

ANALYSIS AND FINDINGS

November 18, 2021

Case #:	VAR 21-0003
Project:	Plambeck Gardens
Location:	23500 & 23550 SW Boones Ferry Rd; Tax ID: 2S135D000303
Applicant:	Jilian Saurage Felton, Community Partners for Affordable Housing
Representative:	Kayla Zander, Carleton Hart Architecture

I. INTRODUCTION

The issue before the Planning Commission is consideration of a Variance to the maximum structure height standard in the High Density Residential zone and to the minimum parking requirements for multi-family dwellings in complexes with private internal driveways as they relate to a future affordable housing development on property owned by Community Partners for Affordable Housing (CPAH).

The subject site is approximately 4.68-acres, is located at 23500 & 23550 SW Boones Ferry Road (Washington County Tax Map: 2S135D Lot 303), and is zoned High Density Residential (RH).

A. Applicable Criteria

The following Chapters of the Tualatin Development Code (TDC) are applicable to the subject proposal:

- TDC 32: Procedures
- TDC 33.120(6): Variance
- TDC 43: High Density Residential (RH) Zone
- TDC 73C: Parking Standards

B. Project Description

The applicant, Carleton Hart Architecture, on behalf of Community Partners for Affordable Housing, requests approval to maximum structure height standards in the High Density Residential zone; and to the minimum parking requirements for multi-family dwellings in complexes with private internal driveways. The request would allow a four-story development (up to 53.5 feet), in lieu of the maximum building height of 35 feet. The applicant is also seeking relief to parking standards by 18 stalls. Following the Variance decision, the proposed multifamily development would be subject to a future Type III Architectural Review decided by the Architectural Review Board.

C. Previous Land Use Actions

- ANN 20-0004 – Annexation by Ordinance 1456-21

E. Site Description and Surrounding Uses

The subject site is a 4.68 acre lot that is zoned High Density Residential (RH) and is located in the Basalt Creek planning area, near the Horizon Community Church campus. The site currently consists of two single family homes with several small structures scattered around the site. The proposed Plambeck Gardens project would create a 116-unit affordable housing development with units ranging in size from 1-bedroom to 4-bedroom and several support spaces for residents, including laundry rooms, lounges, and a meeting room. The future project has received funding through the Washington County Metro Affordable Housing Bond Program.

Surrounding uses indicate a range of neighborhood uses that include:

North: Institutional (IN)

- Horizon Community Church and High School Campus

South: Institutional (IN), Neighborhood Commercial (CN), Residential Medium-Low Density (RML)

- Vacant Land
- Future Autumn Rise Subdivision (CUP 21-0011 and SB 21-0001)

West: Unincorporated Washington County

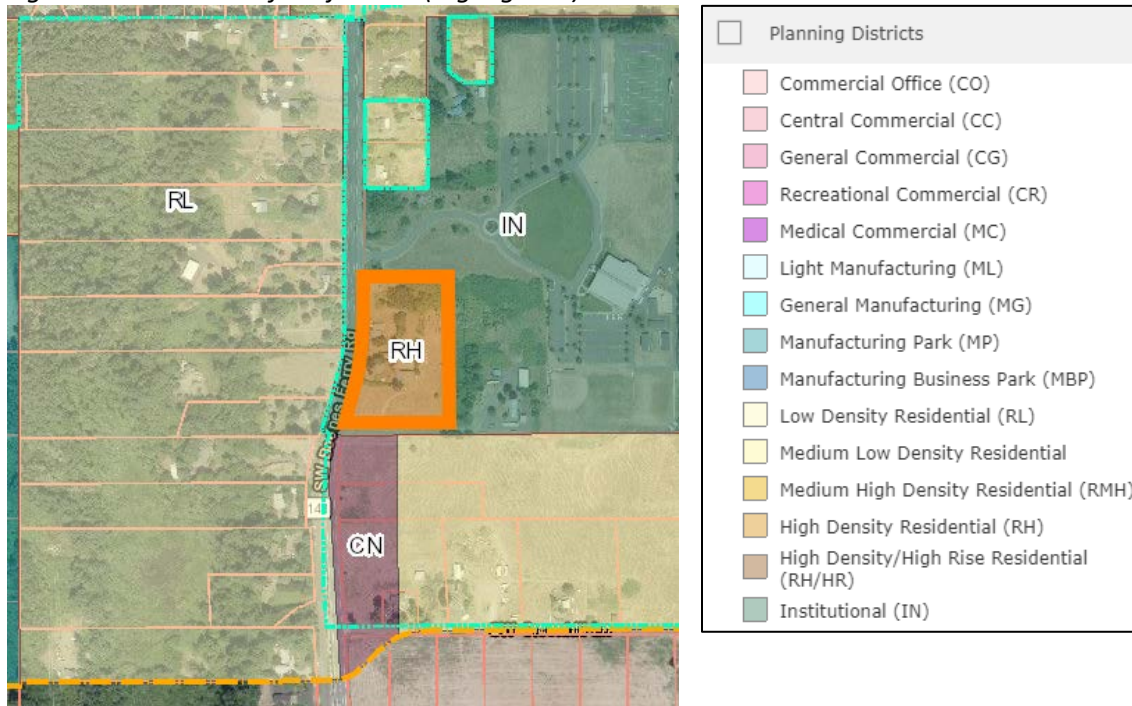
Tualatin Urban Planning Area, designated Low-Density Residential (RL)

- SW Boones Ferry Road
- Single-family homes on forested land

East: Residential Medium-Low Density (RML)

- Vacant Land
- Future Autumn Rise Subdivision (CUP 21-0011 and SB 21-0001)

Figure 1: Aerial view of subject site (highlighted)



F. Public Comments

Staff received three comments from the public (Exhibit H) and two agency comments (Exhibit F and G) as part of the notice of hearing.

- *Cathy Holland*: Voiced concern over existing transit service and parking variance request.
- *Dave Liberte*: Is representing the Lucinis and asked for a number of clarifications pertaining to development. Staff would like to clarify that the details requested may not have a direct impact on the Variance approval criteria found in TDC 33.120(6).
- *Mary Lyn Westenhaver*: Requested clarification on when the meeting link and materials would be available.

G. Exhibit List

- A: Applicant's Narrative
- B: Plan Set
- C: Supporting Documents
- D: Geotechnical Report
- E: Parking Study
- F: Memorandum from Clean Water Services
- G: Memorandum from Trimet
- H: Notice of Application
- I: Public Comments

II. FINDINGS

The Planning Division findings reference the TDC, unless otherwise noted.

Chapter 32: Procedures

Section 32.010 – Purpose and Applicability.

[...]

(2) Applicability of Review Procedures. All land use and development permit applications and decisions, will be made by using the procedures contained in this Chapter. The procedure “type” assigned to each application governs the decision-making process for that permit or application. There are five types of permit/application procedures as described in subsections (a) through (e) below. Table 32-1 lists the City’s land use and development applications and corresponding review procedure(s).

[...]

(c) Type III Procedure (Quasi-Judicial Review – Public Hearing). Type III procedure is used when the standards and criteria require discretion, interpretation, or policy or legal judgment. Quasi-Judicial decisions involve discretion but implement established policy. Type III decisions are made by the Planning Commission or Architectural Review Board and require public notice and a public hearing, with an opportunity for appeal to the City Council.

[...]

(3) Determination of Review Type. Unless specified in Table 32-1, the City Manager will determine whether a permit or application is processed as Type I, II, III, IV-A or IV-B based on the descriptions above. Questions regarding the appropriate procedure will be resolved in favor of the review type providing the widest notice and opportunity to participate. An applicant may choose to elevate a Type I or II application to a higher numbered review type, provided the applicant pays the appropriate fee for the selected review type.

Table 32-1 – Applications Types and Review Procedures

Application / Action	Procedure Type	Decision Body*	Appeal Body*	Pre-Application Conference Required	Neighborhood/Developer Mtg Required	Applicable Code Chapter
[...]						
Variance	III	PC	CC	Yes	Yes	TDC 33.120
[...]						
* City Council (CC); Planning Commission (PC); Architectural Review Board (ARB); City Manager or designee (CM); Land Use Board of Appeals (LUBA).						

Finding:

The requested Variance application is classified as Type III Procedure Types according to Table 32-1. They are being processed according to the applicable code for Type III procedures. This standard is met.

Section 32.020 – Procedures for Review of Multiple Applications.

Multiple applications processed individually require the filing of separate applications for each land use action. Each application will be separately reviewed according to the applicable procedure type and processed sequentially as follows:

(1) Applications with the highest numbered procedure type must be processed first;

(2) Applications specifically referenced elsewhere in the TDC as to the particular order must be processed in that order; and

(3) Where one land use application is dependent on the approval of another land use application, the land use application upon which the other is dependent must be processed first (e.g., a conditional use permit is subject to prior approval before architectural review).

Finding:

The proposed development will also require approval of an Architectural Review (Type III). In this case, the approval of the Architectural Review is dependent upon the approval of the variance. VAR 21-0003 is therefore being processed before the Architectural Review, in accordance with 32.020(3). With recommended Condition of Approval VAR -1, this standard is met.

Section 32.030 – Time to Process Applications.

(1) Time Limit - 120-day Rule. The City must take final action on all Type II, Type III, and Type IV-A land use applications, as provided by ORS 227.178, including resolution of all local appeals, within 120 days after the application has been deemed complete under TDC 32.160, unless the applicant provides written request or consent to an extension in compliance with ORS 227.178. (Note: The 120-day rule does not apply to Type IV-B (Legislative Land Use) decisions.)

[...]

Finding:

The application was deemed complete on October 11, 2021. The 120th day will be February 8, 2022. The hearing for VAR 21-0003 is scheduled November 18, 2021. The final action will take place within the 120 days unless the applicant requests an extension in compliance with ORS 227.178. This standard is met.

Section 32.110 – Pre-Application Conference.

(1) Purpose of Pre-Application Conferences. Pre-application conferences are intended to familiarize applicants with the requirements of the TDC; to provide applicants with an opportunity discuss proposed projects in detail with City staff; and to identify approval criteria, standards, and procedures prior to filing a land use application. The pre-application conference is intended to be a tool to assist applicants in navigating the land use process, but is not intended to be an exhaustive review that identifies or resolves all potential issues, and does not bind or preclude the City from enforcing any applicable regulations or from applying regulations in a manner differently than may have been indicated at the time of the pre-application conference.

(2) When Mandatory. Pre-application conferences are mandatory for all land use actions identified as requiring a pre-application conference in Table 32-1. An applicant may voluntarily request a pre-application conference for any land use action even if it is not required.

(3) Timing of Pre-Application Conference. A pre-application conference must be held with City staff before an applicant submits an application and before an applicant conducts a Neighborhood/Developer meeting.

(4) Application Requirements for Pre-Application Conference.

(a) Application Form. Pre-application conference requests must be made on forms provided by the City Manager.

(b) Submittal Requirements. Pre-application conference requests must include:

(i) A completed application form;

(ii) Payment of the application fee;

(iii) The information required, if any, for the specific pre-application conference sought; and

- (iv) Any additional information the applicant deems necessary to demonstrate the nature and scope of the proposal in sufficient detail to allow City staff to review and comment.**
- (5) Scheduling of Pre-Application Conference.** Upon receipt of a complete application, the City Manager will schedule the pre-application conference. The City Manager will coordinate the involvement of city departments, as appropriate, in the pre-application conference. Pre-application conferences are not open to the general public.
- (6) Validity Period for Mandatory Pre-Application Conferences; Follow-Up Conferences.** A follow-up conference is required for those mandatory pre-application conferences that have previously been held when:
 - (a) An application relating to the proposed development that was the subject of the pre-application conference has not been submitted within six (6) months of the pre-application conference;**
 - (b) The proposed use, layout, and/or design of the proposal have significantly changed; or**
 - (c) The owner and/or developer of a project changes after the pre-application conference and prior to application submittal.**

Finding:

A pre-application meeting is mandatory. The applicant participated in a pre-application meeting on July 28, 2021, approximately five weeks prior to submittal. These standards are met.

Section 32.120 – Neighborhood/Developer Meetings.

- (1) Purpose.** The purpose of this meeting is to provide a means for the applicant and surrounding property owners to meet to review a development proposal and identify issues regarding the proposal so they can be considered prior to the application submittal. The meeting is intended to allow the developer and neighbors to share information and concerns regarding the project. The applicant may consider whether to incorporate solutions to these issues prior to application submittal.
- (2) When Mandatory.** Neighborhood/developer meetings are mandatory for all land use actions identified in Table 32-1 as requiring a neighborhood/developer meeting. An applicant may voluntarily conduct a neighborhood/developer meeting even if it is not required and may conduct more than one neighborhood/developer meeting at their election.
- (3) Timing.** A neighborhood/developer meeting must be held after a pre-application meeting with City staff, but before submittal of an application.
- (4) Time and Location.** Required neighborhood/developer meetings must be held within the city limits of the City of Tualatin at the following times:
 - (a) If scheduled on a weekday, the meeting must begin no earlier than 6:00 p.m.**
 - (b) If scheduled on a weekend, the meeting must begin between 10:00 a.m. and 6:00 p.m.**
- (5) Notice Requirements.**
 - (a) The applicant must provide notice of the meeting at least 14 calendar days and no more than 28 calendar days before the meeting. The notice must be by first class mail providing the date, time, and location of the meeting, as well as a brief description of the proposal and its location. The applicant must keep a copy of the notice to be submitted with their land use application.**
 - (b) The applicant must mail notice of a neighborhood/developer meeting to the following persons:**
 - (i) All property owners within 1,000 feet measured from the boundaries of the subject property;**

(ii) All property owners within a platted residential subdivision that is located within 1,000 feet of the boundaries of the subject property. The notice area includes the entire subdivision and not just those lots within 1,000 feet. If the residential subdivision is one of two or more individually platted phases sharing a single subdivision name, the notice area need not include the additional phases; and

(iii) All designated representatives of recognized Citizen Involvement Organizations as established in TMC Chapter 11-9.

(c) The City will provide the applicant with labels for mailing for a fee.

(d) Failure of a property owner to receive notice does not invalidate the neighborhood/developer meeting proceedings.

(6) Neighborhood/Developer Sign Posting Requirements. The applicant must provide and post on the subject property, at least 14 calendar days before the meeting. The sign must conform to the design and placement standards established by the City for signs notifying the public of land use actions in TDC 32.150.

(7) Neighborhood/Developer Meeting Requirements. The applicant must have a sign-in sheet for all attendees to provide their name, address, telephone number, and email address and keep a copy of the sign-in sheet to provide with their land use application. The applicant must prepare meeting notes identifying the persons attending, those commenting and the substance of the comments expressed, and the major points that were discussed. The applicant must keep a copy of the meeting notes for submittal with their land use application.

Finding:

The applicant has provided evidence that they held a Neighborhood/Developer meeting on August 11, 2021, approximately three weeks prior to application submittal. The applicant has provided documentation of sign posting and notification in compliance with this section, as well as a sign-in sheet and notes from the meeting. These standards are met.

Section 32.130 – Initiation of Applications.

(1) Type I, Type II, Type III, and Type IV-A Applications. Type I, Type II, Type III, and Type IV-A applications may be submitted by one or more of the following persons:

(a) The owner of the subject property;

(b) The contract purchaser of the subject property, when the application is accompanied by proof of the purchaser's status as such and by the seller's written consent;

(c) A lessee in possession of the property, when the application is accompanied by the owners' written consent; or

(d) The agent of any of the foregoing, when the application is duly authorized in writing by a person authorized to submit an application by paragraphs (a), (b) or (c) of this subsection, and accompanied by proof of the agent's authority.

[...]

Finding:

The application has been signed by an agent of Community Partners for Affordable Housing, who serves as the property owner's legal representative. This standard is met.

Section 32.140 – Application Submittal.

(1) Submittal Requirements. Land use applications must be submitted on forms provided by the City. A land use application may not be accepted in partial submittals. All information supplied on the

application form and accompanying the application must be complete and correct as to the applicable facts. Unless otherwise specified, all of the following must be submitted to initiate completeness review under TDC 32.160:

(a) A completed application form. The application form must contain, at a minimum, the following information:

- (i) The names and addresses of the applicant(s), the owner(s) of the subject property, and any authorized representative(s) thereof;**
- (ii) The address or location of the subject property and its assessor's map and tax lot number;**
- (iii) The size of the subject property;**
- (iv) The comprehensive plan designation and zoning of the subject property;**
- (v) The type of application(s);**
- (vi) A brief description of the proposal; and**
- (vii) Signatures of the applicant(s), owner(s) of the subject property, and/or the duly authorized representative(s) thereof authorizing the filing of the application(s).**

(b) A written statement addressing each applicable approval criterion and standard;

(c) Any additional information required under the TDC for the specific land use action sought;

(d) Payment of the applicable application fee(s) pursuant to the most recently adopted fee schedule;

(e) Recorded deed/land sales contract with legal description.

(f) A preliminary title report or other proof of ownership.

(g) For those applications requiring a neighborhood/developer meeting:

- (i) The mailing list for the notice;**
- (ii) A copy of the notice;**
- (iii) An affidavit of the mailing and posting;**
- (iv) The original sign-in sheet of participants; and**
- (v) The meeting notes described in TDC 32.120(7).**

(h) A statement as to whether any City-recognized Citizen Involvement Organizations (CIOs) whose boundaries include, or are adjacent to, the subject property were contacted in advance of filing the application and, if so, a summary of the contact. The summary must include the date when contact was made, the form of the contact and who it was with (e.g. phone conversation with neighborhood association chairperson, meeting with land use committee, presentation at neighborhood association meeting), and the result;

(i) Any additional information, as determined by the City Manager, that may be required by another provision, or for any other permit elsewhere, in the TDC, and any other information that may be required to adequately review and analyze the proposed development plan as to its conformance to the applicable criteria;

(2) Application Intake. Each application, when received, must be date-stamped with the date the application was received by the City, and designated with a receipt number and a notation of the staff person who received the application.

(3) Administrative Standards for Applications. The City Manager is authorized to establish administrative standards for application forms and submittals, including but not limited to plan details, information detail and specificity, number of copies, scale, and the form of submittal.

Finding:

The applicant submitted an application for VAR 21-0003 on September 2, 2021. The application was deemed complete on October 11, 2021. The general land use submittal requirements were included with this application. These standards are met.

Section 32.150 - Sign Posting.

(1) When Signs Posted. Signs in conformance with these standards must be posted as follows:

- (a) Signs providing notice of an upcoming neighborhood/developer meeting must be posted prior to a required neighborhood/developer meeting in accordance with Section 32.120(6); and**
- (b) Signs providing notice of a pending land use application must be posted after land use application has been submitted for Type II, III and IV-A applications.**

(2) Sign Design Requirements. The applicant must provide and post a sign(s) that conforms to the following standards:

- (a) Waterproof sign materials;**
- (b) Sign face must be no less than eighteen (18) inches by twenty-four (24) inches (18" x 24"); and**
- (c) Sign text must be at least two (2) inch font.**

(3) On-site Placement. The applicant must place one sign on their property along each public street frontage of the subject property. (Example: If a property adjoins four public streets, the applicant must place a sign at each of those public street frontages for a total of four signs). The applicant cannot place the sign within public right of way.

(4) Removal. If a sign providing notice of a pending land use application disappears prior to the final decision date of the subject land use application, the applicant must replace the sign within forty-eight (48) hours of discovery of the disappearance or of receipt of notice from the City of its disappearance, whichever occurs first. The applicant must remove the sign no later than fourteen (14) days after:

- (a) The meeting date, in the case of signs providing notice of an upcoming neighborhood/developer meeting; or**
- (b) The City makes a final decision on the subject land use application, in the case of signs providing notice of a pending land use application.**

Finding:

The applicant provided certification within Exhibit C that signs in conformance with this section were placed on site in accordance with this section. These standards are met.

Section 32.160 – Completeness Review.

(1) Duration. Except as otherwise provided under ORS 227.178, the City Manager must review an application for completeness within 30 days of its receipt.

(2) Considerations. Determination of completeness will be based upon receipt of the information required under TDC 32.140 and will not be based on opinions as to quality or accuracy. Applications that do not respond to relevant code requirements or standards can be deemed incomplete. A determination that an application is complete indicates only that the application is ready for review on its merits, not that the City will make a favorable decision on the application.

(3) Complete Applications. If an application is determined to be complete, review of the application will commence.

(4) Incomplete Applications. If an application is determined to be incomplete, the City Manager must provide written notice to the applicant identifying the specific information that is missing and allowing the applicant the opportunity to submit the missing information. An application which has been determined to be incomplete must be deemed complete for purposes of this section upon receipt of:

- (a) All of the missing information;**
- (b) Some of the missing information and written notice from the applicant that no other information will be provided; or**

- (c) Written notice from the applicant that none of the missing information will be provided.
- (5) Vesting. If an application was complete at the time it was first submitted, or if the applicant submits additional required information within 180 days of the date the application was first submitted, approval or denial of the application must be based upon the standards and criteria that were in effect at the time the application was first submitted.
- (6) Void Applications. An application is void if the application has been on file with the City for more than 180 days and the applicant has not provided the missing information or otherwise responded, as provided in subsection (4) of this section.
- [...]

Finding:

The applicant submitted an application for VAR 21-0003 on September 2, 2021. The application was deemed complete on October 11, 2021. These standards are met.

Section 32.230. - Type III Procedure (Quasi-Judicial Review—Public Hearing).

Type III decisions involve the use of discretion and judgment and are made by the Planning Commission or Architectural Review Board after a public hearing with an opportunity for appeal to the City Council. The decision body for each application type is specified in Table 32-1. A hearing under these procedures provides a forum to apply standards to a specific set of facts to determine whether the facts conform to the applicable criteria and the resulting determination will directly affect only a small number of identifiable persons.

(1) Submittal Requirements. Type III applications must include the submittal information required by TDC 32.140(1).

(2) Determination of Completeness. After receiving an application for filing, the City Manager will review the application will for completeness in accordance with TDC 32.160.

(3) Written Notice of Public Hearing—Type III. Once the application has been deemed complete, the City must mail by regular first class mail Notice of a Public Hearing to the following individuals and agencies no fewer than 20 days before the hearing.

(a) Recipients:

- (i) The applicant and, the owners of the subject property;
- (ii) All property owners within 1,000 feet measured from the boundaries of the subject property;
- (iii) All property owners within a platted residential subdivision that is located within 1,000 feet of the boundaries of the subject property. The notice area includes the entire subdivision and not just those lots within 1,000 feet. If the residential subdivision is one of two or more individually platted phases sharing a single subdivision name, the notice area need not include the additional phases;
- (iv) All recognized neighborhood associations within 1,000 feet from the boundaries of the subject property;
- (v) All designated representatives of recognized Citizen Involvement Organizations as established in TMC Chapter 11-9;
- (vi) Any person who submits a written request to receive a notice;
- (vii) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies, including but not limited to: school districts; fire district; where the project either adjoins or directly affects a state highway, the Oregon Department of Transportation; and where the project site would access a County road or otherwise be subject to review by the County, then the County; and

Clean Water Services; Tri Met; and, ODOT Rail Division and the railroad company if a railroad-highway grade crossing provides or will provide the only access to the subject property. The failure of another agency to respond with written comments on a pending application does not invalidate an action or permit approval made by the City under this Code;

(viii) Utility companies (as applicable); and,

(ix) Members of the decision body identified in Table 32-1.

(b) The Notice of a Public Hearing, at a minimum, must contain all of the following information:

(i) The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;

(ii) The street address if assigned, if no street address has been assigned then Township, Range, Section, Tax Lot or Tax Lot ID;

(iii) The type of application and a concise description of the nature of the land use action;

(iv) A list of the approval criteria by TDC section for the decision and other ordinances or regulations that apply to the application at issue;

(v) Brief summary of the local decision making process for the land use decision being made and a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;

(vi) The date, time and location of the hearing;

(vii) Disclosure statement indicating that if any person fails to address the relevant approval criteria with enough detail, he or she may not be able to appeal to the Land Use Board of Appeals on that issue, and that only comments on the relevant approval criteria are considered relevant evidence;

(viii) The name of a City representative to contact and the telephone number where additional information may be obtained; and

(ix) Statement that the application and all documents and evidence submitted to the City are in the public record and available for review, and that copies can be obtained at a reasonable cost from the City; and

(x) Statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost.

(c) Failure of a person or agency to receive a notice, does not invalidate any proceeding in connection with the application, provided the City can demonstrate by affidavit that required notice was given.

Finding:

After submittal and completeness review as required by this section, notice for the Type III hearing concerning VAR 21-0003 was mailed by city staff on October 13, 2021 and contained the information required by this section (Exhibit H). These standards are met.

(4) Conduct of the Hearing—Type III. The person chairing the hearing must follow the order of proceedings set forth below. These procedures are intended to provide all interested persons a reasonable opportunity to participate in the hearing process and to provide for a full and impartial hearing on the application before the body. Questions concerning the propriety or the conduct of a hearing will be addressed to the chair with a request for a ruling. Rulings from the chair must, to the extent possible, carry out the stated intention of these procedures. A ruling given by the chair on such question may be modified or reversed by a majority of those members of the decision body present

and eligible to vote on the application before the body. The procedures to be followed by the chair in the conduct of the hearing are as follows:

(a) At the commencement of the hearing, the person chairing the hearing must state to those in attendance all of the following information and instructions:

(i) The applicable substantive criteria;

(ii) That testimony, arguments and evidence must be directed toward the criteria described in paragraph (i) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision;

(iii) That failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the State Land Use Board of Appeals based on that issue;

(iv) At the conclusion of the initial evidentiary hearing, the decision body must deliberate and make a decision based on the facts and arguments in the public record; and

(v) Any participant may ask the decision body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing; if the decision body grants the request, it will schedule a date to continue the hearing as provided in TDC 32.230(4)(e), or leave the record open for additional written evidence or testimony as provided TDC 32.230(4)(f).

(b) The public is entitled to an impartial decision body as free from potential conflicts of interest and pre-hearing ex parte (outside the hearing) contacts as reasonably possible. Where questions related to ex parte contact are concerned, members of the decision body must follow the guidance for disclosure of ex parte contacts contained in ORS 227.180. Where a real conflict of interest arises, that member or members of the decision body must not participate in the hearing, except where state law provides otherwise. Where the appearance of a conflict of interest is likely, that member or members of the decision body must individually disclose their relationship to the applicant in the public hearing and state whether they are capable of rendering a fair and impartial decision. If they are unable to render a fair and impartial decision, they must be excused from the proceedings.

(c) Presenting and receiving evidence.

(i) The decision body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant, or personally derogatory testimony or evidence;

(ii) No oral testimony will be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing only as provided by this section; and

(iii) Members of the decision body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.

(d) The decision body, in making its decision, must consider only facts and arguments in the public hearing record; except that it may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous City decisions; case law; staff reports). Upon announcing its intention to take notice of such facts in its deliberations, it must allow persons who previously participated in the hearing to request the hearing record be reopened, as necessary, to present evidence concerning the newly presented facts.

(e) If the decision body decides to continue the hearing, the hearing must be continued to a date that is at least seven days after the date of the first evidentiary hearing (e.g., next regularly scheduled meeting). An opportunity must be provided at the continued hearing for persons to

present and respond to new written evidence and oral testimony. If new written evidence is submitted at the continued hearing, any person may request, before the conclusion of the hearing, that the record be left open for at least seven days, so that he or she can submit additional written evidence or arguments in response to the new written evidence. In the interest of time, after the close of the hearing, the decision body may limit additional testimony to arguments and not accept additional evidence.

(f) If the decision body leaves the record open for additional written testimony, the record must be left open for at least seven days after the hearing. Any participant may ask the decision body in writing for an opportunity to respond to new evidence (i.e., information not disclosed during the public hearing) submitted when the record was left open. If such a request is filed, the decision body must reopen the record, as follows:

(i) When the record is reopened to admit new evidence or arguments (testimony), any person may raise new issues that relate to that new evidence or testimony;

(ii) An extension of the hearing or record granted pursuant to this section is subject to the limitations of TDC 32.030, unless the applicant waives his or her right to a final decision being made within the required timeframe; and

(iii) If requested by the applicant, the decision body must grant the applicant at least seven days after the record is closed to all other persons to submit final written arguments, but not evidence, provided the applicant may expressly waive this right.

Finding:

The Tualatin Planning Commission will follow the hearing requirements set forth by this section in hearing VAR 21-0003. These standards will be met.

(5) Notice of Adoption of a Type III Decision. Notice of Adoption must be provided to the property owner, applicant, and any person who provided testimony at the hearing or in writing. The Type III Notice of Adoption must contain all of the following information:

(a) A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;

(b) The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area;

(c) A statement that a copy of the decision and complete case file, including findings, conclusions, and conditions of approval, if any, is available for review and how copies can be obtained;

(d) The date the decision becomes final, unless a request for appeal is submitted; and

(e) The notice must include an explanation of rights to appeal the decision to the City Council in accordance with TDC 32.310.

Finding:

A final decision and any appeal will follow the requirements of this section. These standards will be met.

Chapter 33: Applications and Approval Criteria

H. Section 33.120 Variances and Minor Variances

[...]

(2) Applicability. Variances may be granted to the requirements of the TDC as provided in this Section when it can be shown that, owing to special and unusual circumstances related to a specific piece of property, the literal interpretation of the TDC would cause an undue or unnecessary hardship.

- (a) Variances may be requested for the following:**
(i) Standards in TDC Chapters 40-69 and 71-73A through 73F.

Finding:

A Variance is proposed to the maximum structure height standard described in TDC Table 43-3 for development standards in the High Density Residential zone, and to the minimum parking requirements for multi-family dwellings in complexes with private internal driveways described in TDC 73C.100(1)(a)(iii). The proposed building heights and parking plan are shown in the applicant's site plans (Exhibit B). The Variance process is applicable per TDC 33.120(2)(a)(i).

[...]

FINDINGS FOR VARIANCE TO STRUCTURE HEIGHT IN TDC TABLE 43-3:

- (6) Approval Criteria for Granting a Variance that is not a Minor Variance or for a Wireless Communication Facility. A variance must not be granted unless it can be shown that criterion (a) is met and three of the four approval criteria (b)-(e) are met for non-sign requests:**
- (a) A hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same zone or vicinity and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control.**

Finding:

Table 43-3 presents that the maximum structure height in the RH zone be no greater than 35 feet. The variance request is to grant approval of a four-story development with a structure height up to 54 feet; or 19 feet over the standard.

Structure Height is defined in TDC 31.060 as: Height of a structure is the vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The reference datum must be elected by either of the following, whichever yields a greater height of building:

- (1) the elevation of the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than ten feet above lowest grade;*
- (2) An elevation ten feet higher than the lowest grade when the sidewalk or ground surface described in Item (1) above is more than ten feet above lowest grade. The height of a stepped or terraced building is the maximum height of any segment of the building.*

The applicant notes that there are several pressures pointing toward development constraints including existing site topography, soil suitability, site access requirements, and utility connection limitations. The current site conditions include an existing retaining wall along the west property line at Boones Ferry Road. The highest grading point on the site is located along the east property line. From the east property line, the grades slope to the northwest and southwest corners off the site. The slope at the northwest corner of the site is particularly steep. Additionally, there is a large hill in the northeast corner of the site. This existing topography on the north side of the site makes this portion of the property undevelopable for buildings.

In addition to the existing grading and steep slopes on the north side of the site, the development team conducted a geotechnical survey (Exhibit D), including 10 test pit locations dispersed throughout the site. To build a multi-family structure, the building will need a bearing pressure that requires the site to be over-excavated through the soft native soils near the surface to reach the stiff soil stratum below. The two test pits located on the north side of the site indicated that soft soils extend to a much greater depth in that area. These soft soils are unsuitable for the weight of buildings.

As development in the Basalt Creek Planning Area continues, extension of utility infrastructure and utility planning are ongoing and subject to City and Clean Water Services standards. The subject site is proposing a public sanitary sewer connection at the future Autumn Sunrise development, to the south. The below ground connection point for the sanitary sewer on Autumn Sunrise's property is at a higher elevation than most of the grade on the subject site, specifically along the north side and along the Boones Ferry Road frontage. By shifting the buildings away from the north and west sides of the site as shown in the proposed site plan (Exhibit B), the project can provide a gravity sanitary sewer connection for both residential buildings on site to address infrastructure standards.

The combination of soft soils, slopes, and sanitary sewer connection limitations creates a hardship that is beyond the owner's capacity to build on a portion of the site. Based on these site conditions, a site plan that would meet the maximum building height, as well as other applicable development standards, while allowing for the applicant to exercise their property right is not feasible. However, by reducing the overall footprint to two buildings and increasing the building height to 4-stories, keeps foundations away from the worst conditions while maintaining density standards and keeping development of the site viable. Consolidating the design to two buildings also provides more open space on site and provides a greater setback from surrounding property lines, which mitigate impacts to area properties. To achieve this, the project team is seeking a variance to increase the maximum structure height of the two residential buildings by 19 feet, to maintain a density of 116 units, which is the allowed density for the RH zone. Criterion A is met.

(b) The hardship does not result from actions of the applicant, owner or previous owner, or from personal circumstances or financial situation of the applicant or owner, or from regional economic conditions.

Finding:

The circumstances described in the above section related to existing grading, soil conditions, and utility limitations are not inherently the result of owner actions, circumstances, or finances, and do not result directly from regional economic conditions. Criterion B is met.

(c) The variance is necessary for the preservation of a property right of the applicant or owner substantially the same as is possessed by owners of other property in the same zone or vicinity.

Finding:

As noted above, the applicant has a proposed a 116-unit multifamily development. The use and density are Permitted within the RH zoning district. As discussed under subsection (a), the hardship would preclude the applicant from exercise of their property right. Criterion C is met.

(d) The variance must not be detrimental to the applicable goals and policies of the Tualatin Comprehensive Plan and must not be injurious to property in the zone or vicinity in which the property is located.

Finding:

Applicable Comprehensive Plan goals and policies include:

- **Goal 1.1 Community Involvement** – Implement community involvement practices in line with Statewide Planning Goal 1.
- **Policy 1.1.3** – Conduct the planning process with adequate input and feedback from citizens in each affected neighborhood.
- **Goal 3.1 Housing Supply** – Ensure that a 20-year land supply is designated and has urban services planned to support the housing types and densities identified in the Housing Needs Analysis.
- **Policy 3.1.2 - Zoning for Multifamily.** Provide zoning for multifamily development, which may be located in areas adjacent to transit.
- **Policy 3.1.6 – Infrastructure Planning.** Evaluate future infrastructure planning for consistency with the Housing Needs Analysis and Housing Strategies.
- **Goal 3.2 – Housing for all.** Encourage development and preservation of housing that is affordable for all households in Tualatin.

The applicant describes their coordination with Washington County on a series of listening sessions related to housing needs. Feedback revealed a need for multi-family housing and senior housing to serve diverse demographics. In response the applicant has included larger unit types, including 4-bedroom units to their proposal.

The 2019 Housing Needs Analysis cites an expected growth of 218% in the Basalt Creek area during the 2020-2040 period. Per the analysis, there is a need to plan for approximately 456 multifamily units over this timeframe. With the requested variance, the site will generate 116 affordable units, which accounts for roughly 25% of that need. The subject site is also served by Trimet Line 96.

Additionally, the project site was identified as the only area in the Basalt Creek Concept Plan that is available and serviceable for high density residential. The future development proposal will extend a new public water line from SW Norwood Road south to the site, which will provide a connection point for future developments. The project will also connect to and extend a public sanitary sewer line that will be constructed by the Autumn Sunrise development to the south.

The proposal includes units at 60% Area Median Income (AMI) for 60 years as required by the State of Oregon to use Low Income Housing Tax Credits (LIHTC). In addition to this requirement, the project will meet the requirements of the Washington County Metro Affordable Housing Bond Program, which includes a minimum of 30% of total units to be restricted to 30% AMI or below for 60 years and a minimum of 50% of the total units to be 2-bedroom or larger. The units at 30% AMI or below are considered deeply affordable housing and are often the most needed in communities. Not surprisingly, this subsidy level is the most difficult and costly for affordable housing developers to provide. With recommend Condition of Approval VAR21-0002, criterion D is met.

(e) The variance is the minimum remedy necessary to alleviate the hardship.

Finding:

The applicant states that multiple design iterations were explored to work around the existing grading, soil conditions, and utility limitations. These options were not feasible on the northern portion of the site containing slopes and unsuitable soil and the west side of the site being lower than surrounding properties. By reducing the overall building footprint to two taller buildings (4-stories), the project can succeed at avoiding areas that are not feasible for development while maintaining density and compliance with additional code requirements for shared outdoor areas, children’s play areas, and parking lot landscaping, as well as meeting applicable access and circulation requirements. With recommend Condition of Approval VAR-3, criterion E is met.

Chapter 43: High Density Residential District (RH)

Section 43.300. - Development Standards.

Development standards in the RH zone are listed in Table 43-3. Additional standards may apply to some uses and situations, see TDC 43.310.

**Table 43-3
 Development Standards in the RH Zone**

STANDARD	REQUIREMENT	LIMITATIONS AND CODE REFERENCES
[...]		
MAXIMUM STRUCTURE HEIGHT		
All Uses	35 feet	Maybe increased to a maximum of 50 feet with a conditional use permit, if all setbacks are not less than 1½ times the height of the building.
[...]		

Finding:

The applicant states that the site-specific hardships have resulted in a need for increased structure height to keep the development viable. The exact height needed for each façade is altered based on the varying grading around the site. Elevation drawings (Exhibit B) show the heights at each corner of the residential buildings. The tallest height occurs on the north side of the site where the existing grading has the steepest slopes, resulting in a 53’-7” height at the northwest corner of Building B as measured per the structure height definition above. The shortest height for the residential buildings occurs in the center of the site at the northeast corner of Building A at a height of 46’-11” as measured per the structure height definition above.

Per Table 43-3, the maximum structure height standard is 35 feet or 50 feet through a conditional use permit subject to increased setbacks. The criteria for a variance from these standards have been addressed above. The remainder of the development standards are to be addressed through Architectural Review. These standards are or will be met.

FINDINGS FOR VARIANCE TO MINIMUM PARKING REQUIREMENTS IN TDC 73C.100(1)(a)(iii):

(6) Approval Criteria for Granting a Variance that is not a Minor Variance or for a Wireless Communication Facility. A variance must not be granted unless it can be shown that criterion (a) is met and three of the four approval criteria (b)-(e) are met for non-sign requests:

(a) A hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same zone or vicinity and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control.

Finding:

The proposed multifamily development would require a minimum of 188 vehicle parking spaces to comply with TDC 73C.100(1)(a)(iii). This variance is seeking less than a 10% reduction in total parking stalls to 170.

The subject site is located along Boones Ferry Road, which is a major arterial under Washington County's jurisdiction, and requires a minimum of 600-feet of separation between access points when collector access is not available, per Washington County Code, Section 501-8.5. There is no location along the property line that will allow for 600-feet of separation between driveways at neighboring Horizon Community Church (north/south) and Autumn Sunrise (south) access points. Washington County has confirmed that subject site is not permitted to have a driveway off Boones Ferry Road without an approved Design Exception, and that any direct driveway connection from Boones Ferry Road to the subject property would be considered temporary.

Washington County has further indicated that the subject site is required to provide for a future connection across Horizon's property south of the project site to connect to a proposed new driveway in the Autumn Sunrise development. This new driveway will align with the Autumn Sunrise proposed "M-Street" once it is built, and is the preferred access point. The applicant team is negotiating access with Horizon Community Church, however there is no indication that an easement will be accepted by Horizon. Therefore a Washington County Design Exception is required to permit temporary access to the site.

The proposal includes site access located on the northern end of the site (Exhibit B). Due to the slopes at the northern end of the site, main access location must hook south to meet up with Boones Ferry Road at a point where the grading is less steep. This additional length of driveway to meet Boones Ferry Road at a less steep location and the steep grades at the northwest corner of the site make this section unable to accommodate parking. A second access point that is limited to emergency responders is included on the southern end of the site.

Due to the various constraints for access to the site, the applicant is unable to provide the required number of parking stalls, and is seeking a variance for uncovered surface parking stalls to provide a design that meets jurisdictional requirements. Criterion A is met.

(b) The hardship does not result from actions of the applicant, owner or previous owner, or from personal circumstances or financial situation of the applicant or owner, or from regional economic conditions.

Finding:

The circumstances described in the above section related to access limitations and site topography are not inherently the result of owner actions, circumstances, or finances, and do not result directly from regional economic conditions. Criterion B is met.

(c) The variance is necessary for the preservation of a property right of the applicant or owner substantially the same as is possessed by owners of other property in the same zone or vicinity.

Finding:

As noted above, the applicant has proposed a 116-unit multifamily development. The use and density are Permitted within the RH zoning district. As discussed under subsection (a), the hardship would preclude the applicant from exercise of their property right. Criterion C is met.

(d) The variance must not be detrimental to the applicable goals and policies of the Tualatin Comprehensive Plan and must not be injurious to property in the zone or vicinity in which the property is located.

Finding:

Applicable Comprehensive Plan goals and policies include:

- **Goal 1.1 Community Involvement** – Implement community involvement practices in line with Statewide Planning Goal 1.
- **Policy 1.1.3** – Conduct the planning process with adequate input and feedback from citizens in each affected neighborhood.
- **Goal 3.1 Housing Supply** – Ensure that a 20-year land supply is designated and has urban services planned to support the housing types and densities identified in the Housing Needs Analysis.
- **Policy 3.1.2 - Zoning for Multifamily.** Provide zoning for multifamily development, which may be located in areas adjacent to transit.
- **Policy 3.1.6 – Infrastructure Planning.** Evaluate future infrastructure planning for consistency with the Housing Needs Analysis and Housing Strategies.
- **Goal 3.2 – Housing for all.** Encourage development and preservation of housing that is affordable for all households in Tualatin.

The applicant describes their coordination with Washington County on a series of listening sessions related to housing needs. Feedback revealed a need for multi-family housing and senior housing to serve diverse demographics. In response the applicant has included larger unit types, including 4-bedroom units to their proposal.

The 2019 Housing Needs Analysis cites an expected growth of 218% in the Basalt Creek area during the 2020-2040 period. Per the analysis, there is a need to plan for approximately 456 multifamily units over this timeframe. With the requested variance, the site will generate 116 affordable units, which accounts for roughly 25% of that need. The subject site is also served by Trimet Line 96.

Additionally, the project site was identified as the only area in the Basalt Creek Concept Plan that is available and serviceable for high density residential. The future development proposal will extend a new public water line from SW Norwood Road south to the site, which will provide a connection point for

future developments. The project will also connect to and extend a public sanitary sewer line that will be constructed by the Autumn Sunrise development to the south.

The proposal includes units at 60% Area Median Income (AMI) for 60 years as required by the State of Oregon to use Low Income Housing Tax Credits (LIHTC). In addition to this requirement, the project will meet the requirements of the Washington County Metro Affordable Housing Bond Program, which includes a minimum of 30% of total units to be restricted to 30% AMI or below for 60 years and a minimum of 50% of the total units to be 2-bedroom or larger. The units at 30% AMI or below are considered deeply affordable housing and are often the most needed in communities. Not surprisingly, this subsidy level is the most difficult and costly for affordable housing developers to provide. Criterion D is met.

(e) The variance is the minimum remedy necessary to alleviate the hardship.

Finding:

A parking study of three similar sites and the ITE Parking Generation Manual for affordable housing was submitted as Exhibit E. The selected sites are similar in affordability, unit size, unit mix and set in suburban areas with bus service in the vicinity and has been included in this application for reference.

The proposed site plan (Exhibit B) includes 170 parking stalls, rather than the required 188 parking stalls. The applicant’s parking study found that the three comparable sites resulted in a parking rate of 1.30 spaces per unit (equal to 151 parking stalls). In looking at comparable, the study suggests that variance request would grant the proposal 19 parking stalls above the average demand at similar sites, which is consistent with applicant’s experience owning and operating affordable housing developments across Washington County for the past 27 years. With Condition VAR-4, criterion E is met.

Chapter 73C: Parking Standards

Section 73C.100 - Off-Street Parking Minimum/Maximum Requirements.

(1)The following are the minimum and maximum requirements for off-street motor vehicle parking in the City, except these standards do not apply in the Core Area Parking District. The Core Area Parking District standards are in TDC 73C.110.

USE	MINIMUM MOTOR VEHICLE PARKING	MAXIMUM MOTOR VEHICLE PARKING	BICYCLE PARKING	PERCENTAGE OF BICYCLE PARKING TO BE COVERED
(a) Residential Uses				
(iii) Multi-family dwellings in complexes with private internal driveways	1.0 space/studio, 1.25 space/1 bedroom, 1.50 space/2 bedroom, 1.75 space/3=	None	Developments with four or more units; none required if a garage is provided as an integral element of a unit; otherwise 1.00 space per unit	100

USE	MINIMUM MOTOR VEHICLE PARKING	MAXIMUM MOTOR VEHICLE PARKING	BICYCLE PARKING	PERCENTAGE OF BICYCLE PARKING TO BE COVERED
	bedroom in addition to garage			

Finding:

The applicant states that the site-specific hardships have resulted in a need for decreased parking minimums to keep the development viable. The project consists of 116 total units comprised of 1-bedroom, 2-bedroom, 3-bedroom, and 4-bedrooms. While the code does not state a specific standard for 4-bedroom units, the 3-bedroom standard has been applied to the 4-bedroom units).

This variance is seeking less than a 10% reduction in total parking stalls. The project is proposing 148 surface parking stalls and 22 garage stalls, totaling 170 parking stalls, thus seeking a variance for a reduction of 18 surface parking stalls as detailed on the next page.

Surface Parking Stall Calculation:

- 1-Bedroom: 54 units x 1.25 = 67.5
- 2-Bedroom: 40 units x 1.50 = 60
- 3-Bedroom: 16 units x 1.75 = 28
- 4-Bedroom: 6 units x 1.75 = 10.5

Total Required Surface Parking: 166

Total Provided Surface Parking: 148

Garage Parking Stall Calculation:

- 1-Bedroom: 54 units x 0 = 0
- 2-Bedroom: 40 units x 0 = 0
- 3-Bedroom: 16 units x 1 = 16
- 4-Bedroom: 6 units x 1 = 6

Total Required Garage Parking: 22

Total Provided Garage Parking: 22

Per TDC 73C.100, the minimum parking standards would require a total of 188 parking stalls. The criteria for a variance from these standards have been addressed above. The remainder of the development standards are to be addressed through Architectural Review. These standards are or will be met.

III. RECOMMENDATION

Based on the application materials and analysis and findings presented above, staff finds that the applicable criteria have been met relative to VAR 21-0003, and therefore recommends approval of the application with the following conditions of approval:

- VAR-1** Development of the proposed 116-unit multi-family project will require submittal and approval of an Architectural Review (Type III) application, in accordance with TDC 33.020(3)(d)(iii).
- VAR-2** Modification to this approval will require submittal and approval of a new Type III Variance application in accordance with TDC.
- VAR-3** Structure height for proposed 116-unit multi-family project shall not be more than 54 feet in as measured in TDC 31.060.
- VAR-4** A minimum of 170 vehicle parking spaces shall be provided for the proposed 116-unit multi-family project.