STAFF REPORT

CITY OF LAKE OSWEGO

PLANNING DIVISION

APPLICANTS/PROPERTY OWNERS:

The Van Buren Living Trust
Richard & Colleen Didzun
Sean P. Casey
Huffco Portland, LLC
AT Enterprises, LLC

FILE NO:

LU 16-0023

APPLICANTS' REPRESENTATIVE:

Lake Oswego Redevelopment Agency

STAFF:

Johanna Hastay, AICP

TAX LOT REFERENCES:

Tax Lots 5900, 6000, 6200, 6300, & 6500
of Tax Map 21E03DD

DATE OF REPORT:

June 30, 2016

LOCATIONS:

23, 25, & 27 A Avenue (The Rogers Building I)
402 N. State Street (The Rogers Building I)
428 N. State Street
456 N. State Street (The Rogers Building II)
468 N. State Street (The Bickner Building)
496 N. State Street

120-DAY DECISION DATE:

October 12, 2016

COMP. PLAN DESCRIPTION:

EC

NEIGHBORHOOD ASSOCIATION:

First Addition – Forest Hills

ZONING DESIGNATION:

EC

I. APPLICANTS' REQUEST

The applicants are requesting Development Review permits for façade improvements as a part of the Lake Oswego Redevelopment Agency (LORA) façade grant program. Three of the sites are historic landmarks that also require approval of minor alterations to historic resources: the Rogers Building I, the Rogers Building II, and the Bickner Building.

II. DECISION

Approval of LU 16-0023 with no conditions.

III. APPLICABLE REGULATIONS

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

LOC 50.01.006	Nonconforming Uses, Structures, Lots and Site Features
LOC 50.02.002.2.a	Site Specific Standards for Commercial Zones
LOC 50.04.001.4	Commercial, Mixed Use, and Industrial Zones Dimensional Standards
LOC 50.04.002	Special Street Setbacks
LOC 50.05.004	Downtown Redevelopment Design District Standards
LOC 50.06.009; 50.07.004.4	Historic Preservation
LOC 50.07.003.1	Application Procedures
LOC 50.07.003.5	Conditions on Development
LOC 50.07.003.6	Effect of Decision
LOC 50.07.003.7	Appeals
LOC 50.07.003.14	Minor Development Decisions

IV. FINDINGS

A. Background/Existing Conditions:

1. This project does not include Tax Lot 6100, developed as a public surface parking facility (Exhibits E1 and E2).

2. The combined sites are approximately 36,000 sq. ft. in area and are bordered by State Street (a major arterial) to the east, B Avenue (a major collector) to the north, and A Avenue (a major arterial) to the south (Exhibit E1).

3. The combined sites are zoned East End General Commercial (EC) and are located in the Downtown Redevelopment Design District (DRDD). All adjacent properties are zoned EC and are developed with commercial uses.

4. The Rogers Building I was built in 1925. According to the City of Lake Oswego Cultural Resources Inventory Field Form (Exhibit F4), the building was designed by Charles Ertz. The building is designated as a historic landmark, known as the "The George Rogers Building I". According to the Resource Inventory, the building is significant as an excellent example of the Commercial style as well as its association with early commercial development in downtown Lake Oswego.

5. The Rogers Building II was built in 1929. According to the City of Lake Oswego Cultural Resources Inventory Field Form (Exhibit F4), the building may have been designed by Van Evera Bailey. The building is designated as a historic landmark, known as the "The Rogers Building II". According to the Resources Inventory (Exhibit F4), the building is significant as an excellent example of the Mediterranean style as well as its association with early commercial development in downtown Lake Oswego.

6. The Bickner Building was built in 1897 as a joint commercial and residential (hotel) building. According to the City of Lake Oswego Cultural Resources Inventory Field Form (Exhibit F4), the building is designated a historic landmark, known as "The Bickner & Sons Store". According to the Resources Inventory (Exhibit F4), the building is significant as the last remaining example of a wood-framed building on State Street, as an example of commercial Vernacular design, and with its association with early commercial development in downtown Lake Oswego.

V. PUBLIC NOTICE OF APPLICATION AND APPLICANT'S BURDEN OF PROOF

A. Neighborhood Meeting

A neighborhood meeting is not required with this type of development.

B. Public Notice to Surrounding Area

The City has provided adequate public notice and opportunity to comment on this application pursuant to LOC 50.07.003. No comments were received.

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 applicants have provided sufficient evidence to enable staff to evaluate the proposal. These documents are listed as exhibits at the end this report.

VI. MINOR DEVELOPMENT

A. Classification of Application

LOC 50.07.003.14.a.ii(6) and (25) classify modifications to commercial structures located in a design district and minor alterations to historic resources as minor development.

B. 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;

Nonconforming Uses [LOC 50.01.006]

The existing structures and on-site improvements are nonconforming to certain DRDD standards and to the Special Street Setback for State Street (Exhibits E2 and F1). Per LOC 50.01.006.2.a, a nonconforming structure may be continued and maintained in reasonable repair so long as it remains otherwise lawful. A nonconforming structure may only be expanded in a manner that either does not increase the degree of nonconformity or does not create any new nonconformity (LOC 50.01.006.3.a). Staff finds that the proposed façade improvements do not increase the degree of nonconformity (Exhibits E3 and F1).

Specific Standards for Commercial, Mixed Use and Industrial Zones [LOC 50.02.002.2]

LOC 50.02.002.2.a includes specific standards for commercial uses. Subsection 2.a.i requires that all business, service, repair, processing, and storage, or the display of merchandise on property abutting or adjacent to a residential zone shall be conducted wholly within an enclosed building unless screened from the residential zone by a buffer area. Subsection 2.a.ii includes drainage requirements for vehicle rental or sales lots. Additionally, the cumulative square-footage of a single commercial business in the EC zone shall not exceed 35,000 sq. ft. per Subsection 2.a.iii.

The uses that occupy the subject buildings include offices, retail, food retail, and a service station (Exhibit F1). With the exception of outdoor tables for the Gemini Bar & Grill along its State Street frontage and the gas pumps for Bill's Old Fashion Service Station, all business activities are conducted wholly within the buildings (Exhibit E3). Those outdoor uses are more than 600 feet away from any residential zone (Exhibit E1). No use exceeds 35,000 sq. ft. in gross floor area (Exhibit E2). This standard is met.

Special Street Setbacks [LOC 50.04.002.5]

The Special Street Setback is to ensure an adequate front yard setback is available in the event of possible future street improvements, such as additional lanes, pedestrian and bicycle facilities, transit facilities, drainage management improvements, lighting, and street landscaping. All yards are measured from the special street setback line.

State Street is identified as having a special setback of 50 feet, measured from either the centerline of the right-of-way or at another point of measurement, to be determined by the City Engineer. The existing right-of-way width is 80 feet (Exhibit E1). Existing structures may be nonconforming to the Special Street setback, but as noted in the applicant's materials, no new structures or expansions into the special street setback area are proposed for this project (Exhibits E3 and F1). Therefore, staff finds that this standard is not applicable due to the scope of the proposal.

Dimensional Standards for Commercial, Mixed Use and Industrial Zones [LOC 50.04.001.4]

The applicants propose minor façade updates to the existing commercial structures (Exhibits E3 and F1-F2). The proposed updates do not result in any building expansions or changes to the existing building footprints or height; therefore, the dimensional standards are not applicable to the proposal.

2. The Development Standards applicable to minor developments;

Downtown Redevelopment District Design Standards [LOC 50.05.004.1-12]

Staff notes that the DRDD standards apply as this project is funded by LORA (LOC 50.05.004.2.c). The standards for new buildings or substantial remodels do not apply to this project as there is no new construction, no building footprint expansions, and the façade improvements do not rise to the level of "substantial remodel".

50.05.004.6 Building Design

Building elements shall be designed to create a village character through compliance with the following requirements:

> ***Lake Oswego Style Required [Subsection a]****: Buildings shall be designed using building design elements of the Lake Oswego Style to create distinctive buildings which have richly textured, visually engaging facades. See LOC 50.11.001, Appendix A – Lake Oswego Style.*

Per LOC 50.11.001-Appendix A, the Lake Oswego styles include Oregon Rustic, Arts and Crafts, and English Tudor. The applicants' materials (Exhibits E3 and F2) and the attached Cultural Resources Inventory Forms (Exhibit F4) illustrate that the architectural styles of the existing buildings are nonconforming to this standard. The styles of the buildings include "Commercial", "Mediterranean", and "Vernacular". The proposed façade improvements are minor in scope and do not alter the nonconforming styles of the respective buildings. The improvements include paint updates, new roof brackets, fencing, new lights, addition of entry pavers, and converting some windows to folding glass doors. These improvements will not increase the degree of nonconformity to the Lake Oswego Styles and are also designed to complement the existing building styles. Staff concurs with the applicants' finding that this standard is not applicable because of the applicants' nonconforming rights under LOC 50.01.006.2.a.

> ***Storefront Appearance [Subsection b]****: Buildings fronting on streets or alleys designed for pedestrian use shall create a storefront appearance on the ground floor. A minimum of 80% (linear measurement) of the exterior ground floor abutting pedestrian ways shall be designed as storefront with display windows and entry features. The bottom edge of windows along pedestrian ways shall be constructed no more than 30 in. above the abutting walkway surface and shall be no closer than 12 in. above the walkway surface. Sufficient interior or soffit lighting to allow night-time window shopping shall be provided.*

Of the five sites, only the Gemini Pub & Grill includes improvements to the storefront appearance. The applicants are proposing to convert all of the fenestration except for the main entry to folding doors (Exhibits E3 and F2). The existing storefront fenestration is 42 linear feet or 82% of the 51-foot frontage (Exhibit E3). The proposal maintains the 82% fenestration and will (with the folding doors open) increase the presence of the now multiple entry features (Exhibit F2). This standard is met.

> ***Prohibited Materials [Subsection c.iv]****: The following exterior materials are prohibited:*
> *(1) Plastic, except when used to replicate old styles;*
> *(2) Metal or vinyl siding;*
> *(3) Mirrored glass;*
> *(4) T-111 Type plywood;*
> *(5) Corrugated metal or fiberglass;*
> *(6) Standard form concrete block (not including split faced, colored or other block designs that mimic stone, brick or other similar masonry); and*
> *(7) Backlit fabrics, except that awning signs may be backlit fabrics for individual letters or logos.*

No prohibited materials are proposed (Exhibit F2).

The applicable DRDD Building Design standards are met as proposed.

50.05.004.8 Landscaping and Site Design

The purpose of the DRDD Landscaping standards is to enhance building design, enhance public views and spaces, define the street, provide buffers (screening) and transitions, and provide for a balance between shade and solar access. The only landscaping criterion affected by the scope of the development is "Brick Paving".

> ***Brick Paving [Subsection h]****: Where a development is proposed abutting to a sidewalk or intersection, brick paving shall be required for sidewalk surface detail panels on numbered streets and at primary building entrances as shown in the paving detail diagrams. Brick pavers shall be used to provide color and texture on north-south streets. The use of brick, cobbles or flagstones as pavement for other pedestrian ways, courtyards or parking lots is encouraged, but is not required.*

This standard is applicable to all building entrances within the DRDD[1].

The applicants' narrative states that new paver tiles will be incorporated into all of the entries and along the base of the buildings to replace broken concrete slabs (Exhibits E4 and F2). The concrete slabs are nonconforming to this standard. The proposed tiles include basalt-like, "natural carbon", "natural mica", and terracotta all of which are northwest colors/materials typical to the Oregon Rustic style (Exhibits E3, E4, and F2). No new entries are proposed. This standard is met.

The applicable DRDD Landscaping and Site Design standards are met as proposed.

Conclusion. The proposal complies with all applicable DRDD standards.

Historic Preservation [LOC 50.06.009]

The applicants propose minor alterations in the form of façade improvements to the three historic landmarks: The Bickner Building, The Rogers Building I, and The Rogers Building II. Staff notes that a change in paint color is considered maintenance and repair and is exempt from review per LOC 50.06.009.7.a.vii. The other portions of the proposal (roof brackets, new lights, some entry pavers, and windows converted to folding doors) are considered "minor alterations" as defined by LOC 50.10. "Definitions":

> "An exterior alteration which does not change the appearance or material of the landmark or contributing resource as it exists, or which duplicates or restores the affected exterior features and materials as determined from historic photographs, original building plans or other evidence of original features or materials."

In order to approve a request for a minor alteration, the follow criteria must be met (LOC 50.06.009.7.b.i-iii):

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[1] This brick paving requirement is also applicable to:

- Sidewalks on numbered streets: It is not applicable to sidewalks abutting the sites in this application because the scope of the proposed development does not include sidewalk installation / modification and State Street is not a numbered street; and,
- Street right-of-ways that are aligned north-south in the district (numbered streets and State St.): It is not applicable to this development because the scope of development does not include the rights-of-way of State Street or A Avenue.

i. No Exterior Change. *There is no change in the appearance or material of the resource as it exists; or*

The proposal includes exterior changes to the appearance of the resources. This alternative criterion is not met.

ii. Duplication/Restoration. *The proposed alteration duplicates or restores the affected exterior features and materials as determined from historic photographs, original building plans, or other evidence of original features or materials; or*

The applicants provided historic photographs to help determine compliance with this criterion (Exhibits E3 and F4), but are proposing alterations that might not fully restore the buildings to their original historic styles/appearances due to changes in building code regulations or modern expectations for commercial development. This alternative criterion is not met.

iii. ESEE Analysis. *Through an Economic, Social, Environmental, and Energy (ESEE) analysis, it can be shown that the benefit to the community of allowing the alteration outweighs the benefit to the community of preserving the resource in its present condition.*

Neither the Comprehensive Plan nor the Community Development Code provide specific guidelines for an ESEE analysis. The Historical Preservation section was adopted as part of the City's LCDC Goal 5 compliance, and therefore the ESEE process in OAR 660-016-0005(3) is the required analysis procedure: "the economic, social, environmental and energy consequences of the conflicting uses must be determined. Both the impacts on the resource site and on the conflicting use must be considered in analyzing the ESEE consequences."

As discussed, below, staff concurs with the applicants' analysis that the benefits to the community from allowing the proposed façade improvements outweigh the benefits of preserving the resources in their present conditions (Exhibits E3, E4, and F1).

Economic:

Well-maintained historic buildings contribute to a vibrant downtown commercial sector with low vacancy rates. The proposed façade improvements update the State Street and A Avenue building facades as appropriate for existing commercial uses. If approved, the minor alterations will help maintain the commercial buildings with minimal impacts to their historic character.

Social:

Historic buildings benefit the community by preserving the distinctive character of the downtown commercial sector. The proposed minor alterations allow for aesthetic improvements that highlight the unique historic style of each of the buildings. The improvements reinforce the sense of place and the community's social identity.

Environmental:

Allowing minor alterations to the City's historic commercial buildings incentivizes the rehabilitation and continued use of existing structures. The improvements ensure the buildings remain financially viable without the environmental impacts from demolition and the use of new building materials.

Energy:

Similar to the environmental analysis, above, the rehabilitation of existing historic buildings reduces energy outputs from generating new materials and new construction. In addition, maintaining a vibrant downtown commercial area within walking distance to nearby residential areas reduces energy outputs on the City and regional transportation systems.

Staff finds that the community benefits to allowing the proposed minor alterations outweigh the costs. This alternative criterion is met as proposed.

Conclusion: The proposal complies with all applicable Minor Alteration standards.

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

There are no additional statutory or regulatory provisions which apply to this proposal.

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

There are no outstanding conditions of approval that affect the subject properties.

VII. CONCLUSION

Based upon the materials submitted by the applicants and findings presented in this report, staff concludes that LU 16-0023 complies with all applicable criteria and standards.

VIII. ACTION TAKEN

Staff **approves** LU 16-0023 with no conditions.

Code Requirements:

1. **Expiration of Development Permit:** Per LOC 50.07.003.17, the development 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.

2. **Tree Protection:** Submit a tree protection plan and application prepared by a certified arborist as required by LOC 50.08.020 and 55.08.030 for review and approval by staff, including off-site trees that are within the construction zone. The plan shall include:

   a. The location of temporary tree protection fencing, consisting of a minimum 6-foot high cyclone fence secured by steel posts, around the tree protection zone, or as recommended by the project arborist and approved by the City.

   b. A note stating that no fill or compaction shall occur within the critical root zones of any of the trees, or that if fill or compaction is unavoidable, measures will be taken as recommended by a certified arborist to reduce or mitigate the impact of the fill or compaction. Such measures shall be clearly outlined in the tree protection plan. The note shall also inform contractors that the project arborist shall be on site and oversee all construction activities within the tree protection zone.

c. A note that clearly informs all site contractors about the necessity of preventing damage to the trees, including bark and root zone. The applicant and contractor(s) shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction.

d. A sign shall be attached to the tree protection fencing, which states that inside the fencing is a tree protection zone, not to be disturbed unless prior approval has been obtained from the City Manager and project arborist.

Notes:

1. The applicants are advised to take part in a post-Land Use Approval meeting. City staff would like to offer 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 that all the conditions are understood and to identify other permits necessary to complete the project. 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, i.e., Americans with Disabilities Act, Endangered Species Act. Staff may advise the applicants of issues regarding state and federal laws that 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.

Prepared by:

_____ _____

Johanna Hastay, AICP — Date
Associate Planner

Reviewed by:

_____ _____

Evan Boone — Date
Deputy City Attorney

Approved by:

_____ _____

Jessica Numanoglu, AICP — Date
Planning Manager

EXHIBITS

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

E. GRAPHICS/PLANS

E1 Tax Map
E2 Aerial Photo
E3 Proposed Building Elevations with Existing and Historic Photos
E4 Proposed Entry Pavers Details
E5 Existing A Avenue and State Street Sidewalk Improvements and Site Plan
E6 Proposed Material and Cutsheet Details

F. WRITTEN MATERIALS

F1 Applicants' Narrative
F2 Applicants' Supplemental Narrative
F3 Proposed Improvements Summary Table
F4 Cultural Resources Inventory Forms
F5 Fire Marshal Memo

G. LETTERS

Neither for nor Against (G1-99)

None

Support (G100-199)

None

Opposition (G200-299):

None

Date of Application Submittal: May 5, 2016
Date Application Determined to be Complete: June 14, 2016
State Mandated 120-Day Rule: October 12, 2016