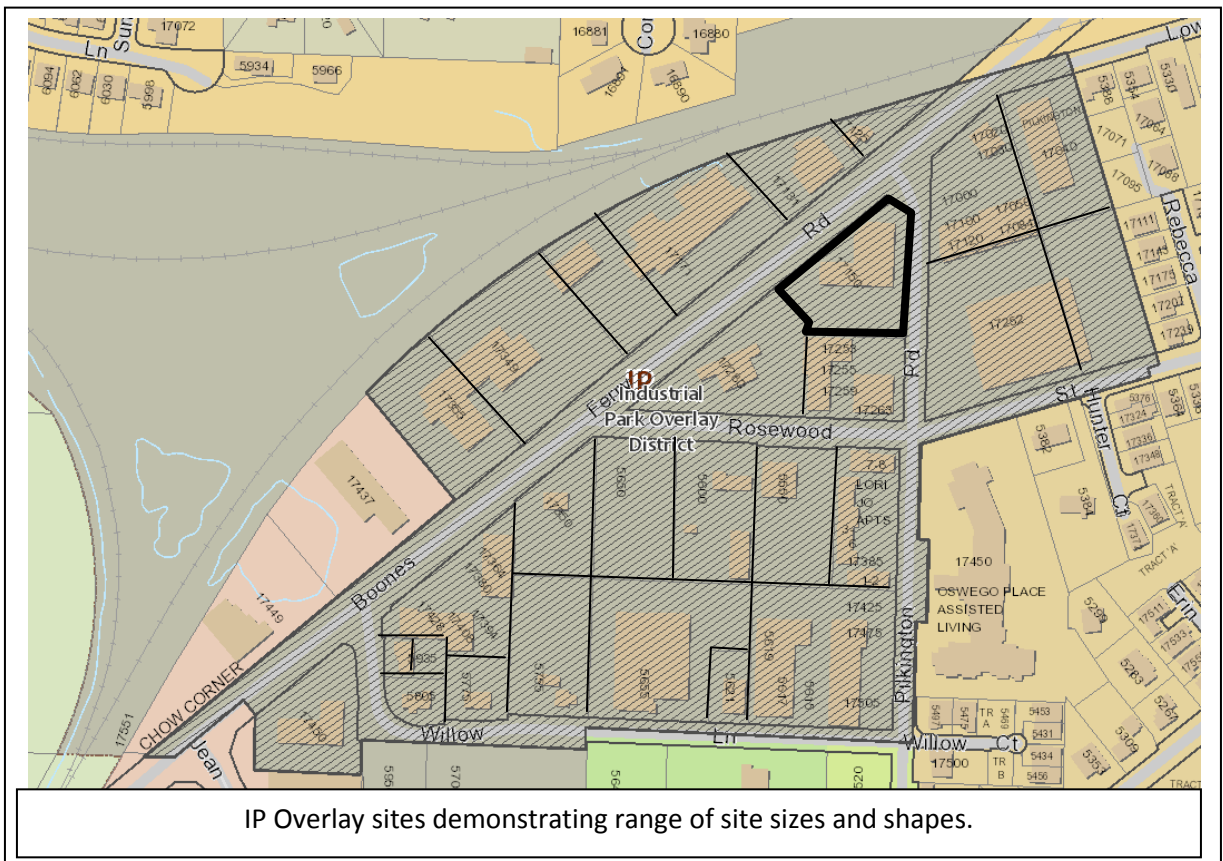
The Code provides the granting authority a number of factors in determining whether hardship exists. This is not an exclusive listing of factors and not all factors must be found to exist on the property in order to meet the “prevent an unnecessary hardship” criterion. One must first determine whether there is a hardship resulting on the property before determining that the hardship is unnecessary. Staff will start the analysis at this point.

To be relevant to the hardship determination, the factor must contribute to the claim of hardship. It is not an unnecessary hardship to comply with the regulatory requirements of the Code. Staff can only consider hardships related to the physical aspects of the site and cannot consider zoning regulations imposed on the site as itself a hardship. There is no guarantee under the Code that all permitted uses will fit on all lot sizes in the zone.

a. Physical circumstances related to the piece of property involved.

The applicant's Hardship Variance narrative states that the site itself is unusually shaped (it is a triangular peninsular lot) and small (it is slightly less than one acre in size after required right-of-way dedication) (Exhibit F3). The Hardship Variance narrative addendum also states that the subject property has an "unusual and unconventional shape that is slightly triangular in nature" (Exhibit F4).

Staff finds that the triangular nature of the site does not itself constrain development. At the narrowest point of the triangle, the allowed building envelope is still approximately 25 feet wide and then widens considerably from there (Exhibit E3). Without the Boones Ferry Road driveway, the building envelope is approximately 240 feet wide and the depth ranges from 95 to 185 linear feet (Exhibit E3). As discussed above, there are no lot coverage or floor area limitations in the IP zone. The required open space/landscaping requirement is 15% of the site and may be located along the perimeter of the site in required yard setbacks, as shown on the applicant's proposed landscape plan (Exhibit E10). There are no significant grade changes on the site and no significant trees or groves of trees that are required to be preserved, (Exhibit E2; See Chapter 55 Tree Code discussion, below). Staff also finds that the size of the site is not a factor that contributes to the claim of hardship. Many other sites within the IP zone, and particularly in the IP Overlay, are similar in size or smaller.



Finally, the site is being fully redeveloped without having to design around existing site improvements or physical constraints. The applicant has not demonstrated how the development potential of the site is unreasonably constrained when compared to other sites in the zone and vicinity. Staff finds that physical circumstances related to the site do not create an unnecessary hardship. For the analysis of the existing street system and the traffic impact analysis from redevelopment, please see the discussion, below.

b. Whether a reasonable use similar to like properties can be made of the property without the variance.

Staff believes that this is the primary factor in determining if a hardship exists for the applicant – whether the applicant is able to make reasonable use of the property similar to like properties. If the applicant is not able to make reasonable use, then the other factors in LOC 50.08.003 (physical circumstances, self-created, and economic impact) address whether the hardship is “unnecessary”. Accordingly, staff first examines whether the applicant is able to make reasonable use of the site similar to like properties.

1. Non-conforming Properties as “Like” Properties

Parcels that are non-conforming -- where a site was developed prior to the effective date of the current requirement from which a variance is sought -- cannot be said to be a “like” property for comparison purposes. When searching for “like” properties, inclusion of sites with non-conforming access points would, in effect, be seeking a variance because of a change in the access code requirements, and would effectively repeal the current access restriction as to that lot. Stated simply, sites that are legally constructed under prior code requirements cannot be used in the variance process to overcome current (changed) ordinance requirements.

Both Hardship Variance narratives use the Crossing as example of a similar property that enjoys direct access onto Boones Ferry Road even though the site also has frontage (and access points) on Pilkington Road (Exhibits F3 and F4). The applicant’s narrative erroneously states that the access was constructed in 2001 (Page 3 of Exhibit F3). The 3-story office building approved in 2001 per LU 01-0002, was the last remaining vacant parcel in a phased development (the Crossing). In that report, staff noted that the Boones Ferry Road access point was already in existence.

The Crossing is part of a 4-lot, 3-phase commercial and industrial Planned Unit Development (PUD) that was initially approved in 1968 (PUD 1-68). The Access standards in 1968 did not prohibit direct access onto an arterial even if alternate access was available. In 2001, the PUD was formally repealed as a part of LU 01-0002. Termination of the PUD restored the entire Crossing site to being subject to the underlying zoning requirements for *future* development; prior development in conformance with the 1968 PUD standards, including the site access point, would be classified as a non-conforming site feature upon the termination of the PUD. PUD termination removed the prior “PUD zone” from the site, but did not require the site to conform to the zoning and development standards at the time of the PUD dissolution. Thus, in the 2001 PUD termination, the direct access point onto Boones Ferry Road was permitted to remain as a non-conforming site feature.

Staff finds that given that the Boones Ferry Road access point is non-conforming, the Crossing should not be used as a “like property” for purposes of the applicant’s new site development. If the Crossing site were to fully redevelop today with intensification of traffic to and from the site, it would necessarily comply with current code regulations including removal of non-conforming access points like the subject site.

2. Established Industry Standards to Define “Reasonable Use”

The applicant’s narrative addendum asserts that “reasonable use” should be considered to be the “minimum site development characteristics consistent with established industry standards for lot coverage, parking, access and the like” (Exhibit F4).

First, staff notes that there is no showing that the text, context, or legislative history of the Hardship Variance criterion’s “reasonable use” incorporated “established industry standards.” There is no evidence that the City’s legislative body, the City Council, consulted any claimed source of “established industry standards” when it adopted site development requirements, and thus there is no showing that the site development standards were adopted with the intent of securing “established industry standards” as the “reasonable use” criterion. Second, staff finds that “established industry standards” is vague: there is no differentiation between standards for different types of development or definition of what those standards should be, other than what the applicant desires for its business purposes. Third, “established industry standards” is overly broad: there are no “established industry standards” as there is no entity that adopts what are claimed to be “industry standards.” Even if there were, the “standards” would be necessarily based upon the average site development standards found throughout numerous jurisdictions. The question isn’t what other jurisdictions would find necessary in terms of site development requirements that would still permit development on a non-constricted parcel, but rather what the Lake Oswego City Council meant in assuring a level of “reasonable use” of a constricted commercial site.

3. “Reasonable Use” in Terms of Uses

Staff understands and has applied the “reasonable use similar to like properties” factor in relation to the criterion of “unnecessary hardship”. Since there is no assurance that every lot in a zone is suitable for every use permitted in the zone, “reasonable use” has been interpreted to mean that if there are some uses permitted in the zone that could be made on the site, even though they may not be the applicant’s specific choice of uses, nevertheless the applicant could make “reasonable use” of the site similar to like properties. Similar properties typically have a mix of uses available to them under the zone; obviously not all “like properties” in the zone develop with the uses desired by a specific applicant. Again, the question is whether there are site-specific constraints which preclude the opportunity to develop the site with uses permitted in the zone, as would be the case for a non-constrained site.

4. Analysis of Asserted Site Constraints

The site is subject to established Lake Oswego development standards which include code provisions, adopted pursuant to Comprehensive Plan policies, which limit access points on the City’s arterials to ensure their proper function (see the policy discussion, below). In addition, there are no limitations on lot coverage or floor area ratio in the IP zone. The applicant is requesting and staff is recommending approval of Minor Variances to setbacks. The applicant is voluntarily proposing uses on the site which would have high parking demands, e.g., food retail uses, to determine the minimum on-site parking required. As illustrated on Exhibit E4, almost double the required open space/landscaping is provided on the site.

Although staff does not accept the argument that “reasonable use” is determined through “established industry standards,” staff notes that the applicant fails to demonstrate that the asserted “industry standards” for an unconventionally shaped lot are not met. The applicant states that “industry standards” for an unconventionally shaped lot can be interpreted to mean lot coverage limited to 28-29% to allow for adequate parking and maneuvering, landscaping, and pedestrian areas (Pages 3 and 34 of Exhibit F3). The applicant is proposing approximately 18% lot coverage. The applicant then asserts that without the Boones Ferry Road access point, donation truck maneuvering needs would necessitate an even smaller building envelope (Exhibit F3). In fact, the applicant provides a large number of on-site parking spaces based on hypothetical high parking-demand uses (but not all high-demand uses can occur on every lot in the zone) and is still able to set aside 10% more than the required open space/landscaping square footage. Staff finds that the applicant’s materials demonstrate the site is voluntarily “underdeveloped” with regards to lot coverage, overdeveloped with regards to parking, and yet is subsequently configured to provide an truck circulation plan that directly conflicts with Access standards.

Staff also finds that the donation truck maneuvering is not a use that should drive a development plan necessitating the requested Hardship Variance. Not every site in a zone is suitable for, in this case, processing activities. If unconstrained truck maneuvering is a requirement for the donation center, a purportedly small and unconventionally-shaped site may not be the best location for this use. The inability to do every use allowed in a zone on a site does not result in the inability to make “reasonable use” of a site. An applicant must necessarily balance uses on a site so they function on the site. One means of balancing uses on a site is to control the timing of the uses, so they do not conflict.

With two proposed loading berths for the donation storage containers, the reasonable expectation is that removal and replacement of full containers will happen on a weekly basis, not daily or hourly like a more standard industrial use. Staff believes that Goodwill Industries could restrict on-site truck maneuvering to a time when the retail building parking lot is empty similar to how grocery stores schedule their deliveries to early morning or late at night. The burden would be on the applicant to demonstrate why this type of scheduling (and subsequently on-site truck maneuvering) is not possible.

Staff finds that the applicant has not met its burden of proof required to demonstrate that a reasonable use similar to like properties cannot be made of the property without the direct access onto Boones Ferry Road. For the analysis of the existing street system and the traffic impact analysis from redevelopment, please see the discussion, below.

c. Whether the hardship was created by the person requesting the variance.

The applicant asserts that it is the Access standard itself, because it is applicable to the site, that creates the hardship: in order to be considered a “prime site”, any site with frontage on an arterial should also be granted direct access from that arterial (Page 34 of Exhibit F3). Staff assumes that the applicant’s characterization of the site as a “prime site” in its view is due to the site’s location for retail space, not for a donation center.

The Access standards do not deny all access to arterials, only to corner or peninsular sites with alternate frontage. This site has frontage on a major arterial, Boones Ferry Road, and a major collector, Pilkington Road. The Access standard was created to ensure the reduction in direct access points on the City’s arterial streets so that they might function to their highest capacity. Denial of the Boones Ferry Road access point would not preclude an alternate development plan that could comply with all applicable standards. Compliance with applicable zoning and development standards is not, in and of itself, a hardship.

The applicant's narrative addendum asserts that while a different site plan with less parking could be proposed, the applicant's proposal was driven by its judgment of "maximum build-out" (Exhibit F4). Staff rejects that argument that the inability to achieve the applicant's vision of "maximum build out" is an "unnecessary hardship." First, the proposed required minimum on-site parking requirement for the retail building is based on the applicant's use of a hypothetical 2,000 sq. ft. restaurant and 4,500 sq. ft. medical office (see Parking discussion, above, and Exhibit F1). A restaurant and medical office are just two of the many allowed uses in the IP Overlay but both have a higher than typical parking requirement. The retail building itself is just a shell at this time; one or more unknown tenants may ultimately use the space. Over the course of time, it is expected that businesses will come and go in the building; neither the zone nor the site characteristics make the site exclusive to restaurant and medical offices. Therefore, it is impossible to determine – or assure -- "maximum build-out" for the site as that is a market-driven reality.

Staff finds that the applicant's site development plan (including a proposed use requiring truck maneuvering, hypothetically high parking demands for future retail tenants, extra open space/landscaping, and proposed building locations) is directed to complicating on-site truck maneuvering. An alternate site plan that complies with Code and that provides sufficient on-site truck maneuvering space is possible, it appears that the applicant just does not desire an alternative. Staff finds that the "hardship" is being created by the person requesting the variance. For the analysis of the existing street system and the traffic impact analysis from redevelopment, please see the discussion, below.

d. The economic impact upon the person requesting the variance if the request is denied.

This factor requires a determination that the property suffers from a development limitation imposed by the Code which, due to the unique circumstances of the property, creates an unnecessary hardship, and that by not granting the variance, the applicant will thereby suffer economic hardship. Variances, if granted, usually have the effect of enhancing the property value of the site for the applicant. Mere reduction in value from what the value of the property would be if the variance were granted is not sufficient to meet this factor. This factor requires an extraordinary impact upon the applicant akin to precluding development of the parcel or approaching substantial prohibition of development.

Both Hardship Variance narratives make a number of assertions that the lack of direct access onto Boones Ferry Road will result in negative economic impacts (Exhibits F3 and F4).

The first assertion is that a single access point off of Pilkington Road would render the site "un-leasable" and economically unviable as a retail center because the absence of a Boones Ferry Road access necessitates increasing on-site truck maneuvering space and subsequently less on-site parking for the retail uses. Less parking would automatically mean restricting the categories and size of possible future retail tenants. The applicant states that "no tenant, whether industrial, retail, or service oriented will locate on a premises that is not provided with direct... access points" (Page 2 of Exhibit F3). The applicant appears to argue that the code prohibition of a direct access onto Boones Ferry Road renders the site economically unviable, and rises to the level of a regulatory taking. The applicant asserts but provides no evidence that the lack of Boones Ferry Road access would jeopardize the financial stability of the entire project and ensure that the site will not be commercially successful (Exhibit F4).

A regulatory taking occurs when regulations so constrict the uses of a site that no economically viable use can be made of the property. Seeking a variance for relief from the zoning constraints that give rise to a regulatory taking is a necessary first step for a property owner:

“The court recognized that plaintiffs who base inverse condemnation claims on use restrictions—claims that the court described as “regulatory takings” claims—must exhaust administrative remedies for two reasons:

‘First, the fact that one use is impermissible under the regulations does not necessarily mean that other economically productive uses are also precluded; and second, until alternative uses are applied for or alternative means of obtaining permission for the first use are attempted, there can be no conclusive authoritative determination of what is legally permitted by the regulations. Therefore, the courts cannot perform their adjudicative function on a claim predicated on a single denial, because something more must be decided by the local or other regulatory authority before there can be a demonstrable loss of all use and, therefore, a taking. *72 See *Sues Builders v. City of Beaverton*, [294 Or. 254, 261–62, 656 P.2d 306 (1982)].’

Nelson v. City of Lake Oswego, 126 Or.App. 416, 422, 869 P.2d 350 (1994), cited in *West Linn Corporate Park, L.L.C. v. City of West Linn*, 349 Or. 58, 71-72, 240 P.3d 29 (2010)

Staff has already noted that the restaurant and medical offices are hypothetical uses proposed specifically because of their high parking requirements; the uses are just two of many non-industrial uses allowed in the IP Overlay. See Table 50.03.002.3-2. Indeed, the very purpose of the IP Overlay was to “provide land that is available for both the standard IP uses *and office, business services, and limited retail uses* along Lower Boones Ferry Road in the vicinity of Pilkington and Jean Roads...” (LOC 50.05.008.1). Given the sheer number of potential uses – both standard IP uses *and office, business services, and limited retail uses* --many with lower parking requirements, it would seem to be extremely difficult to show that the site, even if its uses were limited to retail, would be un-leasable without the Boones Ferry Road access, even if that meant slightly fewer parking spaces or a different parking lot configuration. At the least, staff finds that the applicant has not met its burden of showing that there is no economic use available for the site that would be in conformance with the zoning and development restrictions. Finally, the Pilkington Road access point directly abuts the retail building and its parking lot (Exhibit E3). Staff finds that the single access point will provide direct, visible, and convenient access to the prime retail space without any need to circumnavigate vehicles queuing for donation drop-off.

The second main assertion is that if the direct access point on Boones Ferry Road is denied, there would be significant redesign costs to provide a site plan with a single access point off of Pilkington Road (Page 35 of Exhibit F4). The redesign would also impact construction and opening dates of both buildings, resulting in further economic loss.

First, if the variance is denied, the applicant will have to revise the non-compliant site plan to one that does comply with Code. This is not considered an economic effect that results from Code requirements causing “unnecessary hardships” due to the site’s characteristics. Second, when the applicant first approached the City to discuss redevelopment options for this site in December 2012, staff provided clear written and oral confirmation of the access restriction on Boones Ferry Road. Staff also noted that a Hardship Variance would be difficult to support for a number of reasons, all of them addressed in this report.

Given that the Access standard is clear and objective (not discretionary), that the applicant was made aware of the standard at the beginning of the development process, and was also made aware that a variance to the standard would not likely be supported by staff, any redesign costs or delay in construction if the variance is denied were financial risks that the applicant voluntarily undertook and cannot be considered an “economic impact” with regards to this factor.

The final economic impact assertion involves the Goodwill Industries business model based on the resale of voluntarily donated products. The applicant states that delay in construction means delay in gathering donations (Page 35 of Exhibit F3). Goodwill Industries also provides a number of unspecified non-profit programs that are funded by the sale of the donated goods (Page 2 of Exhibit F3). Requiring a donor to use the Pilkington Road access would be frustrating and inconvenient to its donors and customers, thereby stifling both potential retail profits and non-profit programs (Exhibit F3).

Staff would direct the Commission to consider the proposed site plan shown on Exhibit E3. While the proposed Boones Ferry Road access point and driveway abut the donation center, a donor would be required to perform a sharp turn to access the donation center queue. With some out-of-direction travel through the intersection, the Pilkington Road access provides a straightforward connection of almost the same length. The applicant’s assertion also assumes that a donor who was specifically going to this site to donate would be fundamentally discouraged by the extra 560 feet of out-of-direction travel through the intersection. Staff finds that this premise is unlikely as the donation center would be considered a destination point, not a random trip.

Finally, although the applicant asserts that societal impacts would ensue due to delay associated with redesign, no evidence was provided supporting that assertion; the applicant also fails to consider the longer term societal impacts (traffic impacts to Boones Ferry Road) that compliance with the code provision is meant to avoid.

As is always the case regarding variance requests, if an applicant’s proposed development is not approved, it will have some economic impact. In previous Hardship Variance requests, this factor has been applied as follows: mere reduction in value from what the value of the property would be if the variance were granted is not sufficient to meet this factor. This factor requires an extraordinary impact upon the applicant akin to precluding development of the site or approaching substantial prohibition of development. Staff finds that denial of the Hardship Variance does not result in the degree of unforeseen negative economic impacts that would constitute an “unnecessary hardship”, the applicable criterion.

Per LOC 50.08.003.3.b.ii:

“... other factors may be considered on whether granting the variance will prevent a hardship.”

The applicant has provided a Traffic Impact Analysis (TIA) that reviews development of the site with and without the Boones Ferry Road access point (Exhibit F7). The applicant asserts that the TIA finds the following impacts from a single Pilkington Road access (Exhibits F3 and F4):

- Existing congestion on Pilkington Road will increase due to the additional trips;
- On-site queuing will increase with all vehicles exiting onto Pilkington Road;
- More than half of the site-generated trips would be required to navigate to the site via out-of-direction travel;
- Out-of-direction travel will increase turn movement interactions with pedestrians at the Boones Ferry and Pilkington Roads intersection;
- Increased on-site truck maneuvering area would be necessary;
- Restricted access by Fire or Emergency Vehicles to only one access/entry point.

The applicant concludes that all of these factors negatively impact travel and safety for the proposed development and abutting neighborhood, as well as the economic viability of the retail space and the donation center. Again, the question is whether these impacts, which would result from compliance with the code requirements, are due to site-specific constraints that create an unnecessary hardship.

The City's Traffic Engineer has reviewed the TIA along with the proposed site plans, and found the following:

- Using hypothetical restaurant and medical office retail tenants, along with the proposed processing use (donation center), new development will add 111 trips in PM peak.
- The TIA was conservative (meaning it overestimated the number of trips). It used high-generating land uses for retail tenants, assumed the Otak buildings (across Boones Ferry Road to the south) at previous occupancy, and no trip reductions were taken.
- With a single access point, congestion on Pilkington Road will increase by 12%, with a volume/capacity (v/c) ratio increase of 0.07 (0.57 to 0.64). This is an acceptable change.
- The Level of Service (LOS) of the Boones Ferry Road/Pilkington Road intersection is unaffected by the additional 50± vehicles using the intersection during the peak hour. Of course, it is expected that there will be an increase in traffic resulting from any intensification of use of the site. The resulting LOS "C" is well above the city's established threshold of LOS "E".
- With a single access point, the 95% queue lengths on Pilkington Road will increase by 25 feet. This means that during the busiest 15 minutes of the peak hour (5-6 pm), the left turn queue off Pilkington Road onto Boones Ferry Road will increase from 150 feet to 175 feet (or one car length) for 5% of the time. The available storage for queuing is 200 feet.
- The same situation occurs at the right turn from Boones Ferry Road onto Pilkington Road. (In fact, the existing 95% queue will extend beyond the proposed Boones Ferry Road access point, blocking attempts for traffic to enter/exit the site during a red light.)
- The Crossing's driveway (along Pilkington Road) will see impacts from the increased traffic, but that driveway is already blocked by queuing vehicles. Assuming a single access point on Pilkington Road (and retail tenants that generate a high number of trips), the queue would be one car length longer than the existing queue.
- If the donation center traffic was directed to the single Pilkington Road access, the 560 feet of out-of-direction travel could add approximately 30 seconds of travel time under green light conditions. (As noted earlier, the Pilkington Road driveway actually provides better direct access to the retail building than the one proposed off of Boones Ferry Road.)
- As discussed under On-Site Circulation – Driveway and Fire Access, below, the 13-foot wide Boones Ferry Road driveway does not comply with LOC Chapter 15 Fire Code and is not intended to act as a fire access lane. Denial of the Hardship Variance does not make the project non-compliant with fire access standards.

Staff finds that, as demonstrated in the applicant's materials, denying a direct access point on Boones Ferry Road does not produce significant traffic or safety impacts. On the contrary, the extensive TIA demonstrates that, with a single access point, potential congestion using two of the highest trip generating uses possible will add on only seconds of delay, one additional car in all queuing lanes, and the same service level as it does currently. As discussed, below, the Comprehensive Plan directs the City to adopt regulations and design projects to ensure that the street network operates at LOS "E" or above. The applicant may have to revise the site plans to allow for on-site truck maneuvering for the donation center, but staff anticipates no more than one to two trips a week for this use.

In short, the applicant's claim of hardship arises from the desire to use the site for two uses – retail and drive-through donation – and, as the applicant illustrates, these two uses present conflicts to each other. The site may well be able to handle either use separately, or both uses if scheduled appropriately. The applicant has not provided sufficient evidence that a site-specific circumstance exists on the property that is not self-created and that could be eliminated by granting the variance request. Therefore, staff cannot find that an "unnecessary hardship" exists that precludes "reasonable use of the property". This criterion is not met.

2. Development consistent with the request will not be injurious to the neighborhood in which the property is located or to property established to be affected by the request;

The purpose of the Access standard is to ensure that the number of direct access points onto the City's arterial streets are reduced or removed where site conditions allow. The Code requires sites which have an alternative access point off of non-arterial streets to use that as access. Sites which do not have an alternative access other than the arterial are required to consolidate their access with adjacent properties, to reduce the access points on to the arterial.

The applicant's materials demonstrate that this site currently has two large non-conforming direct access points on Boones Ferry Road which account for curb cuts for approximately 38% of that frontage (Exhibits E1 and F3). The proposed development would consolidate and relocate those access points further from the intersection and into one driveway, resulting in approximately 5% of that frontage as a curb cut and in a much safer location (Exhibit F3). Additionally, when the abutting property to the southwest redevelops, the applicant and that property owner have agreed to consolidate those existing access points into a 26-foot wide shared driveway with an internal connection between the sites (Exhibits E6 and F10). This will result in a total reduction in curb cuts along the combined frontage for both sites from approximately 32.5% to 4% (Exhibit F3 and F10).

Staff agrees with the applicant's finding that the proposed 26-foot direct access approach and 13-foot driveway (until the abutting site redevelops) off of Boones Ferry Road will not *add* injury for the neighborhood. It would also not reduce the number of Boones Ferry Road access points to the level desired in the Code, reflecting the Comprehensive Plan policies. This criterion has been met. For the analysis of development on the existing street system and the traffic impact analysis from redevelopment, please see the discussion, above.

3. *The request is the minimum variance necessary to make reasonable use of the property; and,*

As noted above, the proposed access point would consolidate two existing driveways on the site's Boones Ferry Road frontage, and if the abutting property redevelops, would further consolidate two more existing driveways into this one. The proposal reduces four non-conforming driveways into one and the new shared driveway location complies with current regulations with regards to the Boones Ferry and Pilkington Road intersection.

Unfortunately, staff has already found that the applicant is not denied reasonable use of the property if the variance is not granted. While the proposed direct access point is the minimum variance necessary that could be proposed, the applicant may make reasonable use of the property without it. This criterion is not met.

4. *The request is not in conflict with the Comprehensive Plan.*

The City's Community Development Code (Code) has been adopted with procedures and regulations that implement the City's Comprehensive Plan (Plan), providing the opportunity for citizen participation in all phases of the planning process through the notice requirements and opportunity for public comment. Because the Plan is acknowledged by the State Land Conservation and Development Commission and the Code codifies procedures that enable application of a variance from various code requirements, the applicant's ability to request variances is generally not found to be in conflict with the Plan. Staff finds that, technically, there are no applicable regulatory policies that must be reviewed against the requested variance. With regards to the applicant's *ability to request* a variance, the request is not in conflict with the Plan.

Even so, the applicant has provided a thorough analysis of how the proposed development with direct access on Boones Ferry Road does or does not conflict with adopted goals and policies in the Comprehensive Plan (Exhibit F3). Staff finds the only Plan goal that might warrant further analysis is Goal 12: Transportation, as the goal contains specific policies regarding access that were codified in the Code.

Goal 12: Transportation, Sub Goal 1: Major Street System

- Policy 1. The arterial and major collector street network shall be designed and maintained to service level "E" during peak hours. The design of the roadway system shall also take into consideration:*
- a. Balancing roadway size and scale with the need to provide efficient and safe transportation for all modes of travel, including bike, pedestrian and transit.*
 - b. Preserving community aesthetics by considering existing topography and vegetation.*

To mitigate the development's impact upon the street system, the applicant is proposing to improve the existing right-of-way by constructing a public sidewalk on both street frontages and the dedication of eight feet of land along the Pilkington Road frontage in order to construct a 12-foot travel lane and full bike lane (Exhibit E3). Further, the applicant's TIA demonstrates that the existing street network and intersection will function as LOS "C" during peak hours after development, even with all site generated trips directed to the single access point on Pilkington Road (Exhibit F7). There are no topographic or vegetation constraints on this site. This policy is addressed.

Policy 2. Direct access onto major streets shall be controlled and consolidated over time through the development review process and the implementation of major street projects.

This policy is applicable because this is a site-specific development project that is considered by the development review process. Boones Ferry Road is classified as a “major street”.

This policy was implemented through the Access standard, from which the applicant seeks a variance. Although the applicant is proposing to consolidate up to four non-conforming access points on Boones Ferry Road into one, the requested Hardship Variance conflicts with this policy. The development review process for this site is the time to ensure compliance with the applicable development standards that codify this Plan policy. While the *ability to request* a variance is not in conflict with the Plan, the specific request is.

As discussed on Pages 18-23 of Exhibit F3, Comprehensive Plan Goal 12 includes a number of specific (albeit non-regulatory) Recommended Action Measures (RAMs) that mandate the City to direct access, if feasible, away from arterials. The RAMs assist in interpreting the intent of the policies. The policy, as elaborated on by the RAMs, is codified as the regulatory Access standard LOC 50.06.003.1c.iii: “Direct permanent access from a development to an arterial street is prohibited where an alternate access is either available or is expected to be available. A temporary access may be allowed.” Staff has already found that alternate access on Pilkington Road, a lower classification of street, is feasible and does not negatively impact the service level of the street and intersection network. Full closure of the two non-conforming driveways on the Boones Ferry Road and construction of a single access point off of Pilkington Road does not conflict with Goal 12 applicable policies and associated RAMs.

Goal 12: Transportation, Sub Goal 2: Inter-Governmental Coordination

Lake Oswego’s transportation system shall be planned, developed and operated in a coordinated manner with other state, regional and local transportation providers.

The applicant’s narrative states that there was a similar Oregon Department of Transportation’s (ODOT) restriction regarding access to arterials (Exhibit F3). According to the applicant’s materials, ODOT recently changed their rules in regards to arterial access “after realizing it was negatively impacting the economics of many areas along their roadways” (Page 22 of Exhibit F3). The new policies on arterial accesses are summarized in a 2-page informational brochure titled “Change of Use” (final pages of Exhibit F3). The applicant asserts that the proposed direct access on Boones Ferry Road:

“...meets ODOT’s “Moving in the Direction of” conformity standards as it reduces the net number of highway connections, improves the distance between highway connections and improves sight distance on the highway at the connection. The Hardship Variance requested is therefore consistent with ODOT standards and the incremental changes identified by state law. *While this application does not seek to modify the text of the LOC, in particular Section 50.06.003.i.c.iii (emphasis added), approval of the requested variance is supported by Sub-Goal 2 as it represents the City’s developing and operating the transportation system in a coordinated manner with other state, regional and local transportation providers.*”

Through the adoption of the Access standard, the City's street system has been "planned, developed and operated" in coordination with a number of transportation providers. ODOT is but one of them. The applicant is pointing out that there may now be an opportunity to change our Access standard because ODOT has since changed its rules. Staff finds that ODOT made a decision to explore and then implement a policy change regarding arterial access, with a subsequent amendment to their rules. The Access standard remains in compliance with the Comprehensive Plan's sub-goal. The applicant is not requesting the City consider a policy change similar to ODOT's; the request is for a Hardship Variance. As noted above, the request does not comply with applicable Hardship Variance criteria and until the Code is amended, the access restriction is applicable. Therefore, this criterion is not met.

Conclusion:

A Hardship Variance is not a means to equal or surpass development that would be permitted on a non-constricted lot, but is a means to allow development on a uniquely constricted lot to achieve a minimum reasonable use of the property. Staff finds that the site is not uniquely constrained, that the applicant has created the hardship as alternate site plans are available that allow reasonable use of the property, that there are no unforeseen economic impacts that arise from not granting the variance, and that any traffic impacts from a single access point are consistent with the planned impact caused by abutting development.

The requested variance is use-specific, not site-specific, and conflicts with a Comprehensive Plan goal and policies that have been implemented through the subject Access standard. This standard is not met.

Staff recommends that the Commission deny the Hardship Variance and provide the applicant the opportunity to submit revised site plans for review that fully comply with Access standards.

On-Site Circulation – Driveways and Fire Access Roads [LOC 50.06.003.2]

This standard is applicable to all development proposing a new use or an increased use on a site when the development will result in the construction of, or the increased use of private streets, driveways, or parking lot aisles. This standard regulates driveways, including width, slope, and other aspects of geometric design, particularly those related to emergency vehicle access.

Driveway approach locations for corner lots depend if the adjacent street is fully improved. The maximum width of a driveway approach, measured where the edges of the driveway meet the right-of-way, shall be 24 feet unless otherwise justified by the recommendations of a traffic study. Where the driveway meets the public street, the landing area shall be a minimum of 25 feet long and shall have a maximum grade of 5%. All driveway approaches shall be located and designed in accordance with American Association of State Highway and Transportation Officials (AASHTO) standards.

The applicant proposes two driveways, one on each street frontage (Exhibits E3 and F1). The applicant has submitted a TIA and preliminary plans, both prepared by a registered engineer, addressing the requirements of this standard (Exhibits E3, F1, and F7). The TIA recommends that on-site landscaping, signage, and above-ground utilities be located and maintained along Boones Ferry and Pilkington Roads to ensure that adequate intersection sight distance is provided upon redevelopment (Exhibit F7).

Boones Ferry Road

Boones Ferry Road is fully improved to the ultimate anticipated width. The applicant is proposing a 26-foot wide driveway approach from Boones Ferry Road at the southwest corner of the site, more than 30 feet from the intersection (Exhibit E3). Thirteen feet of the driveway approach is located off-site on the abutting property to the west within an access easement (Exhibit E3). The TIA includes an egress truck turning template demonstrating the need for the 26-foot wide driveway approach, rather than the maximum 24 feet allowed (Exhibit F7). As discussed in the TIA, the proposed driveway approach is designed and located in compliance with AASHTO standards. The maximum driveway grade is approximately 8%, with a 25-foot landing area that has a maximum grade of a 5% (Exhibit F1). The applicant states that no grade breaks exceed a difference of 9%, as shown on the proposed plans (Exhibits E7 and F1).

The Engineering staff finds that the proposed driveway width of 13 feet does not meet the minimum 15-foot width for one-way or 20-foot width for two-way Fire Code access standards per LOC 50.06.003.2.b.ii, but that fire access can be provided through the Pilkington Road access point and the proposed parking lot driveway aisles (Exhibits E3, F1, and F11). The Engineering staff recommends a condition of approval that until the shared driveway is fully developed to the proposed 26-foot width, it should be restricted to a one-way, entrance-only ingress driveway with appropriate signage, to the satisfaction of the City Engineer.

Pilkington Road

Pilkington Road is not improved to its ultimate width but the Engineering staff finds that the location of the proposed 28-foot driveway onto this street adequately addresses this standard as the approach is more than 30 feet from the intersection. The TIA includes a truck turning template for the Pilkington Road driveway approach to justify the applicant's request to exceed the maximum 24 feet allowed (Exhibit E7). The Engineering staff finds that the truck turning template does not adequately demonstrate that the extra four feet are necessary for truck turning. Therefore, staff recommends a condition of approval to narrow the driveway to a maximum of 24 feet. The narrower driveway approach will also address staff's concerns about potential conflicts between vehicles entering the site and the three on-site parking spaces north of the driveway entrance (Exhibits E3 and the Pilkington Road egress truck turning template in Exhibit F7).

As conditioned, this standard can be met.

On-Site Circulation - Bikeways, Walkways, and Accessways [LOC 50.06.003.3]

This section is applicable to all commercial or industrial development. Walkways shall meet Americans with Disabilities Act (ADA) standards. Walkways within the site, connections to the public sidewalk, and external connections off site shall provide convenient, accessible, and the most practical direct, barrier-free route design. ADA accessible walkways that provide access to all portions of the site and to each street frontage are provided (Exhibits F1 and E13). Compliance with this requirement will be reviewed at the time of building permit application.

Internal walkways crossing driveways, parking areas, and loading areas shall be clearly identifiable through the use of a different paving material, raised elevation, or other similar methods. Where walkways are adjacent to vehicle travel areas, they shall be separated by a raised curb, bollards, buttons, landscaping or other physical barrier. If a raised walkway is used, the ends of the raised portions shall be equipped with curb ramps. As discussed in the applicant's narrative (Exhibit F1), all walkways that cross driveways or parking areas will be raised with ADA accessible curb ramps as necessary.

Compliance with the construction standards for walkways and accessways and ADA accessibility will be reviewed at the time of building permit application. This standard is met.

Transit [LOC 50.06.003.5]

This standard is applicable because the site has frontage on Boones Ferry Road, a transit road.

Transit-oriented features for a site within one-fourth mile of a transit street shall be provided to connect the development with the nearest adjacent transit street, or to adjacent paths which lead to the nearest transit street. Transit-oriented features consist of sidewalks, accessways, bikeways, pedestrian and bicycle amenities.

The closest bus stop is located at the northeast corner of the site along Boones Ferry Road. This stop does not currently include a bus shelter. As indicated on the site and grading plans (Exhibits E3 and E7), the applicant is proposing new public sidewalks along the perimeter of the site connecting with the proposed internal pedestrian walkways and thus to the existing bus stop. The applicant is also proposing to install a bus shelter (Exhibit F1). As a condition of approval, staff recommends that the applicant demonstrate that new bus shelter conforms to Tri-met specifications and meets all applicable ADA and City standards.

As conditioned, this standard is met.

Landscaping, Screening and Buffering [LOC 50.06.004.1]

This standard is triggered by the construction of a new non-residential structure or expansion in the footprint of an existing structure, and requires that 15% of the gross land area⁴ to be set aside in combined open space/landscaping. Screening and buffering of private utilities is required.

As discussed in Open Space standards below, the site is approximately 44,171 sq. ft. in area, requiring 6,626 sq. ft. to be contained in open space/landscaping. The applicant is proposing 11,145 sq. ft. or 25.2% of the site as open space/landscaping and new street trees are provided along the two street frontages as indicated on Exhibits E4, E10, and F1.

The buildings are located in the southwest corner and north side of the site, with parking centered in between the buildings (Exhibits E3 and E10). Except for the proposed access driveways, the perimeter of the site will be fully landscaped and trees and landscape islands are provided in the parking lot. Trash enclosures are proposed to be fenced (Exhibits E13 and E16). The materials and colors for the trash enclosures are compatible with the materials and colors of the buildings and other site features.

All landscape material is required to be guaranteed by the owner for a period of one 12-month growing season from the date of installation pursuant to LOC 50.06.010.2. As a condition of approval, staff recommends that the applicant provide a security in the amount of 5% of the total landscaping cost. As conditioned, this standard is met.

⁴ The applicant's narrative states that "gross land area" should be interpreted to mean land area remaining after required right-of-way dedications (Exhibit F1). The City has previously interpreted this standard as the land area prior to right-of-way dedications. Regardless, the proposed open space/landscaping percentage complies with this standard.

Lighting Standard [50.06.004.3]

This standard is applicable when development will increase use of public and private streets, public pathways and accessways, or parking lots.

Public Pathway Lighting

Per LOC 50.06.004.3.b.i, public sidewalk lighting shall be low level lighting *of less than* 0.3 average foot-candles and with a maximum uniformity of illuminating ratio not to exceed 20:1. The applicant’s narrative states that the proposed lighting for the public pathways will be *a minimum of* 0.3 foot-candles and does not discuss the maximum uniformity ratio (Exhibits E19 and F1)). As a condition of approval, staff recommends that the applicant provide a revised photometric plan that demonstrates full compliance with public sidewalk lighting standards.

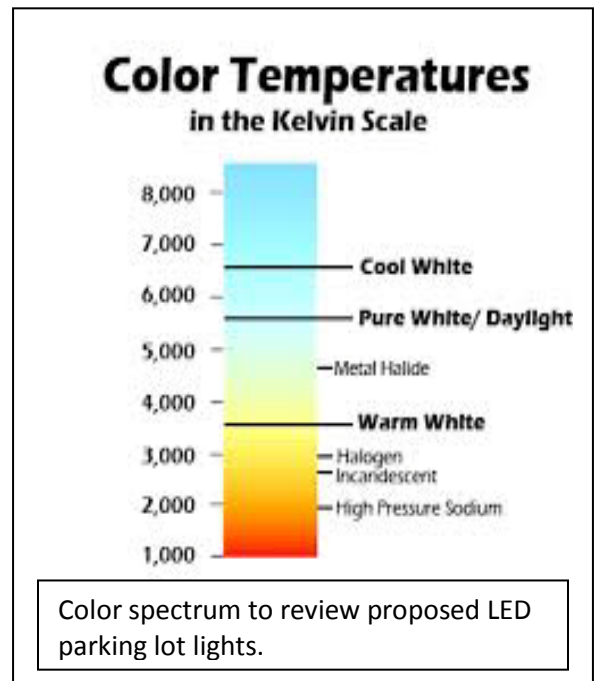
Street Lighting

Street lights are required along major collector and arterial streets. There are existing cobra head street lights located along Boones Ferry and Pilkington Roads. The Engineering staff finds that no new street lights will be required along Boones Ferry Road. For Pilkington Road, staff finds that although two new streets lights are proposed along this frontage (Exhibit E3), no photometric data for the existing or proposed street lights was provided. Staff was therefore unable to determine if the existing street lighting is inadequate or if the proposed street lighting complies with these standards. As a condition of approval, the applicant shall demonstrate that Pilkington Road street lighting conforms to these standards and that if new street lighting is proposed, LED lighting will be required, to the satisfaction of the City Engineer, following the current City LED retrofit project.

Parking Lot Lighting

The standards that shall apply to surface open air parking lots in the IP zone are listed in LOC 50.06.004.3.b.ii. Open air parking lot lighting shall be designed to provide uniform lighting throughout the facility with the minimum lighting necessary for safety and security, with no light trespass, or disabling glare. The proposed photometric plan includes a variety of LED luminaires which are engineered for uniform lighting with the minimum number of luminaires necessary for safe and secure parking lot lighting (Exhibits E19 and F1). The plan demonstrates that no light trespass is proposed and will not produce annoying or disabling glare (Exhibits E19 and F1). The luminaires are designed and positioned with full cut-off fixtures (Exhibits E20 and F1).

Per LOC 50.06.004.3.b.ii((2(b))), open air parking lot lighting shall use lamps whose emission is perceived as the warm (yellow/orange) end of the color spectrum, except under the circumstances permitted in this section. The graphic, right, demonstrates a typical color spectrum for different luminaires. The applicant proposes different LED luminaires that range from 3,000 k to 4,000 k which is at the very edge of the warm (yellow/orange) end of the spectrum (Exhibit E19). The maximum pole and luminaire height is 22 feet and both the luminaire and poles are coated in a decorative dark bronze finish as noted in the lighting cutsheets (Exhibits E20 and F1).



The parking lot lighting standards require a minimum illumination level of 0.15 foot-candles on the pavement. As shown on the applicant's photometric plan, the minimum level of illumination exceeds the 0.15 foot-candle requirement (Exhibit E19). The maximum illumination level is 4.0 foot-candles. The applicant's narrative and photometric plan states that the maximum proposed illumination level for the parking lot is 4.0 foot-candles or less (Exhibits E19 and F1). The lighting that exceeds 4.0 foot-candles is contained within the areas of internal walkways and under building canopies (Exhibit E19). Internal walkway and building lighting are not subject to these standards. As shown on the photometric plan, the proposed building lights do not over-illuminate the parking lot (Exhibit E19). No prohibited lighting materials are proposed.

As conditioned, this standard is met.

Park and Open Space [LOC 50.06.005]

This standard requires that commercial and industrial development provide open space/landscaping in an aggregate amount equal to at least 15% of the gross land area of the development. As indicated on Exhibits E4 and F1, 25.2% of the site is provided in open space. This standard is met.

Drainage Standard for Major Development [LOC 50.06.006.3]

This standard requires that drainage improvements be provided to ensure that the development will not adversely affect surrounding properties. In addition, this standard requires design features to minimize pollutants from entering the storm water system and that the intensity of runoff rates are maintained at their natural undeveloped level. The determination of whether or not the application meets the drainage requirements of LOC 50.06.006.3 is under the review authority of the City Engineer.

This site generally slopes towards the northeast, towards the intersection of Boones Ferry and Pilkington Roads. There is an existing 30-inch storm conveyance line located within Pilkington Road along the northeast site frontage. The stormwater runoff from the site frontage along Boones Ferry and Pilkington Roads is captured in catch basins and conveyed in a storm pipe to the east through neighboring properties, where the drainage eventually outfalls into a regional detention facility for the Lower Boones Ferry drainage basin.

The applicant has submitted preliminary drainage reports (Exhibits F8 and F9) prepared by a registered engineer. The stormwater runoff from the building roof areas and parking areas is proposed to be routed through a storm filter manhole for treatment, prior to being conveyed to the on-site detention facility (Exhibit F9). The treatment design for stormwater quality is 0.36 inches of precipitation falling in four hours with an average return period of 96 hours. The drainage analysis indicates two stormwater filter cartridges will be needed in the manhole (Exhibit F9).

The City Engineer has made the following findings and conclusions:

The required detention volume shall be the maximum difference between the stormwater runoff volume for the 50-year storm event from the proposed development site and the runoff volume for the 10-year storm event from the pre-development site. The detention facility is proposed to be constructed with a storm chamber system with impervious liner and will have a control structure to detain stormwater runoff, to the City of Lake Oswego standards (Exhibits E8 and F9).

Stormwater runoff from the detention facility is proposed to be routed to the existing public storm main located in Pilkington Road with a new manhole constructed over the existing main (Exhibits E8 and F9). As a condition of approval, a public storm cleanout will be required at the Pilkington Road right-of-way line. The City will be responsible for future maintenance of the storm line within the right-of-way. The final design regarding the storm management facilities will be reviewed prior to building permit issuance. All on-site storm water facilities will be private, and the applicant will be required to submit an operations and maintenance plan and record a Declaration of Covenant for Operation and Maintenance of Surface Water Management Facilities.

The Engineering staff finds the proposed storm management concept complies with the Drainage standards but recommends that a trapped catch basin be installed at the loading dock at the rear of the donation center (Exhibits E3 and E8). As conditioned, this standard is met.

Utilities [LOC 50.06.008]

This standard is applicable to all development requiring connection to utilities and requires them to be constructed in accordance with City Engineering Division's policies, design standards, technical specifications and standard details. The utility plan (Exhibit E12) indicates the proposed structures will be served by utilities in compliance with regulations enforced by the City Engineer. Compliance with this standard will be ensured at the time of building permit review.

Sanitary Sewer: There is an 8-inch public sewer located in Pilkington Road. It appears the existing service lateral to this site is located at the northeast corner of the property. The applicant has proposed a new sanitary lateral being connected to an existing sanitary manhole in Pilkington Road and a cleanout located at the new right-of-way line. The Engineering staff notes that the new service lateral may be required to be tapped to the mainline, however, this can be determined at the time of final construction plans review for the street frontage improvements. The existing service shall be abandoned per City standards.

Water and Hydrants: The City has an existing 8-inch public water main located in Boones Ferry and Pilkington Roads. The closest hydrant is located across Pilkington Road at the northeast corner of the site. The applicant has shown a proposed water line connection to the mainline in Pilkington Road which includes a combined fire hydrant and domestic water service. The Engineering staff finds that the fire hydrant shall have a separate independent connection 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. These will be made conditions of approval. As conditioned, this standard is met.

Streets: Boones Ferry Road is an improved major arterial street. Pilkington Road is classified as a major collector. See additional comments, below, under LOC Chapter 42 for street frontage improvement requirements.

Sidewalks: Sidewalks exist along Boones Ferry Road and the frontage of the Crossing on the east side of Pilkington Road. A new sidewalk will be required along the entire site frontage for this development along Pilkington Road and also along Boones Ferry where the existing driveway approaches that will be removed. See additional comments, below, under LOC Chapter 42, for street frontage improvement requirements.

Other utilities: It is the applicant's responsibility to ascertain the availability of electric, gas, telecommunications and cable TV. All overhead utilities shall be installed underground.

As conditioned, this standard is met.

3. Any additional statutory, or Lake Oswego Code provisions which may be applicable to the specific minor development application; and,

City of Lake Oswego Streets and Sidewalks Code [LOC Chapter 42]

This Chapter authorizes the City Engineer to make specific street and sidewalk improvement recommendations after taking a variety of policy and site specific factors into consideration.⁵ The City Engineer's comments are included, below, for the review of the overall understanding of the project. The City Engineer's conditions of approval are included, as they must be included in the decision, to find that the application will comply with this Chapter.

The Engineering staff has reviewed the development proposal and field conditions in the context of the City's codes, improvement policies, and Transportation System Plan (TSP), and offers the following observations and recommendations.

The proposed development is estimated to generate approximately 111 net new daily trips during the weekday p.m. hour.⁶ Additional pedestrian and bicycle trips can be expected as well. The cumulative effect of new trips (all modes) imposes an additional burden and concomitant concerns for preserving street capacity and public safety, particularly for bicycles and pedestrians.

The City has a governmental interest in assuring that new development does not contribute to a degradation of adequate, safe and efficient public transportation facilities. New development should mitigate the negative impacts (increased noise, and the degradation of aesthetics, safety, system capacity, and bicycle and pedestrian mobility) resulting from new development. The City has adopted a broad palette of policies, plans, regulations, and fees that have been designed to offset the adverse impacts of development on the natural and built environment. In this regard, the following regulations, standards, and site specific characteristics have a direct bearing on the governmental interest in preserving the functionality and safety of the public infrastructure, and are particularly relevant to this development proposal:

- The City's Comprehensive Plan identifies Pilkington Road as needing bike lanes.
- Pilkington Road is designated as a major collector and, as such, should be designed to safely accommodate bike and pedestrian traffic.
- Boones Ferry Road is designated as a major arterial and, as such, should be designed to safely accommodate bike and pedestrian traffic.

⁵ To meet the review criteria for a minor development, the applicant must comply with "any additional ... Lake Oswego Code provisions which may be applicable to the specific major development application, such as ... the Streets and Sidewalks Ordinance." LOC 50.07.003.14(d)(ii)(d). The determination of whether or not the application meets the requirements of LOC Chapter 42, Streets and Sidewalks, is under the review authority of the City Manager or City Engineer; the requirements of this Chapter are not under the review authority of a hearing body, other than to find whether or not the City Engineer or City Manager has found that the application complies with LOC Chapter 42, or whether conditions of approval are required for compliance with this Chapter.

⁶ Lake Grove Goodwill ADC and Shops Traffic Impact Analysis, prepared by Kittelson & Associates, August 23, 2013.

- The site is located within walking and biking distance of the surrounding neighborhoods and businesses.
- The site is located within a quarter of mile of a transit system.
- LOC Chapter 42 directs the City Engineer to recommend to the decision making authority the appropriate width of public rights of way, and the width and character of the improvements contained therein.
- LOC Chapter 42 requires frontage improvements, including pedestrian improvements, to be constructed when property is developed.

The implementation of the City's plans, policies, and regulations will offset to some degree the negative impacts of development on the public infrastructure. LOC 50.07.003.5 allows the reviewing authority to impose conditions of approval on a development permit when the condition is reasonably related to alleviation of a need for public services or facilities created or contributed to by the proposed development. In addition, the US Supreme Court has rule (Dolan v. City of Tigard) that, in order to require exactions, the local government must apply a test of "rough proportionality" between the impacts of the proposed development and the need for the exaction.

Boones Ferry Road is fully improved to the anticipated width along the site frontage. Required frontage improvements will include constructing new curb and gutter (full 6-inch curb exposure) and a sidewalk across the driveway approaches that will be removed. The new sidewalk shall match the existing sidewalk width along the site frontage, to the satisfaction of the City Engineer.

Pilkington Road along the site frontage is substandard in that it lacks a bike lane and sidewalk. The Comprehensive Plan identifies Pilkington Road as needing bike lanes and the City's TSP also identifies major collector roads as having bike lanes. This development will be required to provide a 12-foot travel lane, 5-foot bike lane, concrete curb and gutter, and an 8-foot wide sidewalk (excluding the width of the top of curb) along the Pilkington Road site frontage. The 5-foot bike lane shall be measured from the edge of the 8-inch wide white stripe (separating the travel lane and bike lake) and the edge of the concrete gutter pan for the curb. An appropriate transition at the south property line will be required to be designed to match the improvements with the existing conditions heading south along Pilkington Road. All of the frontage improvements will be required to be located within public right-of-way; therefore, sufficient right-of-way dedication will be required along the site frontage. The applicant has provided a preliminary plan (Exhibit E3) indicating that an 8-foot right-of-way dedication will be needed for the above described frontage improvements.

The Engineering also notes existing overhead utilities along the Pilkington Road frontage. Per LOC 50.06.008.4.d, utilities shall be installed underground. This development will be required to underground the existing overhead utility lines along the site frontage from the existing utility pole located at the northeast corner of the site to the south property line. The existing utility pole located at the northeast corner of the site can remain to avoid undergrounding utility lines across Boones Ferry Road. The applicant's plans indicate that the existing overhead utilities will be removed and installed underground in a conduit (Exhibits E3 and F1). The Engineering staff also notes that the proposed sidewalk clearance around this utility pole is proposed to be 4.6 feet (Exhibit E3). In order to provide adequate clearance per ADA standards, the minimum clearance shall be five feet. This will be made a condition of approval.

As conditions of approval of the proposed development, the City will require the following exactions:

Boones Ferry Road Frontage:

- Construct 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.
- Provide a minimum 5-foot sidewalk clearance width around street elements such as tree wells, street lights, utility poles, benches, etc.
- Provide adequate right-of-way dedication (if necessary) to construct the frontage improvements inside of the public right-of-way. It appears the required frontage improvements can be constructed within the existing right-of-way.

Pilkington Road Frontage:

- Provide 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.
- Construct the driveway approach in compliance with City and ADA standards.
- Provide a minimum 5-foot sidewalk clearance width around street elements such as tree wells, street lights, utility poles, benches, etc.
- Underground the existing overhead utilities along the site frontage.
- Provide adequate right-of-way dedication to construct the frontage improvements inside of the public right-of-way. It appears that an 8-foot right-of-way dedication will be sufficient.

The above exactions are directly related to mitigating the adverse impacts created by the development, as follows:

- The provision of additional right-of-way will allow construction of the required street frontage improvements.
- The described improvements will address the increased vehicle traffic because, with a separation between vehicle, bicyclists and pedestrians, the traffic capacity of the street will be preserved.
- The described improvements will encourage use of the sidewalks and bike lanes, and use of transit, thus reducing the demand that would otherwise arise for vehicle travel on the street.
- The described improvements will address the safety of the pedestrians and bicyclists by providing separation of modes of travel.
- The described improvements will address the safety of ingress into the site and egress from the site.
- The City therefore finds that exacting the improvements on Boones Ferry and Pilkington Roads is therefore directly related to the increased traffic, bike, and pedestrian trips that will be created by this development.

The City finds that the exaction of the required improvements is roughly proportional to the adverse impacts created by the development because:

- The proposed development can be expected to generate approximately 111 net new daily trips during the weekday p.m. hour. The required frontage improvements along the property frontage will result in a greater use of alternative modes of travel (pedestrian, bicycle, transit), both today and in the future, as traffic congestion increases in the area. These additional alternative mode travel trips will help offset additional vehicle trips generated by the development.
- Similar exactions for site frontage improvements have been required for similar developments in the area, with the result being that such exactions have mitigated the increased traffic (vehicle, pedestrian, and bicycle) by preserving the functionality and public safety features of the public street system.

In light of the above facts and Code requirements, staff finds that the development of this site will place sufficient additional demand on the surrounding street system to justify the associated improvements above, and that these exactions are roughly proportional to the degree of impact imposed by the new development.

Note: There is approximately 60 feet of street frontage along Pilkington Road at the south end of the site that will be adding pavement width in order to construct the required bike lane. Although additional pavement is added to Pilkington Road, pavement for “bicycle trails which are physically separated from other paved areas and which are not available for use by automobiles” are not included in “pavement width” for purposes of Section 40 of the City Charter. Pavement within a bike lane marked with a painted line is not included in “pavement width” for purpose of requiring public notice and opportunity for election. CAO Memorandum Opinion, *City Charter Section 40 – “Major Road Expansion” and Bike Lanes*, (Nov. 19, 2013). Therefore, this condition is satisfied, and no action will be required regarding Section 40 of the City Charter.

City of Lake Oswego Tree Code [LOC Chapter 55]

Tree Removal

As illustrated on Exhibit E9, there are seven trees on the site that are five inches in diameter or greater. As detailed in the applicant’s narrative (Exhibit F1) and arborist report (Exhibit F5), the applicant is requesting to remove all seven trees to construct the proposed development. The requested trees include: 38-inch Big leaf maple, 30-inch Big leaf maple, 19-inch Big leaf maple, 25-inch Douglas fir, 15-inch Japanese flowering cherry, 11-inch Japanese flowering cherry, and 18-inch Colorado spruce.

Trees proposed for removal in conjunction with a minor development can be granted tree removal permits [LOC 55.02.035; 55.02.080], if the following criteria are met:

1. *The removal is for development purposes allowed pursuant to the City Code;*

The removal of the seven trees is necessary for development of the proposed buildings and site improvements (Exhibits E3, E7, E9, and F5).

2. *The removal will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks;*

The removal will not have a significant negative impact on erosion, soil stability, or flow of surface waters because the site does not contain significant slopes, has stabilized soils, and the proposed drainage improvements are designed to handle stormwater runoff from all new impervious surfaces (Exhibits F1 and F8-F9).

The removal will also not have a significant negative impact on protection of adjacent trees or existing windbreaks because the trees proposed for removal are either smaller than the other nearby trees or are separated far enough from other trees that they do not provide a wind break.

3. *The removal will not have a significant negative impact on the character, aesthetics, or property values of the neighborhood, except when alternatives to tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone; and,*

Three of the trees (Big leaf maples) are in poor condition due to years of neglect and damage from on-site activities (Exhibit F5); they do not contribute to the treed character of the neighborhood. Two of the remaining trees are smaller street trees (Japanese cherries) that do not provide a significant contribution to the treed character of Boones Ferry Road. The two remaining trees are evergreens, the 25-inch Douglas fir (in fair condition) and the 18-inch Colorado spruce (in good condition) (Exhibit F5). Both of these trees are more prominent on the site but they are located in areas that will be severely impacted by the proposed development. The Douglas fir will be impacted by grading and new impervious surface on three sides from the Pilkington Road driveway, sidewalk, and parking lot, all of which would be difficult to revise to the extent necessary to preserve the tree (Exhibit E3). The spruce is located in the area of new landscaping and a proposed water feature at the intersection (Exhibit E10). The landscaping and water feature could be revised to include this tree but staff finds that it does not provide a significant enough contribution to the treed character of the site to warrant the extent of revisions necessary to preserve it.

4. *The removal is not for the sole purpose of providing or enhancing views.*

The trees are not being removed for view enhancement, because their removal will not improve any views.

For the reasons outlined above, staff concludes that the removal request for the seven trees complies with the applicable criteria and may be approved. The applicant will be required to apply for a Verification Tree Removal Permit for the seven trees prior to approval of the building permit.

Mitigation

Any tree approved for removal under the Type II tree analysis shall be mitigated at a minimum 1:1 ratio. Mitigation trees should have a minimum 2-inch caliper diameter for deciduous trees and a minimum 6-8 foot height (excluding leader) for evergreen trees. There are seven trees to be removed; therefore, seven mitigation trees meeting the standard mitigation specifications of LOC 55.02.084 will be required.

The applicant will be required to submit a tree mitigation plan with the verification tree removal application showing the size, species and location of seven trees in compliance with the minimum mitigation requirements.

Tree Protection

The Code requires tree protection measures for most new construction, LOC 55.08.030(1). After removal of the seven trees, there will be no trees on the site or abutting the site that will require protection during construction (Exhibit E2).

4. **Any applicable condition of approval imposed pursuant to an approved ODPS or prior development permit affecting the subject property.**

There are no prior conditions of approval that affect the subject property.

V. CONCLUSION

Based upon the information provided by the applicant and the findings presented within this report, staff concludes that LU 13-0043 complies with the majority of the applicable criteria and standards as conditioned, with the exception of the Hardship Variance standards.

VI. RECOMMENDATION

Option 1 (Recommended):

Based upon the applicant's submittals as of the date of this report, staff recommends **Denial** of LU 13-0043, because staff finds that the applicant has not met the criteria for a Hardship Variance for a direct access onto Boones Ferry Road (an arterial street), and staff does not find that conditions of approval can be imposed by the Commission that will allow the proposed development to be approved (denial of the Boones Ferry Road access is too fundamental to the site plan).

If the applicant requests the opportunity to revise the application prior to the Commission's adoption of an Order denying the application (and extends the 120-Day deadline), staff recommends that the Commission approve the applicant's request to revise the application, and continue the hearing to a later date in order for the applicant to provide revised site plans and narratives that demonstrate compliance with the Access standards for the Commission's consideration. Staff will provide additional findings and recommended conditions of approval appropriate to that proposal prior to the continued public hearing.

Option 2:

If the Commission finds that the Hardship Variance could be **Approved**, staff recommends the following conditions of approval to be imposed on the proposal:

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

1. Submit final site and building plans for review and approval of staff that are the same or substantially similar to the site plans, floor plans, and building elevations illustrated on Exhibits E3-E25, to the satisfaction of staff, with the following revisions:
 - a. An internal connection as shown on Exhibit E6 between the subject site and the abutting property to the west (Tax Lot 4100 of Tax Map 21E18BA).
 - b. The upper wall CMU siding on both buildings shall be replaced with brick siding or brick veneer siding. The size of the brick shall be similar to the standard 2x8-inch brick size. The color of the brick shall be a lighter red color, to the satisfaction of staff.

- c. The proposed composite stucco on the Pilkington Road façade of the retail building shall be replaced with a window system similar to the window system on the internal façade. Any painted metal doors in that same area of the façade shall be revised to glass doors.
 - d. An additional covered bike parking space shall be provided for the retail building.
 - e. The 13-foot driveway off of Boones Ferry Road shall be a one-way ingress-only driveway with “entrance only” signage in appropriate locations, to the satisfaction of the City Engineer.
 - f. The Pilkington Road driveway approach shall be a maximum of 24 feet, to the 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.
 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.
 - 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 submit preliminary public improvement construction plans that are far enough advanced to support an itemized estimate of the cost of construction.
 5. Apply for and obtain a verification tree removal permit for the seven trees approved by this application. The verification tree removal application submittal shall include an 8½" x 11" copy of the tree removal plan and a mitigation plan showing replacement trees on a 1:1 basis. Replacement trees shall not be dwarf or ornamental varieties and shall be at least two inches in caliper if deciduous or at least 6-8 feet tall (excluding the leader) if evergreens.

6. Submit a final landscape plan for review and approval of staff. The landscape plan shall be the same or substantially similar to Exhibit E10.
7. Submit a final erosion control plan and evidence of DEQ 1200-C erosion control permit. The erosion control plan shall be designed by a civil engineer.
8. Pay all applicable System Development Charges pertaining to the proposed development.

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

1. Complete all public improvements as required by Condition A(3), above, submit certified "as-built" drawings conforming to the City's standards for record drawings, and receive a certificate of completion and acceptance by the City.
2. Complete all private utility services, including water, storm, sanitary and franchise utilities.
3. Submit an Operations and Maintenance Plan for the private on-site storm facilities for review and approval of the City Engineer, and record a Declaration of Covenant for Operation and Maintenance of Surface Water Management Facilities.
4. Install all mitigation trees as required by Condition A(5), above.
5. Install all landscaping as required by Condition A(6), above.
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.

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 would like to offer you 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 you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting, please 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 applicants are advised to review plans for compliance with applicable state and federal laws and regulations that could relate to the development, e.g., Americans with Disabilities Act, Endangered Species Act, etc. City staff may advise the applicants of issues regarding state and federal laws that the City staff member believes would be helpful to the applicants, but any such advice or comment is not a determination or interpretation of federal or state law or regulation.

EXHIBITS

- A. [No current exhibits; reserved for hearing use]
- B. [No current exhibits; reserved for hearing use]
- C. [No current exhibits; reserved for hearing use]
- D. [No current exhibits; reserved for hearing use]

E. GRAPHICS/PLANS

- E1 Tax Map
- E2 Survey of Existing Conditions
- E3 Proposed Site Plan
- E4 Proposed Site Plan with Shaded Landscape & Open Space
- E5 Propose Site Plan with Shared Access Easement
- E6 Proposed Site Plan with Internal Shared Access
- E7 Proposed Grading Plan
- E8 Stormwater Management Plan
- E9 Tree Removal Plan
- E10 Landscape Plan
- E11 Goodwill Donation Center Building Elevations
- E12 Retail Building Elevations
- E13 Sign and Trash Enclosure Elevations
- E14 Goodwill Donation Center Color Elevations
- E15 Retail Building Color Elevations
- E16 Sign and Trash Enclosure Color Elevations
- E17 Color Perspective Drawings

- E18 Proposed Floor Plans
- E19 Proposed Photometric Plan
- E20 Lighting Cutsheets
- E21 Bike Rack Cutsheet
- E22 Window Cutsheets
- E23 Window Framing Cutsheets
- E24 Water Feature Details
- E25 Color and Materials Board

F. WRITTEN MATERIALS

- F1 Applicant's Narrative
- F2 Applicant's Addendum Narrative, dated November 25, 2013
- F3 Applicant's Hardship Variance Narrative
- F4 Applicant's Hardship Variance Narrative Addendum, dated November 26, 2013
- F5 Arborist's Report, prepared by Tree Care & Landscapes Unlimited, Inc., dated November 14, 2013
- F6 Neighborhood Meeting Documentation
- F7 Traffic Impact Analysis and Appendices, prepared by Kittleson & Associates, Inc. dated August 23, 2013
- F8 Preliminary Drainage Memo, prepared by Cardno, dated August 16, 2013
- F9 Preliminary Drainage Report, prepared by Cardno, dated November 7, 2013
- F10 Goodwill and Mike Duyn Access Easement Agreement
- F11 Fire Marshal Memo
- F12 Informal Interpretation Request, prepared by Baysinger Partners Architecture, dated February 13, 2013
- F13 Informal Use Interpretation Analysis, prepared by Ron Bunch, former Interim Planning Director, dated February 22, 2013

G. LETTERS

Neither for nor Against (G1-99):

None

Support (G100-199):

None

Opposition (G200-):

None

Date of Application Submittal: August 23, 2013

Date Application Determined to be Complete: December 13, 2013

State Mandated 120-Day Rule: April 11, 2014