

**NOTICE OF TYPE II DECISION**  
**SITE DEVELOPMENT REVIEW (SDR) 2008-00004**  
**MAX'S BREW PUB IMPROVEMENTS**



120 DAYS = 1/28/2009

**SECTION I. APPLICATION SUMMARY**

**FILE NAME:** MAX'S BREW PUB IMPROVEMENTS  
**CASE NOS.:** **Site Development Review (SDR)** **SDR2008-00004**  
Adjustment (VAR) VAR 2008-00020  
Adjustment (VAR) VAR 2008-00021

**PROPOSAL:** The applicant is requesting Site Development Review approval to address issues raised under enforcement Case File No. CEO2008-00100, regarding paving and drainage of a parking lot, stormwater facilities, and vegetated corridor enhancement. In addition, the applicant is requesting access to the rear parking area requiring adjustments to reduce the minimum spacing of driveways along a collector from 200 feet to 40 feet and to reduce the minimum access width from 30 feet to 13 feet.

**APPLICANT/OWNER:** Russ Goddard **APPLICANT'S REP.:** AKS Engineering  
Two G's Real Estate, LLC. 13910 SW Galbreath Dr., Suite 100  
18395 Wood Thrush Street Sherwood, OR 97140  
Lake Oswego, OR 97035

**LOCATION:** 12562 SW Main Street; Washington County Tax Map 2S102AC, Tax Lot 01101.

**ZONE:** CBD: Central Business District. The CBD zoning district is designed to provide a concentrated central business district, centered on the City's historic downtown, including a mix of civic, retail and office uses. Single-family attached housing, at a maximum density of 12 units/net acre, equivalent of the R-12 zoning district, and multi-family housing at a minimum density of 32 units/acre, equivalent to the R-40 zoning district, are permitted outright. A wide range of uses, including but not limited to adult entertainment, utilities, facilities with drive-up windows, medical centers, major event entertainment and gasoline stations, are permitted conditionally.

**APPLICABLE REVIEW CRITERIA:** Community Development Code Chapters 18.360, 18.370, 18.390, 18.520, 18.705, 18.725, 18.745, 18.755, 18.760, 18.765, 18.775, 18.780, 18.790, 18.795 and 18.810.

**SECTION II. DECISION**

Notice is hereby given that the City of Tigard Community Development Director's designee has **APPROVED** the above request for Site Development Review and the Access and Egress Adjustments subject to certain conditions of approval. The findings and conclusions on which the decision is based are noted in Section VI of the Decision.

## **CONDITIONS OF APPROVAL**

### **THE FOLLOWING CONDITIONS SHALL BE SATISFIED PRIOR TO ANY SITE DEVELOPMENT OR ISSUANCE OF SITE PERMITS AND WITHIN 6 MONTHS OF THE EFFECTIVE APPROVAL DATE OF THIS DECISION:**

**The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the CURRENT PLANNING DIVISION, ATTN: GARY PAGENSTECHEER 503-639-4171, EXT 2434. The cover letter shall clearly identify where in the submittal the required information is found:**

1. The applicant shall remove the new concrete block paving material consistent with applicant's Preliminary Site, Circulation, and Landscape Plan (Sheet 4 of 5), CWS Service Provider Letter (June 30, 2008), and CWS Design and Construction Standards (adopted by Resolution and Order No. 07-20).
2. The applicant shall submit a letter from the franchise hauler demonstrating that the waste facility meets the location, design, and access standards required by the franchise hauler.
3. The applicant shall submit revised landscape plans to show native street trees along the proposed access way consistent with CWS standards and TDC Section 18.745.040.
4. The applicant shall position fencing as directed by the project arborist to protect the trees to be retained. The applicant shall allow access by the City Arborist for the purpose of monitoring and inspection of the tree protection to verify that the tree protection measures are performing adequately. Failure to follow the plan, or maintain tree protection fencing in the designated locations shall be grounds for immediate suspension of work on the site until remediation measures and/or civil citations can be processed.

**The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the ENGINEERING DEPARTMENT, ATTN: KIM MCMILLAN 503-639-4171, EXT 2642. The cover letter shall clearly identify where in the submittal the required information is found:**

5. Two joint use and maintenance agreements shall be executed and recorded on a City standard form for the common driveway. The agreements shall be referenced on and become part of all applicable parcel deeds. The agreements shall be approved by the Engineering Department prior to recording.
6. The applicant shall provide an on-site water quality facility as required by Clean Water Services Design and Construction Standards (adopted by Resolution and Order No. 07-20). Final plans and calculations shall be submitted to the Engineering Department (Kim McMillan) for review and approval prior to issuance of the site permit. In addition, a proposed maintenance plan shall be submitted along with the plans and calculations for review and approval.

### **THE FOLLOWING CONDITIONS SHALL BE SATISFIED WITHIN SIX MONTHS FROM THE EFFECTIVE APPROVAL DATE OF THIS DECISION:**

**The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the CURRENT PLANNING DIVISION, ATTN: GARY PAGENSTECHEER 503-639-4171, EXT 2434. The cover letter shall clearly identify where in the submittal the required information is found:**

7. The applicant/owner shall record deed restrictions to the effect that any existing tree greater than 6" diameter may be removed only if the tree dies or is hazardous according to a certified arborist. The deed restriction may be removed or will be considered invalid if a tree preserved in accordance with this decision should either die or be removed as a hazardous tree.
8. Approval of the access variances is contingent on the condition that the required joint access agreement is reached. If the joint access agreement is not reached, access to the subject property shall be restricted by a locked gate at Main Street for service vehicles only, subject to review and approval by the Development Review Engineer. The applicant shall be responsible for installing and maintaining the gate.

9. The applicant shall provide the City with a letter of compliance with the applicant's CWS Service Provider Letter (CWS File Number 08-000812 dated June 30, 2008). For a site inspection contact Amber Wierck at 503-681-3653.
10. Prior to installation of any signage, the applicant shall submit a separate sign permit application for all signage.
11. Prior to six months from the effective approval date of this decision the applicant shall contact the planning division to conduct an inspection to verify that the proposal was completed in accordance with this decision and the approved plans. Failure to comply with these conditions of approval in a timely manner may result in referral of this enforcement case to Municipal Court.

**The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the ENGINEERING DEPARTMENT, ATTN: KIM MCMILLAN 503-639-4171, EXT 2642. The cover letter shall clearly identify where in the submittal the required information is found:**

12. The applicant's engineer shall submit documentation to the City Engineering Department certifying that the water quality facility was constructed in accordance with CWS standards.

**THIS APPROVAL SHALL BE VALID FOR EIGHTEEN (18)  
MONTHS FROM THE EFFECTIVE DATE OF THIS DECISION**

### **SECTION III. BACKGROUND INFORMATION**

#### Site History:

The subject property (Tax Lot 1101) is located at 12562 SW Main Street. The subject property was previously used by Powel Paint for a retail paint store. According to City records, the subject property has been the site of an approved monopole (CUP97-00005) and various enforcement actions for illegal signs. In 2006, under prior ownership, the use of the subject property was changed from retail to eating and drinking establishment (MMD2006-00008) for Max's Brew Pub. The conditions for the proposed change of use required the applicant to 1) remove the curb drops and replace them with standard curb in order to eliminate on-site parking in the front of the building and 2) that any improvements exterior of the building within the vegetated corridor be consistent with the standards identified in the Clean Water Services Provider Letter for the project. A primary issue for the subject property has been the desire to pave the access and gravel the parking lot on the site. On two occasions, both the owner of the business (Marvin Bowen, Max's Brew Pub) and current owners of the property (Russ Goddard, Two G's Real Estate, LLC.) have undertaken to pave the parking lot without permits. This activity has resulted in an enforcement case (CEO2008-00100) in which the property owner, Mr. Goddard, through a Voluntary Compliance Agreement dated April 16, 2008, agreed to submit for this site development review as a remedy.

**NOTE:** During the review for this decision, the property has again been paved sometime prior to December 4, 2008, when staff visited the site and confirmed the concrete block paving had occurred. Paving has occurred up to the existing bollard line at top of bank. The paving appears to be inconsistent with the applicant's proposal, which showed no development within the vegetated corridor enhancement area required under the CWS SPL. The applicant will be required to implement the proposed development subject to the conditions of approval of this decision within six months. To remedy this issue, the applicant shall remove the new concrete block paving material consistent with applicant's proposal (Sheet 4 of 5) and the CWS Service Provider Letter (June 30, 2008) and CWS storm water quality standards.

#### Vicinity Information:

The subject property is a Main Street property surrounded by parcels also zoned CBD.

#### Site Information and Proposal Description:

The subject 0.58-acre site is located on SW Main Street immediately west and adjacent to the bridgehead over Fanno Creek. The site is developed with a storefront building connected to an adjacent storefront building on an adjacent lot (Tax Lot 1100). The SW Main Street frontage is improved with sidewalk and street trees pursuant to the Minor Modification approval (MMD2008-00008). The Fanno Creek vegetated corridor runs the length of the property on the east. The subject property shares a common property line with Tax Lot 1100 on the west.

The applicant is requesting Site Development Review approval to address issues raised under enforcement Case File No. CEO2008-00100, regarding paving and drainage of a parking lot, stormwater facilities and vegetated corridor enhancement. In addition, the applicant is requesting access to the rear parking area requiring adjustments to reduce the minimum spacing of driveways along a collector from 200 feet to 40 feet and to reduce the minimum access width from 30 feet to 13 feet.

#### **SECTION IV. NEIGHBORHOOD COMMENTS**

The Tigard Community Development Code requires that property owners within 500 feet of the subject site be notified of the proposal and be given an opportunity for written comments and/or oral testimony prior to a decision being made. The City provided notice to adjacent property owners on October 10, 2008. In addition, staff has posted a notice at the driveway to the site, visible from SW Main Street.

The City received one comment on the subject application from George Diamond, owner of the adjacent property located at 12564 SW Main Street. Mr. Diamond wants to ensure that any approval conforms to the City's Access, Egress, and Circulation standards in Chapter 18.705. Since the application shows use of Mr. Diamond's property for access to the subject property, Mr. Diamond asks that any approval be subject to a written agreement between the Applicant and his property ownership.

RESPONSE: The applicant proposes ingress for a one-way access loop on Mr. Diamond's property, tax lot 1100, with egress from the applicant's site. The shared access will require an agreement with the adjacent owner, Mr. Diamond. Approval of the proposed access and parking improvements is conditioned on a joint access agreement between the owners of the subject properties.

#### **SECTION V. SUMMARY OF APPLICABLE REVIEW CRITERIA**

The proposal's consistency with these Code Chapters is reviewed in the following sections:

- A. **Zoning Districts**
  - 18.520 Commercial Zoning Districts
- B. **Applicable Specific Development Standards**
  - 18.370 Variances and Adjustments
  - 18.705 Access Egress and Circulation
  - 18.725 Environmental Performance Standards
  - 18.745 Landscaping and Screening
  - 18.755 Mixed Solid Waste and Recyclable Storage
  - 18.760 Nonconforming Situations
  - 18.765 Off-Street Parking and Loading Requirements
  - 18.775 Sensitive Lands
  - 18.780 Signs
  - 18.790 Tree Removal
  - 18.795 Visual Clearance
- C. **Specific SDR Approval Criteria**
  - 18.360 Site Development Review
- D. **Street and Utility Improvement Standards**
  - 18.810
- E. **Decision Making Procedures**
  - 18.390 Impact Study

**SECTION VI. APPLICABLE REVIEW CRITERIA**

**A. ZONING DISTRICTS**

**Commercial Zoning Districts (18.520.020)**

**CBD: Central Business District.** The CBD zoning district is designed to provide a concentrated central business district, centered on the City's historic downtown, including a mix of civic, retail and office uses. Single-family attached housing, at a maximum density of 12 units/net acre, equivalent of the R-12 zoning district, and multi-family housing at a minimum density of 32 units/acre, equivalent to the R-40 zoning district, are permitted outright. A wide range of uses, including but not limited to adult entertainment, utilities, facilities with drive-up windows, medical centers, major event entertainment and gasoline stations, are permitted conditionally.

Max’s Brew Pub is an existing commercial eating and drinking establishment permitted in the CBD zone. The proposed access and parking improvements are accessory to this permitted use and, therefore, are also permitted in the CBD zone.

**Development Standards:**

Section 18.520.040.A requires all development to comply with the applicable development standards contained in the underlying zoning district, except where the applicant has obtained variance in accordance with Chapter 18.370. The applicable development standards in commercial zoning districts are contained in Table 18.520.2 below:

**TABLE 18.520.2  
COMMERCIAL DEVELOPMENT STANDARDS**

<b>STANDARD</b>	<b>I-P</b>	<b>Subject Parcel</b>
Minimum Lot Size	None	NA
Minimum Lot Width	None	NA
Minimum Setbacks	-	NA
- Front yard	0/30 ft [12]	22-32 ft
- Side facing street on corner & through lots	0/30 ft [12]	-
- Side yard	0/30 ft [12]	0/62 ft
- Side or rear yard abutting more restrictive zoning district	-	-
- Rear yard	0/30 ft [12]	98 ft
- Distance between front of garage & property line abutting a public or private street.	-	-
Maximum Height	80 ft. [13]	Approx. 24'
Maximum Site Coverage [2]	85%	Approx. 55%
Minimum Landscape Requirement	15%	Approx. 45%

[12] There are no setback requirements, except 30 feet where a commercial use within a district abuts a residential zoning district.

[13] The maximum height of any building in the CBD zone within 100 feet of any residential zoning district shall not exceed 40 feet.

**FINDING:** The proposed access and parking lot improvements are reviewed under the applicable criteria, below. As shown above, in Table 18.520.2, the existing building meets the commercial setbacks, site coverage, landscape, and height development standards.

**B. APPLICABLE SPECIFIC DEVELOPMENT STANDARDS**

**Variances and Adjustments (18.370):**

**Adjustments**

The purpose of this section is to establish two classes of special variances: 1) “development adjustments” and 2) “special adjustments”. Special adjustments are variances from development standards which have their own approval criteria as opposed to the standard approval criteria for variances contained in Section 18.370.010.C.

Two special adjustments are requested: 1) to reduce the minimum spacing of driveways along a collector from 200 feet to 40 feet and 2) to reduce the minimum access width from 30 feet to 13 feet.

**Adjustment to access and egress standards (Chapter 18.705).**

**In all zoning districts where access and egress drives cannot be readily designed to conform to Code standards within a particular parcel, access with an adjoining property shall be considered. If access in conjunction with another parcel cannot reasonably be achieved, the Director may grant an adjustment to the access requirements of Chapter 18.705 through a Type II procedure, as governed in Section 18.390.030, using approval criteria contained in Subsection 2b below.**

Pursuant to Section 18.705.030.H.3, a minimum driveway spacing of 200 feet is required along a collector. The site fronts on SW Main Street, a collector. Since there are several driveways within 200 feet of the existing driveway, a variance is requested. In return for an approved variance, a shared one-way driveway is proposed. The ingress would be on Tax Lot 1100 with egress from the applicant's site on Tax Lot 1101. The shared driveway will require an agreement with the adjacent owner. Approval of the variance is recommended on the condition that the required joint access agreement is reached. If the joint access agreement is not reached, access to the subject property will be restricted by a locked gate at Main Street for service vehicles only.

Pursuant to Table 18.705.3, the minimum access width for commercial uses is 30 feet with 24 feet paved with curbs. Unlike the residential access standards in Table 18.705.3, commercial access standards do not provide for one-way access. The applicant requests an access adjustment to reduce the minimum access width from 30 feet to 13 feet for a one-way access route. Due to the existing conditions on the subject property, only 13 feet is available for the access for a segment of approximately 50 lineal feet between the building and the 100-year floodplain. The access is otherwise proposed at 15 feet in width.

**b. The Director may approve, approve with conditions, or deny a request for an adjustment from the access requirements contained in Chapter 18.705, based on the following criteria:**

**(1) It is not possible to share access;**

The City requires the applicant to obtain joint access with Tax Lot 1100 in order to allow access to the proposed parking in the rear of the building. If the joint access agreement is not reached, the adjustment to the spacing standard will not be approved and access to the subject property will be restricted by a locked gate at Main Street for service vehicles only.

**(2) There are no other alternative access points on the street in question or from another street;**

The subject site has no other alternative access onto SW Main Street.

**(3) The access separation requirements cannot be met;**

There are three access points on the south side of SW Main Street within 200 feet of the existing access on Tax Lot 1101. Two accesses for Tax Lot 1100 are located approximately 40 feet and 117 feet to the west. A private street for Tax Lot 201 is located approximately 190 feet west. In addition, there are several driveways on the north side of SW Main Street within 200 feet of the property's existing access. Therefore, the 200 foot access standard cannot be met.

**(4) The request is the minimum adjustment required to provide adequate access;**

The proposed joint access is required by the City of Tigard's Development Review Engineer City to provide adequate access.

**(5) The approved access or access approved with conditions will result in a safe access; and**

According to the City of Tigard's Development Review Engineer, the one-way proposal will result in a safer access than two two-way access points within 120 feet of each other.

**(6) The visual clearance requirements of Chapter 18.795 will be met.**

The subject property is located in the CBD zone and is, therefore, exempt from the visual clearance criteria.

FINDING: The applicant has proposed adjustments to the access and egress standards that provide for adequate and safe access given the site restrictions of the subject property. Approval of the variance is recommended on the condition that the required joint access agreement is reached. If the joint access agreement is not reached, access to the subject property will be restricted by a locked gate at Main Street for service vehicles only, subject to review and approval by the Development Review Engineer.

**Access, Egress and Circulation (18.705):**

**Walkways:**

**18.705.030(F) requires that on-site pedestrian walkways comply with the following standards: Walkways shall extend from the ground floor entrances or from the ground floor landing of stairs, ramps, or elevators of all commercial, institutional, and industrial uses, to the streets which provide the required access and egress. Walkways shall provide convenient connections between buildings in multi-building commercial, institutional, and industrial complexes. Unless impractical, walkways shall be constructed between new and existing developments and neighboring developments;**

As described in the applicant's Existing Conditions Plan (Sheet 2 of 5), a pedestrian walkway exists between the building's entrance and SW Main Street.

**In no case shall the design of the service drive or drives require or facilitate the backward movement or other maneuvering of a vehicle within a street, other than an alley.**

The proposed one-way access is designed so that no backup movement is required within the street, consistent with this standard.

**Access Management:**

**Section 18.705.030.H.1 states that an access report shall be submitted with all new development proposals which verifies design of driveways and streets are safe by meeting adequate stacking needs, sight distance and deceleration standards as set by ODOT, Washington County, the City and AASHTO.**

The existing driveway is proposed to remain. The applicant's engineer states sight distance is adequate.

**Section 18.705.030.H.2 states that driveways shall not be permitted to be placed in the influence area of collector or arterial street intersections. Influence area of intersections is that area where queues of traffic commonly form on approach to an intersection. The minimum driveway setback from a collector or arterial street intersection shall be 150 feet, measured from the right-of-way line of the intersecting street to the throat of the proposed driveway. The setback may be greater depending upon the influence area, as determined from City Engineer review of a traffic impact report submitted by the applicant's traffic engineer. In a case where a project has less than 150 feet of street frontage, the applicant must explore any option for shared access with the adjacent parcel. If shared access is not possible or practical, the driveway shall be placed as far from the intersection as possible.**

The driveways are not within the influence area of a collector or an arterial.

**Section 18.705.030.H.3 and 4 states that the minimum spacing of driveways and streets along a collector shall be 200 feet. The minimum spacing of driveways and streets along an arterial shall be 600 feet. The minimum spacing of local streets along a local street shall be 125 feet.**

The site fronts to SW Main Street, a collector requiring a minimum of 200 feet of driveway spacing. Since there are several driveways within 200 feet of the existing driveway, a variance is requested. In return for an approved variance, a shared one-way driveway is proposed. The ingress would be on Tax Lot 1100 with egress from the applicant's site on Tax Lot 1101. The shared driveway will require an agreement with the adjacent owner. Approval of the variance is based on the condition that the required agreement is reached.

**Minimum Access Requirements for Commercial and Industrial Use:**

Section 18.705.030.J provides the minimum access requirements for commercial and industrial uses: Table 18.705.3 indicates that the required access width for developments with fewer than 100 parking spaces is one 30-foot accesses with 24 feet of pavement. Vehicular access shall be provided to commercial or industrial uses, and shall be located within 50 feet of the primary ground floor entrances; additional requirements for truck traffic may be placed as conditions of site development review.

The applicant's Preliminary Site, Circulation, and Landscape Plan (Sheet 4 of 5) and narrative describe access for the proposed access and parking lot development. A one-way 15-foot private access drive is proposed entering on the adjacent parcel and existing on the subject parcel. The applicant has applied for a variance to this standard.

**Section 18.705.030.K provides that where a proposed parking facility indicates only one-way traffic flow on the site, it shall be accommodated by a specific driveway serving the facility; the entrance drive shall be situated closest to oncoming traffic and the exit drive shall be situated farthest from oncoming traffic.**

The applicant's Preliminary Site, Circulation, and Landscape Plan (Sheet 4 of 5) and narrative describe access for the proposed access and parking lot development. A one-way 15-foot private access drive is proposed entering on the adjacent parcel from SW Main Street and exiting from the subject parcel onto SW Main Street, consistent with this standard.

**FINDING:** The proposed development does not meet all of the applicable Access, Egress and Circulation standards. However, with the approved variances reviewed above, these standards can be satisfactorily addressed.

**Environmental Performance Standards (18.725)**

These standards require that federal and state environmental laws, rules and regulations be applied to development within the City of Tigard. Section 18.725.030 (Performance Standards) regulates: Noise, visible emissions, vibration and odors.

**Noise.** For the purposes of noise regulation, the provisions of Sections 7.41.130 through 7.40.210 of the Tigard Municipal Code shall apply.

**Visible Emissions.** Within the commercial zoning districts and the industrial park (IP) zoning district, there shall be no use, operation or activity which results in a stack or other point- source emission, other than an emission from space heating, or the emission of pure uncombined water (steam) which is visible from a property line. Department of Environmental Quality (DEQ) rules for visible emissions (340-21-015 and 340-28-070) apply.

**Vibration.** No vibration other than that caused by highway vehicles, trains and aircraft is permitted in any given zoning district which is discernible without instruments at the property line of the use concerned.

**Odors.** The emissions of odorous gases or other matter in such quantities as to be readily detectable at any point beyond the property line of the use creating the odors is prohibited. DEQ rules for odors (340-028-090) apply.

**Glare and heat.** No direct or sky reflected glare, whether from floodlights or from high temperature processes such as combustion or welding, which is visible at the lot line shall be permitted, and; 1) there shall be no emission or transmission of heat or heated air which is discernible at the lot line of the source; and 2) these regulations shall not apply to signs or floodlights in parking areas or construction equipment at the time of construction or excavation work otherwise permitted by this title.

**Insects and rodents.** All materials including wastes shall be stored and all grounds shall be maintained in a manner which will not attract or aid the propagation of insects or rodents or create a health hazard.

The proposed access and parking improvements are permitted outright in the CBD zone. The applicant's narrative states that the above standards will be met. Based on the provision of adequate trash and recycling area, and the fact that the proposed use is not likely to generate noise, visible emissions, odors, glare and heat, or harbor insects and rodents beyond what would be expected from an eating and drinking establishment, this standard is satisfied. Ongoing maintenance to meet these standards shall be maintained and any violation of these standards will be addressed by the City of Tigard's Code Enforcement Officer.

FINDING: The Environmental Performance Standards are met.

#### **Landscaping and Screening (18.745)**

**Protection of Existing Landscaping.** Existing vegetation on a site shall be protected as much as possible:

1. The developer shall provide methods for the protection of existing vegetation to remain during the construction process; and
2. The plants to be saved shall be noted on the landscape plans (e.g., areas not to be disturbed can be fenced, as in snow fencing which can be placed around the individual trees).

The proposed driveway and parking lot paving do not involve significant landscape alteration. As shown on the applicant's Preliminary Grading, Erosion Control, Tree and Utility Plan (Sheet 3 of 5), all improvements are proposed outside of the 100-year floodplain. The two existing trees proposed to be saved are located within the vegetated corridor and the 100-year floodplain and are shown with tree protection provided. The proposal is consistent with this standard.

#### **Street Trees:**

**Section 18.745.040 states that all development projects fronting on a public street or a private drive more than 100 feet in length shall be required to plant street trees in accordance with Section 18.745.040.C. Section 18.745.040.C requires that street trees be spaced between 20 and 40 feet apart depending on the size classification of the tree at maturity (small, medium or large).**

In 2006, under prior ownership, the use of the subject property was changed from retail to eating and drinking establishment (MMD2006-00008). A condition of this approval required two street trees be planted along SW Main Street, which have been planted.

The proposed access way is approximately 200 feet long. The applicant proposes to meet the street tree requirement along the access way through implementation of the CWS vegetated corridor enhancement. Although the enhancement does require trees be planted, the two-gallon size specification does not meet the City's street tree standard dimension of 2-inch caliper (diameter at breast height). The City Arborist recommends that 2 inch caliper native trees be planted to meet the street tree requirement. Therefore, the applicant shall revise their landscape plans to show native street trees along the proposed access way consistent with CWS standards and Section 18.745.040.

#### **Buffering and Screening:**

**Section 18.745.080 states that no buffer is required between abutting uses that are of a different type when the uses are separated by a street. No buffer is required between a proposed office use and existing office use. Buffering and/or screening are required for dissimilar uses.**

The subject site is bordered on three sides by commercial uses all within the CBD zone. Therefore, no buffering or screening is required.

#### **Screening:**

##### **Special Provisions:**

**Section 18.745.050.E requires the screening of parking and loading areas. Landscaped parking areas shall include special design features which effectively screen the parking lot areas from view. Planting materials to be installed should achieve a relative balance between low lying and vertical shrubbery and trees. Trees shall be planted in landscaped islands in all parking areas, and shall be equally distributed on the basis of one (1) tree for each seven (7) parking spaces in order to provide a canopy effect. The minimum dimension on the landscape islands shall be three (3) feet wide and the landscaping shall be protected from vehicular damage by some form of wheel guard or curb.**

Screening is required for parking lots. The applicant's Preliminary Site, Circulation, and Landscape Plan (Sheet 4 of 5) shows that the required vegetated corridor and stream bank enhancement plantings (CWS SPL) will buffer and screen the development from view from the Fanno Creek bike and pedestrian path located on the adjacent property to the east and from SW Main Street to the north. Therefore, the special screening standard has been met.

In addition, one tree for each seven parking spaces evenly distributed to provide a canopy effect is required. Six parking spaces are proposed. The trees required in the vegetated corridor will provide the required shade, consistent with this standard.

#### **Screening of Service Facilities.**

**Except for one-family and two-family dwellings, any refuse container or disposal area and service facilities such as gas meters and air conditioners which would otherwise be visible from a public street, customer or resident parking area, any public facility or any residential area shall be screened from view by placement of a solid wood fence or masonry wall between five and eight feet in height. All refuse materials shall be contained within the screened area;**

The subject site includes an existing waste and recycling facility in the rear of the building. The facility is screened with a six-foot high wood fence, consistent with this standard.

**When re-vegetation is required. Where natural vegetation has been removed through grading in areas not affected by the landscaping requirements and that are not to be occupied by structures, such areas are to be replanted.**

Clean Water Services' SPL (CWS File Number 08-000812 dated June 30, 2008) requires the applicant to remove non-native vegetation and to replant with native vegetation. The Vegetated Corridor Redevelopment Encroachment and Mitigation Concept Natural Resource Assessment (SPL Figure 5) details the areas of encroachment and enhancement within the vegetated corridor. The applicant shall provide the City with a letter of compliance with the CWS SPL. For a site inspection contact Amber Wierck at 503-681-3653.

**FINDING:** Based on the analysis above, the landscaping and screening standards have not been fully met. If the applicant complies with the conditions listed below, the standards will be met.

#### **CONDITIONS:**

- ◆ The applicant shall revise their landscape plans to show native street trees along the proposed access way consistent with CWS standards and Section 18.745.040.
- ◆ The applicant shall provide the City with a letter of compliance with the conditions of approval of the applicant's CWS Service Provider Letter (CWS File Number 08-000812 dated June 30, 2008). For a site inspection contact Amber Wierck at 503-681-3653.

#### **Mixed Solid Waste and Recyclables Storage (18.755)**

**Chapter 18.755 requires that new construction incorporate functional and adequate space for on-site storage and efficient collection of mixed solid waste and source separated Recyclables prior to pick-up and removal by haulers.**

**FINDING:** The subject site includes an existing waste and recycling facility in the rear of the building. The facility is screened with a wood fence. The facility has been recently constructed without review or approval. The design of the proposed access and parking improvements may impact the existing waste and recycling facility. Therefore, the applicant shall provide a sign-off from the franchise hauler demonstrating compliance with the hauler's requirements, consistent with the applicable standards in Section 18.755.

#### **CONDITION:**

- ◆ The applicant shall submit a letter from the franchise hauler demonstrating that the waste facility meets the location, design, and access standards required by the franchise hauler.

### Nonconforming Situations (18.760)

18.760.040.C states where a lawful structure exists at the effective date of adoption or amendment of this title that could not be built under the terms of this title by reason of restrictions on lot area, lot coverage, height, yard, equipment, its location on the lot or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions: a. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity but any structure or portion thereof may be enlarged or altered in a way that satisfies the requirements of this title or will decrease its nonconformity; or

FINDING: The existing access to the property is along the eastern side of the building, between the building and Fanno Creek. A portion of the access along the building, but not behind the building, was paved sometime in the distant past. The existing nonconforming development is partially within the 100-year floodplain. The applicant states that no enlargement or expansion of this use is proposed within the 100-floodplain. Any development proposed within the floodplain would otherwise require a Type IIIA Hearings Officer review.

However, during the review for this decision, the property has again been paved sometime prior to December 4, 2008, when staff visited the site and confirmed the concrete block paving had occurred. Paving has occurred up to the existing bollard line at top of bank. The paving appears to be inconsistent with the applicant's proposal, which showed no development within the vegetated corridor enhancement area required under the CWS SPL. The applicant will be required to implement the proposed development subject to the conditions of approval of this decision within six months. To remedy this issue, the following condition of approval shall be imposed:

#### CONDITION:

- ♦ The applicant shall remove the new concrete block paving material consistent with applicant's Preliminary Site, Circulation, and Landscape Plan (Sheet 4 of 5), CWS Service Provider Letter (June 30, 2008), and CWS Design and Construction Standards (adopted by Resolution and Order No. 07-20).

### Off-Street Parking and Loading (18.765)

#### Location of vehicle parking:

Off-street parking spaces for single-family and duplex dwellings and single-family attached dwellings shall be located on the same lot with the dwellings. Off-street parking lots for uses not listed above shall be located not further than 500 feet from the building or use that they are required to serve, measured in a straight line from the building with the following exceptions: a) commercial and industrial uses which require more than 40 parking spaces may provide for the spaces in excess of the required first 40 spaces up to a distance of 300 feet from the primary site; The 40 parking spaces which remain on the primary site must be available for users in the following order of priority: 1) Disabled-accessible spaces; 2) Short-term spaces; 3) Long-term preferential carpool and vanpool spaces; 4) Long-term spaces.

The proposed parking lot is located adjacent to the existing building. The proposal includes six surface parking spaces adjacent to the existing commercial building. Of the six spaces, one is disabled. The proposed vehicle parking is consistent with the locational standards.

#### Joint Parking.

Owners of two or more uses, structures or parcels of land may agree to utilize jointly the same parking and loading spaces when the peak hours of operation do not overlay, subject to the following: 1) The size of the joint parking facility shall be at least as large as the number of vehicle parking spaces required by the larger(est) use per Section 18.765.070; 2) Satisfactory legal evidence shall be presented to the Director in the form of deeds, leases or contracts to establish the joint use; 3) If a joint use arrangement is subsequently terminated, or if the uses change, the requirements of this title thereafter apply to each separately.

Joint parking is not proposed with this application; therefore this standard is not applicable.

### **Disabled-Accessible Parking.**

**All parking areas shall be provided with the required number of parking spaces for disabled persons as specified by the State of Oregon Uniform Building Code and federal standards. Such parking spaces shall be sized, signed and marked as required by these regulations.**

The applicant has indicated that there is one ADA handicap space provided. According to ORS 447.233, incorporated through reference to the International Building Code (IBC), 1 space is required. Final determination of the number of required ADA spaces will be made by the building official during the review of the building permit application. As shown on the Preliminary Site, Circulation, and Landscape Plan (Sheet 4 of 5), the site plan appears to be in compliance with the ADA requirements.

### **General Design Standards**

#### **Access Drives:**

**With regard to access to public streets from off-street parking: access drives from the street to off-street parking or loading areas shall be designed and constructed to facilitate the flow of traffic and provide maximum safety for pedestrian and vehicular traffic on the site; the number and size of access drives shall be in accordance with the requirements of Chapter, 18.705, Access, Egress and Circulation; access drives shall be clearly and permanently marked and defined through use of rails, fences, walls or other barriers or markers on frontage not occupied by service drives; access drives shall have a minimum vision clearance in accordance with Chapter 18.795, Visual Clearance; access drives shall be improved with an asphalt or concrete surface; and excluding single-family and duplex residences, except as provided by Subsection 18.810.030.P, groups of two or more parking spaces shall be served by a service drive so that no backing movements or other maneuvering within a street or other public right-of-way will be required.**

The applicant's Preliminary Site, Circulation, and Landscape Plan (Sheet 4 of 5) and narrative proposes one way access to facilitate the flow of traffic and provide maximum safety for pedestrian and vehicular traffic on the site. The proposed single access is consistent with Table 18.705.3. The proposed access width (13-15 feet) is inconsistent but otherwise satisfactorily addressed in the variance to the access and egress standards, above. The applicant's plan shows the proposed access drive is clearly marked. Visual clearance areas are not applicable to developments in the CBD. Therefore, this standard is met.

#### **Parking Lot Striping:**

**Except for single-family and duplex residences, any area intended to be used to meet the off-street parking requirements as contained in this Chapter shall have all parking spaces clearly marked; and all interior drives and access aisles shall be clearly marked and signed to show direction of flow and maintain vehicular and pedestrian safety.**

The plans submitted show the parking spaces clearly marked with striping, consistent with this standard.

#### **Wheel Stops:**

**Parking spaces along the boundaries of a parking lot or adjacent to interior landscaped areas or sidewalks shall be provided with a wheel stop at least four inches high located three feet back from the front of the parking stall. The front three feet of the parking stall may be concrete, asphalt or low lying landscape material that does not exceed the height of the wheel stop. This area cannot be calculated to meet landscaping or sidewalk requirements.**

The applicant's site plan shows and narrative indicates that all proposed parking spaces contain a wheel stop. Therefore, this standard is met.

#### **Space and Aisle Dimensions:**

**Section 18.765.040.N states that: "except as modified for angled parking in Figures 18.765.1 and 18.765.2 the minimum dimensions for parking spaces are: 8.5 feet x 18.5 feet for a standard space and 7.5 feet x 16.5 feet for a compact space"; aisles accommodating two direction traffic, or allowing access from both ends, shall be 24 feet in width. No more than 50% of the required spaces may be compact spaces.**

The applicant's Site Development plan (Sheet 4 of 5) shows the dimensions of the parking spaces, where 5 of 6 spaces will conform to the standard sized spaces and the one ADA parking space conforms to the ADA specifications. The applicant's site plan shows a 34-foot-wide isle. Therefore, this standard is met.

### **Bicycle Parking Location, Access, and Design:**

Section 18.765.050.A provides standards for bicycle parking location, access and design:

Bicycle parking for the existing Pub has been addressed previously under the minor modification decision which changed the use from retail to eating and drinking establishment (MMD 2006-00008).

### **Minimum Off-Street Parking:**

Section 18.765.070.H states that the minimum and maximum parking shall be as required in Table 18.765.2. Table 18.765.2 states [5]Existing buildings directly abutting Main Street are not required to add additional off-street parking for a change of use except for entertainment uses. New buildings or existing buildings that undergo remodeling provided the original square footage of the buildings remain the same also are not required to add additional off-street parking.

The subject building directly abuts Main Street. No additional square footage is proposed. Therefore, pursuant to Note [5] of this table, no additional parking is required.

### **Off-Street Loading Spaces:**

Commercial, industrial and institutional buildings or structures to be built or altered which receive and distribute material or merchandise by truck shall provide and maintain off-street loading and maneuvering space as follows: A minimum of one loading space is required for buildings with 10,000 gross square feet or more; A minimum of two loading spaces for buildings with 40,000 gross square feet or more.

The building is less than 10,000 square feet. Therefore, this standard does not apply.

FINDING: Based on the analysis above, the off-street parking and loading standards have all been satisfied.

### **Sensitive Lands (18.775)**

18.775.010.G identifies sensitive lands are lands potentially unsuitable for development because of their location within:

1. The 100-year floodplain or 1996 flood inundation line, whichever is greater;
2. Natural drainageways;
3. Wetland areas which are regulated by the other agencies including the U.S. Army Corps of Engineers and the Division of State Lands, or are designated as significant wetland on the City of Tigard "Wetland and Stream Corridors Map";
4. Steep slopes of 25% or greater and unstable ground; and
5. Significant fish and wildlife habitat areas designated on the City of Tigard "Significant Habitat Areas Map."

The subject site includes Fanno Creek and its associated natural drainageway, 100-year floodplain, and stream bank steep slopes greater than 25%. The applicant provided a Natural Resource Assessment dated June 6, 2008 prepared by Keystone Natural Resource Consulting which found that wetlands do not exist on the subject site.

18.775.020.C allows the following exemptions when performed under the direction of the City, and in compliance with the provisions of the City of Tigard Standards and Specifications for Riparian Area Management, on file in the Engineering Division, the following shall be exempt from the provisions of this section:

1. Responses to public emergencies, including emergency repairs to public facilities;
2. Stream and wetlands restoration and enhancement programs;
3. Non-native vegetation removal;
4. Planting of native plant species; and
5. Routine maintenance or replacement of existing public facilities projects.

The Clean Water Services SPL (CWS File Number 08-000812 dated June 30, 2008) requires rehabilitation of the vegetated corridor on the subject property. These activities include non-native vegetation removal and planting of native plant species and, therefore, are exempt from review.

**18.775.020.G states the Hearings Officer shall have the authority to issue a sensitive lands permit in the 100-year floodplain by means of a Type IIIA procedure, as governed by Section 18.390.050, using approval criteria contained in Section 18.775.070.**

The applicant's Existing Conditions Plan (Sheet 2 of 5) shows the 100-year flood plain in a broad arc across the property located from one to 30 feet west of top of bank of Fanno Creek. Existing paving on the side and in front of the building is within the 100-year floodplain. No new proposed development is located within the 100-year floodplain. The proposed paving and water quality facility in the rear of the building are located outside the 100-year floodplain. Therefore, the proposed development does not require a Type IIIA procedure.

FINDING: The proposed development does not require a Sensitive Lands Review permit and can be reviewed as a Type II Site Development Review.

### **Signs (18.780)**

**Chapter 18.780.130.F lists the type of allowable signs and sign area permitted in the I-P Zoning District.**

FINDING: The applicant does not propose any specific signs with this development application. All subsequent signage must be reviewed through a separate Type I process and will be subject to the code standards in effect at the time of application submittal.

### **Tree Removal (18.790)**

**Section 18.790.030 requires that a tree plan for the planting, removal and protection of trees prepared by a certified arborist shall be provided with a site development review application.**

The applicant has submitted a tree plan prepared by Randy Killen, a certified arborist. The applicant's Existing Conditions Plan (Sheet 2 of 5) includes a Tree table and plan with three trees located on the subject site. The applicant has submitted a Preliminary Grading, Erosion Control, Tree, and Utility Plan (Sheet 3 of 5) which includes Tree Protection Notes, a Tree Table, and the arborist signature, consistent with this standard.

**Plan requirements. The tree plan shall include the following:**

- 1. Identification of the location, size and species of all existing trees including trees designated as significant by the city;**

The applicant has submitted a Preliminary Grading, Erosion Control, Tree, and Utility Plan (Sheet 3 of 5) which includes a Tree Table showing multi-stem trees none of which are greater than 12 inches in diameter, consistent with this standard.

- 2. Identification of a program to save existing trees or mitigate tree removal over 12 inches in caliper. Mitigation must follow the replacement guidelines of Section 18.790.060D, in accordance with the following standards and shall be exclusive of trees required by other development code provisions for landscaping, streets and parking lots:**
  - a. Retention of less than 25% of existing trees over 12 inches in caliper requires a mitigation program in accordance with Section 18.790.060D of no net loss of trees;**
  - b. Retention of from 25% to 50% of existing trees over 12 inches in caliper requires that two-thirds of the trees to be removed be mitigated in accordance with Section 18.790.060D;**
  - c. Retention of from 50% to 75% of existing trees over 12 inches in caliper requires that 50 percent of the trees to be removed be mitigated in accordance with Section 18.790.060D;**
  - d. Retention of 75% or greater of existing trees over 12 inches in caliper requires no mitigation.**

The applicant has submitted a Preliminary Grading, Erosion Control, Tree, and Utility Plan (Sheet 3 of 5) which includes a Tree Table showing multi-stem trees none of which are greater than 12 inches in diameter. Therefore, no mitigation is required.

**3. Identification of all trees which are proposed to be removed;**

The applicant has submitted a Preliminary Grading, Erosion Control, Tree, and Utility Plan (Sheet 3 of 5) which shows one tree (#10125) on the subject site proposed for removal, consistent with this standard.

**4. A protection program defining standards and methods that will be used by the applicant to protect trees during and after construction.**

The applicant has submitted a Preliminary Grading, Erosion Control, Tree, and Utility Plan (Sheet 3 of 5) which includes Tree Protection Notes, consistent with this standard.

**Subsequent removal of a tree. Any tree preserved or retained in accordance with this section may thereafter be removed only for the reasons set out in a tree plan, in accordance with Section 18.790.030, or as a condition of approval for a conditional use, and shall not be subject to removal under any other section of this chapter. The property owner shall record a deed restriction as a condition of approval of any development permit affected by this section to the effect that such tree may be removed only if the tree dies or is hazardous according to a certified arborist. The deed restriction may be removed or will be considered invalid if a tree preserved in accordance with this section should either die or be removed as a hazardous tree. The form of this deed restriction shall be subject to approval by the Director.**

A condition of approval will ensure that this standard is met.

**FINDING:** The applicant submitted a tree removal plan that has fully met the applicable standards. To ensure these standards are met, the following conditions of approval shall be imposed.

**CONDITIONS:**

- ◆ The applicant shall position fencing as directed by the project arborist to protect the trees to be retained. The applicant shall allow access by the City Arborist for the purpose of monitoring and inspection of the tree protection to verify that the tree protection measures are performing adequately. Failure to follow the plan, or maintain tree protection fencing in the designated locations shall be grounds for immediate suspension of work on the site until remediation measures and/or civil citations can be processed.
- ◆ The applicant/owner shall record deed restrictions to the effect that any existing tree greater than 6" diameter may be removed only if the tree dies or is hazardous according to a certified arborist. The deed restriction may be removed or will be considered invalid if a tree preserved in accordance with this decision should either die or be removed as a hazardous tree.

**Visual Clearance Areas (18.795)**

Chapter 18.795 requires that a clear vision area shall be maintained on the corners of all property adjacent to intersecting right-of-ways or the intersection of a public street and a private driveway. A clear vision area shall contain no vehicle, hedge, planting, fence, wall structure, or temporary or permanent obstruction exceeding three (3) feet in height. The code provides that obstructions that may be located in this area shall be visually clear between three (3) and eight (8) feet in height (8) (trees may be placed within this area provided that all branches below eight (8) feet are removed). A visual clearance area is the triangular area formed by measuring a 30-foot distance along the street right-of-way and the driveway, and then connecting these two (2), 30-foot distance points with a straight line.

**18.795.030.A states that except within the CBD zoning district a visual clearance area shall be maintained on the corners of all property adjacent to the intersection of two streets, a street and a railroad, or a driveway providing access to a public or private street.**

**FINDING:** The subject property is located in the CBD zone and is, therefore, exempt from the visual clearance criteria.

## **C. SPECIFIC SITE DEVELOPMENT REVIEW APPROVAL CRITERIA**

New developments and major modifications. Site development review for a new development or major modification of an approved plan or existing development, as defined in Section 18.360.050A, shall be processed by means of a Type II procedure, as governed by Section 18.390.040, using approval criteria contained in Section 18.360.090.

The existing access for both adjoining properties (Tax Lots 1100 and 1101) is ingress and egress on separate accessways onto SW Main Street. However, the existing access spacing standard on Main is not met but can be mitigated by the one-way, joint access design which is required by the City in this case. Staff finds the proposal is a major modification because the proposed one-way access utilizing the adjacent property represents a change in the type of access ways where off-site traffic would be affected.

**Section 18.360.090. The Director shall make a finding with respect to each of the following 15 criteria when approving, approving with conditions, or denying an application:**

The proposal contains no elements related to the provisions of the following and are, therefore, found to be inapplicable as approval standards:

18.360.090.A.3 (Multi Family Exterior Elevations); 18.360.090.A.5 (Privacy and Noise: Multi-family or Group Living Uses); 18.360.090.A.6 (Private Outdoor Areas: Multi-family Use); 18.360.090.A.7 (Shared Outdoor Recreation Areas: Multi-family Use); and 18.360.090.A.9 (Demarcation of Spaces).

The following sections were discussed elsewhere in this decision and, therefore, will not be addressed in this section:

18.360.090.A.1 (Chapter 18.810 Street and Utility Standards); 18.360.090.A.4 (Buffering, Screening and Compatibility Between Adjoining Uses); 18.360.090.A.8 (100-year floodplain); 18.360.090.A.12 (Landscaping); 18.360.090.A.13 (Drainage); and 18.360.090.A.14 (Provision for the Disabled); and 18.360.090.A.15 (Provision for Underlying Zone Apply).

**18.360.090.A.2 Relationship to the Natural and Physical Environment:**

**Buildings shall be: located to preserve existing trees, topography and natural drainage where possible based upon existing site conditions; located in areas not subject to ground slumping or sliding; located to provide adequate distance between adjoining buildings for adequate light, air circulation, and fire-fighting; and oriented with consideration for sun and wind. Trees shall be preserved to the extent possible. Replacement of trees is subject to the requirements of Chapter 18.790, Tree Removal.**

The subject building is pre-existing and therefore is not subject to this locational standard. The applicant's plans show preservation of two of three existing trees both of which are located in the vegetated corridor. The third tree proposed for removal is located in the area identified for parking. Therefore, the trees are preserved to the extent possible for the proposed development.

**18.360.090.A.11 Public Transit:**

**Provisions within the plan shall be included for providing for transit if the development proposal is adjacent to an existing or proposed transit route; the requirements for transit facilities shall be based on: the location of other transit facilities in the area; and the size and type of the proposal. The following facilities may be required after City and Tri-Met review: bus stop shelters; turnouts for buses; and connecting paths to the shelters.**

Tri-Met Bus lines 12 and 45 are adjacent to the subject site on SW Main Street. A east bound bus stop is adjacent to the subject property and the westbound bus stop is within 170 feet. Therefore, the site is adequately served by existing service.

FINDING: Based on the findings above, the fifteen site development approval criteria are met.

## **D. STREET AND UTILITY IMPROVEMENTS STANDARDS**

**Street And Utility Improvements Standards (Section 18.810)**

**Chapter 18.810 provides construction standards for the implementation of public and private facilities and utilities such as streets, sewers, and drainage. The applicable standards are addressed below:**

**Streets:**

**Improvements:**

Section 18.810.030.A.1 states that streets within a development and streets adjacent shall be improved in accordance with the TDC standards.

Section 18.810.030.A.2 states that any new street or additional street width planned as a portion of an existing street shall be dedicated and improved in accordance with the TDC.

This site lies adjacent to SW Main Street, which is classified as a collector on the City of Tigard Transportation Plan Map. The street is fully improved; additional public improvements are not required.

**Future Street Plan and Extension of Streets:** Section 18.810.030.F states that a future street plan shall be filed which shows the pattern of existing and proposed future streets from the boundaries of the proposed land division. This section also states that where it is necessary to give access or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary lines of the tract to be developed and a barricade shall be constructed at the end of the street. These street stubs to adjoining properties are not considered to be cul-de-sacs since they are intended to continue as through streets at such time as the adjoining property is developed. A barricade shall be constructed at the end of the street by the property owners which shall not be removed until authorized by the City Engineer, the cost of which shall be included in the street construction cost. Temporary hammerhead turnouts or temporary cul-de-sac bulbs shall be constructed for stub streets in excess of 150 feet in length.

The property is bounded to the east and west by commercial development and to the east by floodplain. There is no opportunity or need for street extensions through this property. However, a private access is proposed with the adjoining property to the west.

**Block Designs -** Section 18.810.040.A states that the length, width and shape of blocks shall be designed with due regard to providing adequate building sites for the use contemplated, consideration of needs for convenient access, circulation, control and safety of street traffic and recognition of limitations and opportunities of topography.

**Block Sizes:** Section 18.810.040.B.1 states that the perimeter of blocks formed by streets shall not exceed 1,800 feet measured along the right-of-way line except:

- ♦ Where street location is precluded by natural topography, wetlands or other bodies of water or, pre-existing development or;
- ♦ For blocks adjacent to arterial streets, limited access highways, major collectors or railroads.
- ♦ For non-residential blocks in which internal public circulation provides equivalent access.

No new streets are proposed. The subject site is an existing lot of record. Therefore, this standard does not apply.

Section 18.810.040.B.2 also states that bicycle and pedestrian connections on public easements or right-of-ways shall be provided when full street connection is not possible. Spacing between connections shall be no more than 330 feet, except where precluded by environmental or topographical constraints, existing development patterns, or strict adherence to other standards in the code.

The existing lot of record fronts onto SW Main Street which is not listed as a bike route on the Transportation System Plan. No new streets are proposed. Therefore, this standard does not apply.

**Lots - Size and Shape:** Section 18.810.060(A) prohibits lot depth from being more than 2.5 times the average lot width, unless the parcel is less than 1.5 times the minimum lot size of the applicable zoning district.

The subject lot is an existing lot of record. Therefore, this standard does not apply.

**Lot Frontage:** Section 18.810.060(B) requires that lots have at least 25 feet of frontage on public or private streets, other than an alley. In the case of a land partition, 18.420.050.A.4.c applies, which requires a parcel to either have a minimum 15-foot frontage or a minimum 15-foot wide recorded access easement. In cases where the lot is for an attached single-family dwelling unit, the frontage shall be at least 15 feet.

The subject lot is an existing lot of record with a frontage on SW Main Street of approximately 123 feet and a lot depth of approximately 240 feet, consistent with the lot frontage standard.

**Sidewalks:** Section 18.810.070.A requires that sidewalks be constructed to meet City design standards and be located on both sides of arterial, collector and local residential streets. Private streets and industrial streets shall have sidewalks on at least one side.

The Main Street frontage is currently improved with a sidewalk.

**Sewers Required:** Section 18.810.090.A requires that sanitary sewer be installed to serve each new development and to connect developments to existing mains in accordance with the provisions set forth in Design and Construction Standards for Sanitary and Surface Water Management (as adopted by Clean Water Services in 1996 and including any future revisions or amendments) and the adopted policies of the comprehensive plan.

Existing sewer service will remain.

**Storm Drainage:**

**General Provisions:** Section 18.810.100.A requires developers to make adequate provisions for storm water and flood water runoff.

**Accommodation of Upstream Drainage:** Section 18.810.100.C states that a culvert or other drainage facility shall be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the development. The City Engineer shall approve the necessary size of the facility, based on the provisions of Design and Construction Standards for Sanitary and Surface Water Management (as adopted by Clean Water Services in 2000 and including any future revisions or amendments).

There are no upstream drainageways that impact this development.

**Effect on Downstream Drainage:**

Section 18.810.100.D states that where it is anticipated by the City Engineer that the additional runoff resulting from the development will overload an existing drainage facility, the Director and Engineer shall withhold approval of the development until provisions have been made for improvement of the potential condition or until provisions have been made for storage of additional runoff caused by the development in accordance with the Design and Construction Standards for Sanitary and Surface Water Management (as adopted by Clean Water Services in 2000 and including any future revisions or amendments).

In 1997, Clean Water Services (CWS) completed a basin study of Fanno Creek and adopted the Fanno Creek Watershed Management Plan. Section V of that plan includes a recommendation that local governments institute a stormwater detention/effective impervious area reduction program resulting in no net increase in storm peak flows up to the 25-year event. The City will require that all new developments resulting in an increase of impervious surfaces provide onsite detention facilities, unless the development is located adjacent to Fanno Creek. For those developments adjacent to Fanno Creek, the storm water runoff will be permitted to discharge without detention.

Runoff will be collected by a private system, treated and then directly discharged to Fanno Creek. Detention is not required.

**Bikeways and Pedestrian Pathways:**

**Bikeway Extension:** Section 18.810.110.A states that developments adjoining proposed bikeways identified on the City's adopted pedestrian/bikeway plan shall include provisions for the future extension of such bikeways through the dedication of easements or right-of-way.

The City's adopted Bicycle Master Plan (Figure 6-2, Transportation System Plan) shows a proposed bicycle route (RTP Regional Corridor Off-Street Regional Multi-Use Path) along the Fanno Creek corridor. Fanno Creek crosses through the northeast portion of the property for a length of approximately 130 feet. An existing bike and pedestrian path exists just east of the subject property adjacent to Fanno Creek on the A-Boy (Dolan) site. The path continues southwest across a bridge just south of the subject property. The existing pedestrian and bicycle path is consistent with Fanno Creek alignment of the City's Bicycle Master Plan. No extension of the pedestrian and bicycle path is necessary at this location.

**Storm Water Quality:**

**The City has agreed to enforce Surface Water Management (SWM) regulations established by Clean Water Services (CWS) Design and Construction Standards (adopted by Resolution and Order No. 07-20) which require the construction of on-site water quality facilities. The facilities shall be designed to remove 65 percent of the phosphorus contained in 100 percent of the storm water runoff generated from newly created impervious surfaces. In addition, a maintenance plan shall be submitted indicating the frequency and method to be used in keeping the facility maintained through the year.**

The applicant shall submit plans and calculations for a water quality facility that will meet the intent of the CWS Design Standards. In addition, the applicant shall submit a maintenance plan for the facility that must be reviewed and approved by the City prior to construction.

To ensure compliance with Clean Water Services design and construction standards, the applicant shall employ the design engineer responsible for the design and specifications of the private water quality facility to perform construction and visual observation of the water quality facility for compliance with the design and specifications. These inspections shall be made at significant stages throughout the project and at completion of the construction. Prior to final building inspection, the design engineer shall provide the City of Tigard (Inspection Supervisor) with written confirmation that the water quality facility is in compliance with the design and specifications.

**ADDITIONAL CITY CONCERNS:**

Two floodway elevations are shown on the plans. Those labeled "FIS Data" are correct and are in accordance with *The Fanno Creek Watershed Flood Insurance Restudy Final 100-Year Floodplain, Zero Rise Floodway and Base Flood Elevations Map- 2000*. The floodplain across the site is entirely floodway.

**Site Permit Required:**

The applicant is required to obtain a Site Permit from the Building Division to cover all on-site private utility installations (water, sewer, storm, etc.) and driveway construction.

**E. IMPACT STUDY**

**Section 18.360.090.A.1 states, the Director shall make a finding with respect to the following criteria when approving, approving with conditions or denying an application: Compliance with all of the applicable requirements of this title including Chapter 18.810, Street and Utility Standards.**

**Section 18.390.040 states that the applicant shall provide an impact study to quantify the effect of development on public facilities and services. For each public facility system and type of impact, the study shall propose improvements necessary to meet City standards, and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users. In situations where the Community Development Code requires the dedication of real property interests, the applicant shall either specifically concur with a requirement for public right-of-way dedication, or provide evidence that supports that the real property dedication is not roughly proportional to the projected impacts of the development.**

The applicant has provided an impact study addressing the project's impacts on public systems. The Brew Pub is an existing development. The proposal is for paving of a parking lot and access way. No dedication or improvement to SW Main Street is required. Storm water runoff from the proposed new paving is addressed in the applicant's plan to satisfy the conditions of the applicant's CWS Service Provider Letter (CWS File Number 08-000812). The applicant has been conditioned in this decision to provide the City of Tigard (Inspection Supervisor) with written confirmation that the water quality facility is in compliance with the CWS design and specifications.

The Transportation Impact Fee (TIF) is a mitigation measure required for new development and will be paid at the time of building permits. Based on Washington County figures, TIF's are expected to recapture 20 percent of the traffic impact of new development on the Collector and Arterial Street system. Since this is an existing development, no TIF will be charged.

## **SECTION VII. OTHER STAFF COMMENTS**

**The City Police Department** has reviewed the proposal and has no objections to it.

**The City of Tigard Arborist** has reviewed the proposal and commented that the application materials do not satisfactorily address all the applicable code provisions. The arborist's detailed comments have been incorporated above in the Landscaping and Screening and Tree Removal sections of this decision.

## **SECTION VIII. AGENCY COMMENTS**

**Clean Water Services (CWS)** has reviewed the proposal and provided a general comment letter dated September 29, 2008, addressing sanitary sewer, storm drainage and water quality, sensitive areas, and erosion control issues. These issues are addressed within the body of the application and reviewed in this decision under the applicable standards of the Street and Utility Improvement section. In addition, CWS issued a Service Provider Letter (SPL) for the project (CWS File Number 08-000812 dated June 30, 2008) with Special Conditions 11-17, and Conditions 18-21 that must be incorporated in the Final Plans, and requiring that the riprap outfall in the buffer zone not exceed 100 square feet in area.

**Tualatin Valley Fire and Rescue (TVF&R)** was notified of the proposal but did not comment.

## **SECTION IX. PROCEDURE AND APPEAL INFORMATION**

### Notice:

Notice was posted at City Hall and mailed to:

- The applicant and owners
- Owner of record within the required distance
- Affected government agencies

### **Final Decision:**

**THIS DECISION IS FINAL ON DECEMBER 12, 2008 AND BECOMES  
EFFECTIVE ON DECEMBER 30, 2008 UNLESS AN APPEAL IS FILED.**

### Appeal:

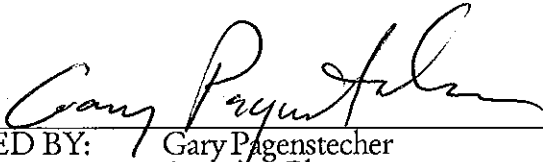
The decision of the Director (Type II Procedure) or Review Authority (Type II Administrative Appeal or Type III Procedure) is final for purposes of appeal on the date that it is mailed. Any party with standing as provided in Section 18.390.040.G.1. may appeal this decision in accordance with Section 18.390.040.G.2. of the Tigard Community Development Code which provides that a written appeal together with the required fee shall be filed with the Director within ten (10) business days of the date the notice of the decision was mailed. The appeal fee schedule and forms are available from the Planning Division of Tigard City Hall, 13125 SW Hall Boulevard, Tigard, Oregon 97223.

Unless the applicant is the appellant, the hearing on an appeal from the Director's Decision shall be confined to the specific issues identified in the written comments submitted by the parties during the comment period. Additional evidence concerning issues properly raised in the Notice of Appeal may be submitted by any party during the appeal hearing, subject to any additional rules of procedure that may be adopted from time to time by the appellate body.

THE DEADLINE FOR FILING AN APPEAL IS AT 5:00 PM ON DECEMBER 29, 2008.

Questions:

If you have any questions, please call the City of Tigard Planning Division, Tigard City Hall, 13125 SW Hall Boulevard, Tigard, Oregon at (503) 639-4171.



PREPARED BY: Gary Pagenstecher  
Associate Planner

December 11, 2008  
DATE




REVIEWED BY: Dick Bewersdorf  
Planning Manager

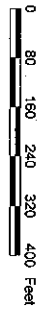
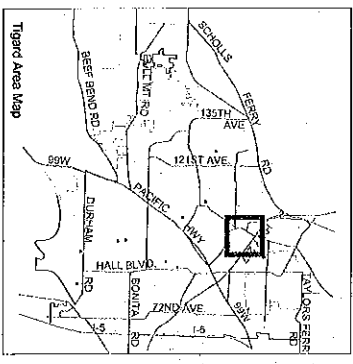
December 11, 2008  
DATE

i:\curpln\gary\site development review\sdr2008-00004 (max's brew pub\sdr2008-00004 decision.doc

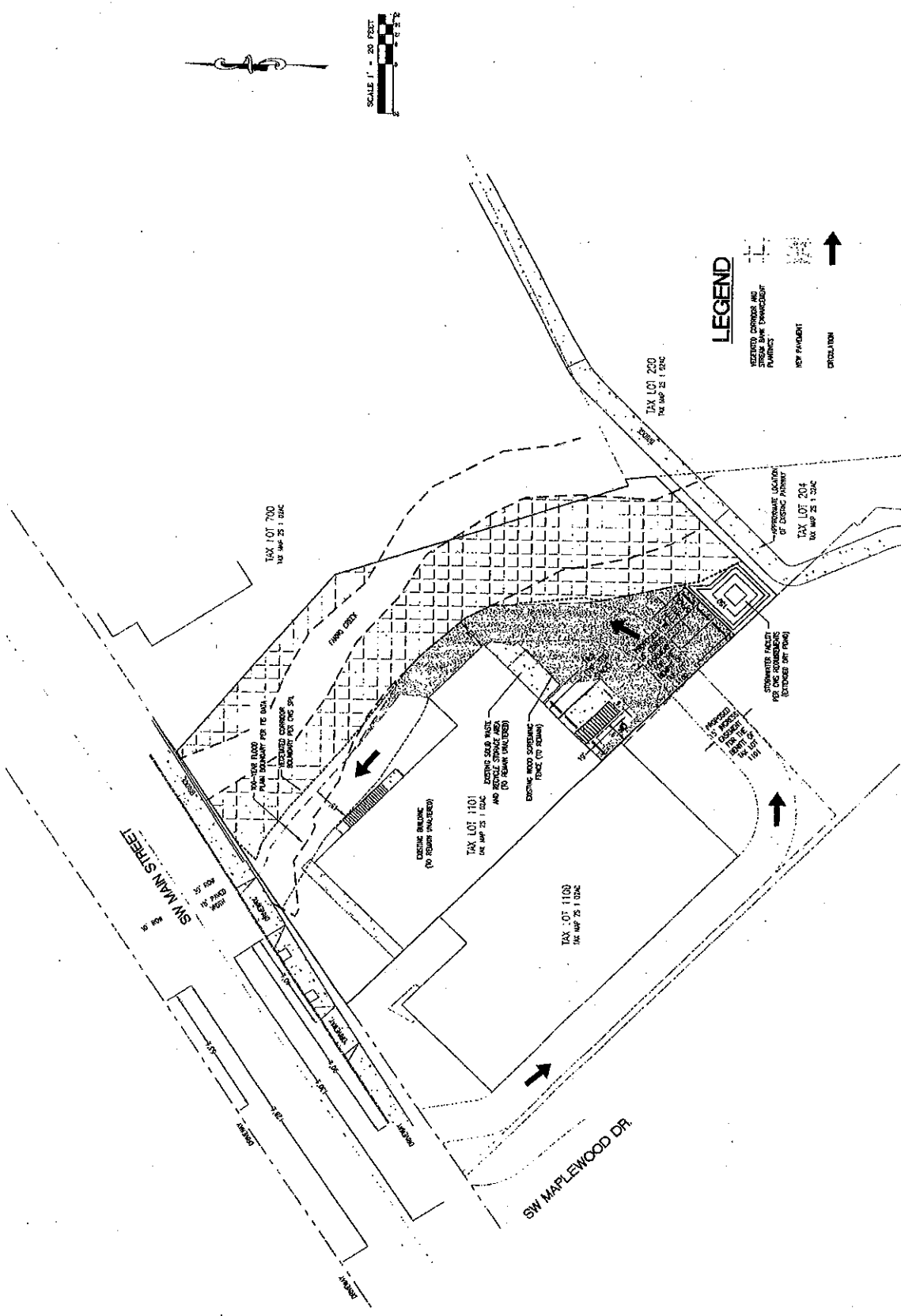
CITY of TIGARD  
 GEOGRAPHIC INFORMATION SYSTEM  
**VICINITY MAP**

SDR2008-00004  
 MAXX'S BREW PUB

LEGEND:  
 SUBJECT SITE



Information on this map is for general location only and should be verified with the Development Services Division, 13125 SW Hall Blvd, Tigard, OR 97223, (503) 639-4171, <http://www.ci.tigard.or.us>



**LEGEND**

REFLECTED LOTTERIES AND PLANNING

NEW PAVEMENT

CIRCULATION

<b>REVISIONS</b>     	<b>PRELIMINARY SITE, CIRCULATION, AND LANDSCAPE PLAN</b>		<b>ENGINEERING • PLANNING</b> 10000 N. W. 11th St. SUITE 200 GARDEN DR. SUITE 200 SEASIDE, OR 97138 PHONE (503) 734-2800 FAX (503) 734-2800		<b>AKS</b> ARCHITECTURE & INTERIOR DESIGN		<b>SURVEYING • FORESTRY</b> Offices Located in: SEASIDE, OR 97138 WASHINGTON, DC 20004 WASHINGTON, DC 20004 WASHINGTON, DC 20004		<b>PREPARED FOR</b> TIGARD 100 LOT NUMBER 100 TIGARD, OR 97138		<b>12562 SW MAIN STREET</b> OREGON WASHINGTON COUNTY TAX MAP 20-1-1042C		DATE: 8-16-05 JOB NUMBER: 2049 SHEET: 4 OF 5	
	<b>PROFESSIONAL SEAL</b> REGISTERED PROFESSIONAL ENGINEER		<b>REGISTERED PROFESSIONAL ARCHITECT</b> REGISTERED PROFESSIONAL LANDSCAPE ARCHITECT		<b>REGISTERED PROFESSIONAL FORESTRY</b> REGISTERED PROFESSIONAL SURVEYOR		<b>REGISTERED PROFESSIONAL PLANNING</b> REGISTERED PROFESSIONAL CIVIL ENGINEER		<b>REGISTERED PROFESSIONAL ELECTRICAL ENGINEER</b> REGISTERED PROFESSIONAL MECHANICAL ENGINEER		<b>REGISTERED PROFESSIONAL CHEMICAL ENGINEER</b> REGISTERED PROFESSIONAL INDUSTRIAL ENGINEER		<b>REGISTERED PROFESSIONAL METALLURGICAL ENGINEER</b> REGISTERED PROFESSIONAL NUCLEAR ENGINEER	