



CITY COMMISSION FINDINGS AND NOTICE OF DECISION

Appeal of Historic Review Board's Decision on Cottage Home Development
December 6, 2017

FILE NO.: AP 17-04: Appeal of Historic Review Board (HRB) conditional approval of five (5) cottage style homes in the Canemah Historic District (files MD 17-01, MD 17-02, MD 17-03, MD 17-04, MD 17-05, MD 17-06.

OWNER / APPLICANT: Christopher Staggs
8903 Nordic Drive, Portland, OR 97223

LOCATION: Properties located in between 502 and 514 4th Ave., in the vicinity of 4th Ave. and Miller St., Clackamas County Map 3-1E-01AA Tax Lots 02200, 3600 and 03700

REQUEST: Friends of Canemah and Paul Edgar appealed the HRB's granting a Certificate of Appropriateness for the construction of five (5) cottage style homes, with preservation incentives to adjustment the front, side, and rear setbacks, in the Canemah Historic District.

DECISION: Deny the appeal and affirm the HRB's decision approving the application with conditions.

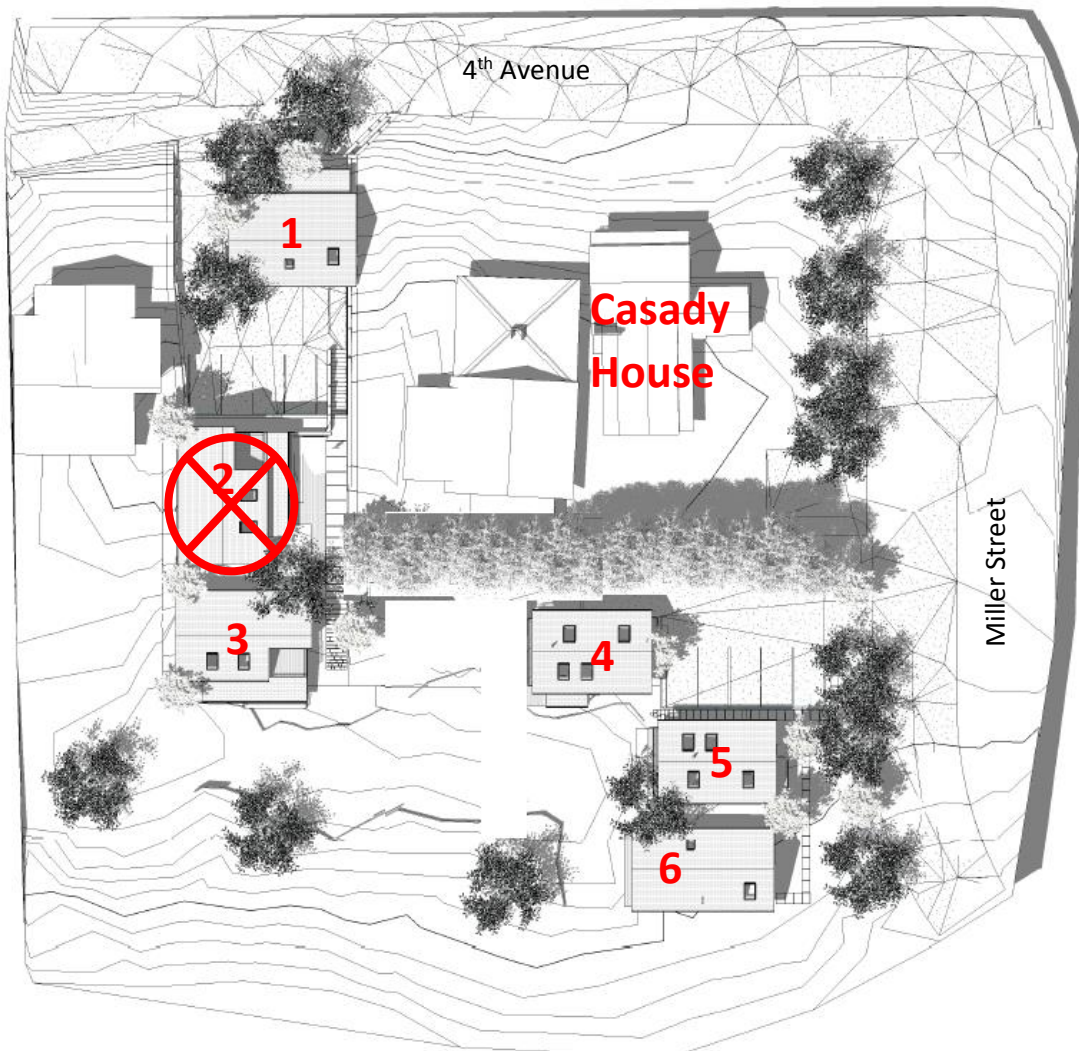
BACKGROUND:

On August 22, 2017, the Oregon City Historic Review Board voted 4-0-0 to approve the proposed six (6) unit cottage style development with conditions of approval, including elimination of one unit (Unit #2),¹ resulting in the approval of a development including five (5) dwelling units on four lots, totaling 3,900 square feet on a 20,000 square foot site, consisting of 4 lots of record. The five homes vary in size between 600 to 1,100 square feet.

House #1: 600 Square Feet
House #2: 1,100 Square Feet
House #3: 1,100 Square Feet
House #4: 800 Square Feet
House #5: 800 Square Feet
House #6: 600 Square Feet

¹ Since the HRB conditioned its approval on the elimination of House #2, and that decision was not further appealed by the applicant, no further details regarding House #2 are included as part of this report.

The development has been proposed near the corner of 4th Ave and Miller St., within the Canemah Historic District. Two homes that contribute to the significance of the Historic District flank both sides of the properties' 4th Avenue frontage, including the Casady House located at the corner of 4th Ave and Miller Street, which is highly visible. The property is encumbered by geologic hazards, a wetland and has an approximately 1200 square foot unimproved alley right of way running along the east side, connecting to 4th Avenue and running parallel to Miller Street. For this reason, the request included a number of preservation incentives to allow a portion of the proposed development to be located within the setbacks.





Vicinity Map

PROCEDURAL FINDINGS:

The notice of appeal filed by the Friends of Canemah and Paul Edgar, identifies 11 appeal issues, plus a number of sub-issues, which are introduced as a “partial list of issues of non-compliance and non-compatibility.” OCMC 17.50.190 provides that only those issues raised in the notice of appeal may be considered before the City Commission on appeal. Therefore, no issues, beyond those raised in the notice of appeal were considered.

Mr. Edgar submitted written and oral testimony on behalf of the Friends of Canemah and as an individual and as a result, both parties have standing to participate in the appeal. Howard Post, a member of Friends of Canemah, also participated orally at the Historic Review Board hearing, had standing to participated orally at the appeal hearing. Ms. Karen Blaha submitted written comments in advance of the hearing. Ms. Blaha participated in the proceedings before the HRB and therefore, her comments were added to the record. Ms. Christine Kosinski submitted a letter dated November 15, 2017. Since Ms. Kosinski did not participate in the proceedings before the HRB and did not have standing to submit testimony, this letter was rejected from the record and not considered.

In addition to limiting the issues on appeal, this matter was considered by the Commission on the record; no new evidence was allowed. During the proceeding, the Appellant argued that the City Commission had an obligation to consider new evidence citing OCMC 2.28.070(D), an appeal provision contained within the Administration section of the code authorizing the creation and operation of the HRB . The City Commission rejected this argument finding that OCMC 2.28.070 does not require that the City Commission consider new evidence when this same provision requires compliance with OCMC

17.50, the procedures governing land use reviews. The procedures specifically applicable to Type III Historic District reviews are set forth in OCMC 17.50.030(2)(c) and 17.50.190(D)(2) and (F). The City Commission finds that the references in OCMC 17.50 to historic review to be the most specific description of the type of review. The City Commission further finds that the public was given notice orally and in writing before the HRB that review by the City Commission would be on the record.

Mr. Edgar submitted a survey form of the neighboring Casady house from the 2007 resurvey of Canemah. This document was not previously included in the record. The Historic Review Board (HRB) staff report, provide a synopsis of the survey information, but did not attach the survey as an exhibit. For the reasons set forth above, this survey form was formally rejected from the record.

SUBSTANTIVE FINDINGS

As findings in support of approval of the Application, the City Commission adopts and incorporates by reference the Revised Notice of Historic Review Board Decision, dated September 6, 2017, for File Nos: MD 17-01, MD 17-02, MD 17-03, MD 17-04, MD 17-05, and MD 17-06 (but not the exhibits thereto. The City Commission finds that this document is properly incorporated as findings because they are written in the nature of findings and specifically address whether the Applications comply with approval criteria and respond to other issues raised during these proceedings. In the event of a conflict between these incorporated findings and the findings in this document, this document shall control.

ISSUES RAISED ON APPEAL:

The items listed in the notice of appeal are grouped together by topic below:

Site Plan and Design Review-Cottage Housing Requirements

The Historic Review Board review of this proposal is the first step in the development process. The applicant's next step will be to apply for and receive approval for Cottage Housing through the Type II Site Plan and Design Review process (OCMC 17.62.059- Cottage Housing), including lot consolidation. Conformance with the criteria for Cottage Housing, a permitted use in the underlying zone, will be reviewed and conditions may be placed on the proposal, at time of Site Plan and Design Review. The Historic Review Board's review of this proposal is confined to the criteria found in OCMC 17.40-Historic Overlay.

Building Layout Issues

Proposed Density

OCMC 17.62.059(C) allows cottage cluster development in an R-6 zone of up to 2 units per lot. The subject site is comprised of four lots of record, therefore, a total of eight structures could be allowed, assuming that all of the criteria applicable to new construction within a historic district are also satisfied. In other words, up to eight units could be permitted so long as a finding can be made that their layout and design are compatible.

The Appellants assert that the proposed layout deviates from what is typically approved in the Canemah Historic District with regard to densities in that it allows 5 homes on four tax lots. The Appellants argue that the amount of building lot coverage exceeds 80%, going beyond what is typical in Canemah of one

primary structure per 5,000 square foot lot and therefore, cottage cluster development should not be allowed within Canemah.

Nothing in the Code expressly prohibits cottage cluster development within historic areas. The matter before the Commission is whether the proposed development complies with the applicable plan policies and regulations i.e. is compatible with the District, notwithstanding the clustered proposal. Appellants contend that locating more than one house on each lot is incompatible with the historic district *per se* and cannot ever be compatible because the design guidelines do not mention authorizing more than one home per 50 x 100 to 100 x 100 foot lot. The HRB did not interpret this reference in the design guidelines to prohibit clustered development. Rather, the HRB noted the New Construction Guidelines regarding Canemah points out that, although most development consists of a single family home per 50 x 100 foot lot, “variations are found.” Further, the HRB found that the modest house sizes coupled with landscape planting provided sufficient mitigation for the one extra home in excess of the number of lots. Therefore, the City Commission agrees with the HRB that cottage housing is not *per se* incompatible with the Canemah Historic District. Appellants believe that the HRB’s approval is contrary to Comprehensive Plan Goal 5.3 and Policy 5.3.1.² Comprehensive Plan Goal 5.3 applies to the preservation of existing historic resources and does not apply to this proposal to locate new houses on vacant lots. With regard to density, the HRB adopted staff’s findings explaining that there is a precedent for larger-scale and greater density of buildings on each property in this area, particularly given the density contained within the Casady House property, and they provide:

The surrounding residences are a mix of age and architecture. The neighbor on the corner of 4th and Miller (See pg. 20) was built in 1890 in the Queen Anne Vernacular Style, but has had several additions and two additional buildings constructed over time increasing the density significantly. One building is a barn/garage built in 1990. If the same development was built now, it would exceed maximum density allowed by Oregon City code.

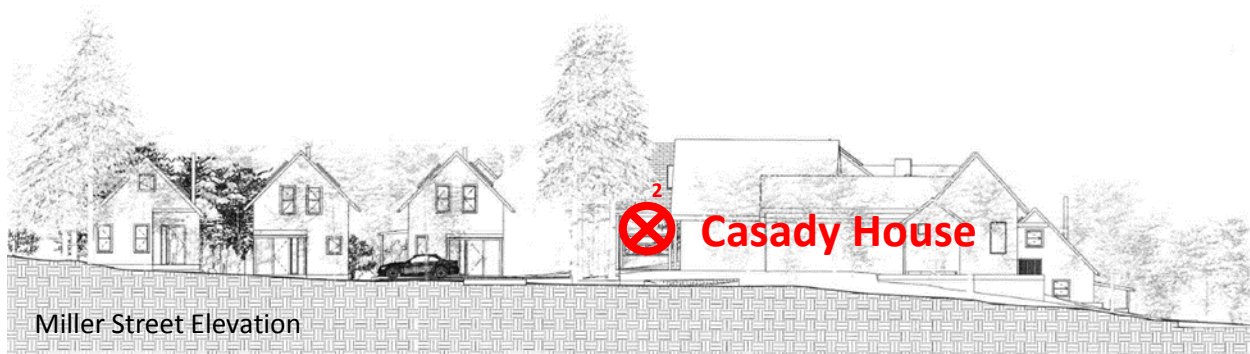
² These relevant Comprehensive Plan policies provide:

Goal 5.3 Historic Resources

Encourage the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City.

Policy 5.3.1

Encourage architectural design of new structures in local Historic Districts, and the central Downtown area to be compatible with the historic character of the surrounding area.



HRB conditioned the removal of house #2

4th Ave / Miller Street Elevations

These elevation drawings show that the Casady House appears as a group of homes clustered or layered together. The applicant's proposal along 4th Avenue continues by layering with House #1, nestled down at street elevation, reducing its prominence and behind that, House #3 will be visible, but recessed. Houses 4 through 6 will read as separate single family, cottage-sized homes. Therefore, the Commission agrees with the HRB that considering the surrounding development, the provision of 5 houses on 4 lots does not compromise the character of the district.

Site Design

Appellants object to the significant amount of land grading, in violation of Plan Goal 5.3.8, and argues that the installation of a retaining wall is incompatible with the Historic District.³ The Appellant claims that this proposal will "alter the Historic Wagon Roads." The Appellant objects to the inclusion of internal parking lots as part of the development.

With regard to retaining walls, the applicant explained:

³ Policy 5.3.8 provides:
Preserve and accentuate historic resources as part of an urban environment that is being reshaped by new development projects.

The majority of Canemah is nestled within the side of a hill. As you enter Canemah, you are confronted with steep cliffs of basalt rock. Retaining walls are a necessary part of constructability in this context and is evident throughout the entire neighborhood. The neighborhood is made up of terraced land held back by various shapes and sizes of retaining walls throughout the entire landscape. Some covered with moss and ivy, some exposed as seen in the construction of a new home along 4th street. The retaining wall condition in this proposed project is not unique. Our intention is to layer basalt stone over the structural elements along with covering with planting to minimize appearance and to blend more seamlessly in with the surrounding landscape. Through the use of basalt stone and native plantings, the design is directly mimicking the retaining walls seen through the neighborhood and in the images below.⁴

The applicant submitted evidence showing the use of tiered systems of retaining walls on nearby properties. Conditions of approval imposed by the HRB limit all retaining wall heights in front of homes to less than 3½ feet. Given that retaining wall are typical of development within Canemah, the walls will be modest in height, and conditions of approval require that they be constructed of rock, brick, finished concrete, the Commission could find that they will be compatible.

The New Construction Guidelines prohibit “extensive regrading of the lot.” Appellants raise a particular concern with regard to House 1, which will be lower in elevation than the adjacent homes as a result of grading. As the applicant points out, the regrading will not be extensive. Rather, it is necessary along the north portion of the property to make the property accessible to vehicles. Moreover, the proposed site grading will serve to lower House #1, making it appear shorter and serve to elevate the prominence of the contributing structures on both sides.

Appellants mention impacts to “Historic Wagon Roads.” The Canemah Historic District designation does not ascribe significance to or regulate Historic Wagon Roads. Furthermore, the proposal would expand the right-of-way slightly in an area adjacent to an existing driveway along 4th Avenue but otherwise does not propose curbs or sidewalks or other improvements that would alter the existing improved right-of-way. The HRB concluded that this expansion of the right-way on 4th Ave adjacent to the driveway for the adjacent home will appear to extend that driveway extension rather than as greater roadway width.

The Appellants are generally correct that the Historic Guidelines for New Construction suggest that parking lots are incompatible. However, the HRB found that the proposed parking lots were compatible because the parking serving Units 1 and 3 will be located behind Unit 1 and will not be visible from 4th

⁴ The New Construction Guidelines characterize historic development within Canemah as follows:

Because of limited level building land, Canemah’s older homes, especially above 99E are sited in accommodation to the existing terrain. Steep hillside lots were not re-graded or filled. Houses neither “step” down a sloping lot nor are they cantilevered out on “stilts.” As a result, some homes lack setbacks, with front porches opening almost directly onto the street. For this reason houses do not uniformly face the river, but uphill, or towards other houses across the street

Ave. The parking serving Units 4 – 6 will be setback from Miller Street and significant landscape screening will make it largely invisible from the street. The City Commission agrees with this conclusion.

With regard to locating homes on existing lot lines and within zoning setbacks, the HRB found:

In addition to not constructing development on the wetland identified onsite, the proposed homes are each buffered from the adjacent Casady House with setbacks and landscaping. In order to allow for such buffering, the applicant has proposed to utilize preservation incentives to place structures 5 and 6 within the setbacks of the zoning designation, a practice common within the historic district.

These findings suggest that locating structures within the setback is fairly common in Canemah. For example, it appears that the Stanford Ely Rental, located at 514 4th Ave, across Miller Street from the subject site, does not comply with the corner side yard setback and is quite close to the property line. Therefore, the City Commission concludes that the spacing for the proposed homes are compatible with the surrounding area.

Wetland Impacts, Setbacks and Preservation Incentives

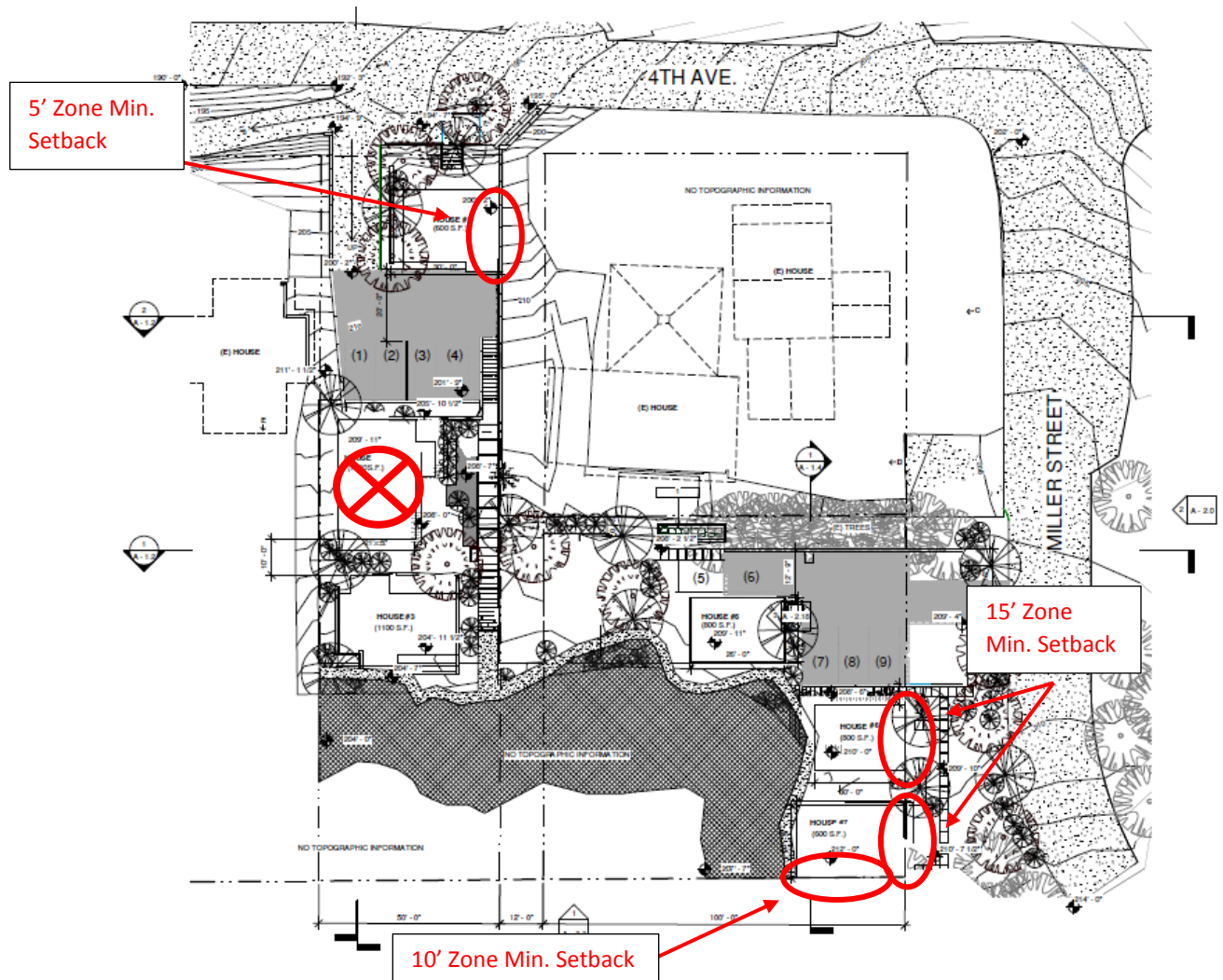
Appellants object that the proposed development fails to preserve vegetative corridors and adversely impacts the delineated wetland. Wetlands protection and geologic hazards are not within the Historic Review Board purview, which is limited strictly to historic resource issues. Therefore, these issues are not germane to this appeal. Additional site plan and geologic hazard review for compliance with the Oregon City Municipal Code is required in advance of development as required in the conditions of approval.

Appellants also object to the use of preservation incentives to allow reduction in the setbacks between proposed homes and along the property boundaries.

The follow excerpt explains the HRB's analysis of the preservation incentive issues as follows:

Development is required to be located outside of the delineated wetlands, as identified by the Department of State Lands. The wetland is located in the rear of the site, and would cover a majority of 3 of the 4 historic lots encompassed by the proposed development. Compliance with applicable overlay districts is required prior to development onsite.

Per OCMC 17.40.065(A-D) – Historic preservation incentives are used to allow for compatible development and increase the potential for historically designated properties to be used, protected, renovated, and preserved. All exterior alterations of designated structures and new construction in historic and conservation districts are eligible for historic preservation incentives if the exterior alteration or new construction has received a certificate of appropriateness from the Historic Review Board per OCMC 17.50.110(c).



Three of the six proposed dwellings, numbers 1, 5, and 6, appear to be encroaching within the setbacks of the zoning designation as demonstrated above. None of the listed properties extend into the public right of way. The historic preservation incentives should be used in situations where an existing property is being threatened to or where topographical constraints limit the development, and not necessarily used as a tool to increase the density. It has been common within Canemah to grant preservation incentives to single family homes to allow for a zero lot line setback as to reduce the impact of the proposed single family home on the existing topography of the site.

The site contains delineated wetlands, topographic constraints, and an adjacent historic home which limit the location of structures on the site. The wetlands extend over a majority of 3 of the 4 historically platted lots the site encumbers. The preservation incentives allow the structures to locate near the property lines, but in the case of buildings 5 and 6, also allow the structures to be spaced apart from each other which result in an overall more compatible design with the district. In addition, the site is surrounded by a right-of-way which acts as a buffer between the development and

other structures as well as the public. Structure #1 is separated from the neighboring property by an alleyway while 5 and 6 are located at the corner of two platted streets. The frontage along Miller is constructed with pavement a distance away from the property line and the 5th Avenue frontage is not developed at all.

The requested preservation incentives within the submitted application could be viewed as appropriate for the requested development with installation of additional landscaping. In addition to street trees, the applicant shall assure one tree is planted (or retained) a within 10 feet of the right-of-way or within the right-of-way for every 35 feet of lineal frontage on Miller Street and 4th Avenue and one shrub is planted (or retained) for every 4 feet of frontage in the same location.

Based on the foregoing, the HRB found that the proposed landscaping would serve as an appropriate buffer and mitigate for the reduction in the setbacks.

In summary, the Guidelines for New Construction describe Cannemah with regard to building siting issues with the following relevant components:

- No uniform front setback; South of 3rd Street: houses may face front or side depending on topography.
- Lots are usually 50x100 and contain a single house; variations are found.
- Properties edges often not defined; Where fenced, primarily low slat or picket at front with side or partial returns
- House Placement: to suit the existing topography and most level lot portion especially south of 3rd Street.
- Retaining walls: stone, mortared or stacked basalt, or concrete south of 3rd Street, especially in proximity with street.
- Garages: Not found historically; informal graveled parking next to street or along house.

The proposed cluster development satisfies these siting standards in that the house locations were largely dictated by the property topography, particularly the existence of a fairly large wetland. Rather than seek to fill the wetland to allow for a large home that would dwarf the adjacent homes, in massing as well as height, given the higher elevation of the subject property. By grading the northern portion of the property, smoothing and reducing the highest point, the proposed houses will be the same height or, in the case of House #1, shorter than the adjacent contributing structures. The retaining walls are appropriately sized and will be constructed of historically sensitive materials. Instead of including garages that would be visible from the street, the applicant has proposed off-street surface parking that is tucked behind proposed structures or landscaping so as to limit visibility from the street. The City Commission agrees with the HRB's conclusions in this regard.

Structure Design Issues

Appellants argue that use of three basic house designs with two "clone duplicates" is not permitted within the Historic District. More specifically, the appellants object to the use of large window walls, skylights and second-floor balconies that create more of a "chalet" rather than a more typical vernacular design.

Nothing in the New Construction Guidelines prohibit duplication in design. Rather, one of the characteristics of vernacular design is its simple rectangular form, with a medium pitch, gable roof. It does not exemplify great variety in detail. None of the homes are identical but all of them will include painted wood windows and siding, another characteristic of the vernacular style. These deliberately simple forms and volumes will also tend to make them appear more as background to the existing contributing structures.

Further, these objections fail to acknowledge the HRB-imposed the following conditions of approval that would limit the use of modern design details in the following respects:

- Second story windows shall be rectangular on shape and not exceed the door height plus a one foot transom.
- No roof cutouts shall be permitted on any of the proposed cottages.
- Skylights shall be installed in inconspicuous roof slopes and skylights shall be mounted close to the roof plane, and not visible from the right-of-way.

The conditions ensure that the designs for these homes will be visually quiet, simple, and respectful of the forms and volumes of the nearby historic homes as well as within the District.

Overall Purpose and Policy Objectives for Protecting Canemah

Appellants believe that, taken together, the proposed layout and building designs so deviate from what is appropriate within the Canemah Historic District as to affect property values, compromise “civic pride,” and impact tourism opportunities currently enjoyed by Canemah as part of the City’s – First City Historic Story. Appellants argue that the proposal “does not make preservation more attractive” and does not “enhance what are consider *[sic]* important attributes that make up the Canemah National Register Historic District.”

The HRB found that the proposed development includes modest sized homes designed in the vernacular style that remain contextually appropriate with modern updates that are largely not visible from the street. The Appellants provide no evidence to support their claim that this development will impact property values or discourage preservation generally. One of the historic district policies is to “promote the use of historic districts for housing” and other uses. OCMC 17.40.010(H). This suggests a policy toward promoting the use of land within this historic districts. Approving this development will add additional housing stock in an area with currently low housing stock and increasing the housing options for people within Oregon City or looking to move to Oregon City. The proposed designs are visually and functionally compatible with the surroundings, while at the same time, adding homes, people, activity and value to the area. All of the while, the existing fabric of the historic district is protected and kept visually primary within the District.

CONCLUSION AND RECOMMENDATION:

Based on the analysis and findings as described above, the City Commission votes to deny the appeal (AP 17-04) and affirm the HRB’s decision approving file MD 17-01 – MD-06 with conditions and adopted the enclosed finding of fact on December 6, 2017.