

**BEFORE THE CITY COUNCIL FOR
THE CITY OF BEAVERTON, OREGON**

IN THE MATTER OF AN APPEAL OF THE PLANNING) ORDER NO. 2840
COMMISSION'S DECISION TO APPROVE SDM2020-) APP2021-0003 APPEAL OF HERZOG MEIER
0007 HERZOG MEIER EXPANSION SIDEWALK) EXPANSION SIDEWALK DESIGN MODIFICATION
DESIGN MODIFICATION.) (SDM2020-0007).

OVERVIEW

The matter came before the City Council on September 7, 2021, on appeal of the July 14, 2021, Planning Commission decision to approve the applicant's Sidewalk Design Modification (SDM2020-0007) application. The appellants asked the Council to modify the Planning Commission's decision and approve SDM2020-0007 Herzog Meier Expansion. The applicant proposes to modify the sidewalk and planter strip widths for a portion of the sidewalk.

The subject site is located at 4180 SW 141st Avenue, specifically identified as Tax Lot 03300 on Washington County Tax Assessor's Map 1S116BB. The site is zoned General Commercial (GC).

Pursuant to Beaverton Development Code Sections 50.70 and 50.85 through 50.88, the City Council conducted a public hearing and considered testimony and exhibits on the subject proposal. The appeal hearing was "de novo," meaning that the Council could consider evidence and arguments not already raised at the Planning Commission hearing.

The appeal made one assertion of error specifically related to the Sidewalk Design Modification application. The assertion is that the Planning Commission erred in not fully granting the requested Sidewalk Design Modification because the approval criteria were met (SDM2020-0007 Conditions of Approval #2 and #3 from Land Use Order No. 2827).

The appellants asserted that the design required by the Conditions of Approval would result in reconstructed sidewalks along SW Whitney Way that are unsafe, abrupt, and unsightly; whereas the appellants' proposed design would retain a sidewalk free of transitions. Regarding SW Tualatin Valley Highway, the appellants asserted that the approval criteria authorize sidewalk modifications to avoid existing local physical conditions, such as the nine existing structures and utility devices, that prevent the construction of a standard sidewalk. Additionally, the SW Tualatin Valley Highway frontage design, as approved by the Planning Commission, is not reasonable and will result in substantial unnecessary expense because of: 1) the removal of two existing monument signs, as well as seven light poles, along the southern edge of the parking lot; 2) either the unnecessary removal of a PGE utility pole or an unsightly sidewalk design that jogs around the pole; 3) the inconsistency with other Conditions of Approval that require the planters and plaza to remain; and 4) the inconsistency in the sidewalk design as it relates to the surrounding developments.

After the close of the hearing, the Council discussed the appellants' assertion and the challenged conditions of approval on each frontage. Regarding SW Whitney Way, the Council found that Engineering Design Manual allows for transitions between different sidewalk corridors and provides transition standards that result in a safe sidewalk. Additionally, Council found that four-foot-wide sidewalks do not meet the Beaverton Development Code because the City has a minimum five-foot sidewalk width to ensure appropriate width for passing on sidewalks, which is consistent with Public Right of Way Accessibility Guidelines adopted as part of the City's ADA Transition Plan. For these reasons, the Council endorsed Condition of Approval #2 from Land Use Order No. 2827 as approved by the Planning Commission.

Regarding SW Tualatin Valley Highway, the Council expressed uncertainty about the Oregon Department of Transportation's (ODOT) actual need for the four feet of right

of way donation and because ODOT was not present at the hearing, the Council was unable to obtain additional information about ODOT's plans. The Council also expressed uncertainty that the trip generation methodology based on the increase in square footage that was required by the City was the most appropriate methodology for measuring the likely transportation impacts of the proposal on SW Tualatin Valley Highway. Because of these uncertainties regarding the nature and extent of ODOT's public need, which the four-foot right of way donation and frontage improvements conditioned along SW Tualatin Valley Highway in Land Use Order No. 2824 were designed to address, the Council did not condition any right of way donation. Without an increase in right of way width, the curb will remain in its location until ODOT obtains additional right of way at a later time; so, the frontage improvements proposed by the applicant will meet or exceed the adopted street cross section for an Arterial (Engineering Design Manual Standards Drawing 200-1) and no Sidewalk Design Modification is required for this frontage. Therefore, the Council directed staff to delete Sidewalk Design Modification Condition of Approval #3 from Land Use Order No. 2827.

The Council, after holding the public hearing and considering all oral and written testimony, affirms the Planning Commission approval on appeal and approves SDM2020-0007, Herzog Meier Expansion, subject to the modified Conditions of Approval as identified below. The Council finds that there is substantial evidence in the entire record to find that, with the inclusion of the Conditions of Approval, all the approval criteria are met. The Council adopts and incorporates by reference the Agenda Bill (No. 21222) and exhibits of August 31, 2021; Staff Supplemental Memorandum dated September 7, 2021, with associated exhibits; and testimony submitted orally and in writing at the public hearing on September 7, 2021, as findings demonstrating that the applicant meets the Approval Criteria for Sidewalk Design Modification (SDM2020-0007) approval. In the event that

there is a conflict between this Final Land Use Order and the referenced documents, this Order takes precedence and controls.

Therefore, **IT IS HEREBY ORDERED** that **APP2021-0003** is **APPROVED** and the Planning Commission's **APPROVAL** of **SDM2020-0007** is **AFFIRMED**, based on the testimony, reports and exhibits, and evidence presented during the public hearing on the matter and based on the facts, findings, and conclusions found in Agenda Bill No. 21222; Staff Memorandum dated September 7, 2021; and this Final Land Use Order. SDM2020-0007 is subject to the following Conditions of Approval:

A. General Conditions, the applicant shall:

1. Ensure that the major Modification of a Conditional Use (CU2020-0006) and Design Review Three (DR2020-0079) applications have been approved and are consistent with the submitted plans. (Planning/LR)

B. Prior to issuance of the site development grading permit, the applicant shall:

2. Submit revised plans showing a five-foot-wide sidewalk with 5.5-foot-wide planter strip instead of a four-foot-wide sidewalk with 6.5-foot-wide planter strip along the western half of the site's SW Whitney Way frontage, which transitions to a five-foot-wide sidewalk with 6.5-foot-wide planter strip along the remainder of the frontage. (Planning/LR)

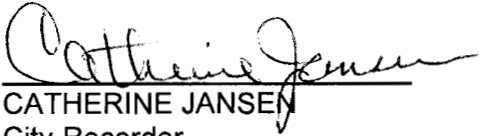
Motion **CARRIED**, by the following vote:

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|-----------------|---|
| AYES: | Councilors Fagin, Hasan, Mitchell, San Soucie, Tivnon and Mayor Beaty |
| NAYS: | None |
| ABSTAIN: | None |
| ABSENT: | None |

Dated this 14th day of September, 2021.

CITY COUNCIL
FOR BEAVERTON, OREGON

ATTEST:



CATHERINE JANSEN
City Recorder

SIGNED:



LACEY BEATY
Mayor