



### CODE INTERPRETATION

#### Staff Recommendation

*March 28, 2018*

**FILE NO.:** CD 16-01: Code Interpretation

**HEARING DATE:** March 26, 2018

**APPLICANT:** Lithia Subaru of Oregon City  
1404 Main Street  
Oregon City, OR 97045

**REQUEST:** Planning Commission code interpretation to allow an additional level of structured parking on a pre-existing nonconforming use. No changes to the code are proposed.

**LOCATION:** 1404 Main Street  
Oregon City, OR 97045  
Clackamas County Map 3-2E-05C - 00803

**NEIGHBORHOOD ASSOCIATION:** Two Rivers Neighborhood Association

**REVIEWER:** Christina Robertson-Gardiner, AICP Senior Planner (503) 496-1564

**PROCESS:** Type III decisions involve the greatest amount of discretion and evaluation of subjective approval standards, yet are not required to be heard by the city commission, except upon appeal. Applications evaluated through this process include code interpretations. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the planning commission hearing is published and mailed to the applicant, recognized neighborhood association and property owners within three hundred feet of the subject property. Notice must be issued at least twenty days pre-hearing, and the staff report must be available at least seven days pre-hearing. At the evidentiary hearing held before the planning commission, all issues are addressed. The decision of the planning commission is appealable to the city commission within fourteen days of the issuance of the final decision. The city commission hearing on appeal is on the record and no new evidence shall be allowed. Only those persons or a city-recognized neighborhood association who have participated either orally or in writing have standing to appeal the decision of the planning commission. Grounds for appeal are limited to those issues raised either orally or in writing before the close of the public record. A city-recognized neighborhood association requesting an appeal fee waiver pursuant to OCMC 17.50.290.C must officially approve the request through a vote of its general membership or board at a duly announced meeting prior to the filing of an appeal. The city commission decision on appeal from the planning commission is the city's final decision.

and is appealable to the Land Use Board of Appeals (LUBA) within twenty-one days of when it becomes final.

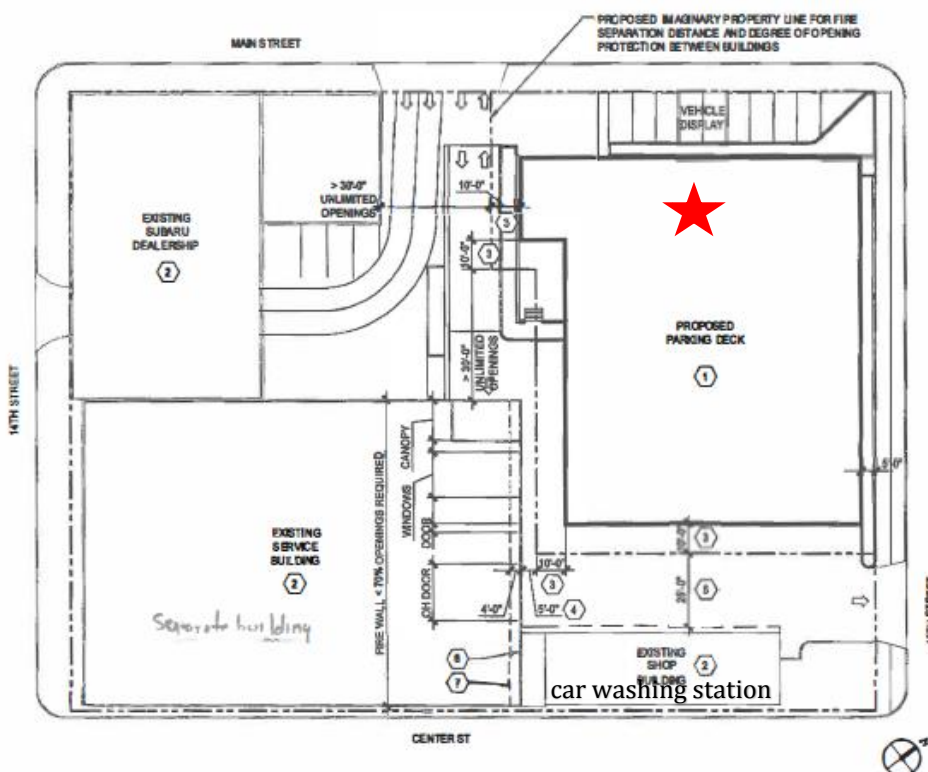
## I. BACKGROUND:

### 1. Project Description

The applicant is requesting a Planning Commission code interpretation to allow an additional level of structured parking/car storage on a pre-existing nonconforming use. No changes to the code are proposed. This code interpretation review is specific to the application being proposed.

- If the Planning Commission finds that the proposal does not constitute an intensification of the pre-existing nonconforming use, the applicant will submit for a Type II Site Plan and Design Review for the construction of the structure.
- If the Planning Commission finds that the proposal does constitute an intensification of the pre-existing nonconforming use, the applicant will retain and use the existing parking/fleet storage area in its current condition.

The Applicant, Lithia Subaru of Oregon City owns property located at 1404 Main Street, Oregon. The property is the entire block that extends from Main Street east to Center Street, and between 14th and 15th Streets. Lithia Subaru operates an automobile business on the Property. The main sales and administrative building is located at the southwest corner of the Property. That building contains the indoor show room, sales offices, finance department and administrative offices. Behind the service building along the Property's east boundary line, there is a 1,760 square foot building used for washing/detailing vehicles. That building was the subject of a June 23, 2014 Type II decision approving the replacement of the old 700 square foot building with a larger 1,760 square foot building.



### GENERAL NOTES

- A. ALL SETBACKS AND DIMENSIONS ARE APPROXIMATE AND TO BE CONFIRMED WITH SURVEY AND LOCAL CODE OFFICIAL.

### KEYNOTES

1. PROPOSED PARKING DECK TO BE EQUIPPED THROUGHOUT WITH AUTOMATIC FIRE SPRINKLER SYSTEM.
2. EXISTING BUILDINGS ON SITE ASSUMED TO BE UNPROTECTED, NON-SPRINKLERED (VERIFY).
3. THE AREA OF OPENINGS IN AN OPEN PARKING STRUCTURE WITH FIRE SEPARATION DISTANCE OF 10' OR GREATER SHALL NOT BE LIMITED (TABLE 705.2, g).
4. FIRE SEPARATION DISTANCE (3' TO LESS THAN 10') ALLOWS FOR UP TO 15% OPENINGS. ALTERNATE IF OPENINGS ARE PROTECTED, ALLOWS FOR 32% OPENINGS. INCLUDES 3'-0" MAIN DOOR AND LARGE OH DOOR.
5. FIRE SEPARATION DISTANCE (20' TO LESS THAN 30') ALLOWS FOR UP TO 70% OPENINGS.
6. WALL REQUIRED TO BE CLASSIFIED AS FIRE WALL.
7. 4'-0" OF FIRE RESISTIVE PLYWOOD DECK REQUIRED AT ROOF ASSEMBLY.



Lithia Subaru is proposing to add a level to the existing u-shaped retaining wall in the area identified by a red star at 15<sup>th</sup> and Main. The applicant describes the retaining wall as a structure and, in this instance, staff agrees with this description/categorization. Lithia believes that its proposal will improve the streetscape and enhance the pedestrian experience in the vicinity consistent with the purposes of the Downtown Design District.

The existing parking will be retained. The proposed structure will be accessed similarly to the existing configuration: from 15th Street, vehicles will be able to drive as they did, slightly downhill into the lower level. The proposed new level of the structure will be roughly at the same grade as the entrance from 15th Street, allowing vehicles to drive onto that level. The proposed level rises in elevation slightly as it extends toward Main Street so that at the west end, it will be at the same level as Main Street. The proposed structure itself will not be higher than the Main Street elevation. With the proposed landscaping on the other improvements, the addition to the existing structure will improve the sidewalk corridor and enhance the streetscape.

The applicant contends that the proposed structure will not be used for any activity for which the existing structure is not already used. It will be used to house vehicle inventory. The proposed structure will allow more of the inventory to be housed closer to the main building. Lithia Subaru's operations conducted on the property will remain unchanged. Lithia Subaru will continue to operate the retail automobile dealership.



View from Main Street



View from 15th Street



**2. PROPOSED ELEVATION AT 15TH STREET**  
 SCALE: 1/16" = 1'-0"

NORTHEAST ELEVATION  
 03.17.2018

LITHIA SUBARU OF OREGON CITY  
 PROJECT NO. 217287



### **Relevant Previous Approvals**

#### *SP 15-16 – Circulation and exterior alterations*

The applicant submitted an application for alterations to circulation, parking, and building façades in the service area of the auto dealership. This alteration improved circulation and exiting for cars at the service drop off and pick up location. The area in the courtyard north of the building and inside the building serve as parking for both pick up and drop off of cars to be repaired. Cars are temporarily parked in this location while customers interact with service advisors. The car is then transported to the basement where car service occurs. The existing turnaround area is located in the through lanes making it difficult or impossible to retrieve many cars after there're serviced. This scope of work was intended to improve customer experience by providing a single direction of traffic flow through the area. The use was identified as a pre-existing non-conforming use.

#### *SP 14-02 – Car Washing Station*

The applicant proposed to remove an existing 700 square foot accessory structure on the north side of the site and build a new 1,760 square feet accessory structure in the same location, along Center Street. The new structure required the removal of a chain link fence along Center Street, an existing pine tree near the Center Street frontage, and 8 existing parking spaces. The applicant also provided upgrading to adjacent landscaping. Staff found that the proposal was not an intensification of use and the car washing station was required to meet the commercial standards of OCMC 17.62- Site Plan and Design Review. The use was identified as a pre-existing non-conforming use.

### **Code Analysis**

The below analysis, findings, and interpretation is based on review of the current Oregon City Municipal Code. Changes to the current zoning regulations require a code amendment. Any citizen, business, or organization can apply for a text amendment to the zoning code, which is subject to a legislative public approval process by the Planning Commission and City Commission. There is no guarantee that such a text amendment would be approved by the Commissions, and no refund of the application fee is given if the amendment is not approved. If the City intends to consider code amendments on this topic, the Planning Division recommends a robust public outreach and engagement process to formulate regulations and policies that would have the support of Oregon City business owners, neighbors, and Planning and City Commissions.

## **II. ANALYSIS AND FINDINGS:**

### **CHAPTER 17.50 - ADMINISTRATION AND PROCEDURES**

#### **17.50.030** *Summary of the City's Decision-Making Processes.*

**Finding: Complies as Proposed.** The proposed Code Interpretation is being processed as a Type III application per chapter 17.50.030 of the Oregon City Municipal Code.

#### **17.50.090** *Public Notices.*

**Finding: Complies as Proposed.** Once the application was deemed complete, the City noticed the application to all neighborhood associations, Citizens Involvement Council, general circulation paper, and posted the application on the City's website. Staff provided email transmittal of the application and

notice to affected agencies, the Natural Resource Committee and to all Neighborhood Associations requesting comment. All interested persons have the opportunity to comment in writing or in person through the public hearing process. No comments were received regarding this application.

#### **CHAPTER 17.58 – LAWFUL NONCONFORMING USES, STRUCTURES AND LOTS**

##### *17.58.030 - Lawful nonconforming use.*

*A use that was lawfully established on a particular development site but that no longer complies with the allowed uses or the standards for those uses in this title may be considered a lawful nonconforming use. Change of ownership, tenancy, or management of a lawfully established nonconforming use shall not affect its lawful nonconforming status. The continuation of a lawful nonconforming use is subject to the following:*

F. Expansion. No lawful nonconforming use may be replaced by a different type of nonconforming use, nor may any legal nonconforming use be expanded or intensified.

**Finding:** Complies as proposed. This report analyses if the additional parking deck is an expansion or intensification of the automobile sales onsite.

The applicant believes that Lithia Subaru's proposed expansion of an existing nonconforming structure is not an expansion of the use of the site, nor an intensification of that use.

If approved by the Planning Commission, the applicant will submit for a Type II Site Plan and Design Review for an expansion to an existing structure which will be required to meet current commercial Site Plan and Design Review standards.

The use of the property will remain the same Subaru dealership and the applicant is not proposing to add any uses or activities onsite. Storage for inventory has always been an element of the dealership as it is with any retail automobile dealership. Staff agrees that it would be different if the proposal was for some use never conducted as part of the dealership, such as general storage or a vehicle rental operation.

The applicant contends that the proposed parking/fleet storage deck will allow more vehicles to be stored closer to the main building, but should not be considered an intensification of the existing use. The dealership will continue to operate exactly as it has for years. They contend that adding additional inventory spaces does not change the business model or increase or decrease the number of customers who will come to the store to buy a car and should not be seen as an intensification of use.

Staff requested the applicant provide additional findings that spoke to question of how the expansion of fleet storage/structured parking near the building would not be considered an intensification of the use. In a supplementary memo dated March 26, 2018, the applicant provides the following summarized arguments:

*“The applicant believes that the City should interpret the code to allow expansions of structures associated with nonconforming uses without the expansion being deemed an expansion of the use.*

*The proposed expansion of the parking structure will provide a much safer and more convenient location for Lithia Subaru to have vehicles in the examples above. When a customer arrives to test drive a number of different vehicles, the sales representative can, in advance, have the vehicles brought over to a location immediately outside the main building. They can walk out the door to the vehicles without having to cross busy streets or driveways. The same is true when a customer arrives to pick up a vehicle after a purchase or after service.*

*....increasing sales in a retail context is not a good indication of whether a use is more or less intense. However, even if you consider the level of sales or revenue, it is incorrect to assume that expanding the parking structure for convenience will increase operations, sales or inventory. Retail automobile dealerships acquire sites that have a good location and sufficient size for their operations. They do not simply look to acquire the largest site they can find, so they can have massive inventories. Having large inventories that one cannot sell is a poor business strategy. Because the size of a dealership has little to do with the sales volume, it is not a prudent economic decision to simply acquire as much property as possible. The factors that influence sales volume, are demand for the product, the level of service and general economic conditions.*

*A dealership with 200,000 square feet can sell more vehicles than a dealership with 100,000 square feet, if the dealership is in a good location, is run effectively, and there is a demand for the vehicles in their platform. Simply having more vehicles on site does not in any way mean the dealership can sell all of those vehicles. If that were the case, every dealership in Oregon would be significantly larger. It is important to keep in mind that dealerships pay for their inventory. No dealership is going to increase inventory simply because they have space for more inventory. They will maintain inventory based upon the demand for the product and the market factors that impact sales. Assuming no changes in the size of a dealership, inventory is going to fluctuate up and down based upon those market conditions. No dealership is going to add inventory just because they have space.*

*Like any retail business, sales will fluctuate depending on the market and other forces. Many retail automobile dealerships will lease property on a short term basis to accommodate increase demands. To avoid the consequences of losing a lease, other dealerships like Lithia, purchase additional property to accommodate fluctuating sales and rises in demand. Acting to meet demands as sales fluctuate cannot be deemed an overall intensification of the use. In one period, a dealership may use the leased property to have more inventory and in another period, it may leave that space vacant because sales are down. In light of the nature of retail business in general, using inventory levels and sales volume to define whether a use has intensified is not a workable policy”*

Staff finds these arguments compelling and sees this request to be consistent with previous expansions onsite such as the carwash booth that staff previously did not view as an expansion of use. Constructing buildings and structures onsite that meet Site Plan and Design Review Code allows for a pre-existing non-conforming business to continue their legal use by making investments that are needed to sustain their business onsite. These improvements also improve the compatibility of the site to the neighboring permitted uses.

### **III. CONCLUSION AND RECOMMENDATION:**

Based on the analysis and findings as described above, Staff concludes that the Code Interpretation supports the request to allow an additional level of structured parking on a pre-existing nonconforming

use. No changes to the code are proposed. Staff recommends the Planning Commission approve file CD 18-01 based upon the findings and exhibits contained in this staff report.

**IV. EXHIBITS:**

1. Vicinity Map
2. Applicant's Submittal
3. Applicant's Supplemental Letter Dated March 26, 2018