

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

IN THE MATTER OF AN APPEAL OF THE PLANNING) ORDER NO. 2839
COMMISSION'S DECISION TO APPROVE DR2020-) APP2021-0002 APPEAL OF HERZOG MEIER
0079 HERZOG MEIER EXPANSION DESIGN REVIEW) EXPANSION DESIGN REVIEW THREE (DR2020-0079).
THREE.)

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 Design Review Three (DR2020-0079) application. The appellants asked the Council to modify the Planning Commission's decision and approve DR2020-0079 Herzog Meier Expansion. The applicant proposes to partially demolish 5,703 square feet of the existing automotive service building, construct a new 24,900 square foot, one-story, automotive service building containing service bays and manual carwash with rooftop storage for inventory vehicles, and reconfigure the on-site vehicle circulation and parking areas.

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 two assertions of error specifically related to the Design Review Three application. The first assertion is that the Planning Commission erred in conditioning

the dedication of approximately four feet of right of way along SW Tualatin Valley Highway to the Oregon Department of Transportation (ODOT) and in conditioning the redevelopment of the SW Tualatin Valley Highway frontage with a 7.5-foot planter strip (DR2020-0079 Conditions of Approval #27 and #28 from Land Use Order No. 2824). The appellants challenged the City's findings of nexus and proportionality as insufficient. The appellants asserted that the exaction of a right of way dedication to ODOT is not supported by the law or the facts; therefore, the City had not met its burden of proof to demonstrate the constitutionality of the exaction. The appellants asserted that the City's proportionality argument was not sufficient because the City used the cost of right of way donation to show that the dedication was proportional to the traffic impacts generated from the proposal, but the City did not provide further analysis, calculations, or data. Further, the appellants asserted that these conditions of approval are inappropriate because they are based on a faulty Institute of Transportation Engineers (ITE) trip calculation method.

The second assertion is that the Planning Commission erred in conditioning the dedication of approximately one foot of right of way along SW Whitney Way to the City of Beaverton and in conditioning the redevelopment of the SW Whitney Way frontage with a five-foot-wide sidewalk (DR2020-0079 Conditions of Approval #31 and #54 from Land Use Order No. 2824). The appellants challenged the City's findings for nexus and proportionality as insufficient. The appellants asserted that the Planning Commission did not provide any arguments for essential nexus and rough proportionality for the one-foot of right of way dedication or the sidewalk improvements. 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.

After the close of the hearing, the Council discussed the appellants' assertions and the challenged conditions of approval on each frontage. Regarding SW Tualatin Valley

Highway, the Council expressed uncertainty about ODOT's 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 Conditions of Approval #27 and #28 from Land Use Order No. 2824 were designed to address, the Council directed staff to delete Condition of Approval #27, which required the four-foot right of way donation and modify Condition of Approval #28 to remove the reference to the 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 also directed staff to modify Condition of Approval #28 to remove the reference to ODOT's roadway improvements and the Sidewalk Design Modification.

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. The Council found that there was substantial evidence in the record that: 1) providing adequate sidewalk capacity on SW Whitney Way is a public need, which Conditions of Approval #31 and #54 from Land Use Order No. 2824 were designed to

address; 2) the proposed development exacerbates this public need; 3) Conditions of Approval #31 and #54 alleviate the identified public need by providing adequate sidewalk capacity; and 4) Conditions of Approval #31 and #54 are roughly proportional to that portion of the identified public need exacerbated by the proposed development. Therefore, the one-foot right of way dedication to the City and the redevelopment of SW Whitney Way with a five-foot-wide sidewalk are lawful exactions. For these reasons, the Council endorsed Conditions of Approval #31 and #54 as approved by the Planning Commission.

The Council, after holding the public hearing and considering all oral and written testimony, affirms the Planning Commission approval on appeal and approves DR2020-0079, 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 Design Review Three (DR2020-0079) approval, with the revised Conditions of Approval related to the required frontage improvements on SW Tualatin Valley Highway. 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 **APP2021-0002** is **APPROVED** and the Planning Commission's **APPROVAL** of **DR2020-0079** 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. DR2020-0079 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), Loading Determination (LO2020-0003), Parking Requirement Determination (PD2020-0005), Sidewalk Design Modification (SDM2020-0007), and Tree Plan Two (TP2020-0005) 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 the required plans, application form, fee, and other items needed for a complete site development permit application per the applicable review checklist. (Site Development Div./SAS)
3. Contract with a professional engineer to design and monitor the construction for any work governed by Beaverton Municipal Code 9.05.020, current standards in place per the City Engineering Design Manual and Standard Drawings, Beaverton Development Code (Ordinance 2050, 4010 +rev.), the current standards in place per the Clean Water Services District, Design and Construction Standards, and the City Standard Agreement to Construct and Retain Design Professionals in Oregon. (Site Development Div./SAS)
4. Submit a completed and executed City Standard Agreement to Construct Improvements and Retain Design Professional(s) Registered in Oregon. After the site development permit is issued, the City Engineer and the Planning Director must approve all revisions utilizing the process set out in the Beaverton Development Code and the City Engineering Design Manual; however, any required land use action shall be final prior to City staff approval of the engineering plan revision and work commencing as revised. (Site Development Div./SAS)
5. Guarantee all public improvements, site grading, stormwater management facilities, private streets, and common driveway paving by submittal of a City-approved security. The security approval by the City consists of a review by the City Attorney for form and the City Engineer for amount, equivalent to 100 percent or more of estimated construction costs. (Site Development Div./SAS)
6. Submit any required off-site easements, executed and ready for recording, to the City after approval by the City Engineer for legal description of the area encumbered and City Attorney as to form. (Site Development Div./SAS)
7. Submit to the City a copy of issued permits or other approvals needed from the Oregon Department of Transportation for work within, and/or construction access to the Tualatin Valley Highway right of way. (Site Development Div./SAS)

8. Submit to the City a copy of issued permits or other approvals needed from the Oregon Department of Transportation Rail Division for any work within 500 feet of the rail crossing area. (Site Development Div./SAS)
9. If determined to be needed by the City Building Official, submit a detailed water demand analysis (fire flow calculations) in accordance with the requirements of the Fire Code as adopted by Tualatin Valley Fire and Rescue. This analysis shall be supplemented by an actual flow test and evaluation by a professional engineer meeting the standards set by the City Engineer as specified in the Engineering Design Manual Chapter 6, 610.2. The analysis shall provide the available water volume (GPM) at 20 psi residual pressure from the fire hydrant nearest to the proposed project. (Site Development Div./SAS)
10. Submit a copy of issued permits or other approvals needed from the Clean Water Services (CWS) District for storm system connections as part of City plan review process. (Site Development Div./SAS)
11. Submit to the City a copy of issued CWS system connection permit for any construction affecting CWS-owned and -maintained sanitary sewer mains 21 inches in diameter or larger. (Site Development Div./SAS)
12. Submit plans for erosion control per 1200-CN General Permit (DEQ/CWS/City Erosion Control Joint Permit) requirements to the City. The applicant shall use the plan format per requirements for sites between 1 and 4.99 acres adopted by DEQ and Clean Water Services. (Site Development Div./SAS)
13. Provide construction plans and a drainage report demonstrating compliance with City surface water management requirements per City 2019 Engineering Design Manual, Resolution 4542, Section 530; and with CWS Resolution and Order 2019-22 for quantity control for conveyance capacity, hydromodification, and quality treatment. Fee-in-lieu can be requested if development meets criteria set forth in City EDM Sections 190, table 530.1 and 530.1.A.4, and CWS Design & Construction Standards Sections 4.03.7.a and 4.04.2.a. (Site Development Div./SAS)
14. Provide a drainage analysis of the subject site prepared by a professional engineer meeting the standards set by the City Engineer. The analysis shall identify all contributing drainage areas and plumbing systems on and adjacent to the site with the site development permit application. The analysis shall also delineate all areas on the site that are inundated during a 100-year storm event, including the safe overflow conveyance from proposed constructed stormwater management facilities. In addition, the analysis shall delineate any mapped FEMA floodplains and flood ways. The site plans shall clearly show the 100-year flood limits on each plan that contains elevation information. (Site Development Div./SAS)
15. Provide an engineering analysis of the grading and construction work proposed

within the 100-year floodplain as necessary to allow for a public notice to be published in a local newspaper by the City Engineer for the proposed floodplain modifications. The applicant's engineer shall certify in writing that the project as designed will meet the requirements of City Code and Clean Water Services Design & Construction standards as they refer to the 100-year floodplain, prior to this notice being sent. The public notice and a 10-day appeal period shall occur after final approval of the site development permit plans by the City Engineer and Planning Director. (Site Development Div./JY)

16. Provide a final no-net rise certification for excavation and fills within the 100-year FEMA floodplain. (Site Development Div./JY)
17. Submit a grading plan showing building pad elevation and minimum finished floor elevation (FFE). Pad elevation shall be at least one foot higher and FFE shall be at least three feet higher than the 100-year/emergency overflow of the stormwater management facility. Any changes to approved grading must meet provisions of Beaverton Code 9.05.110 and 9.05.115. No grading can occur within 10 feet of a property line or half the height of the vertical embankment created, whichever is greater. This applies to all exterior property boundaries of the proposed project. (Site Development Div./SAS)
18. Provide plans showing a pre-treatment system upstream from any stormwater management system. Plans shall also show a high flow bypass system to bypass surface water runoff high flows. (Site Development Div./SAS)
19. Provide plans and details for the proposed LIDA stormwater management facilities. These plans must show profile and elevation information and how the facilities connect to the storm system. (Site Development Div./SAS)
20. Pay any required stormwater system development charges (stormwater quality, quantity, hydromodification, and overall system conveyance) for the new impervious area proposed. (Site Development Div./SAS)
21. Submit an owner-executed, notarized City/CWS standard private stormwater facilities maintenance agreement, with maintenance plan and all standard exhibits, ready for recording with Washington County Records. (Site Development Div./SAS)
22. Submit to the City a certified impervious surface determination of the proposed project's net new impervious area proposed for any common areas and private streets prepared by the applicant's engineer, architect, or surveyor. The certification shall consist of an analysis and calculations determining the square footage of all impervious surfaces as a total for the common areas and private streets. In addition, specific types of impervious area totals, in square feet, shall be given for parking areas and driveways, sidewalk and pedestrian areas, and any gravel surfaces. Calculations shall also indicate the square footage of pre-existing impervious surface, the new impervious surface area

created, and total final impervious surface area on the entire site and individual lots/tracts. (Site Development Div./SAS)

23. Provide plans for the placement of underground utility lines within the site and for services to the proposed new development. If existing utility poles along existing street frontages must be moved to accommodate the proposed improvements, the affected lines must be either undergrounded or a fee in lieu of undergrounding paid per Section 60.65 of the Development Code. (Site Development Div./SAS)
24. Submit plans that show access for a maintenance vehicle within 9 feet from the front or within 19 feet from the side of a vehicle to all public stormwater management structures unless otherwise specifically approved by the City Engineer. (Site Development Div./SAS)
25. If required by OAR 918-780-0040, submit proposed private plumbing plans to the City Building Division for review. If private sewer systems crossing lot lines and within a private easement are proposed, please submit plumbing permit application to the Building Division. Drainage within covered areas shall be piped as approved by the City Building Division. (Site Development Div./SAS)
26. Submit ODOT standard detail DET1720 showing level of design detail for every sidewalk ramp proposed with this development. Maximum designed ramp slope shall be 7.5%, and maximum designed cross slope, flat landing, or turning space shall be 1.5%. Two-directional ADA ramps shall be provided at all corners of all intersections, regardless of curb type. See ODOT standard drawings RD754, RD155, RD756, RD757, RD758, and RD759 for ramp details. (Site Development Div./SAS)
27. Submit plans demonstrating that the sidewalks along the site's full frontage of SW Tualatin Valley Highway are reconstructed to meet the City's standards for an arterial of a minimum 7'-6" planter strip including standard six-inch curb, six-foot sidewalk, one-foot maintenance buffer behind the sidewalk, and ADA ramps brought up to current ODOT standards (BDC 60.55.10.1, 2, and 4). (Transportation/KM and ODOT/MD)
28. Submit confirmation from TriMet that any required transit improvements at the existing bus stop along the site's frontage of SW Tualatin Valley Highway are being coordinated with the required frontage improvements (BDC 60.55.10, 60.55.25, and 60.55.40). (Transportation/KM)
29. Submit plans demonstrating that sidewalks along the site's full frontage of SW 139th Way are reconstructed to meet the City's standards for a local street of a 6'-6" planter strip including standard six-inch curb and a five-foot sidewalk (BDC 60.55.10.1-2). (Transportation/KM)
30. Dedicate one foot of right of way to the City of Beaverton along the site's

frontage to SW Whitney Way for a total width of 26 feet between the right of way center line and the property line (BDC 60.55.10.5). (Transportation/KM)

31. Submit plans demonstrating that signage will be installed near the entrance of the northern-most driveway on SW 139th Way to restrict access into this driveway for employees and loading activities only (BDC 60.55.10.2). (Transportation/KM)
32. Submit plans demonstrating that a stop sign will be installed at the bottom of the new service building ramp that leads to the rooftop vehicle storage area. The plans must also display the vision clearance triangles for this ramp. Should any part of the vision clearance triangles be obstructed or encroached upon, the applicant must propose additional mitigation measures, to be approved by the City Transportation Engineer, to allow greater visibility for the drivers exiting the ramp and/or alert any motor vehicle or pedestrian cross-traffic within the parking lot of a vehicle exiting the ramp (BDC 60.55.10.4 and 60.55.25.7 and 10). (Transportation/KM)
33. Submit plans demonstrating compliance with the City's minimum standards for short-term bicycle parking (BDC 60.30.2.B and EDM Section 340). (Planning/LR)
34. Submit plans demonstrating compliance with the City's minimum standards for long-term bicycle parking (BDC 60.30.2.B and EDM Section 340). (Planning/LR)
35. Submit a photometric plan demonstrating that the on-site lighting will meet the City's Technical Lighting Standards (Table 60.05-1). (Planning/LR)
36. Submit a photometric plan demonstrating that the pole-mounted luminaire poles and bases are finished or painted a non-reflective color. (Planning/LR)
37. Provide tree protection fencing in accordance with the standards of Section 60.60.20 of the Development Code. Any alternatives to the standards in 60.60.20 must be approved by the City Arborist. (Planning/LR)
38. Submit a revised landscape plan showing shrub species that will form an evergreen hedge between 30 and 36 inches in height within the perimeter parking lot landscaping planter strip located between the proposed employee parking area and SW Whitney Way. (Planning/LR)
39. Submit a revised landscape plan showing one tree meeting this standard for each of the five landscape islands. (Planning/LR)
40. Submit a revised landscape plan showing that all trees proposed to be planted in the landscape islands are identified by the City of Beaverton Street Tree List, or demonstrate that use of the Western Redbud tree has been approved by

the City Arborist. (Planning/LR)

41. Submit a revised landscape plan that shows 5 additional trees planted along the east foundation of the new service building for a total of 8 trees. (Planning/LR)

C. Prior to building permit issuance, the applicant shall:

42. Submit a complete site development permit application and obtain the issuance of site development permit from the Site Development Division. (Site Development Div./SAS)
43. Make provisions for installation of all mandated erosion control measures to achieve City inspector approval at least 24 hours prior to call for foundation footing form inspection from the Building Division. (Site Development Div./SAS)
44. Have a professional architect, engineer, or surveyor submit plans and specifications to the City Engineer and City Building Official verifying that all at-risk elements of the new construction (in particular gate controllers, mechanisms, and electrical system) are either elevated or floodproofed as appropriate per City Code, FEMA requirements, IBC Appendix G (Flood-resistant Construction), and ASCE/SEI 24-05, and as determined by the City Engineer and City Building Official to at least 188.0 feet (NAVD-88), which is one foot above the base flood elevation of 187.0 feet (NAVD-88). (Site Development Div./JY)

D. Prior to final inspection and final occupancy permit, the applicant shall:

45. Have substantially completed the site development improvements as determined by the City Engineer. (Site Development Div./SAS)
46. Have the landscaping completely installed or provide for erosion control measures around any disturbed or exposed areas per Clean Water Services standards. (Site Development Div./SAS)
47. Have placed underground all affected, applicable existing overhead utilities and any new utility service lines within the project and along any existing street frontage, as determined at site development permit issuance. (Site Development Div./SAS)
48. Install or replace, to City specifications, all sidewalks which are missing, damaged, deteriorated, or removed by construction. (Site Development Div./SAS)
49. Have a professional architect, engineer, or surveyor submit an elevation certification on Federal Emergency Management Agency (FEMA) standard

form to the City Floodplain Administrator, verifying that the lowest finished floor is at least 188.0 feet (NAVD88), which is one foot above the base flood elevation of 187.0 (NAVD-88) or flood-proofed to 189.0 feet (NAVD88), which is two feet above the base flood elevation of 187.0 feet (NAVD-88). (Site Development Div./JY)

50. Install signage near the entrance of the northern-most driveway on SW 139th Way to restrict access into this driveway for employees and loading activities only (BDC 60.55.10.2). (Transportation/KM)
51. Install a stop sign at the bottom of the new service building ramp that leads to the rooftop vehicle storage area. Install any required mitigation measures that were approved by the City Transportation Engineer if any part of the ramp's vision clearance triangles were shown to be obstructed or encroached upon (BDC 60.55.10.4 and 60.55.25.7 and 10). (Transportation/KM)
52. Reconstruct sidewalks along the site's SW 139th Way frontage to be consistent with the Engineering Design Manual's Standard Cross-section for a Local Street consisting of a 6'-6" planter strip including standard six-inch curb and a five-foot sidewalk. Sidewalk improvements also require constructing ADA-compliant curb ramps at the corner of SW Whitney Way and SW 139th Avenue, as well as installing required street lighting, as shown on the applicant's site plans (BDC 60.55.10.1, 2, and 4). (Transportation/KM)
53. Reconstruct sidewalks along the site's SW Whitney Way frontage to be consistent with the Engineering Design Manual's Standard Cross-section for a Local Street consisting of a 6'-6" planter strip including standard six-inch curb and a five-foot sidewalk, except as modified by the Sidewalk Design Modification application. Sidewalk improvements also require constructing ADA-compliant curb ramps at the corner of SW Whitney Way and SW 139th Way, as well as installing required street lighting, as shown on the applicant's site plans (BDC 60.55.10.1, 2, and 4). (Transportation/KM)
54. Submit to the City of a copy of the issued Oregon Department of Transportation Miscellaneous Permit for the required frontage improvements along the site's SW Tualatin Valley Highway frontage (BDC 60.55.10.1). (Transportation/KM)
55. Install all required B1 landscape buffering along the SW Whitney Way frontage. (Planning/LR)

E. Prior to release of performance security, the applicant shall:

56. Have completed the site development improvements as determined by the City Engineer and met all outstanding conditions of approval as determined by the City Engineer and Planning Director. Additionally, the applicant and professional(s) of record shall have met all obligations under the City Standard Agreement to Construct Improvements and Retain Design Professional

Registered in Oregon, as determined by the City Engineer. (Site Development Div./SAS)

- 57. Submit any required on-site easements not already recorded by document, executed and ready for recording, to the City after approval by the City Engineer for area encumbered and City Attorney as to form. The applicant's engineer or surveyor shall verify all pre-existing and proposed easements are of sufficient width to meet City standards. (Site Development Div./SAS)
- 58. Provide a post-construction cleaning, system maintenance, and any StormFilter recharge/replacement servicing report per manufacturer's recommendations for the site's proprietary stormwater treatment systems by a qualified maintenance provider as determined by the City Engineer. Additional service reports will be required per maintenance schedule and until the maintenance and planting period is complete. (Site Development Div./SAS)
- 59. Provide an additional performance security for 100 percent of the cost of plants, planting materials, and any maintenance labor (including irrigation) necessary to achieve establishment of the vegetation as shown on the approved plan within the stormwater management facility, as determined by the City Engineer. If the plants are not well established (as determined by the City Engineer and City Public Works Director) within a period of two years from the date of substantial completion, a plan shall be submitted by the engineer of record and landscape architect (or wetland biologist) that documents any needed remediation. The remediation plan shall be completely implemented and deemed satisfactory by the City Public Works Director prior to release of the security. (Site Development Div./SAS)

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


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

Dated this 14th day of September, 2021.

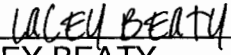
CITY COUNCIL
FOR BEAVERTON, OREGON

ATTEST:

SIGNED:



CATHERINE JANSEN
City Recorder



LACEY BEATY
Mayor