



**TYPE III VARIANCE  
AND MINOR SITE PLAN AND DESIGN REVIEW  
STAFF REPORT AND RECOMMENDATION**

*July 12, 2019*

**FILE NUMBER:** GLUA-19-00020: General Land Use Application; SP-19-00074 Site Plan and Design Review with VAR-19-00004 Type III Planning Commission Variance

**APPLICANT:** Stewart Straus  
12600 SW Crescent St, Ste. 100  
Beaverton, OR 97005

**Submitted:** June 20, 2019

**Complete:** June 20, 2019

**120 Day Deadline:** October 18, 2019

**OWNER:** M. Hashem Limited Partnership,  
PO Box 707,  
Beavercreek, OR 97004

**REQUEST:** The applicant has requested approval of a retaining wall in front of the previously approved 4,000 SF medical office building. A portion of the retaining wall is over 3.5 feet in height, requiring a variance.

**LOCATION:** 397 Warner Milne Rd, Oregon City, OR 97045 (NW Corner of Molalla Ave and Warner Milne Rd)  
Clackamas County Assessor Parcel Number (APN): 3-2E-05CA-03400

**REVIEWER:** Kelly Reid, Planner, AICP, (503) 496-1540

**RECOMMENDATION:** Approval

**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 conditional use permits, preliminary planned unit development plans, variances, code interpretations, similar use determinations and those rezonings upon annexation under Section 17.06.050 for which discretion is provided. In the event that any decision is not classified, it shall be treated as a Type III decision. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the planning commission or the historic review board hearing is published and mailed to the applicant, recognized neighborhood association and property owners within three hundred feet. 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 or the historic review board, all issues are addressed. The decision of the planning commission or historic review board is appealable to the city commission, on the record. A city-recognized neighborhood association requesting an appeal fee waiver pursuant to 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 historic review board or the planning commission is the city's final decision and is appealable to LUBA within twenty-one days of when it becomes final.

## I. BACKGROUND:

### 1. Existing Conditions and Project Description

The subject site is located on the corner of Molalla and Warner Milne Road. It is approximately 4,800 square feet and is zoned "MUC-1" Mixed Use Corridor District. Surrounding properties are also zoned "MUC-1" and are developed with offices and retail businesses.

The subject site is developed with a medical urgent care clinic which was approved under land use file SP 18-42. As construction of the medical clinic proceeded, grading changes were required due to ADA access needs from the parking lot. The result was that the building was placed about five feet below grade of the sidewalk on the corner of the intersection. To accommodate the grade change, the applicant requires a retaining wall behind the sidewalk. A portion of the wall exceeds the maximum height of 3.5 feet, which is the variance being sought. The retaining wall is below sidewalk grade and will not be highly visible. A portion of the wall will be topped with a guardrail for safety purposes.

There were also changes to the landscaping and pedestrian circulation as a result of the grade change. These changes were approved through a Type I Site Plan process (SP 19-68).

The applicant submitted the following description of the proposed wall:

*The bottom of the proposed wall is located at approximately the floor elevation of the building, while the top of the wall follows the slope of the ground at the property line, which is immediately adjacent to the public sidewalk. The entire wall length is approximately 78 feet; the portion in excess of 3'-6" in height is approximately 27 feet, and in proximity to the corner. Beginning adjacent to the steps at the north end along Molalla Avenue, the wall is about 2 feet high for a distance of at least 10 feet; it then begins to increase in height as the sidewalk curves closer to the property line to a maximum of 5 feet near the traffic signal pole at the corner; it remains at 5 feet high between there and directly opposite the entry doors; it then slopes down to the west along the Warner-Milne frontage to about 2 feet high at the west end.*

Figure 1: Vicinity Map



Figure 2: Site Plan

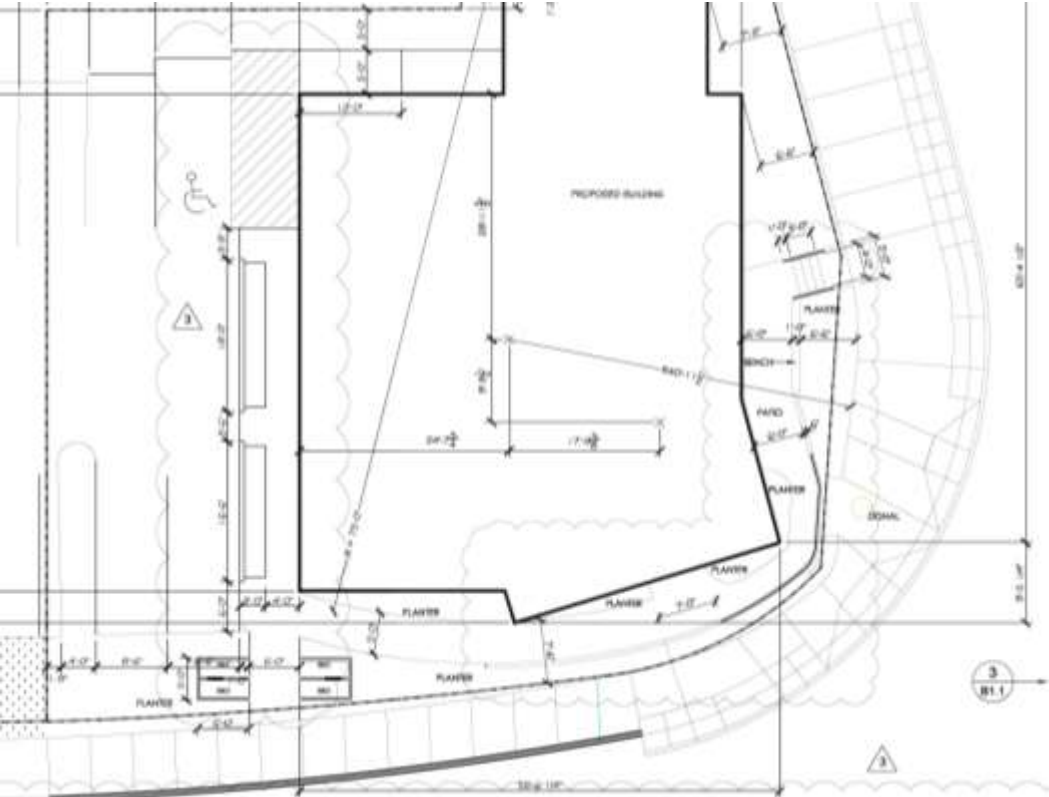
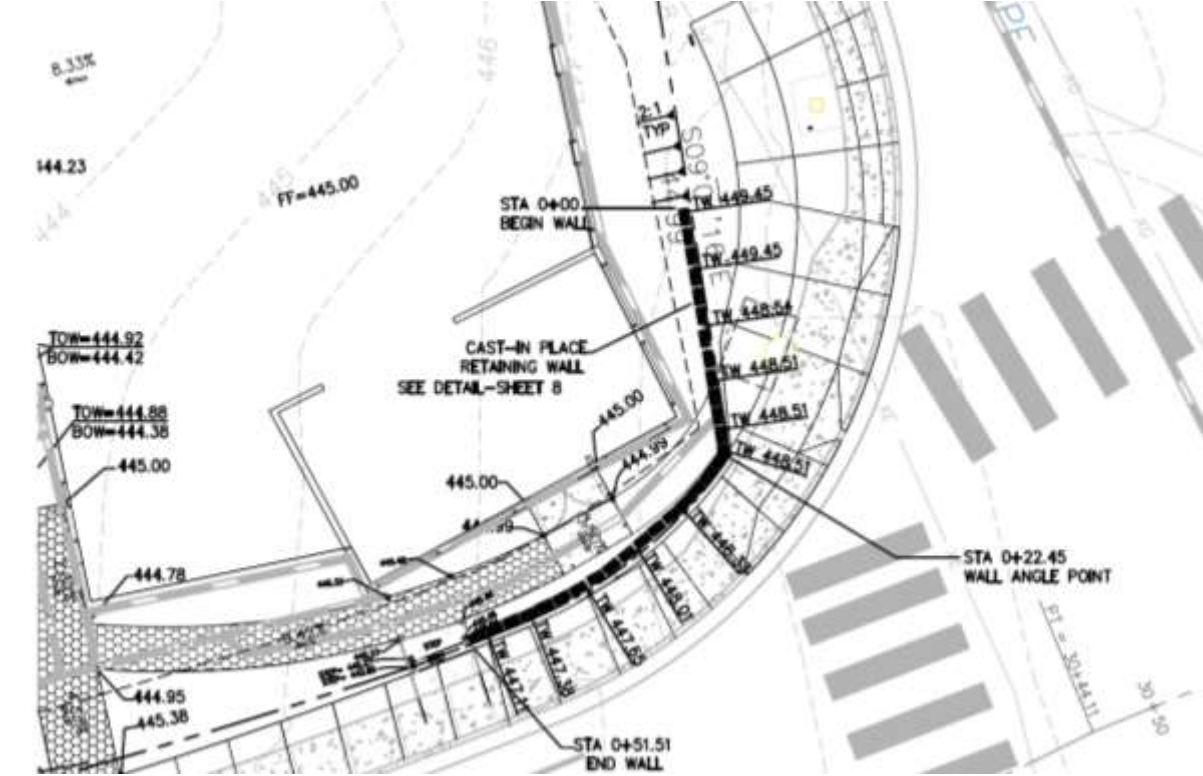


Figure 3: Wall detail



2. **Municipal Code Standards and Requirements:** The following sections of the Oregon City Municipal Code are applicable to this land use approval:

17.54.100 – Fences  
17.50 - Administration and Procedures  
17.60 – Variances  
17.62 - Site Plan and Design Review

The City Code Book is available on-line at [www.orcity.org](http://www.orcity.org).

3. **Permits and Approvals:** The applicant is responsible for obtaining approval and permits from each applicable governmental agency and department at Oregon City including but not limited to the Engineering and Building Divisions.

4. **Notice and Public Comment**

Notice of the proposal was sent to various City departments, affected agencies, property owners within 300 feet, and the Neighborhood Association. Additionally, the subject property was posted with signs identifying that a land use action was occurring on the property. No public comments were received before the staff report was published.

**CHAPTER 17.62 SITE PLAN AND DESIGN REVIEW**

*17.62.030 - When required.*

*Site plan and design review shall be required for all development of real property in all zones except the R-10, R-8, R-6, R-5 and R-3.5 zoning districts, unless otherwise provided for by this title or as a condition of approval of a permit. Site plan and design review shall also apply to all conditional uses, cottage housing development, multi-family and non-residential uses in all zones. No building permit or other permit authorization for development shall be issued prior to site plan and design review approval. Parking lots and parking areas accessory to uses regulated by this chapter also shall require site plan and design review approval. Site plan and design review shall not alter the type and category of uses permitted in zoning districts.*

**Finding: Applicable.** The applicant proposed development of property in the Mixed Use Corridor District, the application is subject to demonstrate compliance with this chapter.

*17.62.040 - Plans required.*

**Finding: Complies as proposed.** The applicant has submitted all requested application items.

*17.62.050 - Standards.*

*A. All development shall comply with the following standards:*

*(Standards 1-20 and 22-23 have been left out of this report as they are not applicable to a retaining wall)*

*21. Building Materials.*

*a. Preferred building materials. Building exteriors shall be constructed from high quality, durable materials. Preferred exterior building materials that reflect the city's desired traditional character are as follows:*

*i. Brick.*

*ii. Basalt stone or basalt veneer.*

*iii. Narrow horizontal wood or composite siding (generally five inches wide or less); wider siding will be considered where there is a historic precedent.*

*iv. Board and batten siding.*

*v. Other materials subject to approval by the community development director.*

*vi. Plywood with battens or fiber/composite panels with concealed fasteners and contiguous aluminum sections at each joint that are either horizontally or vertically aligned.*

*vii. Stucco shall be trimmed in wood, masonry, or other approved materials and shall be sheltered from extreme weather by roof overhangs or other methods.*

**Finding: Complies as proposed.** The proposed retaining wall is cast-in-place concrete, which the Community Development Director has determined to be a preferred material. A metal guardrail on top of the retaining wall is also proposed.

*b. Prohibited materials. The following materials shall be prohibited in visible locations from the right-of-way or a public access easement unless an exception is granted by the community development director based on the integration of the material into the overall design of the structure.*

*i. Vinyl or plywood siding (including T-111 or similar plywood).*

*ii. Glass block or highly tinted, reflected, translucent or mirrored glass (except stained glass) as more than ten percent of the building facade.*

*iii. Corrugated fiberglass.*

*iv. Chain link fencing (except for temporary purposes such as a construction site, gates for a refuse enclosure, stormwater facilities, or within the General Industrial District).*

*[v.] Crushed colored rock/crushed tumbled glass.*

*[vi.] Non-corrugated and highly reflective sheet metal.*

**Finding: Complies as Proposed.** No prohibited materials are proposed.

*c. Special material standards: The following materials are allowed if they comply with the requirements found below:*

*1. Concrete block. When used for the front facade of any building, concrete blocks shall be split, rock- or ground-faced and shall not be the prominent material of the elevation. Plain concrete block or plain concrete may be used as foundation material if the foundation material is not revealed more than three feet above the finished grade level adjacent to the foundation wall.*

*2. Metal siding. Metal siding shall have visible corner moldings and trim and incorporate masonry or other similar durable/permanent material near the ground level (first two feet above ground level).*

*3. Exterior Insulation and Finish System (EIFS) and similar troweled finishes shall be trimmed in wood, masonry, or other approved materials and shall be sheltered from extreme weather by roof overhangs or other methods.*

*4. Building surfaces shall be maintained in a clean condition and painted surfaces shall be maintained to prevent or repair peeling, blistered or cracking paint.*

**Finding: Complies as proposed.** No special materials are proposed within the development application.

## **CHAPTER 17.54.100 – FENCES**

**A. Generally. Fence, hedge, or wall.**

*1. Fences and walls—Fences and walls over forty-two inches shall not be located in front of the front façade or within forty feet of the public right-of-way, whichever is less. All other fences (including fences along the side and rear of a property) shall not exceed six feet in total height unless as permitted [in] Section 17.54.100.B.*

*2. Hedges shall not be more than forty-two inches in the underlying front yard setback. Individual plants and trees taller than forty-two inches tall may be permitted provided there is at least one foot clearance between each plant.*

*3. Property owners shall ensure compliance with the traffic sight obstruction requirements in Chapter 10.32 of the Oregon City Municipal Code.*

*4. It is unlawful for any person to erect any electric fence or any fence constructed in whole or in part of barbed wire or to use barbed wire, except as erected in connection with security installations at a minimum height of six feet, providing further that prior written approval has been granted by the city manager.*

**B. Exception. Fence, hedge, wall, or other obstructing vegetation on retaining wall. When a fence, hedge, wall, or other obstructing vegetation is built on a retaining wall or an artificial berm that is not adjacent to or abutting a public right-of-way, the following standards shall apply:**

*1. When the retaining wall or artificial berm is thirty inches or less in height from the finished grade, the maximum fence or wall height on top of the retaining wall shall be six feet.*

*2. When the retaining wall or earth berm is greater than thirty inches in height, the combined height of the retaining wall and fence or, wall from finished grade shall not exceed eight and one-half feet.*

3. *Fences, hedges or walls located on top of retaining walls or earth berms in excess of eight and one-half feet in height shall be set back a minimum of two feet from the edge of the retaining wall or earth berm below and shall not exceed a combined height of eight and one-half feet.*
4. *An alternative height or location requirement may be approved within a land use process for all non-single-family and two-family residential properties. The fence, hedge or wall shall be compatible with the adjacent neighborhood and achieve the same intent of the zoning designation and applicable site plan and design review process. In no case may the fence, hedge or wall exceed eight feet in height without approval of a variance.*

**Finding: See variance findings.** The applicant proposes a retaining wall in the front and corner side yard of the building. A guardrail is proposed on top of a portion of the wall for safety purposes. For the purposes of this application, staff is considering the guardrail to be an extension of the wall, and the variance request applies to the total height of the wall plus guardrail. Staff also notes that the guardrail would not be included if it were set back from the wall by two feet as described in section 17.54.100. Measurement of walls is from the top of the wall to the bottom of the wall, which is different from building height measurement, which is from the grade at the property line. The wall and guardrail height is up to 8.5 feet in some areas and a variance is requested. See findings in Chapter 17.60.

## **CHAPTER 17.60 VARIANCES**

### ***17.60.020 - Variances—Procedures.***

**17.60.020.A.** *A request for a variance shall be initiated by a property owner or authorized agent by filing an application with the city recorder. The application shall be accompanied by a site plan, drawn to scale, showing the dimensions and arrangement of the proposed development. When relevant to the request, building plans may also be required. The application shall note the zoning requirement and the extent of the variance requested. Procedures shall thereafter be held under Chapter 17.50. In addition, the procedures set forth in subsection D. of this section shall apply when applicable.*

**Finding: Complies as Proposed.** The applicant submitted a Variance application request, and the application was deemed complete on June 20, 2019.

**17.60.020.B.** *A nonrefundable filing fee, as listed in Section 17.50.[0]80, shall accompany the application for a variance to defray the costs.*

**Finding: Complies as Proposed.** The applicant submitted a filing fee and the application was deemed complete on June 20, 2019.

**17.60.020.C.** *Before the planning commission may act on a variance, it shall hold a public hearing thereon following procedures as established in Chapter 17.50. A Variance shall address the criteria identified in Section 17.60.030, Variances — Grounds.*

**Finding: Complies as Proposed.** The requested Variance is being heard by the Planning commission on July 22, 2019.

**17.60.020.D.** *Minor variances, as defined in subsection E. of this section, shall be processed as a Type II decision, shall be reviewed pursuant to the requirements in Section 17.50.030B., and shall address the criteria identified in Section 17.60.030, Variance — Grounds.*

**Finding: Not applicable.** The application is not for a Minor Variance.

**17.60.020.E.** *For the purposes of this section, minor variances shall be defined as follows:*

1. *Variances to setback and yard requirements to allow additions to existing buildings so that the additions follow existing building lines;*
2. *Variances to width, depth and frontage requirements of up to twenty percent;*
3. *Variances to residential yard/setback requirements of up to twenty-five percent;*
4. *Variances to nonresidential yard/setback requirements of up to ten percent;*
5. *Variances to lot area requirements of up to five;*
6. *Variance to lot coverage requirements of up to twenty-five percent;*

7. Variances to the minimum required parking stalls of up to five percent; and

8. Variances to the floor area requirements and minimum required building height in the mixed-use districts.

**Finding: Not applicable.** The application is not for a Minor Variance; the request is to exceed the maximum height for a retaining wall in a front yard, which is not one of the items on this list.

**17.60.030 - Variance—Grounds.**

*A variance may be granted only in the event that all of the following conditions exist:*

**17.60.030.A.** *That the variance from the requirements is not likely to cause substantial damage to adjacent properties by reducing light, air, safe access or other desirable or necessary qualities otherwise protected by this title;*

**Finding: Complies as Proposed.** The applicant has requested a variance to increase the height of a retaining wall in a front yard to 5 feet, with a 3.5 foot guardrail on top of a portion of it, for 27 feet of wall length. The retaining wall is below grade of the sidewalk and will not substantially impact adjacent properties. The above grade portion is the guardrail, which is 3.5 feet in height. Therefore, the wall height variance will not cause damage to adjacent properties, or reduce light, air, safe access, privacy, or other qualities protected by this title.

**17.60.030.B.** *That the request is the minimum variance that would alleviate the hardship;*

**Finding: Complies as Proposed.** The applicant indicated that the proposed wall is the minimum height required to mitigate the change in elevation from the public sidewalk to the building floor elevation. There are only a few feet of space in between the sidewalk and the building, and the retaining wall is needed to provide space at the building entry level for pedestrian circulation.

**17.60.030.C.** *Granting the variance will equal or exceed the purpose of the regulation to be modified.*

**Finding: Complies as Proposed.** The purpose of the regulation limiting fences and walls to 3.5 feet in height in the front yard is to make the building visible and connected to the public and to enhance the interaction between public and private space. In this case, the location of the wall below the public right of way does not conceal the building. In addition, the proposed wall accommodates an additional stair and access to the building from the Molalla Avenue frontage.

**17.60.030.D.** *Any impacts resulting from the adjustment are mitigated;*

**Finding: Complies as Proposed.** No impacts have been identified that require mitigation. The wall is completely below grade and does not impact the view of the building.

**17.60.030.E.** *No practical alternatives have been identified which would accomplish the same purpose and not require a variance; and*

**Finding: Complies as Proposed.** There are only a few feet of space in between the sidewalk and the building, and the retaining wall is needed to provide space at the building entry for pedestrian circulation. The alternative to granting the variance would be to demolish the almost-finished new building and re-grade the entire site so that the building is closer to the sidewalk grade and the retaining wall could be 3.5 feet in height or less. Staff finds that this would be impractical. Granting the variance is the most practical option and there are no other practical alternatives which would accomplish the same purpose and not require a variance.

**17.60.030.F.** *The variance conforms to the comprehensive plan and the intent of the ordinance being varied.*

**Finding: Complies as Proposed.** The proposed Minor Variance allows development of the subject site in accordance with the following Comprehensive Plan Goals and Policies. Approval would allow the applicant to meet the intent of the zoning code and Comprehensive Plan through effective utilization of this single-family property.

**Goal 2.1 Efficient Use of Land**



*Ensure that property planned for residential, commercial, office and industrial uses is used efficiently and that land is developed following principles of sustainable development.*

**Policy 2.1.1**

*Create incentives for new development to use land more efficiently, such as by having minimum floor area ratios and maximums for parking and setbacks.*

**Goal 14.2 Orderly Redevelopment of Existing City Areas**

*Reduce the need to develop land within the Urban Growth Boundary by encouraging redevelopment of underdeveloped or blighted areas within the existing city limits.*

**Policy 14.2.2**

*Encourage redevelopment of city areas currently served by public facilities through regulatory and financial incentives.*

The requested variance would allow the applicant to efficiently utilize the subject property for commercial use as intended by the City Code and Comprehensive Plan. The requested variance would allow the applicant to provide the required ADA access to the building from the ADA parking area on the west side of the building.

**CHAPTER 17.50 - ADMINISTRATION AND PROCEDURES**

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

**Finding: Complies as Proposed.** The Minor Variance is being reviewed pursuant to the Type III process. Notice was posted in a newspaper of general circulation, onsite, online and mailed to property owners within 300 feet of the proposed development site.

**17.50.050 Preapplication Conference**

**A. Preapplication Conference.** Prior to submitting an application for any form of permit, the applicant shall schedule and attend a preapplication conference with City staff to discuss the proposal. To schedule a preapplication conference, the applicant shall contact the Planning Division, submit the required materials, and pay the appropriate conference fee. At a minimum, an applicant should submit a short narrative describing the proposal and a proposed site plan, drawn to a scale acceptable to the City, which identifies the proposed land uses, traffic circulation, and public rights-of-way and all other required plans. The purpose of the preapplication conference is to provide an opportunity for staff to provide the applicant with information on the likely impacts, limitations, requirements, approval standards, fees and other information that may affect the proposal. The Planning Division shall provide the applicant(s) with the identity and contact persons for all affected neighborhood associations as well as a written summary of the preapplication conference. Notwithstanding any representations by City staff at a preapplication conference, staff is not authorized to waive any requirements of this code, and any omission or failure by staff to recite to an applicant all relevant applicable land use requirements shall not constitute a waiver by the City of any standard or requirement.

**B.** A preapplication conference shall be valid for a period of six months from the date it is held. If no application is filed within six months of the conference or meeting, the applicant must schedule and attend another conference before the city will accept a permit application. The community development director may waive the preapplication requirement if, in the Director's opinion, the development does not warrant this step. In no case shall a preapplication conference be valid for more than one year.

**Finding: Complies as Proposed.** The pre-application conference requirement was waived by the Community Development Director pursuant with 17.50.050.B.

**17.50.055 Neighborhood Association Meeting**

**Finding: Not Applicable.** A neighborhood association meeting with the Barclay Hills Neighborhood Association was held on July 9<sup>th</sup>, 2019 and the applicant submitted notes and a sign in sheet.



*17.50.060 Application Requirements.*

**Finding: Complies as Proposed.** All application materials required are submitted with this narrative. The application was deemed complete on June 20, 2019.

*17.50.070 Completeness Review and 120-day Rule.*

**Finding: Complies as Proposed.** This land use application was submitted and deemed complete on June 20, 2019. The City has until October 18, 2019 to make a final determination.

*17.50.080 Complete Application--Required Information.*

**Finding: Complies as Proposed.** This land use application was submitted and deemed complete on June 20, 2019. The City has until October 18, 2019 to make a final determination.

*17.50.090 Public Notices.*

**Finding: Complies as Proposed.** Staff provided public notice in the newspaper, within 300 feet of the site via mail, the site was posted with a land use notice, and on the Oregon City website. Staff provided email transmittal of the application and notice to affected agencies, the Natural Resource Committee and to all Neighborhood Associations requesting comment.

*17.50.100 Notice Posting Requirements.*

**Finding: Complies as Proposed.** The site was posted with a sign for the minimum requirement.

**CONCLUSION AND DECISION:**

Based on the analysis and findings as described above, Staff recommends that the proposed Minor Site Plan and Design Review and Variance application for the property located at 397 Warner Milne Rd, Oregon City, and identified as Clackamas County Map 3-2E-05CA-03400 meets the requirements of the Oregon City Municipal Code.

**EXHIBITS:**

1. Vicinity Map
2. Applicant's Narrative and Plans (On File)
3. Public Comments (On File)