

STAFF REPORT

Report Date: March 17, 2021

Application/Project Name: West End District Condition of Approval Modification

Application Number: DR2021-0008

Proposal: The modification of conditions of approval (COA) associated with a previously approved application DR2018-0149 West End District Mixed Use Development. The modification is to conditions associated with recordation of a final plat for the consolidation of lots. The applicant as part of their development proposal indicated, in error, the subject site was made up of three legal lots of record identified as tax lots 100, 200, and 300 on Washington County Tax Assessor's Map 1S108DD. No changes are being proposed to the overall design of the mixed-use development.



Proposal Location: The site is located at the northwest corner of SW Murray Boulevard and Tualatin Valley Highway, specifically identified as tax Lots 100, 200, and 300 on Washington County Tax Assessor's Map 1S108DD.

Applicant: West End Beaverton, LLC

Recommendation: APPROVAL of West End District Condition of Approval Modification DR2021-0008, subject to conditions identified at the end of this report

Hearing Information: 6:30 p.m. March 24, 2021, at City Hall, 12725 SW Millikan Way

Note: Public Hearings are held remotely and can be viewed at the following link:

<https://www.beavertonoregon.gov/291/Agendas-Minutes>

Contact Information:

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skirkman@BeavertonOregon.gov

Applicant Representative: Stacy Connery, Pacific Community Design, Inc.
12564 SW Main Street
Tigard, OR 97223

Property Owner: Francine Duncan, Sisters of St. Mary of Oregon
4440 SW 148th Avenue
Beaverton, OR 97078

Existing Conditions

Zoning: General Commercial (GC)

Site Conditions: The site has been approved for 424 dwelling units and 31,000 square feet of commercial space with associated improvements that are currently under construction.

Site Size: 13 acres

Location: Northwest corner of SW Tualatin Valley Highway and SW Murray Boulevard

Neighborhood Association Committee: Central Beaverton NAC

Table 1: Surrounding Uses

Direction	Zoning	Uses
North	Office Industrial (OI)	Medical Service
South	Residential-Urban Medium Density (R-2)	Church and Private School
East:	GC and Station Community-Mixed Use (SC-MU)	Private School, Eating and Drinking Establishment, Vehicle Rentals
West:	GC and OI	Vehicle Sales and Service

Application Information

Table 2: Application Summaries

Application	Application type	Proposal summary	Approval criteria location
DR2021-0008	Design Review	The modification of conditions of approval (COA) associated with a previously approved application DR2018-0149 West End District Mixed Use Development.	Development Code Section 40.20.15.3.C and 50.95

Table 3: Key Application Dates

Application	Submittal Date	Deemed Complete	120-Day	365-Day*
DR2021-0008	Jan. 27, 2021	Feb. 16, 2021	May 27, 2021	Jan. 27, 2022

* Pursuant to Section 50.25.9 of the Development Code this is the latest date, with a continuance, by which a final written decision on the proposal can be made.

Project Description

The Planning Commission approved DR2018-0149 West End District Mixed Use Development during the public hearing of December 5, 2018 for 424-dwelling units and 31,000 square feet of commercial space. During the original approval process the applicant's plans and narrative identified that the site was made up on three legal lots, as part of the application process they applied for and were granted approval for two Replat One for Lot Consolidation applications. As part of the conditions of approval for the development Design Review conditions of approval were tied to the milestone of recording of a plat for the consolidation of the lots. Further into the process the applicant became aware, and the County Surveyor confirmed, that the lots proposed to be consolidated were not in fact legal lots of record but were part of the same parent parcel removing the need for a lot consolidation, and therefore the request to modify the conditions of approval tied to the recording of a plat.

The applicant seeks to correct this mistake of fact, proposing to revise the approved conditions of approval adopted by the Planning Commission, specifically the modification is to conditions associated with recordation of a final plat for the consolidation of tax lots.

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Exhibits

Exhibit 1 Materials Submitted by Staff

Exhibit 1.1 Zoning and Vicinity Map (page 6 of this report)

Exhibit 1.2 Aerial Map (page 6 of this report)

Exhibit 1.3 Planning Commission Land Use Order No. 2651

Exhibit 2 Public Comments

No public Comments

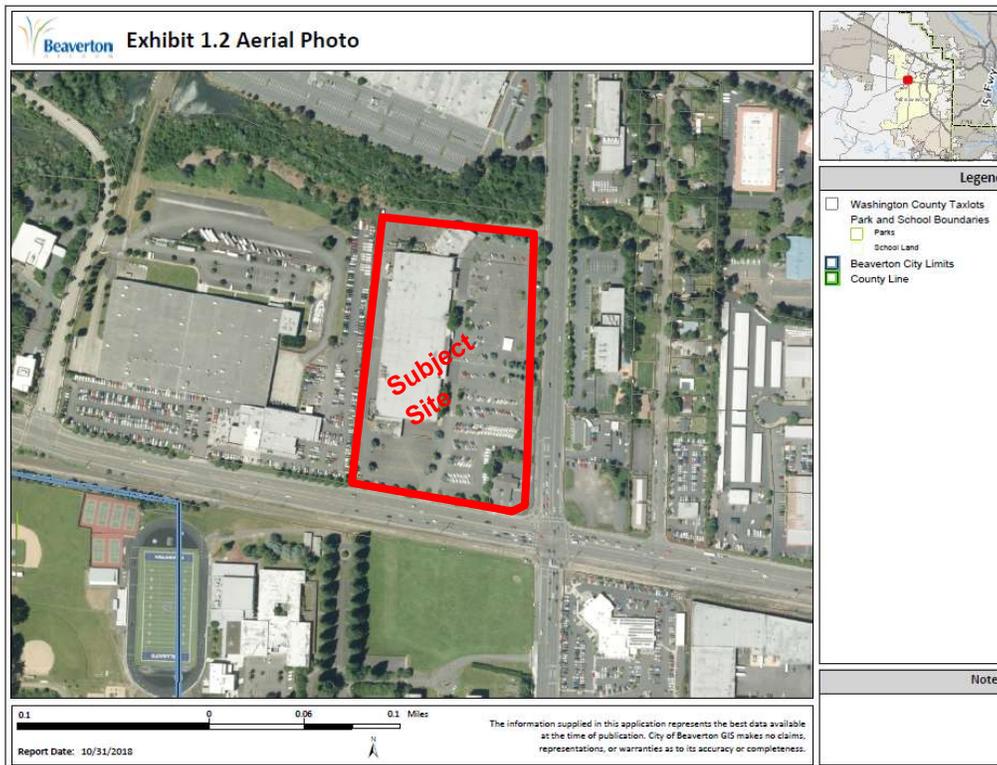
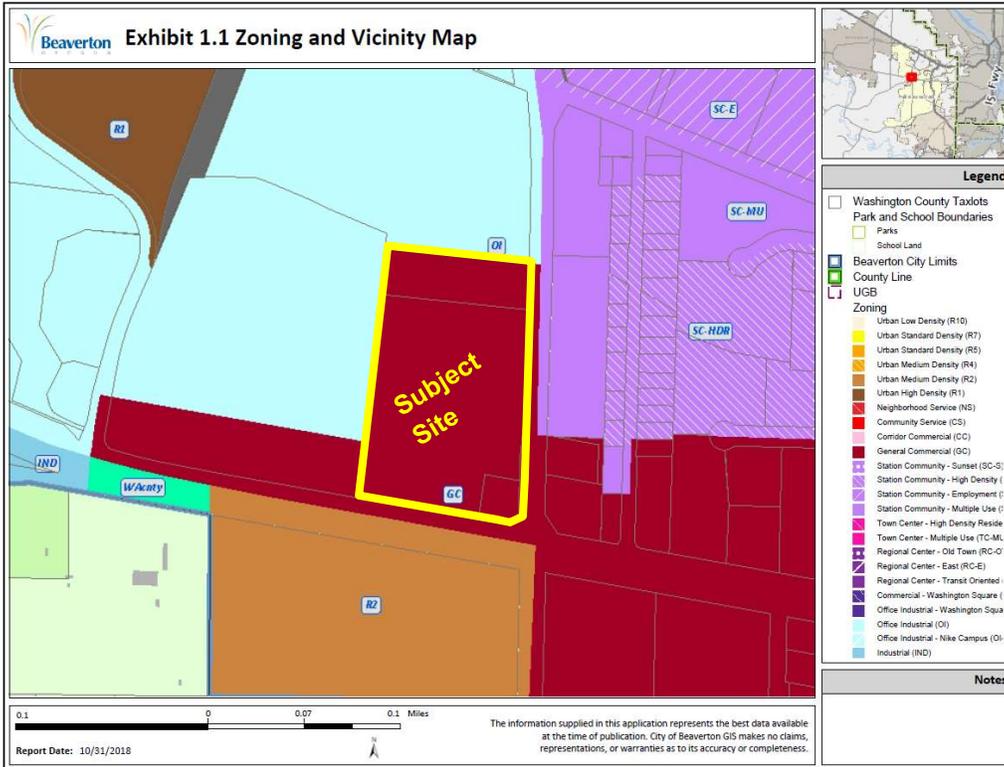
Exhibit 3 Materials Submitted by Applicant

Exhibit 3.1 Application Form

Exhibit 3.2 Applicant Narrative and Documents

Exhibit 3.3 Pre-Application Conference Notes

ZONING/VICINITY/AERIAL MAP



Attachment A: FACILITIES REVIEW COMMITTEE

TECHNICAL REVIEW AND RECOMMENDATIONS

Application: West End District Condition of Approval Modification

Recommendation: APPROVAL DR2021-0008

Finding: The Facilities Review Committee finds that the proposal complies with all the technical criteria. The Committee recommends that the decision-making authority in APPROVING the proposal, adopt the conditions of approval at the end of the report:

Section 40.03 Facilities Review Committee:

The Facilities Review Committee has conducted a technical review of the application, in accordance with the criteria contained in Section 40.03 of the Development Code. The Committee's findings and recommended conditions of approval are provided to the decision-making authority. As they will appear in the Staff Report, the Facilities Review Conditions may be re-numbered and placed in a different order. The decision-making authority will determine whether the application as presented meets the Facilities Review approval criteria for the subject application and may choose to adopt, not adopt, or modify the Committee's findings.

The Facilities Review Committee Criteria for Approval will be reviewed for all criteria that are applicable to the submitted application(s) as identified below:

- All twelve (12) criteria are applicable to the submitted Modification of a Design Review Three application as submitted.

Section 40.03.1.A

All critical facilities and services related to the proposed development have, or can be improved to have, adequate capacity to serve the proposed development at the time of its completion.

FINDINGS:

Chapter 90 of the Development Code defines "critical facilities" to be services that include public water, public sanitary sewer, stormwater drainage and retention, transportation, and fire protection. No physical changes are proposed to the previously approved plans. The scope of this request is limited to modifying previously issued conditions of approval, in association with DR2018-0149 West End District Mixed Use Development. Specifically, the modification is to conditions associated with recordation of a final plat for the consolidation of tax lots. The applicant, as part of their development proposal indicated, in error, the subject site was made up of three legal lots of record (tax lots 100, 200, and 300 on Washington County Tax Assessor's Map 1S108DD); however, these identified lots are not separate legal lots of record. The requested

modification to remove the conditions of approval requiring recordation of a plat showing these lots are consolidated is no longer necessary as the 'lots' identified in the original approval are not legal lots of record and are actually all part of the same legal lot, they do not need to be consolidated to accomplish the purpose of having the development on one single lot.. Compliance with all applicable Facilities Review criteria has been previously reviewed and approved. Because the proposed modification does not include any physical changes, the site will remain adequately served.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Section 40.03.1.B

Essential facilities and services related to the proposed development are available, or can be made available, with adequate capacity to serve the development prior to its occupancy. In lieu of providing essential facilities and services, a specific plan may be approved if it adequately demonstrates that essential facilities, services, or both will be provided to serve the proposed development within five (5) years of occupancy.

FINDINGS:

Chapter 90 of the Development Code defines "essential facilities" to be services that include schools, transit improvements, police protection, and pedestrian and bicycle facilities in the public right-of-way. No physical changes are proposed to the previously approved plans. The scope of this request is limited to modifying previously issued conditions of approval, in association with DR2018-0149 West End District Mixed Use Development. Specifically, the modification is to conditions associated with recordation of a final plat for the consolidation of tax lots. The applicant as part of their development proposal indicated, in error, the subject site was made up of three legal lots of record (tax lots 100, 200, and 300 on Washington County Tax Assessor's Map 1S108DD); however, these identified lots are not separate legal lots of record. The conditions related to the recordation of a plat showing these lots are consolidated are no longer necessary. Compliance with all applicable Facilities Review criteria has been previously reviewed and approved. Because the proposed modification does not include any physical changes, the site will remain adequately served.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Section 40.03.1.C

The proposed development is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are modified by means of one or more applications which shall be already approved or which shall be considered concurrently with the subject application; provided, however, if the approval of the proposed development is contingent upon one or more additional applications, and the same is not approved, then the proposed development must comply with all applicable provisions of Chapter 20 (Land Uses).

FINDINGS:

The scope of this request is limited to modifying previously issued conditions of approval, in association with DR2018-0149 West End District Mixed Use Development. The Committee cites the Code Conformance Analysis chart at the end of this report, which evaluates the proposal as it relates to the applicable Code requirements of Chapter 20. No physical changes to the site are proposed with this Modification of a Decision application.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Section 40.03.1.D

The proposed development is consistent with all applicable provisions of Chapter 60 (Special Requirements) and all improvements, dedications, or both, as required by the applicable provisions of Chapter 60 (Special Requirements), are provided or can be provided in rough proportion to the identified impact(s) of the proposed development.

FINDINGS:

The scope of this request is limited to modifying previously issued conditions of approval, in association with DR2018-0149 West End District Mixed Use Development. The Committee cites the Code Conformance Analysis chart at the end of this report, which evaluates the proposal as it relates to the applicable Code requirements of Chapter 60. No physical changes to the site are proposed with this Modification of a Decision application.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Section 40.03.1.E

Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas, as applicable: drainage facilities, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas, and other facilities not subject to maintenance by the City or other public agency.

FINDINGS:

The scope of this request is limited to modifying previously issued conditions of approval, in association with DR2018-0149 West End District Mixed Use Development. Specifically, the modification is to conditions associated with recordation of a final plat for the consolidation of tax lots. No physical changes are proposed. Compliance with all applicable Facilities Review criteria has been previously reviewed and approved. Because the proposed modification does not include any physical changes, the ability to

provide continued period maintenance and necessary normal replacement of private common facilities and areas will not be altered.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Section 40.03.1.F

There are safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the development.

FINDINGS:

The scope of this request is limited to modifying previously issued conditions of approval, in association with DR2018-0149 West End District Mixed Use Development. Specifically, the modification is to conditions associated with recordation of a final plat for the consolidation of tax lots. No physical changes are proposed. Compliance with all applicable Facilities Review criteria has been previously reviewed and approved. Because the proposed modification does not include any physical changes, the safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the development will not be altered.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Section 40.03.1.G

The development's on-site vehicular and pedestrian circulation systems connect to the surrounding circulation systems in a safe, efficient, and direct manner.

FINDINGS:

The scope of this request is limited to modifying previously issued conditions of approval, in association with DR2018-0149 West End District Mixed Use Development. Specifically, the modification is to conditions associated with recordation of a final plat for the consolidation of tax lots. No physical changes are proposed. Compliance with all applicable Facilities Review criteria has been previously reviewed and approved. Because the proposed modification does not include any physical changes, the development's on-site vehicular and pedestrian circulation systems connect to the surrounding circulation systems in a safe, efficient, and direct manner will not be altered.

Conclusion: Therefore, the Committee finds the proposal meets the criterion.

Section 40.03.1.H

Structures and public facilities serving the development site are designed in accordance with adopted City codes and standards and provide adequate fire protection, including, but not limited to, fire flow.

FINDINGS:

The scope of this request is limited to modifying previously issued conditions of approval, in association with DR2018-0149 West End District Mixed Use Development. Specifically, the modification is to conditions associated with recordation of a final plat for the consolidation of tax lots. No physical changes are proposed. Compliance with all applicable Facilities Review criteria and adopted City codes and standards have been previously reviewed and approved.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Section 40.03.1.I

Structures and public facilities serving the development site are designed in accordance with adopted City codes and standards and provide adequate protection from crime and accident, as well as protection from hazardous conditions due to inadequate, substandard, or ill-designed development.

FINDINGS:

The scope of this request is limited to modifying previously issued conditions of approval, in association with DR2018-0149 West End District Mixed Use Development. Specifically, the modification is to conditions associated with recordation of a final plat for the consolidation of tax lots. No physical changes are proposed. Compliance with all applicable Facilities Review criteria and adopted City codes and standards have been previously reviewed and approved.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Section 40.03.1.J

Grading and contouring of the development site is designed to accommodate the proposed use and to mitigate adverse effect(s) on neighboring properties, public right-of-way, surface drainage, water storage facilities, and the public storm drainage system.

FINDINGS:

The scope of this request is limited to modifying previously issued conditions of approval, in association with DR2018-0149 West End District Mixed Use Development. Specifically, the modification is to conditions associated with recordation of a final plat for the consolidation of tax lots. No physical changes are proposed. Compliance with all applicable Facilities Review criteria has been previously reviewed and approved. Because the proposed modification does not include any physical changes, the grading and contouring of the development site will not be altered.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Section 40.03.1.K

Access and facilities for physically handicapped people are incorporated into the development site and building design, with particular attention to providing continuous, uninterrupted access routes.

FINDINGS:

The scope of this request is limited to modifying previously issued conditions of approval, in association with DR2018-0149 West End District Mixed Use Development. Specifically, the modification is to conditions associated with recordation of a final plat for the consolidation of tax lots. No physical changes are proposed. Compliance with all applicable Facilities Review criteria has been previously reviewed and approved. Because the proposed modification does not include any physical changes, access and facilities for physically handicapped will not be altered.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Section 40.03.1.L

The application includes all required submittal materials as specified in Section 50.25.1 of the Development Code.

FINDINGS:

The applicant submitted the Design Review Three (modification of a decision) on January 27, 2021, and staff deemed the applications complete on February 16, 2021. In review of the materials during the application review process, the Committee finds that all applicable application submittal requirements identified in Section 50.25.1 are contained within this proposal.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Code Conformance Analysis

Chapter 20 Use and Site Development Requirements

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 20.10.20 (GC)			
Attached Dwellings Eating Drinking Establishment Retail Trade	Permitted	The proposal does not include changes to use.	N/A
Development Code Section 20.10.15 (GC)			
Minimum Parcel / Land Area	Non-Residential: 7,000 sq. ft. Residential: 1,000 sq. ft./unit (attached)	The proposal does not include physical changes from the approved plans.	N/A
Minimum Yard Setbacks	<u>Front (south and east):</u> 20 feet – maximum (Parcels that exceed 60,000 square feet are governed by the standards in Section 60.05.15.6) <u>Side (north):</u> 10 feet – minimum <u>Rear (west):</u> None (does not abut residential)	The proposal does not include physical changes from the approved plans.	N/A
Maximum Building Height	60 feet	The proposal does not include physical changes from the approved plans.	N/A

Chapter 60 Special Requirements

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 60.05			
Design Review Principles, Standards, and Guidelines	Requirements for new development and redevelopment.	The proposal does not include physical changes from the approved plans.	N/A
Development Code Section 60.10			
Floodplain Regulation	Standards pertaining to development within the floodplain.	The proposal does not include physical changes from the approved plans.	N/A
Development Code Section 60.15			
Land Division Standards	On-site surface contouring within 25 feet of a property line within or abutting any residentially zoned property.	The applicant does not propose a Land Division	N/A
Development Code Section 60.25			
Off-Street Loading Requirements	Minimum: One Type B space	The proposal does not include physical changes from the approved plans.	N/A
Development Code Section 60.30			
Required off-street motor vehicle parking.	<u>Attached Single Family (1 bedroom)</u> Min: 1.25 space per unit Max: 1.8 space per unit	The proposal does not include physical changes from the approved plans.	N/A
	<u>Attached Single Family (2 bedrooms)</u> Min: 1.5 space per unit Max: 2.0 space per unit		
	<u>Commercial/Retail</u> Min: 3.0 spaces per 1,000 sq. ft. Max: 5.1 spaces per 1,000 sq. ft.		
Development Code Section 60.55			
Transportation Facilities	Regulations pertaining to the construction or reconstruction of transportation facilities.	The proposal does not include physical changes from the approved plans.	N/A
Development Code Section 60.60			
Trees & Vegetation	Regulations pertaining to the removal and preservation of trees.	The proposal does not include physical changes from the approved plans.	N/A
Development Code Section 60.65			
Utility Undergrounding	Regulations pertaining to utility undergrounding.	The proposal does not include physical changes from the approved plans.	N/A
Development Code Section 60.67			
Significant Natural Resources	Regulations pertaining to Significant Natural Resources	The proposal does not include physical changes from the approved plans.	N/A

Attachment B: DR2021-0008

ANALYSIS AND FINDINGS FOR MODIFICATION OF A DESIGN REVIEW THREE APPROVAL

Recommendation: Based on the facts and findings presented below, staff recommends **APPROVAL** of **DR2021-0008**, subject to the applicable conditions identified in Attachment C.

Section 40.03.1 Facilities Review Approval Criteria:

The applicant for development must establish that the application complies with all relevant standards in conformance with Section 50.25.1.B, and all the following criteria have been met:

Facilities Review Approval Criteria Section 40.03.1.A-L

FINDING:

Staff has reviewed the applicable Facilities Review criteria in Attachment A to this report. Staff cites the findings presented in Attachment A in response to the Facilities Review approval criteria. As identified in Attachment A, above, the proposal meets Criteria A-L, and therefore meets the criterion for approval.

Conclusion: Therefore, the Committee finds that the proposal meets the criteria.

Section 40.20.05 Purpose:

The purpose of Design Review is to promote Beaverton's commitment to the community's appearance, quality pedestrian environment, and aesthetic quality. It is intended that monotonous, drab, unsightly, dreary, and inharmonious development will be discouraged. Design Review is also intended to conserve the City's natural amenities and visual character by ensuring the proposals are properly related to their sites and to their surroundings by encouraging compatible and complementary development. The purpose of Design Review as summarized in this Section is carried out by the approval criteria listed herein.

Planning Commission Standards for Approval:

Section 40.20.15.3.C of the Development Code provides standards to govern the decisions of the Commission as they evaluate and render decisions on Design Review Applications. The Commission will determine whether the application as presented, meets the Design Review Three approval criteria. The Commission may choose to adopt, not adopt or modify the Committee's findings. In this portion of the report, staff evaluates the application in accordance with the criteria for Type Three Design Review.

To approve a Design Review Three application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

Section 40.20.15.3.C.1

The proposal satisfies the threshold requirements for a Design Review Three application.

FINDING:

The applicant proposes to modify previously approved conditions of approval, associated with a previously approved application, DR2018-0149 approval of 424 dwelling units and 31,000 square feet of commercial space with associated improvements. Specifically, modification to conditions associated with recordation of a final plat for the consolidation of tax lots.

Section 50.95.6. of the Development Code states that, "The process type for an application to modify a decision shall be based upon the thresholds for the appropriate application listed in Chapter 40". The original request meets Threshold No. 8 of Design Review Type 3 which reads "A project meeting the Design Review Two thresholds which does not meet an applicable Design Standard."

Conclusion: Therefore, staff finds the proposal meets the criterion.

Section 40.20.15.3.C.2

All City application fees related to the application under consideration by the decision making authority have been submitted.

FINDING:

The City of Beaverton received the appropriate fee for a Design Review Three application.

Conclusion: Therefore, staff finds the proposal meets the criterion.

Section 40.20.15.3.C.3

For proposals meeting Design Review Three application thresholds numbers 1 through 6, the proposal is consistent with all applicable provisions of Sections 60.05.35 through 60.05.50 (Design Guidelines).

FINDING:

The applicant meets Design Review Three threshold 8. This criterion does not apply

Conclusion: Therefore, staff finds the criterion is not applicable.

Section 40.20.15.3.C.4

For additions to or modifications of existing development, the proposal is consistent with all applicable provisions of Sections 60.05.35 through 60.05.50 (Design Guidelines) or can demonstrate that the additions or modifications are moving towards compliance with specific Design Guidelines if any of the following conditions exist:

- a. A physical obstacle such as topography or natural feature exists and prevents the full implementation of the applicable guideline; or
- b. The location of existing structural improvements prevent the full implementation of the applicable guideline; or
- c. The location of the existing structure to be modified is more than 300 feet from a public street.

FINDING:

The applicant proposes to modify a previously approved application, DR2018-0149 approval of 424 dwelling units and 31,000 square feet of commercial space with associated improvements, specifically, modification to conditions associated with recordation of a final plat for the consolidation of tax lots. No physical changes are proposed to the previously approved plans. Therefore, this criterion, which pertains to physical additions or modification of existing development, does not apply.

Conclusion: Therefore, staff finds the criterion is not applicable.

Section 40.20.15.3.C.5

For DRBCP proposals which involve the phasing of required floor area, the proposed project shall demonstrate how future development of the site, to the minimum development standards established in this Code or greater, can be realistically achieved at ultimate build out of the DRBCP.

FINDING:

The applicant does not propose a Design Review Build-out Concept Plan (DRBCP).

Conclusion: Therefore, staff finds the criterion is not applicable.

Section 40.20.15.3.C.6

For proposals meeting Design Review Three application Threshold numbers 7 or 8, where the applicant has decided to address a combination of standards and guidelines, the proposal is consistent with all applicable provisions of Sections 60.05.15 through 60.05.30 (Design Standards) except for the Design Standard(s) where the proposal is instead subject to the applicable corresponding Design Guideline(s).

FINDING:

The applicant proposes to modify a previously approved application, DR2018-0149 approval of 424 dwelling units and 31,000 square feet of commercial space with associated improvements, specifically, modification to conditions associated with recordation of a final plat for the consolidation of tax lots. No physical changes are proposed to the previously approved plans. Compliance with all applicable Design Review Standards and Guidelines have been previously reviewed and approved and are not altered by this proposal.

Conclusion: Therefore, staff finds the proposal meets the criterion.

Section 40.20.15.3.C.7

For proposals meeting Design Review Three application Threshold numbers 7 or 8, where the applicant has decided to address Design Guidelines only, the proposal is consistent with the applicable provisions of Sections 60.05.35 through 60.05.50 (Design Guidelines).

FINDING:

The applicant proposes to modify a previously approved application, DR2018-0149 approval of 424 dwelling units and 31,000 square feet of commercial space with associated improvements, specifically, the modification to conditions associated with recordation of a final plat for the consolidation of tax lots. No physical changes are proposed to the previously approved plans. Compliance with all applicable Design Review Standards and Guidelines have been previously reviewed and approved and are not altered by this proposal.

Conclusion: Therefore, staff finds the proposal meets the criterion.

Section 40.20.15.3.C.8

Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

FINDING:

No other applications are required of the applicant at this stage of City review.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95 Modification of a Decision

The applicant has requested modifications to conditions of approval of the previously approved Design Review Type Three application (DR2018-0149), therefore, Section 50.95 of the Development Code is applicable to the request. To approve a Design Review Three application,

the decision-making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

Section 50.95.1

An applicant or successor in interest may file with the Director an application to modify a prior decision that was the subject of a Type 1, Type 2 or Type 3 procedure. In addition to other requirements, such an application to modify a prior decision shall describe the nature of the proposed change to the original decision and the basis for that change, including the applicable facts and law, together with the fee prescribed for that application type necessary to modify the prior decision. Such an application to modify a prior decision shall be subject to the approval criteria and development regulations in effect when the Director receives a complete application for the modification.

FINDING:

The applicant proposes to modify a previously approved application, DR2018-0149 approval of 424 dwelling units and 31,000 square feet of commercial space with associated improvements, specifically, the modification to conditions associated with recordation of a final plat for the consolidation of tax lots. This modification is associated with a decision, originally approved through a Type 3 procedure. The applicant must return to the Planning Commission to request this modification.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.2

An application for modification is subject to pre-application conference and completeness review; provided, the Director shall only require an application for modification to contain information that is relevant or necessary to address the requested change or the facts and regulations on which it is based. An application for modification is not subject to the neighborhood review meeting requirement.

FINDING:

The applicant has requested modification of conditions for DR2018-0149. A pre-application conference was completed, and staff has provided a completeness review letter indicating all the necessary information has been provided to review this request. No other information is required of the applicant at this stage of City review.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.3

An application for modification does not extend the deadline for filing an appeal and does not stay appeal proceedings. An application for modification is subject to the 120-day requirement pursuant to ORS 227.178.

FINDING:

This applicant states it does not request to extend the deadline for filing an appeal or stay the appeal proceedings. The applicant is aware the 120-day requirement for the modification application applies.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.4

Only a decision that approves or conditionally approves an application can be modified. A decision denying an application cannot be modified. Refer to Section 50.99.

FINDING:

The applicant has applied to modify the approved Design Review Three application, DR2018-0149 West End District Mixed Use Development.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.5

An application for modification shall be subject to a Type 1, Type 2, or Type 3 procedure as determined by the Director.

FINDING:

The approved development was originally processed under the Type 3 review procedures. The requested modification to the approved site plan associated with the project will follow the Type 3 review procedures.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.6

The process type for an application to modify a decision shall be based upon the thresholds for the appropriate application listed in Chapter 40. In all cases, regardless of the thresholds listed in Chapter 40, when a proposed modification involves a condition of approval, that condition of approval can be modified or removed only by the same decision making authority that issued the original decision and through the same procedure that was followed to establish the

condition to be modified. Modification or removal of a condition of approval shall only be granted if the decision-making authority determines any one of the following:

- A. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of the condition to correct the mistake.
- B. The condition could not be implemented for reasons beyond the control of the applicant and the modification will not require a significant modification of the original decision.
- C. The circumstances have changed to the extent that the condition is no longer needed or warranted.
- D. A new or modified condition would better accomplish the purpose of the original condition.

FINDING:

As identified in subsection A above, the applicant seeks to correct this mistake of fact, proposing to revise the approved conditions of approval adopted by the Planning Commission in Land Use Order No. 2651 (Exhibit 1.3). The Planning Commission approved DR2018-0149 during the public hearing of December 5, 2018 and adopted conditions of approval associated with the recordation of a plat. The applicant's request is limited to modifying previously issued condition of approvals, in association with DR2018-0149 West End District Mixed Use Development. Specifically, the modification is to conditions associated with recordation of a final plat for the consolidation of tax lots. The applicant as part of their development proposal indicated, in error, the subject site was made up of three legal lots of record (tax lots 100, 200, and 300 on Washington County Tax Assessor's Map 1S108DD); however, these identified lots are not separate legal lots of record. The requested modification to remove the recordation of a plat showing these lots are consolidated is no longer necessary. Modifications are to the following conditions adopted in Land Use Order No. 2651:

Condition No. 43: *Provide proof of recording necessary documents with Washington County Records associated with lot consolidation and easement quit claim deeds consistent with the approved site plans.* The request is to remove the requirement that the lot consolidation be recorded prior to building permit issuance since it is no longer needed.

Condition No. 44: The applicant's request references to lot consolidation be removed in the conditions of approval for this application. Subsection C of the Conditions of Approval for DR2018-0149 identified conditions to be completed prior to recordation of the lot consolidation, this subsection is no longer required. Staff recommends requiring Condition No. 44 to be completed prior to occupancy permit issuance.

Condition No. 45: *Prior to recordation of the lot consolidation, the applicant shall provide paper copies of the documents to be recorded for City staff review.* The request is to remove the entire condition since recordation of the lot consolidation is not longer needed.

Condition No. 51: *Have recorded the final plat in County records and submitted a recorded copy to the City.* The request is to remove the entire condition. Since the lot consolidation is not needed, recordation of a plat would also not be necessary.

Condition No. 61: *Submit any required on-site easements not already dedicated on the plat, 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.* The request is to remove references to the plat clarifying a plat is not expected with this development.

Conclusion: Therefore, staff finds by meeting the conditions of approval the proposal meets the criterion.

Attachment C: Recommended Conditions of Approval

DR2021-0008

1. All conditions of approval for DR2018-0149 shall remain effective with exception to the following modifications from this approval, strikethrough text in red identify the modified language of the condition:

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

43. Provide proof of recording necessary documents with Washington County Records associated with ~~lot consolidation and~~ easement quit claim deeds consistent with the approved site plans. (Site Development Div./JJD/NP)

~~C. Prior to recording the lot consolidation, the applicant shall:~~

- ~~44. Show granting of any required on-site easements on the plat, along with plat notes as approved by the City Engineer for area encumbered and County Surveyor as to form and nomenclature. The applicant's engineer or surveyor shall verify all pre-existing and proposed easements are of sufficient width to meet current City standards in relation to the physical location of existing site improvements. (Site Development Div./JJD/NP)~~

- ~~45. Prior to recordation of the lot consolidation, the applicant shall provide paper copies of the documents to be recorded for City staff review. (Planning/SNK)~~

CD. Prior to occupancy permit issuance, the applicant shall:

- ~~44. Show granting of any required on-site easements on the plat, along with plat notes as approved by the City Engineer for area encumbered and County Surveyor as to form and nomenclature. The applicant's engineer or surveyor shall verify all pre-existing and proposed easements are of sufficient width to meet current City standards in relation to the physical location of existing site improvements. (Site Development Div./JJD/NP)~~

- ~~51. Have recorded the final plat in County records and submitted a recorded copy to the City. (Site Development Div./JJD/NP)~~

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

61. Submit any required on-site easements ~~not already dedicated on the plat~~, 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./JJD/NP)