



# City of Oregon City

625 Center Street  
Oregon City, OR 97045  
503-657-0891

## Meeting Agenda Planning Commission

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Monday, July 22, 2019

7:00 PM

Commission Chambers

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**1. Call To Order**

**2. Public Comments**

**3. Public Hearings**

**3a.** GLUA-19-00020: Variance for retaining wall height in front of building at 397 Warner Milne Road

**Sponsors:** Kelly Reid

**Attachments:** [Commission Report](#)

[Staff Report and Recommendation](#)

[Map](#)

[Land Use Application](#)

[Applicant's narrative](#)

[Drawings](#)

[Neighborhood meeting materials](#)

[Site photo](#)

**3b.** GLUA-19-00022: Chapter 17.40 Code Amendment for HRB Policies Procedures

**Sponsors:** Kelly Reid

**Attachments:** [Commission Report](#)

[Staff report and recommendation](#)

[Exhibit 1. Chapter 17.40 Historic Overlay Draft Amendment](#)

[Exhibit 2: Public Comment](#)

[Exhibit 3: Maps of Areas Affected](#)

[HRB Policies webpage link](#)

**4. Communications**

**5. Adjournment**

*Public Comments: The following guidelines are given for citizens presenting information or raising issues relevant to the City but not listed on the agenda.*

- *Complete a Comment Card prior to the meeting and submit it to the staff member.*
- *When the Chair calls your name, proceed to the speaker table and state your name and city of residence into the microphone.*

- *Each speaker is given 3 minutes to speak. To assist in tracking your speaking time, refer to the timer at the dais.*
- *As a general practice, Oregon City Officers do not engage in discussion with those making comments.*

*Agenda Posted at City Hall, Pioneer Community Center, Library, and City Web site([oregon-city.legistar.com](http://oregon-city.legistar.com)).*

*Video Streaming & Broadcasts: The meeting is streamed live on Oregon City's Web site at [www.orcity.org](http://www.orcity.org) and is available on demand following the meeting.*

*ADA: City Hall is wheelchair accessible with entry ramps and handicapped parking located on the east side of the building. Hearing devices may be requested from the City staff member prior to the meeting. Disabled individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503-657-0891.*



# City of Oregon City

625 Center Street  
Oregon City, OR 97045  
503-657-0891

## Staff Report

File Number: PC 19-076

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**Agenda Date:** 7/22/2019

**Status:** Draft

**To:** Planning Commission

**Agenda #:**

**From:** Kelly Reid

**File Type:** Land Use Item

### **SUBJECT:**

GLUA-19-00020: Variance for retaining wall height in front of building at 397 Warner Milne Road

### **RECOMMENDED ACTION (Motion):**

Staff recommends approval of the variance.

### **BACKGROUND:**

The subject site is developed with a medical urgent care clinic which was approved under land use file SP 18-42. As construction of the medical clinic proceeded, grading changes were required due to ADA access needs from the parking lot. The result was that the building was placed about five feet below grade of the sidewalk on the corner of the intersection. To accommodate the grade change, the applicant requires a retaining wall behind the sidewalk. A portion of the wall exceeds the maximum permitted height of 3.5 feet, and the applicant has requested a variance to allow a portion of the wall to be between 3.5 and 5 feet in height. The retaining wall is below sidewalk grade and will not be highly visible. A portion of the wall will be topped with a guardrail for safety purposes.



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

*July 12, 2019*

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

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

**Submitted:** June 20, 2019

**Complete:** June 20, 2019

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

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

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

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

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

**RECOMMENDATION:** Approval

**PROCESS:** Type III decisions involve the greatest amount of discretion and evaluation of subjective approval standards, yet are not required to be heard by the city commission, except upon appeal. Applications evaluated through this process include conditional use permits, preliminary planned unit development plans, variances, code interpretations, similar use determinations and those rezonings upon annexation under Section 17.06.050 for which discretion is provided. In the event that any decision is not classified, it shall be treated as a Type III decision. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the planning commission or the historic review board hearing is published and mailed to the applicant, recognized neighborhood association and property owners within three hundred feet. Notice must be issued at least twenty days pre-hearing, and the staff report must be available at least seven days pre-hearing. At the evidentiary hearing held before the planning commission or the historic review board, all issues are addressed. The decision of the planning commission or historic review board is appealable to the city commission, on the record. A city-recognized neighborhood association requesting an appeal fee waiver pursuant to 17.50.290(c) must officially approve the request through a vote of its general membership or board at a duly announced meeting prior to the filing of an appeal. The city commission decision on appeal from the historic review board or the planning commission is the city's final decision and is appealable to LUBA within twenty-one days of when it becomes final.



## I. BACKGROUND:

### 1. Existing Conditions and Project Description

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

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

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

The applicant submitted the following description of the proposed wall:

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

Figure 1: Vicinity Map





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

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

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

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

4. **Notice and Public Comment**

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

**CHAPTER 17.62 SITE PLAN AND DESIGN REVIEW**

*17.62.030 - When required.*

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

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

*17.62.040 - Plans required.*

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

*17.62.050 - Standards.*

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

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

*21. Building Materials.*

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

*i. Brick.*

*ii. Basalt stone or basalt veneer.*

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

*iv. Board and batten siding.*

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

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

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

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

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

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

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

*iii. Corrugated fiberglass.*

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

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

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

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

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

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

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

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

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

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

## **CHAPTER 17.54.100 – FENCES**

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

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

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

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

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

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

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

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

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

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

## **CHAPTER 17.60 VARIANCES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**17.60.030 - Variance—Grounds.**

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

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

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

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

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

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

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

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

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

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

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

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

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

**Goal 2.1 Efficient Use of Land**

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

**Policy 2.1.1**

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

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

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

**Policy 14.2.2**

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

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

**CHAPTER 17.50 - ADMINISTRATION AND PROCEDURES**

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

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

**17.50.050 Preapplication Conference**

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

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

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

**17.50.055 Neighborhood Association Meeting**

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

*17.50.060 Application Requirements.*

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

*17.50.070 Completeness Review and 120-day Rule.*

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

*17.50.080 Complete Application--Required Information.*

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

*17.50.090 Public Notices.*

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

*17.50.100 Notice Posting Requirements.*

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

**CONCLUSION AND DECISION:**

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

**EXHIBITS:**

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



# Oregon City GIS Map



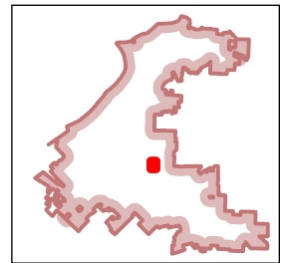
## Legend

Street Names

- Taxlots
- Taxlots Outside UGB
- Unimproved ROW
- City Limits
- UGB
- Basemap

Notes

Overview Map



The City of Oregon City makes no representations, express or implied, as to the accuracy, completeness and timeliness of the information displayed. This map is not suitable for legal, engineering, surveying or navigation purposes. Notification of any errors is appreciated.



0 100 Feet  
1: 1,200

City of Oregon City  
PO Box 3040  
625 Center St  
Oregon City  
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(503) 657-0891  
[www.orcity.org](http://www.orcity.org)







# OREGON CITY

## Community Development - Planning

698 Warner Parrott Road | Oregon City OR 97045  
Ph (503) 722-3789 | Fax (503) 722-3880

11:59 AM JUN 19 2019

# LAND USE APPLICATION FORM

### Type I (OCMC 17.50.030.A)

- ☐ Compatibility Review
- ☐ Lot Line Adjustment
- ☐ Non-Conforming Use Review
- ☐ Natural Resource (NROD) Verification
- ☐ Site Plan and Design Review
- ☐ Extension of Approval

### Type II (OCMC 17.50.030.B)

- ☐ Detailed Development Review
- ☐ Geotechnical Hazards
- ☐ Minor Partition (<4 lots)
- ☒ Minor Site Plan & Design Review
- ☐ Non-Conforming Use Review
- ☐ Site Plan and Design Review
- ☐ Subdivision (4+ lots)
- ☐ Minor Variance
- ☐ Natural Resource (NROD) Review

### Type III / IV (OCMC 17.50.030.C)

- ☐ Annexation
- ☐ Code Interpretation / Similar Use
- ☐ Concept Development Plan
- ☐ Conditional Use
- ☐ Comprehensive Plan Amendment (Text/Map)
- ☐ Detailed Development Plan
- ☐ Historic Review
- ☐ Municipal Code Amendment
- ☒ Variance
- ☐ Zone Change

File Number(s): PA 18-03 SP-19-74 / VAR-19-04

Proposed Land Use or Activity: RETAINING WALL NOT IN ORIGINAL PROJECT SCOPE

Project Name: AFC CLINIC Number of Lots Proposed (If Applicable):           

Physical Address of Site: NW CORNER OF MOLALLA AVE & WARNER-MILNE RD

Clackamas County Map and Tax Lot Number(s): 3-2E-OSCA-03400  
397 WARNER-MILNE

### Applicant(s):

Applicant(s) Signature: Stewart Straus

Applicant(s) Name Printed: STEWART STRAUS Date: 19 JUNE 2019

Mailing Address: 12600 SW CRESCENT ST SUITE 100 BEAVERTON 97005

Phone: 503-672-7517 Fax:                                  Email: sgs@s-strauss.com

### Property Owner(s):

Property Owner(s) Signature:                                 

Property Owner(s) Name Printed: M HASHEM LIMITED PARTNERSHIP Date: 20 JUNE 2019

Mailing Address: PO BOX 707 BEAVERCREEK OR 97004

Phone: 503 593-9870 Fax:                                  Email: mikehashem7@gmail.com

### Representative(s):

Representative(s) Signature: SAME AS APPLICANT [Signature]

Representative (s) Name Printed: Sofia Kondilis Hashem Date: 6/20/19

Mailing Address:                                 

Phone:                                  Fax:                                  Email:                                 

All signatures represented must have the full legal capacity and hereby authorize the filing of this application and certify that the information and exhibits herewith are correct and indicate the parties willingness to comply with all code requirements.

Community Development Planning





## AFC CLINIC VARIANCE NARRATIVE – SITE WALL

1 July 2019

### General Overview

The applicant has received approval of an urgent care clinic at the northwest corner of Molalla Avenue and Warner Milne Road. During the course of construction in response to conflicting requirements for accessibility and building floor elevation relative to the public sidewalk, the building was lowered and a retaining wall proposed along the property line at the corner. A portion of the wall exceeds the maximum height allowed, which is the variance being sought.

### Details of the Proposal

The bottom of the proposed wall is located at approximately the floor elevation of the building, while the top of the wall follows the slope of the ground at the property line, which is immediately adjacent to the public sidewalk. The entire wall length is approximately 78 feet; the portion in excess of 3'-6" in height is approximately 27 feet, and in proximity to the corner.

### Findings in Response to Criteria for Approval

- A. The variance from the requirement is not likely to cause substantial damage to adjacent properties by reducing light, air, safe access or other desirable or necessary qualities otherwise protected by this title.

**Findings: there is nothing about the height, location or configuration of the proposed wall enue that could have any impact on the only adjacent property to this site, which is generally on the opposite side of the proposed building.**

- B. The request is the minimum variance that would alleviate the hardship.

**Findings: the proposed wall is the minimum height required to mitigate the change in elevation from the public sidewalk to the building floor elevation.**

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

**Findings: the purpose of the regulation is to make the building visible and connected to the public, theoretically to enhance the interaction between public and private space on the premise that such interaction is appropriate and beneficial; in this case, the location of the wall below the public right of way does not conceal the building; in addition, the proposed wall accommodates an additional stair and access to the building from the Molalla Avenue frontage.**

- D. Any impacts resulting from the adjustment are mitigated.

**Findings: the original design included access from the public right of way to the building at the corner – this proposal relocates that access closer to the public transit stop on Molalla Avenue.**

## **AFC CLINIC VARIANCE NARRATIVE – SITE WALL**

1 July 2019

Page 2

- E. The variance conforms to the comprehensive plan and the intent of the ordinance being varied.

**Findings: a review of the comprehensive plan has revealed no goals that the proposal would compromise; the intent of the ordinance to maintain visual and access connection between buildings and the public has not been compromised.**

### **Conclusions**

The requested variance does not have any negative impacts on the surroundings of the proposed project, or on the relationship between the building and the public.

Consequently, we respectfully request approval of the variance so the requested and necessary retaining wall can move forward.

**From:** [Stewart Straus](#)  
**To:** [Kelly Reid](#)  
**Subject:** Re: question regarding AFC Variance Tuesday, July 02, 2019  
**Date:** 2:39:46 PM

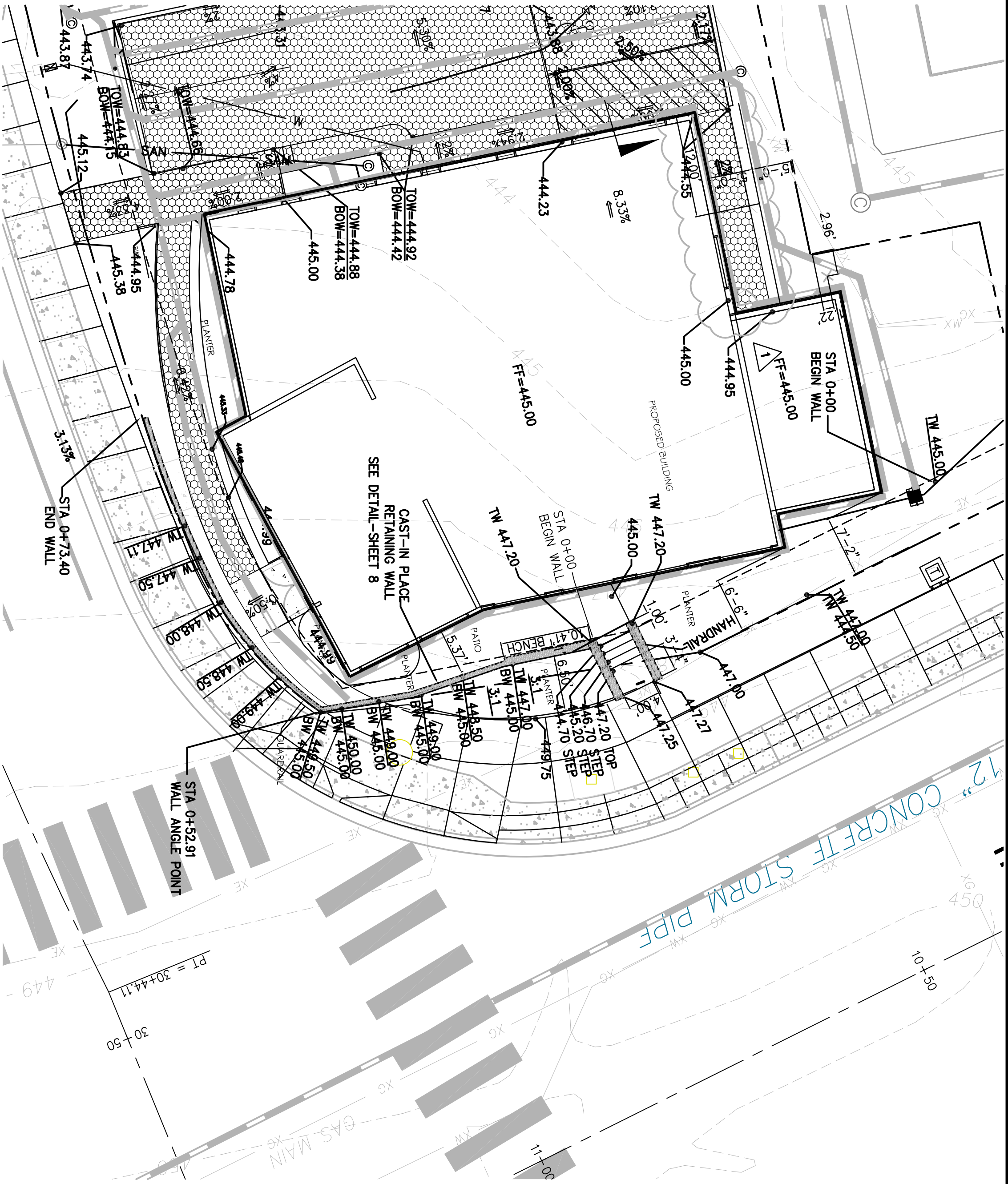
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Kelly -

The wall varies in height as required for its retaining purpose. Beginning adjacent to the steps at the north end along Molalla Avenue, the wall is about 2 feet high for a distance of at least 10 feet; it then begins to increase in height as the sidewalk curves closer to the property line to a maximum of 5 feet near the traffic signal pole at the corner; it remains at 5 feet high between there and directly opposite the entry doors; it then slopes down to the west along the Warner-Milne frontage to about 2 feet high at the west end.

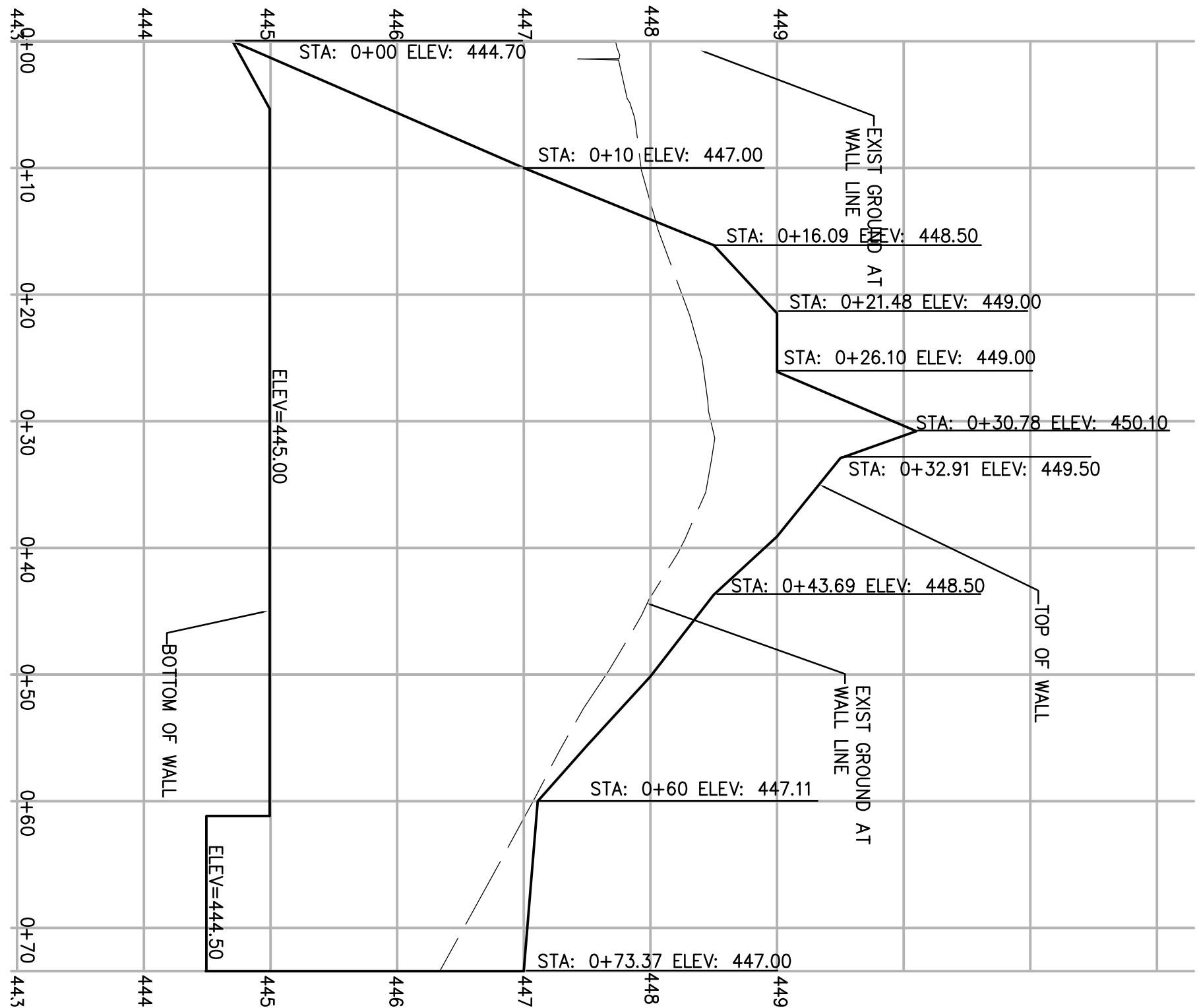






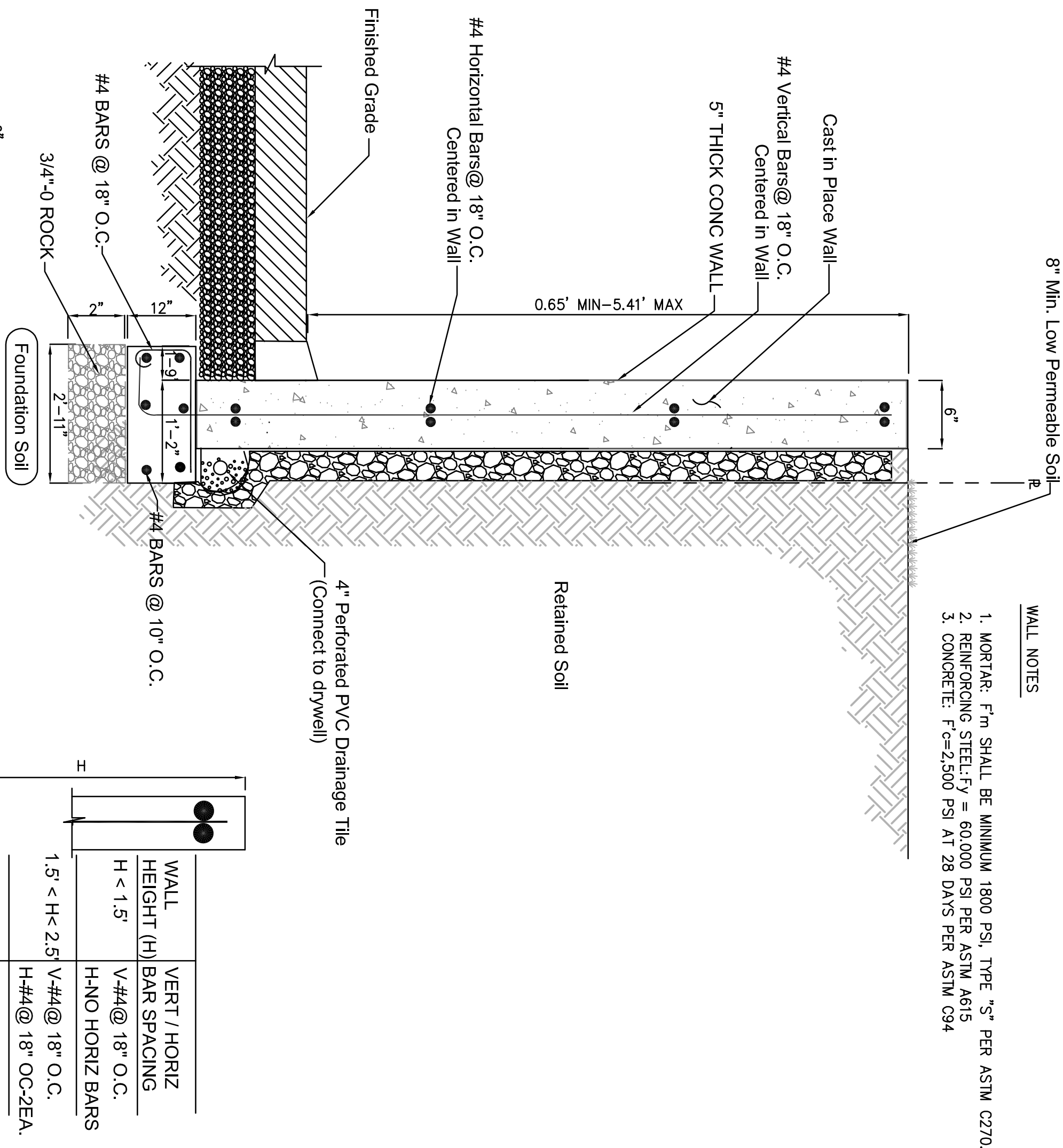
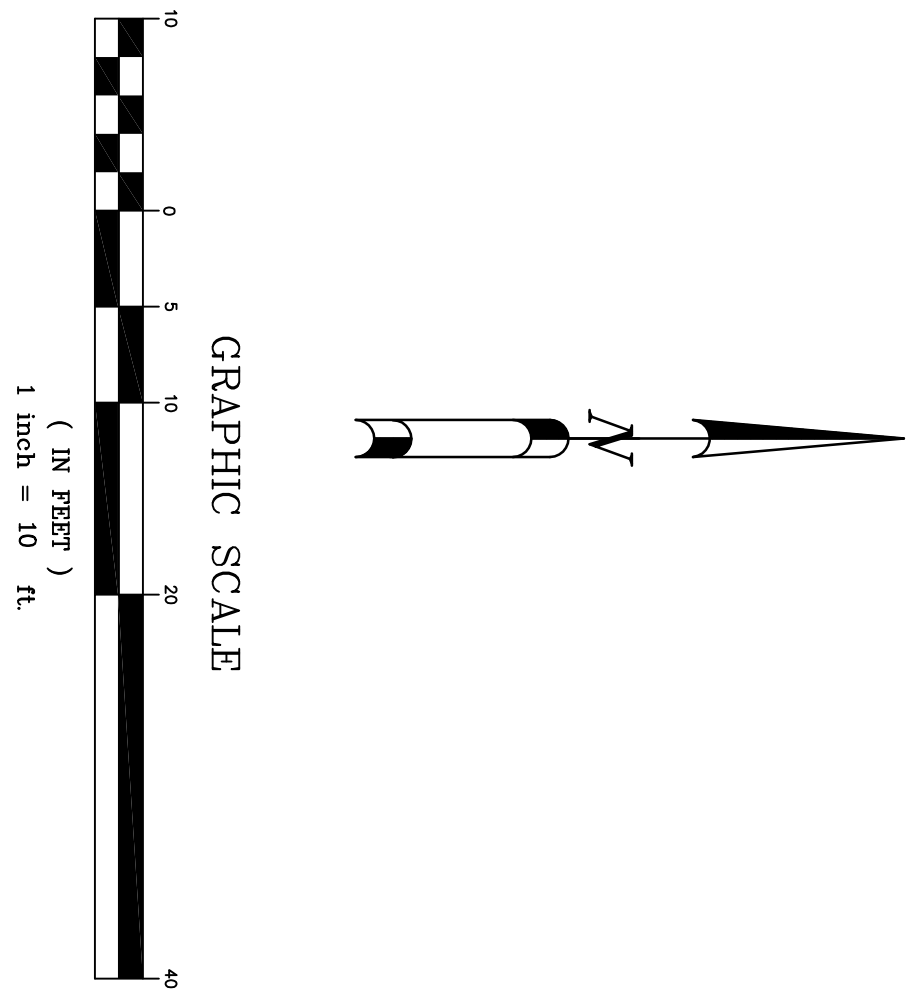
RETAINING WALL - PLAN

SCALE: 1"=10'



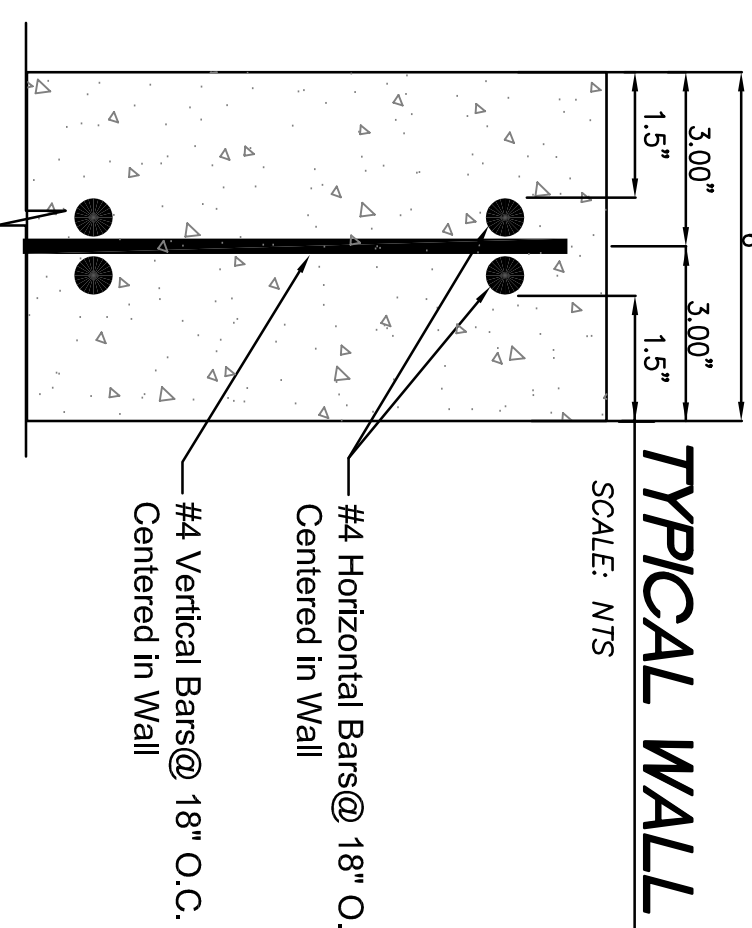
RETAINING WALL - PROFILE

SCALE: H-1"=10', V-1"=1'



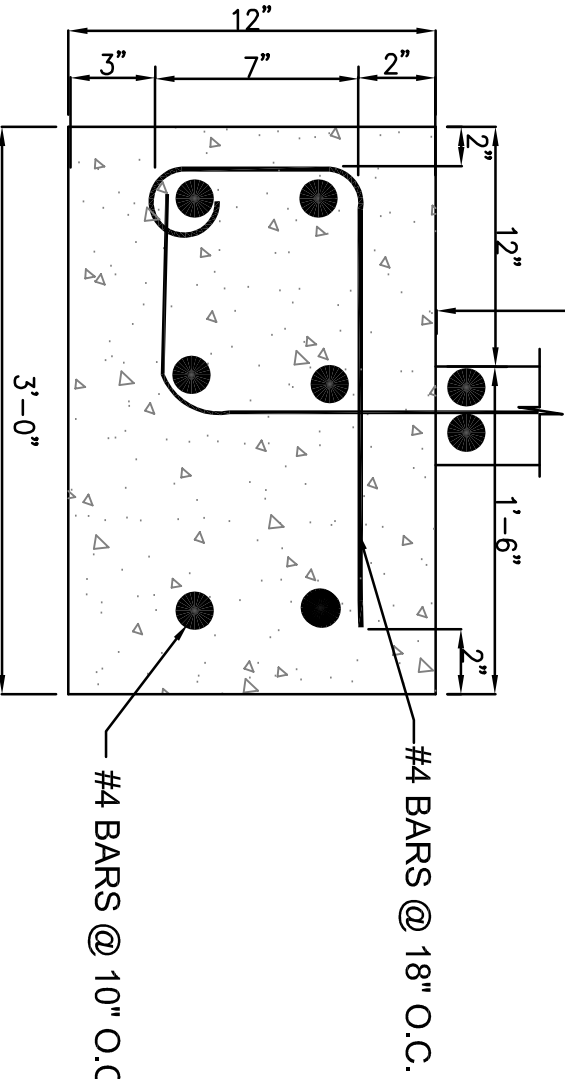
TYPICAL WALL SECTION

SCALE: NTS



STEM REBAR DETAIL

SCALE: NTS



FOOTING REBAR DETAIL

SCALE: NTS

NEW PLAN SHEET, CAST-IN PLACE  
RETAINING WALL DETAILS

WALL NOTES

1. MORTAR: F'm SHALL BE MINIMUM 1800 PSI, TYPE "S" PER ASTM C270.
2. REINFORCING STEEL: F\_y = 60,000 PSI PER ASTM A615
3. CONCRETE: F\_c=2,500 PSI AT 28 DAYS PER ASTM C94



**TCC ASSOCIATES INC**  
5821 SE 82ND AVE  
Suite 111  
Portland, OR 97266  
Phone: (503) 277-8143  
Fax: (503) 262-8668  
Email: yeekaytee@yahoo.com

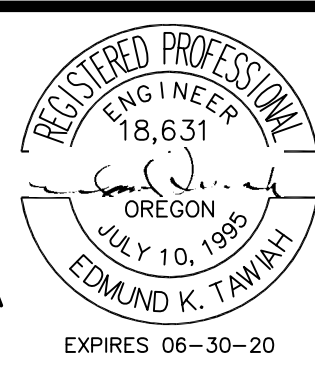
DESIGNED	ET
DRAWN	ET
CHECKED	WC
DATE	12-06-18

NO.	REVISIONS	DATE	BY
1	NEW CAST-IN PLACE RETAINING WALL DETAILS	05/07/2019	ET

DRAWING TITLE:  
**RETAINING WALL  
PLAN & DETAILS**

FILE NAME: RETAINING WALL DETAILS

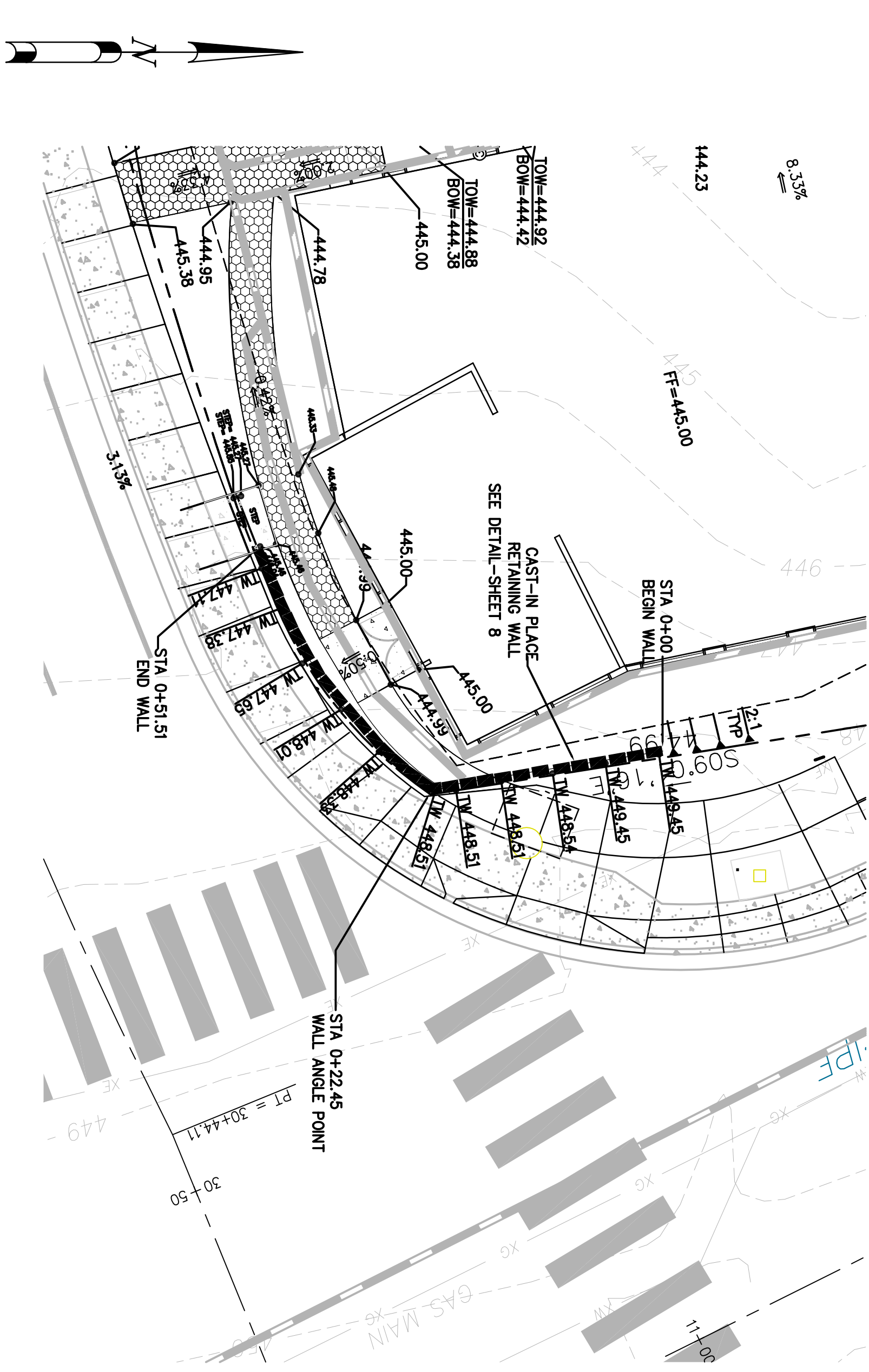
PROJECT  
**AFC URGENT  
CARE CLINIC**  
365 WARNER MILNE RD  
PORTLAND, OREGON 97045  
L 03400, T3S R2E SEC 05C  
CLACKAMAS COUNTY



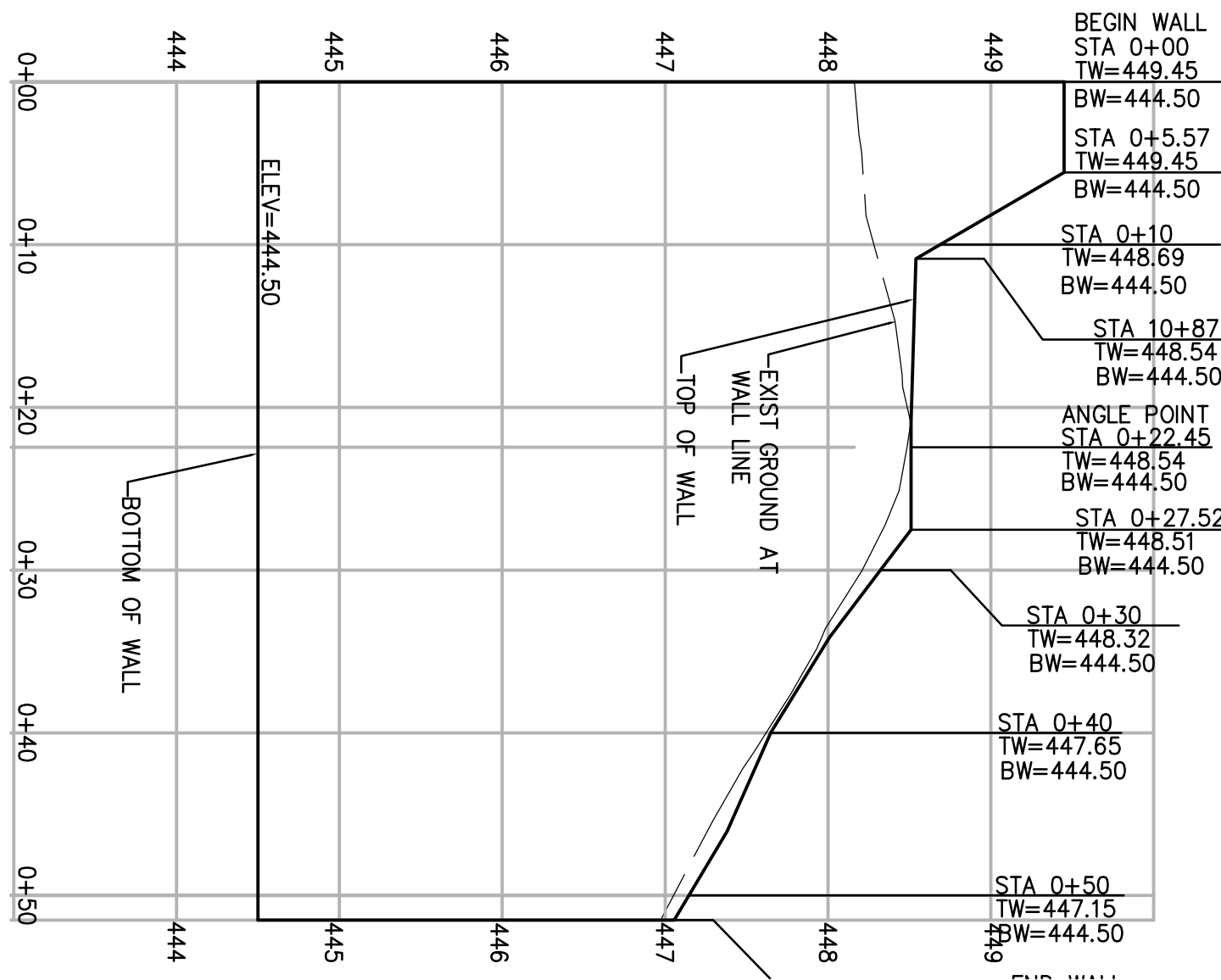
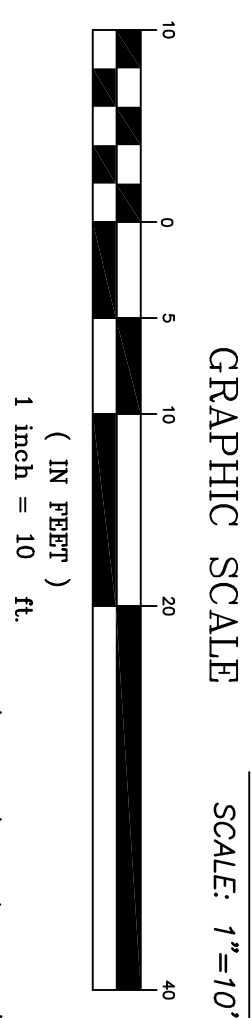
SHEET	<b>8</b>
OF	8
JOB #	18-012

DEVELOPER  
**MIKE HASHEM  
SKIDMORE MANAGEMENT**  
12258 SE GROVE LOOP  
MILWAUKIE, OREGON 97222  
PH: (XXX) XXX-XXXX  
FAX: (XXX) XXX-XXXX



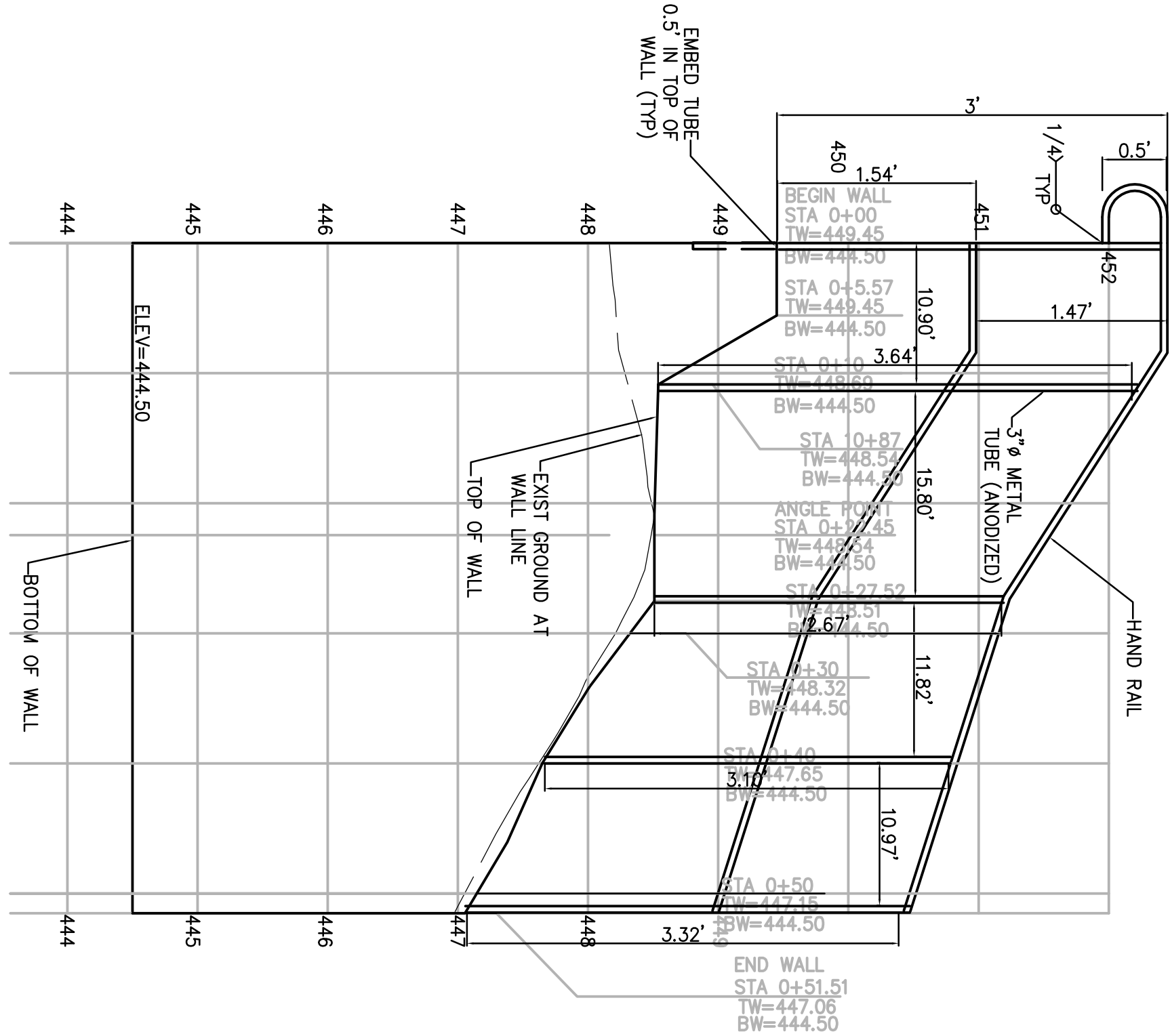


RETAINING WALL - PLAN



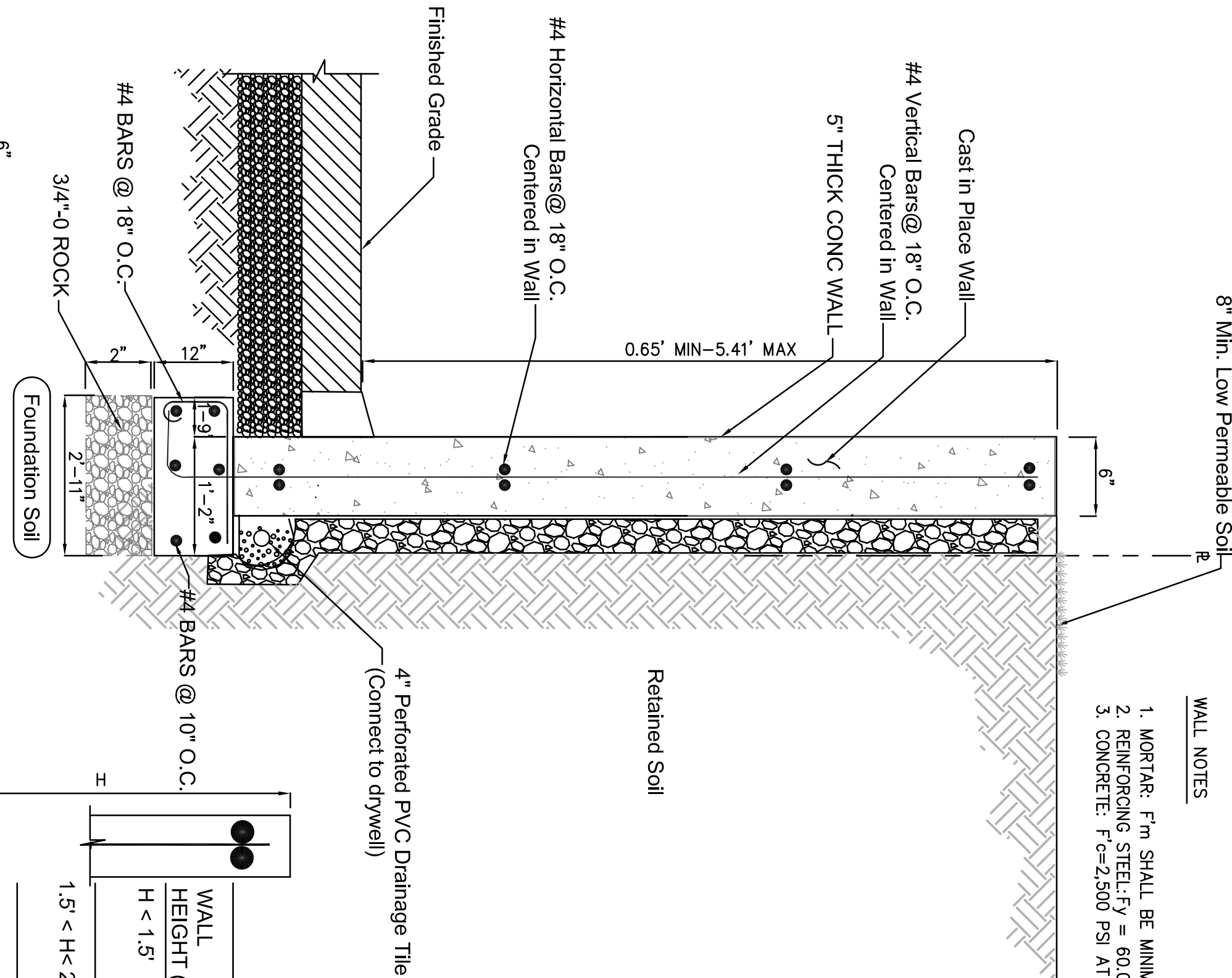
RETAINING WALL - PROFILE

SCALE: H-1"=10', V-1"=1'



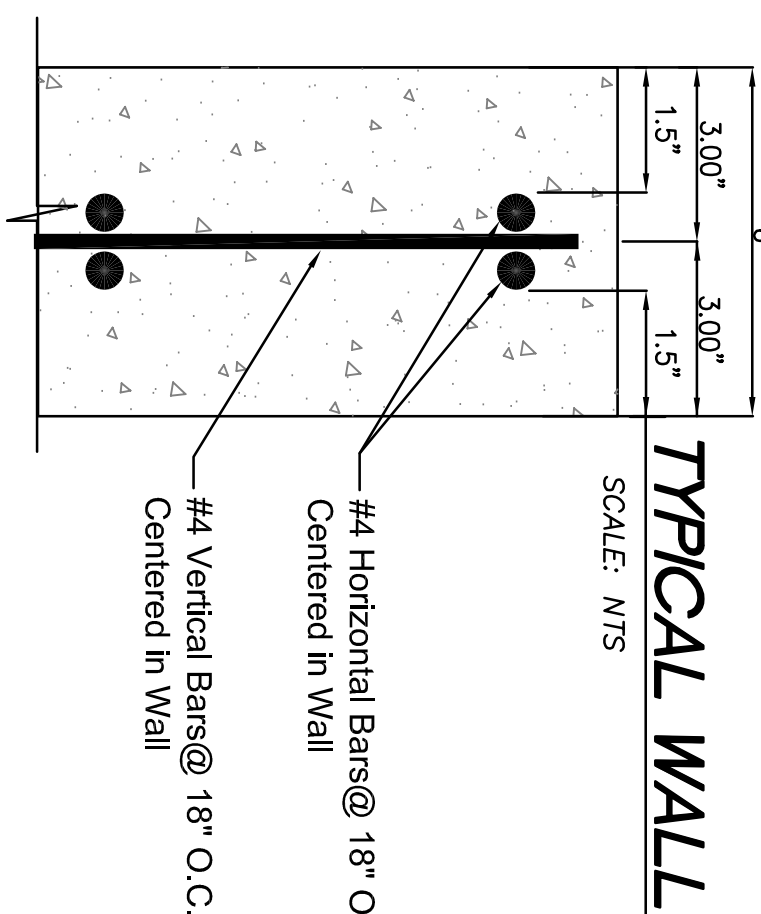
HAND RAIL - DETAIL

SCALE: H-1"=10', V-1"=1'



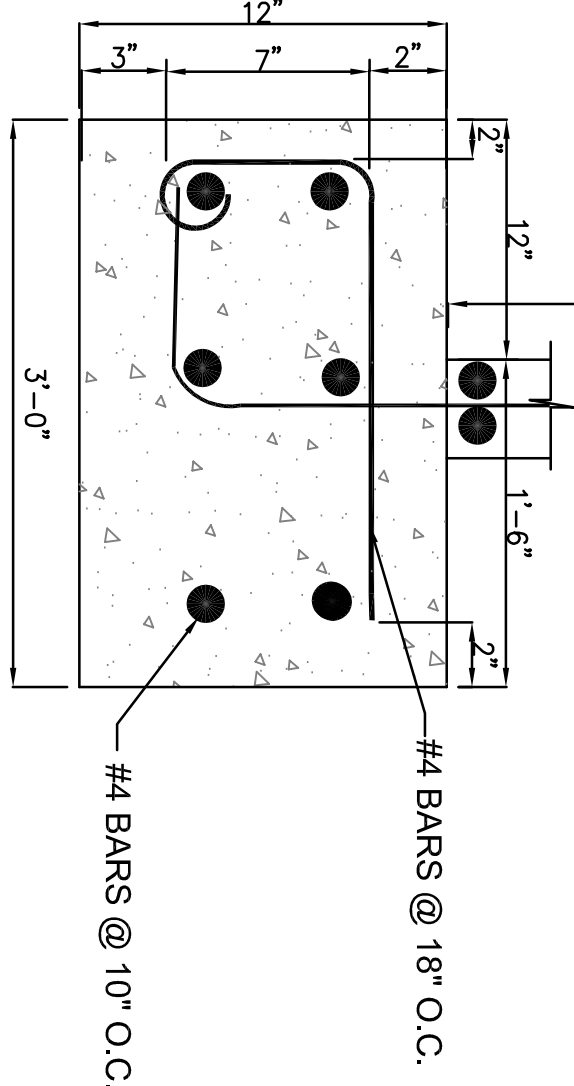
TYPICAL WALL SECTION

SCALE: NTS



STEM REBAR DETAIL

SCALE: NTS



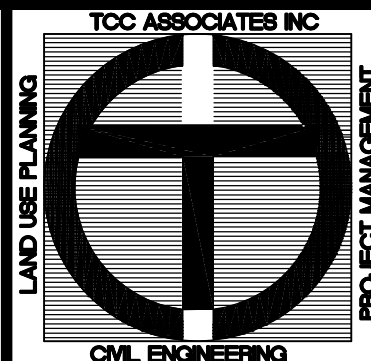
FOOTING REBAR DETAIL

SCALE: NTS

WALL NOTES

1. MORTAR: F<sub>m</sub> SHALL BE MINIMUM 1800 PSI, TYPE "S" PER ASTM C270.
2. REINFORCING STEEL: F<sub>y</sub> = 60,000 PSI PER ASTM A615
3. CONCRETE: F<sub>c</sub>=2,500 PSI AT 28 DAYS PER ASTM C94

NEW PLAN SHEET: CAST-IN PLACE  
RETAINING WALL DETAILS



TCC ASSOCIATES INC.  
5821 SE 82ND AVE  
Suite 111  
Portland, OR 97266  
Phone: (503) 277-8143  
Fax: (503) 262-8668  
Email: yeekaytee@yahoo.com

DESIGNED  
ET  
DRAWN  
ET  
CHECKED  
WC  
DATE  
12-06-18

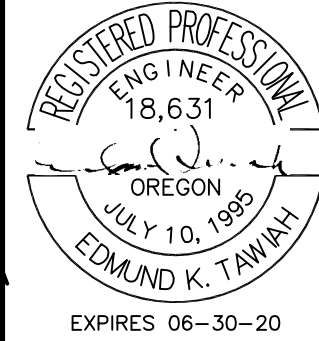
NO. 1  
REVISIONS  
NEW CAST-IN PLACE  
RETAINING WALL DETAILS  
DATE 05/07/2019 BY ET

DRAWING TITLE:

RETAINING WALL  
PLAN

FILE NAME: RETAINING WALL DETAILS

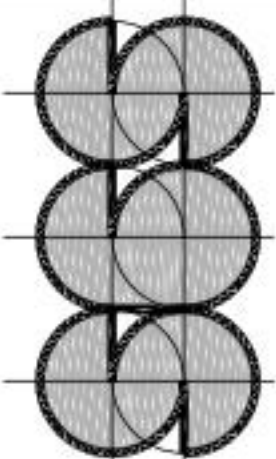
PROJECT  
AFC URGENT  
CARE CLINIC  
365 WARNER MILNE RD  
PORTLAND, OREGON 97045  
L 03400, T3S R2E SEC 05CA  
CLACKAMAS COUNTY



SHEET  
8  
OF  
8  
JOB #  
18-012

DEVELOPER  
MIKE HASHEM  
SKIDMORE MANAGEMENT  
12258 SE GROVE LOOP  
MILWAUKIE, OREGON 97222  
PH: (XXX) XXX-XXXX  
FAX: (XXX) XXX-XXXX





STEWART GORDON STRAUS  
ARCHITECT PC  
12600 SW CRESCENT ST  
SUITE #100  
BEAVERTON, OR 97005  
(503) 672-7517 (OFFICE)  
(503) 672-7808 (FAX)  
(971) 506-2724 (MOBILE)  
sgs@sgs-strauss.com (e-mail)



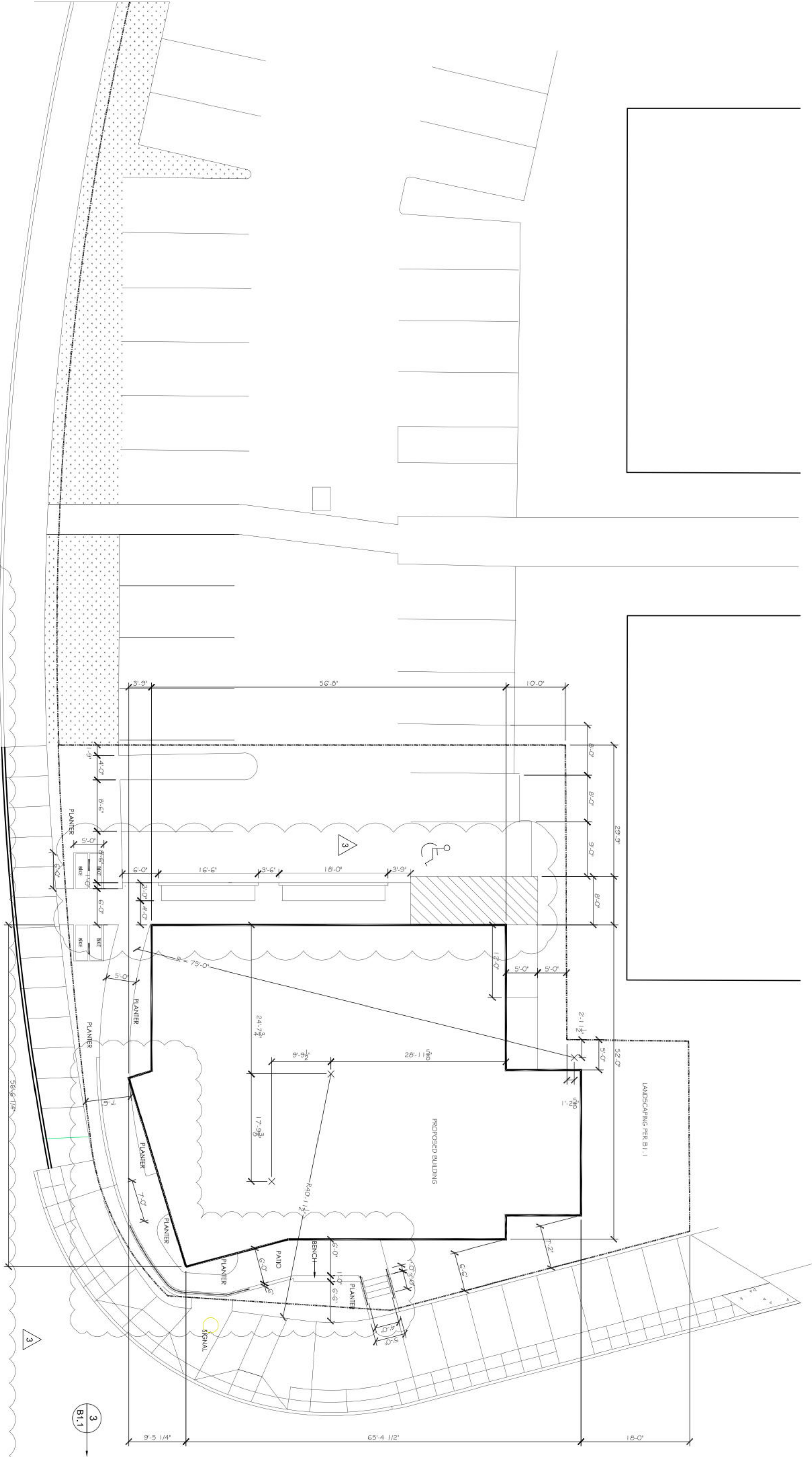
AFC URGENT CARE CLINIC  
NW CORNER OF  
MOLALLA AVE & WARNER-MILNE RD  
OREGON CITY, OREGON

PROJECT  
NUMBER: 1740

DRAWING	DATE	BY
DESIGN	18 APR 2018	SGS
LAND USE REVIEW	25 APR 2018	SGS
PERMIT SET	31 JULY 2018	SGS
REVISION SET	19 SEPT 2018	SGS
CONTRACT SET	6 DEC 2018	SGS
	10 JUN 2019	SGS

SHEET TITLE  
SITE PLAN &  
DETAILS

SHEET #  
B0.3

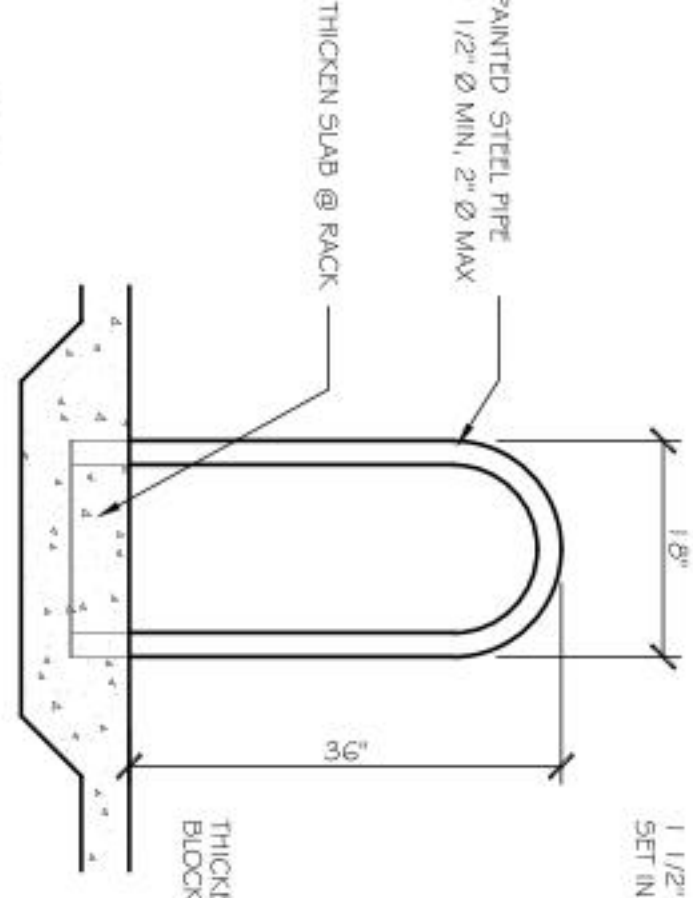


1 SITE PLAN  
B0.3 1/8" = 1'-0"

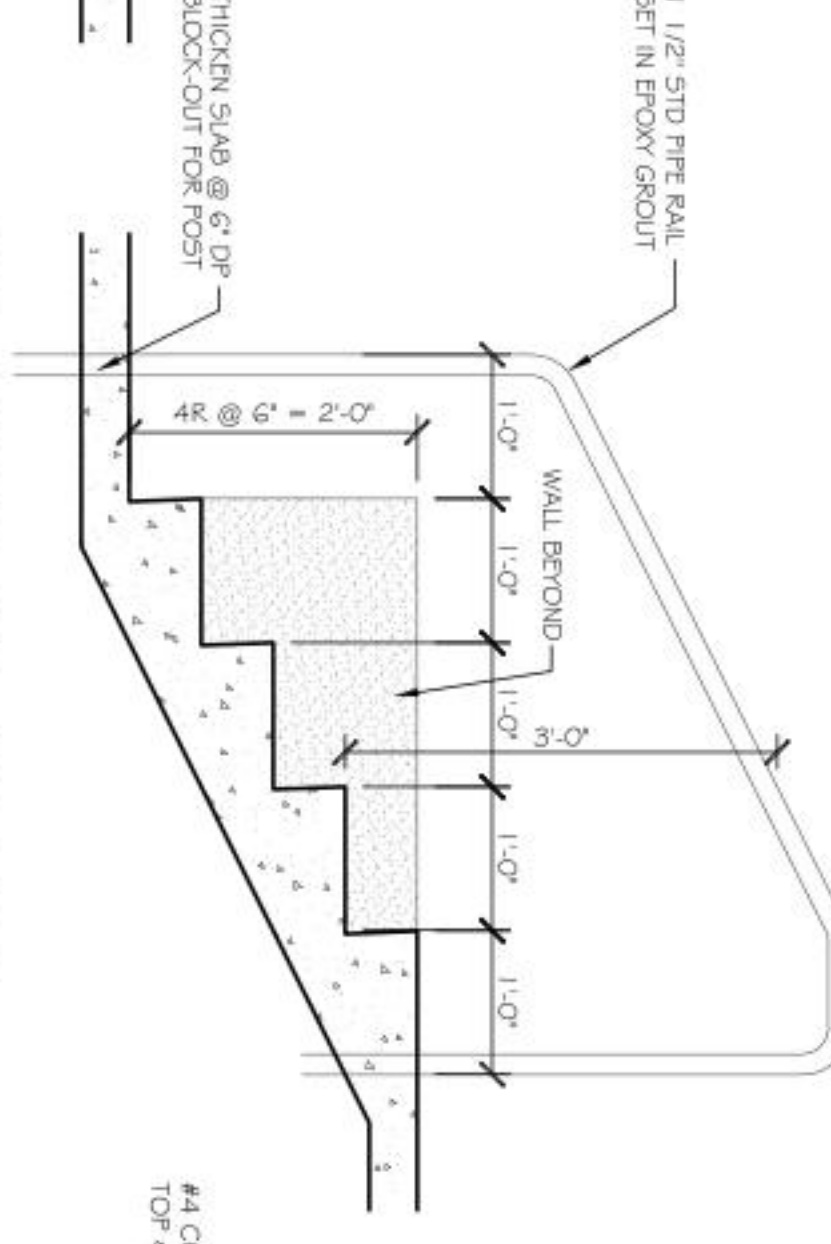


SEE CIVIL DRAWINGS FOR ADDITIONAL SITE INFORMATION

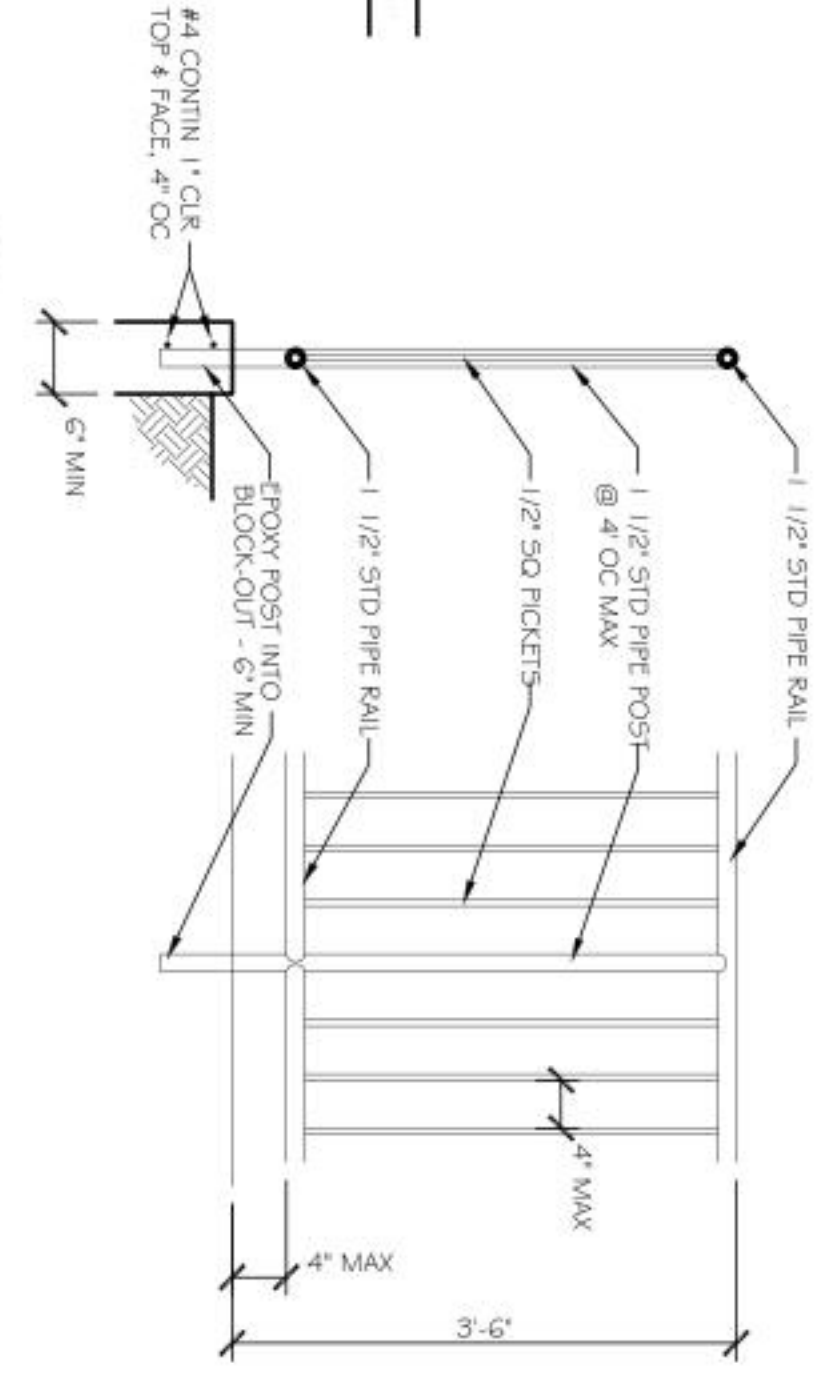
2 BIKE RACK  
B0.3 3/4" = 1'-0"



3 HANDRAIL / STEPS  
B0.3 3/4" = 1'-0"



4 GUARDRAIL @ WALL  
B0.3 3/4" = 1'-0"





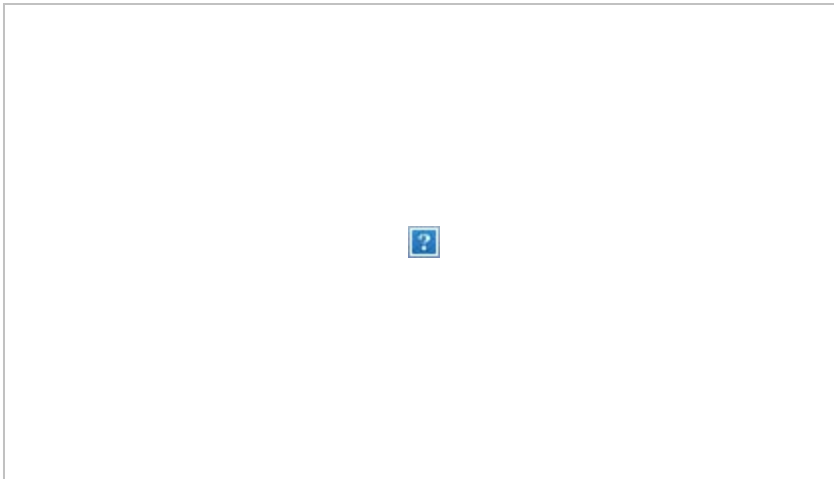
**From:** [Kelly Reid](#)  
**To:** [Kelly Reid](#)  
**Subject:** FW: Variance application requirements  
**Date:** Thursday, July 11, 2019 2:35:12 PM  
**Attachments:** [VARIANCE NEIGHBORHOOD MTG ATTENDANCE.pdf](#)

---

**From:** Stewart Straus [mailto:sgs@s-straus.com]  
**Sent:** Thursday, July 11, 2019 2:32 PM  
**To:** Kelly Reid <kreid@orcite.org>  
**Cc:** Jef Krohn <jkrohn@jhc-companies.com>  
**Subject:** Re: Variance application requirements

Kelly -

Attached is the attendance list from the Barclay Hills Neighborhood Association meeting of 9 July that Jef and I attended. The BHNA secretary will be sending me a copy of their draft minutes as soon as available, and I will forward to you. I presented the general background of the conditions that led to the variance and provided a copy of the site plan with the wall location and cross section. I also provided two very rough freehand sketch views looking south on Molalla and east on Warner-Milne toward the corner with the wall. We answered a number of questions related primarily to visibility for pedestrians approaching the corner; there were no concerns expressed about the building being situated below sidewalk level at the corner.



| | |

## BHNA General Meeting

Tuesday, July 09, 2019

[illegible]





# City of Oregon City

625 Center Street  
Oregon City, OR 97045  
503-657-0891

## Staff Report

File Number: PC 19-075

**Agenda Date:** 7/22/2019

**Status:** Draft

**To:** Planning Commission

**Agenda #:** 3b.

**From:** Kelly Reid

**File Type:** Land Use Item

### **SUBJECT:**

GLUA-19-00022: Chapter 17.40 Code Amendment for HRB Policies Procedures

### **RECOMMENDED ACTION (Motion):**

Staff recommends the Planning Commission recommend approval of the code amendment to Chapter 17.40.

### **BACKGROUND:**

The proposal is for an amendment to the Oregon City Municipal Code. OCMC Chapter 17.40, Historic Overlay, contains provisions for Historic Review processes and procedures. Section 17.40.060 contains procedures and criteria for exterior alterations to historic properties. There are two subsections regarding administrative reviews for work that meets the HRB policies, 17.40.060.D and 17.40.060.K. These two subsections contain conflicting language about the review and approval process. This code amendment would strike section 17.40.060.K, and would clarify the language in the remaining subsection. No criteria is proposed to change; this amendment only addresses the procedures for adoption of HRB policies and for review of work that meets the Historic Review Board (HRB) policies.

HRB Policies were first established in 1986 to give staff the ability to approve alterations to historic resources. The policies are meant to provide clear direction to historic property owners on exterior changes including but not limited to roofing, siding, windows and doors, foundations, fences, porches, gutters, and accessory structures.

The proposed code amendment clarifies the following:

1. Work that meets the HRB policies may be approved administratively (by staff) rather than by the Historic Review Board
2. The Historic Review Board may adopt new or revised policies with public notice and with comment from the Planning Commission and City Commission.

It is important to note that either staff or the applicant may refer a proposal to the Board if it does not meet the HRB policies. The Board has the discretion to determine whether the proposal meets the design guidelines for alterations. HRB decisions are appealable to the City Commission and then to LUBA.

The proposed amendments are attached as Exhibit 1.





**OREGON  
CITY**

**Community Development – Planning**

221 Molalla Ave. Suite 200 | Oregon City OR 97045  
Ph (503) 722-3789 | Fax (503) 722-3880



**OREGON  
CITY**

**Community Development – Planning**

698 Warner Parrott Road | Oregon City OR 97045  
Ph (503) 722-3789 | Fax (503) 722-3880

**STAFF REPORT AND RECOMMENDATION**

**July 12, 2019**

**FILE NO.:** GLUA-19-00022

**APPLICATION TYPE:** Legislative

**HEARING DATE:** Planning Commission  
7:00 p.m., July 22, 2019  
Commission Chambers, 625 Center St, Oregon City, OR 97045

**APPLICANT:** Oregon City Community Development Department

**REQUEST:** Proposed amendments to the Oregon City Municipal Code: Historic Overlay in Chapter 17.40

**LOCATION:** City-Wide

**REVIEWER:** Kelly Reid, AICP, Planner

**RECOMMENDATION:** Staff recommends approval of this application based on the satisfaction of all required criteria for a Legislative action.

**PROCESS:** OCMC 17.50.170.

- A. *Purpose. Legislative actions involve the adoption or amendment of the city's land use regulations, comprehensive plan, maps, inventories and other policy documents that affect the entire city or large portions of it. Legislative actions which affect land use must begin with a public hearing before the planning commission.*
- B. *Planning Commission Review.*
  1. *Hearing Required. The planning commission shall hold at least one public hearing before recommending action on a legislative proposal. Any interested person may appear and provide written or oral testimony on the proposal at or prior to the hearing. The community development director shall notify the Oregon Department of Land Conservation and Development (DLCD) as required by the post-acknowledgment procedures of ORS 197.610 to 197.625, as applicable.*
  2. *The community development director's Report. Once the planning commission hearing has been scheduled and noticed in accordance with Section 17.50.090(C) and any other applicable laws, the community development director shall prepare and make available a report on the legislative proposal at least seven days prior to the hearing.*



3. *Planning Commission Recommendation. At the conclusion of the hearing, the planning commission shall adopt a recommendation on the proposal to the city commission. The planning commission shall make a report and recommendation to the city commission on all legislative proposals. If the planning commission recommends adoption of some form of the proposal, the planning commission shall prepare and forward to the city commission a report and recommendation to that effect.*
- C. *City Commission Review.*
  1. *City Commission Action. Upon a recommendation from the planning commission on a legislative action, the city commission shall hold at least one public hearing on the proposal. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing. At the conclusion of the hearing, the city commission may adopt, modify or reject the legislative proposal, or it may remand the matter to the planning commission for further consideration. If the decision is to adopt at least some form of the proposal, and thereby amend the city's land use regulations, comprehensive plan, official zoning maps or some component of any of these documents, the city commission decision shall be enacted as an ordinance.*
  2. *Notice of Final Decision. Not later than five days following the city commission final decision, the community development director shall mail notice of the decision to DLCD in accordance with ORS 197.615(2).*

IF YOU HAVE ANY QUESTIONS ABOUT THIS APPLICATION, PLEASE CONTACT KELLY REID IN THE PLANNING DIVISION OFFICE AT 503-722-3789.

## **I. PROPOSAL**

The proposal is for an amendment to the Oregon City Municipal Code. OCMC Chapter 17.40, Historic Overlay, contains processes and procedures for Historic Review. Section 17.40.060 contains procedures and criteria for exterior alterations to historic properties. There are two conflicting subsections identifying the review process for work that meets the Historic Review Board (HRB) policies, 17.40.060.D, which calls for administrative (staff) review, and 17.40.060.K, which contains provisions for public notice and a public hearing if requested by anyone receiving the notice. This code amendment removes the notice and hearing provisions by striking section 17.40.060.K, and clarifies the language in the remaining subsection.

No criteria is proposed to change; this amendment only addresses the procedures for adoption of HRB policies and for review of work that meets the HRB policies.

HRB Policies were first established in 1986 to allow property owners to receive approval of minor alterations to historic resources from staff without a public hearing by the Historic Review Board or associated fee. The policies are meant to provide clear non-discretionary direction to historic property owners on exterior changes including but not limited to roofing, siding, windows and doors, foundations, fences, porches, gutters, and accessory structures.

The proposed code amendment includes the following:

1. Work that meets the HRB policies would be reviewed administratively (by staff) rather than by the Historic Review Board at a hearing.
2. Removal of references to specific HRB policies and rather references them generally.
3. Relocation of provisions that the Historic Review Board may adopt new or revised policies with public notice and with comment from the Planning Commission and City Commission.



It is important to note that either staff or the applicant may refer a proposal to the Historic Review Board if it does not meet the HRB policies. The Historic Review Board has the discretion to determine whether the proposal meets the design guidelines for alterations. HRB decisions are appealable to the City Commission and then to LUBA.

The proposed amendments are attached as Exhibit 1.

## **II. PUBLIC NOTICE AND COMMENTS**

Public Notice was provided 20 days prior to the first evidentiary hearing via email to affected agencies, neighborhood associations and Oregon City boards and committees, and published. Notice of the proposed amendment was provided to a variety of groups and government agencies including, Metro and the Department of the Land Conservation and Development. The Planning Division held a meeting with the Citizen Involvement Committee on July 1, 2019, and a Work Session with the Planning Commission on June 24, 2019, and a Work Session on June 11, 2019 with the City Commission to discuss the proposed changes.

The City received a public comment regarding the proposal and heard public testimony throughout the hearing process. The comment did not include support or opposition to the proposed amendment, but rather addressed the content of the HRB policies and the City's enforcement of those policies.

Comments submitted are attached as Exhibit 2 and addressed in this staff report where applicable.

## **III. DECISION-MAKING CRITERIA:**

### **OREGON CITY MUNICIPAL CODE (OCMC)**

#### *Chapter 17.68 Zoning Changes and Amendments*

##### *17.68.010 Initiation of the amendment.*

*A text amendment to this title or the comprehensive plan, or an amendment to the zoning map or the comprehensive plan map, may be initiated by:*

- A. A resolution by the commission;*
- B. An official proposal by the planning commission;*
- C. An application to the planning division presented on forms and accompanied by information prescribed by the planning commission.*

*All requests for amendment or change in this title shall be referred to the planning commission.*

**Finding:** This request is for text amendments to the Oregon City Municipal Code and was initiated by the Planning Division on behalf of a request by the City Commission.

##### *17.68.020 Criteria.*

*The criteria for a zone change are set forth as follows:*

- A. The proposal shall be consistent with the goals and policies of the comprehensive plan.*

**Finding: Complies as Proposed.** Statewide Planning Goals are also shown to indicate how the Oregon City Comprehensive Plan (OCCP) Goals and Policies implement the applicable Statewide Planning Goal.

#### *COMPREHENSIVE PLAN / STATEWIDE PLANNING GOAL 1 – CITIZEN INVOLVEMENT*

*To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

*OCCP Goal 1.1 Citizen Involvement Program*

*Implement a Citizen Involvement Program that will provide an active and systematic process for citizen participation in all phases of the land-use decision making process to enable citizens to consider and act upon a broad range of issues affecting the livability, community sustainability, and quality of neighborhoods and the community as a whole.*

*OCCP Policy 1.1.1*

*Utilize neighborhood associations as the vehicle for neighborhood-based input to meet the requirements of the Land Conservation and Development Commission (LCDC) Statewide Planning Goal 1, Citizen Involvement. The Citizen Involvement Committee (CIC) shall serve as the officially recognized citizen committee needed to meet LCDC Statewide Planning Goal 1.*

*OCCP Goal 1.2 Community and Comprehensive Planning*

*Ensure that citizens, neighborhood groups, and affected property owners are involved in all phases of the comprehensive planning program.*

*OCCP Policy 1.2.1*

*Encourage citizens to participate in appropriate government functions and land-use planning.*

*OCCP Policy 1.2.1*

*Encourage development and refinement of CIC and neighborhood association bylaws that will govern the groups' formation and operations.*

*OCCP Goal 1.3 Community Education*

*Provide education for individuals, groups, and communities to ensure effective participation in decision-making processes that affect the livability of neighborhoods.*

*OCCP Goal 1.4 Community Involvement*

*Provide complete information for individuals, groups, and communities to participate in public policy planning and implementation of policies.*

*OCCP Policy 1.4.1*

*Notify citizens about community involvement opportunities when they occur.*

**Finding: Complies as Proposed.** Public Notice was provided 20 days prior to the first evidentiary hearing via email to affected agencies, neighborhood associations and Oregon City boards and committees, and published. Notice of the proposed amendment was provided to a variety of groups and government agencies including, Metro and the Department of the Land Conservation and Development. The Planning Division held a meeting with the Citizen Involvement Committee on July 1, 2019, and a Work Session with the Planning Commission on June 24, 2019, and a Work Session on June 11, 2019 with the City Commission to discuss the proposed changes.

The proposed code amendments clarify that the process is a staff level review, and include the removal of provisions for public notice and an opportunity for a public hearing in 17.490.060.K. The HRB policies, however, are not discretionary, instead they are clear and objective. The code that provides for notice and potential public hearings gives property owners and neighbors a false sense of influence and involvement, when in actuality there is no discretion involved in the decision. The HRB policies themselves have been adopted and updated through public processes with robust community engagement. The community engagement with respect to HRB policies is through the writing of the policies themselves, rather than the application and enforcement of the policies once adopted.

*COMPREHENSIVE PLAN / STATEWIDE PLANNING GOAL 2 – LAND USE PLANNING*

*To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

**Finding: Complies as Proposed.** The proposed code amendments include clarifications that give applicants more certainty and clarity about city processes. That certainty provides confidence for applicants to understand if their development or redevelopment plans comply with the standards in the Oregon City Municipal Code.

COMPREHENSIVE PLAN / STATEWIDE PLANNING GOAL 3: AGRICULTURAL LANDS

**Finding: Complies as Proposed.** The proposed amendments would not preclude the use of agricultural lands.

COMPREHENSIVE PLAN / STATEWIDE PLANNING GOAL 4: FOREST LANDS

**Finding: Complies as Proposed.** The proposed amendments would not preclude the use of forest lands.

COMPREHENSIVE PLAN / STATEWIDE PLANNING GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES

Statewide Planning Goal 5 requires that open spaces and natural, scenic, and historic resources be protected.

*OCCP Goal 5.3 Historic Resources*

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

*Policy 5.3.7*

*Encourage property owners to preserve historic structures in a state as close to their original construction as possible while allowing the structure to be used in an economically viable manner.*

**Finding: Complies as Proposed.**

The proposed amendments would not preclude the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City. The amendments do not impact the status of the Canemah National Register District or the McLoughlin Conservation District. No changes to review criteria or design guidelines are proposed as part of this amendment. The amendments simply clarify the process for HRB policies, which allow property owners to use their properties in an economically viable manner while also ensuring the structures retain their historic character. The HRB policies offer a more streamlined process without review fees, which better encourages property owners to preserve their historic structures.

*Goal 5.4 Natural Resources*

*Identify and seek strategies to conserve and restore Oregon City's natural resources, including air, surface and subsurface water, geologic features, soils, vegetation, and fish and wildlife, in order to sustain quality of life for current and future citizens and visitors, and the long-term viability of the ecological systems.*

**Finding: Complies as Proposed.** The proposed amendments do not affect natural resources.

COMPREHENSIVE PLAN / STATEWIDE PLANNING GOAL 6: AREAS SUBJECT TO NATURAL HAZARDS

*To protect people and property from natural hazards.*

**Finding: Complies as Proposed.** The overlay districts, such as the Natural Resource Overlay District, Flood Management Overlay, and Geologic Hazards Overlay will apply regardless of the proposed changes.

COMPREHENSIVE PLAN / STATEWIDE PLANNING GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS

*To protect people and property from natural hazards.*

*OCCP Goal 7.1 Natural Hazards*

*Protect life and reduce property loss from the destruction associated with natural hazards*

**Finding: Complies as Proposed.** The proposed amendments will not affect natural hazards overlay districts. The overlay districts, such as the Flood Management Overlay, and Geologic Hazards Overlay will apply regardless of the proposed changes.

COMPREHENSIVE PLAN / STATEWIDE PLANNING GOAL 8: RECREATIONAL NEEDS

*To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

**Finding: Complies as Proposed.** The proposed amendments do not impact parks and recreation.

*COMPREHENSIVE PLAN / STATEWIDE GOAL 9: ECONOMIC DEVELOPMENT*

*To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

*OCCP Policy 9.2.1*

Seek input from local businesses when making decisions that will have a significant economic impact on them.

**Finding: Complies as Proposed.** The City did not specifically seek comment from local businesses; the proposal is simply a code clean up regarding administrative processes.

*OCCP Policy 9.2.2*

Carefully consider the economic impacts of proposed programs and regulations in the process of implementing the City's Comprehensive Plan.

**Finding: Complies as Proposed.** The proposal includes clarifications that will provide greater levels of certainty for developers of property.

*OCCP Policy 9.2.3*

Simplify, streamline, and continuously improve the permitting and development review process.

**Finding: Complies as Proposed.** The proposal includes clarifications that will provide greater levels of certainty for developers of property.

*COMPREHENSIVE PLAN / STATEWIDE PLANNING GOAL 10: HOUSING*

*To provide for the housing needs of citizens of the state.*

**Finding: Complies as Proposed.** The code amendments provide clarity to the existing code standards that apply to historic homes, resulting in greater certainty for the development community.

*COMPREHENSIVE PLAN / STATEWIDE PLANNING GOAL 11: PUBLIC FACILITIES AND SERVICES*

*To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

**Finding: Complies as Proposed.** The proposed amendments have no impact on public facilities.

*COMPREHENSIVE PLAN / STATEWIDE PLANNING GOAL 12: TRANSPORTATION*

To provide and encourage a safe, convenient and economic transportation system.

**Finding: Complies as Proposed.** The proposed amendments have no impact on transportation.

*COMPREHENSIVE PLAN / STATEWIDE PLANNING GOAL 13: ENERGY CONSERVATION*

Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles

**Finding: Complies as Proposed.** The proposed amendments have no impact on energy conservation.

*COMPREHENSIVE PLAN / STATEWIDE PLANNING GOAL 12: URBANIZATION*

Establish an "urban growth boundary" to identify and separate urbanizable land from rural land.

**Finding: Complies as Proposed.** The proposed amendments have no impact on the urban growth boundary.

*COMPREHENSIVE PLAN / STATEWIDE PLANNING GOAL 12: WILLAMETTE RIVER GREENWAY*

To protect the Willamette River corridor's natural, scenic and recreational qualities and to preserve its historical sites, structures, facilities, and objects for education and enjoyment.

**Finding: Complies as Proposed.** The proposed amendments have no impact on the Willamette River Greenway.

**B.** That public facilities and services (water, sewer, storm drainage, transportation, schools, police and fire protection) are presently capable of supporting the uses allowed by the zone, or can be made available prior to issuing a certificate of occupancy. Service shall be sufficient to support the range of uses and development allowed by the zone.

**Finding: Complies as Proposed.** The proposal does not change uses allowed in any zoning districts or the ability of services and facilities.

**C.** The land uses authorized by the proposal are consistent with the existing or planned function, capacity and level of service of the transportation system serving the proposed zoning district.

**Finding: Complies as Proposed.** No land uses are proposed to change and this proposal will have no impact on the transportation system.

**D.** Statewide planning goals shall be addressed if the comprehensive plan does not contain specific policies or provisions which control the amendment.

**Finding: See responses above.** The Oregon City Comprehensive Plan addresses the Statewide Planning Goals, as shown above under the findings in this staff report.

#### **IV. RECOMMENDATION**

Staff recommends that the Planning Commission recommend approval of the proposed text amendments to Chapter 17.40 of the Oregon City Municipal Code.

#### **V. EXHIBITS**

1. Proposed Amendments to the Oregon City Municipal Code
2. Public Comments

## DRAFT PROPOSED AMENDMENT

### 17.40.060 - Exterior alteration and new construction.

- A. Except as provided pursuant to subsection I of this section, no person shall alter any historic site in such a manner as to affect its exterior appearance, nor shall there be any new construction in an historic district, conservation district, historic corridor, or on a landmark site, unless a certificate of appropriateness has previously been issued by the historic review board. Any building addition that is thirty percent or more in area of the historic building (be it individual or cumulative) shall be considered new construction in a district. Further, no major public improvements shall be made in the district unless approved by the board and given a certificate of appropriateness.
- B. Application for such a certificate shall be made to the planning staff and shall be referred to the historic review board. The application shall be in such form and detail as the board prescribes.
- C. Archeological Monitoring Recommendation. For all projects that will involve ground disturbance, the applicant shall provide,
  - 1. A letter or email from the Oregon State Historic Preservation Office Archaeological Division indicating the level of recommended archeological monitoring on-site, or demonstrate that the applicant had notified the Oregon State Historic Preservation Office and that the Oregon State Historic Preservation Office had not commented within forty-five days of notification by the applicant; and
  - 2. A letter or email from the applicable tribal cultural resource representative of the Confederated Tribes of the Grand Ronde, Confederated Tribes of the Siletz, Confederated Tribes of the Umatilla, Confederated Tribes of the Warm Springs and the Confederated Tribes of the Yakama Nation indicating the level of recommended archeological monitoring on-site, or demonstrate that the applicant had notified the applicable tribal cultural resource representative and that the applicable tribal cultural resource representative had not commented within forty-five days of notification by the applicant.

If, after forty-five days notice from the applicant, the Oregon State Historic Preservation Office or the applicable tribal cultural resource representative fails to provide comment, the city will not require the letter or email as part of the completeness review. For the purpose of this section, ground disturbance is defined as the movement of native soils.

- D. ~~[1.]~~ The historic review board, after notice and public hearing held pursuant to Chapter 17.50, shall approve the issuance, approve the issuance with conditions or disapprove issuance of the certificate of appropriateness.

~~2.~~

E. The following exterior alterations to historic sites ~~may shall~~ be subject to administrative approval:

- a. Work that conforms to the adopted Historic Review Board Policies. The Board may adopt such policies only after notice and an opportunity to be heard is provided and shall include specific opportunity for comment by the planning staff, the Planning Commission, and the City Commission. Such policies shall be clear and objective and shall carry out the City's Comprehensive Plan, especially those elements relating to historic preservation.

~~E.F.~~ For exterior alterations of historic sites in an historic district or conservation district or individual landmark, the criteria to be used by the board in reaching its decision on the certificate of appropriateness shall be:

- 1. The purpose of the historic overlay district as set forth in Section 17.40.010;
- 2. The provisions of the city comprehensive plan;

3. The economic use of the historic site and the reasonableness of the proposed alteration and their relationship to the public interest in the structure's or landmark's preservation or renovation;
4. The value and significance of the historic site;
5. The physical condition of the historic site;
6. The general compatibility of exterior design, arrangement, proportion, detail, scale, color, texture and materials proposed to be used with the historic site;
7. Pertinent aesthetic factors as designated by the board;
8. Economic, social, environmental and energy consequences; and
9. Design guidelines adopted by the historic review board.

**FG.** For construction of new structures in an historic or conservation district, or on an historic site, the criteria to be used by the board in reaching its decision on the certificate of appropriateness shall include the following:

1. The purpose of the historic conservation district as set forth in Section 17.40.010;
2. The provisions of the city comprehensive plan;
3. The economic effect of the new proposed structure on the historic value of the district or historic site;
4. The effect of the proposed new structure on the historic value of the district or historic site;
5. The general compatibility of the exterior design, arrangement, proportion, detail, scale, color, texture and materials proposed to be used in the construction of the new building or structure;
6. Economic, social, environmental and energy consequences;
7. Design guidelines adopted by the historic review board.

**GH.** For construction of new structures in an historic corridor, the criteria to be used by the board in reaching its decision on the certificate of appropriateness shall include the following:

1. The purpose of the historic overlay district as set forth in Section 17.40.010;
2. The policies of the city comprehensive plan;
3. The impact on visible evidence of the trail;
4. The impact on archaeological evidence when there exists documented knowledge of archeological resources on the property;
5. The visual impact of new construction within the historic corridor; and
6. The general compatibility of the site design and location of the new construction with the historic corridor considering the standards of subsection G of this section.

**HI.** The following standards apply to development within historic corridors:

1. Within the Oregon Trail-Barlow Road historic corridor, a minimum of a thirty-foot wide-open visual corridor shall be maintained and shall follow the actual route of the Oregon Trail, if known. If the actual route is unknown, the open visual corridor shall connect within the open visual corridor on adjacent property.
2. No new building or sign construction shall be permitted within required open visual corridors. Landscaping, parking, streets, driveways are permitted within required open visual corridors.

**IJ.** In rendering its decision, the board's decision shall be in writing and shall specify in detail the basis therefore.



~~JK.~~ Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any exterior architectural features which does not involve a change in design, material or the outward appearance of such feature which the building official shall certify is required for the public safety because of its unsafe or dangerous condition.

~~K.~~ The following exterior alterations may be made subject to the administrative procedures as outlined below:

~~Construction of fences on historic sites.~~

~~Exterior alterations, excluding additions, to incompatible structures in the Canemah Historic District.~~

- ~~1. A notice of the proposed certificate of appropriateness shall be mailed to the following persons:
  - ~~a. The applicant;~~
  - ~~b. All owners of property within three hundred feet of the property which is the subject of application;~~
  - ~~c. A recognized neighborhood association and a citizen involvement committee representative of the neighborhood involved, if the property which is the subject of the application lies wholly or partially within the boundaries of such organization.~~~~
- ~~2. The failure of the property owner to receive notice shall not invalidate the action if a good faith attempt was made to notify all persons entitled to personal notice.~~
- ~~3. Notice shall also be given by publication in a newspaper of general circulation in the area affected.~~
- ~~4. Within ten days of the issuance of notice of the proposed certificate of appropriateness, any person who has received personal notice pursuant to subdivision 1 of this subsection or who demonstrates sufficient interest in the outcome to participate in such proceedings, as determined by the historic review board, may request a public hearing before the historic review board.~~
- ~~5. Within forty-five days after a request for public hearing is made, a public hearing shall be held before the historic review board following procedures as established in Chapter 17.50.~~
- ~~6. The historic review board shall then deny or approve the application, either with or without conditions, following procedures as established in Chapter 17.50.~~
- ~~7. In the event no request for hearing is filed, the historic review board, through its chairperson and planning staff, shall issue a certificate of appropriateness in accordance with the notice given without further hearing.~~
- ~~8. The board may adopt policies for review of applications of certificates of appropriateness in the historic overlay district. Such policies shall be adopted only after notice and an opportunity to be heard is provided and shall include specific opportunity for comment by the planning staff, the planning commission, and the city commission. Such policies shall carry out the city's comprehensive plan, especially those elements relating to historic preservation. In the absence of such policies, the board shall apply such elements directly.~~

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 10-1003, § 1(Exh. 1), 7-7-2010)



**From:** [Laura Terway](#)  
**To:** [pauloedgar@q.com](mailto:pauloedgar@q.com)  
**Cc:** [Kelly Reid](#)  
**Subject:** RE: Contributing Historic Building/House at 302 3rd Avenue in the Canemah National Register Historic District and it's "Not Acceptable Fence"  
**Date:** Friday, June 28, 2019 2:31:38 PM

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Good Afternoon Paul,

Can you confirm if you would like your comments added to the HRB policy update, the Legislative amendment to 17.40, or both? Thanks and have a great weekend.



**Laura Terway, AICP**  
**Community Development Director**

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Oregon City, Oregon 97045  
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Think **GREEN** before you print.

Please visit us at between the hours of 8:30am-3:30pm Monday through Friday.

PUBLIC RECORDS LAW DISCLOSURE: This e-mail is subject to the State Retention Schedule and may be made available to the public.

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**From:** Paul Edgar <pauloedgar@q.com>  
**Sent:** Saturday, June 22, 2019 11:40 AM  
**To:** Laura Terway <lterway@orcity.org>; Kelly Reid <kreid@orcity.org>; Tony Konkol <tkonkol@orcity.org>; John M. Lewis <jmlewis@orcity.org>  
**Cc:** guttmcg@msn.com; Frank O'Donnell <fodonnell@orcity.org>; Rocky Smith, Jr. <rsmith@orcity.org>; Rachel Smith <lylessmithfororegon@gmail.com>; Dan Holladay <dholladay@orcity.org>  
**Subject:** Contributing Historic Building/House at 302 3rd Avenue in the Canemah National Register Historic District and it's "Not Acceptable Fence"

**Applying all OCMC codes and criteria to this Historic District and the identified - Historically Contributing Building/House/Structure at 302 3rd Avenue (the corner of 3rd Avenue and Ganong Street), is where there is a need for comprehensive review of the appropriateness and that of the future impacts including that of precedence setting, with allowing for what (OCMC Codes Identifies as Not Allowed) a 6' foot high Stockade Style/Type Closed Fence to be built, which effectively annexes approximately 12' Feet of Oregon City's Streets from public use, that obstructs view of this important contributing historic structure - building/house/structure with a creek running under it, and where Public Safety is compromised, with this fence that additionally obstructs views and the abilities for drivers of vehicles from seeing other vehicles and pedestrians, this needs/requires action.**

To imply, that OCMC Codes do not apply, because this fence is in City ROW and/or is not within the property lines and/or that it is grandfathered is that of pushing the reality of what it is and common sense.

When most everyone knows that significant parts of this fence are new (the technical criteria: greater than thirty percent of the contiguous fence is of totally new construction), a determination needs to be applied, that this Fencing Project at 302 3rd Avenue is now new construction and it must comply with with all OCMC codes and OCMC 17.40 Historic District Building Guidelines, and it equally needs a Right-of-Way Permit, as is required with all "New construction" and to have a "Certificate of Appropriateness", to exist within the National Register Historic District of Canemah!

**This has been reported and reported, to the leadership of Oregon City that there are violations of OCMC Codes that have been going on and allowed to exist for greater than two years, and the justification for all delays within the City of Oregon City must now be critically reviewed.**

Below are extracts from the proposed new revisions to Oregon City's Historic District Municipal Codes, 17.40 and most all of this has existed without the need for change over the period of the last two years.

## **Proposed Changes to Historic Review Board Policies, Draft for May 2019 Historic Review Board Meeting , has received HRB approval**

**HRB Policy #6 (First Adopted 9/88; Revised 6/91; to be Revised 2019) - Fences and Walls** The following policy is hereby adopted by the Oregon City Historic Review Board regarding the construction or alteration of fences and walls within Historic Districts, on designated sites in Conservation Districts, or on individual sites designated as landmarks.

Fences and walls are an extension of the architecture of the house. According to the Secretary of the Interior's Standards for Rehabilitation, additions such as fences "should be compatible with the size, scale, material and character of the property, neighborhood or environment." Fences in the front yard are typically more open and decorative, while fences in the side and rear yards are more utilitarian.

Front yard fences or walls and corner side yard fences or walls should be no more than 42 inches in height and shall not create a traffic sight obstruction (as defined in Chapter 10.32 of the Oregon City Municipal Code). Along rear yards and interior side yards (beyond the front yard setback building line), fences or walls may be up to six (6) feet in height.

Fences or walls that are listed in the "ACCEPTABLE" category may be reviewed and a decision made by staff. The primary criterion to be used by staff shall be compatibility of the proposed fence or wall with the style and period of the designated structure. If the proposal within a historic district is not on a designated site, the primary criterion shall be compatibility with surrounding historic structures. Either staff or applicant shall have the option of referring the plans to the Historic Review Board for resolution of

**doubtful or contested application of standards. Fences or walls that are not listed, or that are specifically listed under the "NOT ACCEPTABLE" category, must be submitted for review and decision by the Historic Review Board.**

### **NOT ACCEPTABLE FENCE AND WALL TYPES IN FRONT AND CORNER SIDE YARDS**

**Solid wood board or Stockade: Wood fence with vertical or horizontal boards and no spacing. Includes good neighbor fence and stockade fence. May be topped with lattice or other wood design. May have a scalloped or straight top. Not allowed when obstructing view of historic structure.**

#### **OCMC 17.40.060 - Exterior alteration and new construction.**

A. Except as provided pursuant to subsection I of this section, no person shall alter any historic site in such a manner as to affect its exterior appearance, nor shall there be any new construction in an historic district, conservation district, historic corridor, or on a landmark site, unless a certificate of appropriateness has previously been issued by the historic review board. **Any building addition that is thirty percent or more in area of the historic building (be it individual or cumulative) shall be considered new construction in a district.** Further, no major public improvements shall be made in the district unless approved by the board and given a certificate of appropriateness.

F. For exterior alterations of historic sites in an historic district or conservation district or individual landmark, the criteria to be used by the board in reaching its decision on the certificate of appropriateness shall be:

1. The purpose of the historic overlay district as set forth in Section 17.40.010;
2. The provisions of the city comprehensive plan;
3. The economic use of the historic site and the reasonableness of the proposed alteration and their relationship to the public interest in the structure's or landmark's preservation or renovation;
4. The value and significance of the historic site;
5. The physical condition of the historic site;
6. The general compatibility of exterior design, arrangement, proportion, detail, scale, color, texture and materials proposed to be used with the historic site;
7. Pertinent aesthetic factors as designated by the board;
8. Economic, social, environmental and energy consequences; and
9. Design guidelines adopted by the historic review board.

G. For construction of new structures in an historic or conservation district, or on an historic site, the criteria to be used by the board in reaching its decision on the certificate of

appropriateness shall include the following:

1. The purpose of the historic conservation district as set forth in Section 17.40.010;
2. The provisions of the city comprehensive plan;
3. The economic effect of the new proposed structure on the historic value of the district or historic site;
4. The effect of the proposed new structure on the historic value of the district or historic site;
5. The general compatibility of the exterior design, arrangement, proportion, detail, scale, color, texture and materials proposed to be used in the construction of the new building or structure;
6. Economic, social, environmental and energy consequences;
7. Design guidelines adopted by the historic review board.

I. The following standards apply to development within historic corridors:

1. Within the Oregon Trail-Barlow Road historic corridor, a minimum of a thirty-foot wide-open visual corridor shall be maintained and shall follow the actual route of the Oregon Trail, if known. If the actual route is unknown, the open visual corridor shall connect within the open visual corridor on adjacent property.
2. No new building or sign construction shall be permitted within required open visual corridors. Landscaping, parking, streets, driveways are permitted within required open visual corridors.

**In the proposed revisions to the existing OCMC Codes and Building Guidelines within OCMC 17.40 the following is now being recommended to be RED-Lined out, and deleted.**

K. The following exterior alterations may be made subject to the administrative procedures as outlined below:

Construction of fences on historic sites. Exterior alterations, excluding additions, to incompatible structures in the Canemah Historic District.

1. A notice of the proposed certificate of appropriateness shall be mailed to the following persons: a. The applicant; b. All owners of property within three hundred feet of the property which is the subject of application; c. A recognized neighborhood association and a citizen involvement committee representative of the neighborhood involved, if the property which is the subject of the application lies wholly or partially within the boundaries of such organization.
2. The failure of the property owner to receive notice shall not invalidate the action if a good faith attempt was made to notify all persons entitled to personal notice.
3. Notice shall also be given by publication in a newspaper of general circulation in the

area affected.

4. Within ten days of the issuance of notice of the proposed certificate of appropriateness, any person who has received personal notice pursuant to subdivision 1 of this subsection or who demonstrates sufficient interest in the outcome to participate in such proceedings, as determined by the historic review board, may request a public hearing before the historic review board.

5. Within forty-five days after a request for public hearing is made, a public hearing shall be held before the historic review board following procedures as established in Chapter 17.50.

6. The historic review board shall then deny or approve the application, either with or without conditions, following procedures as established in Chapter 17.50.

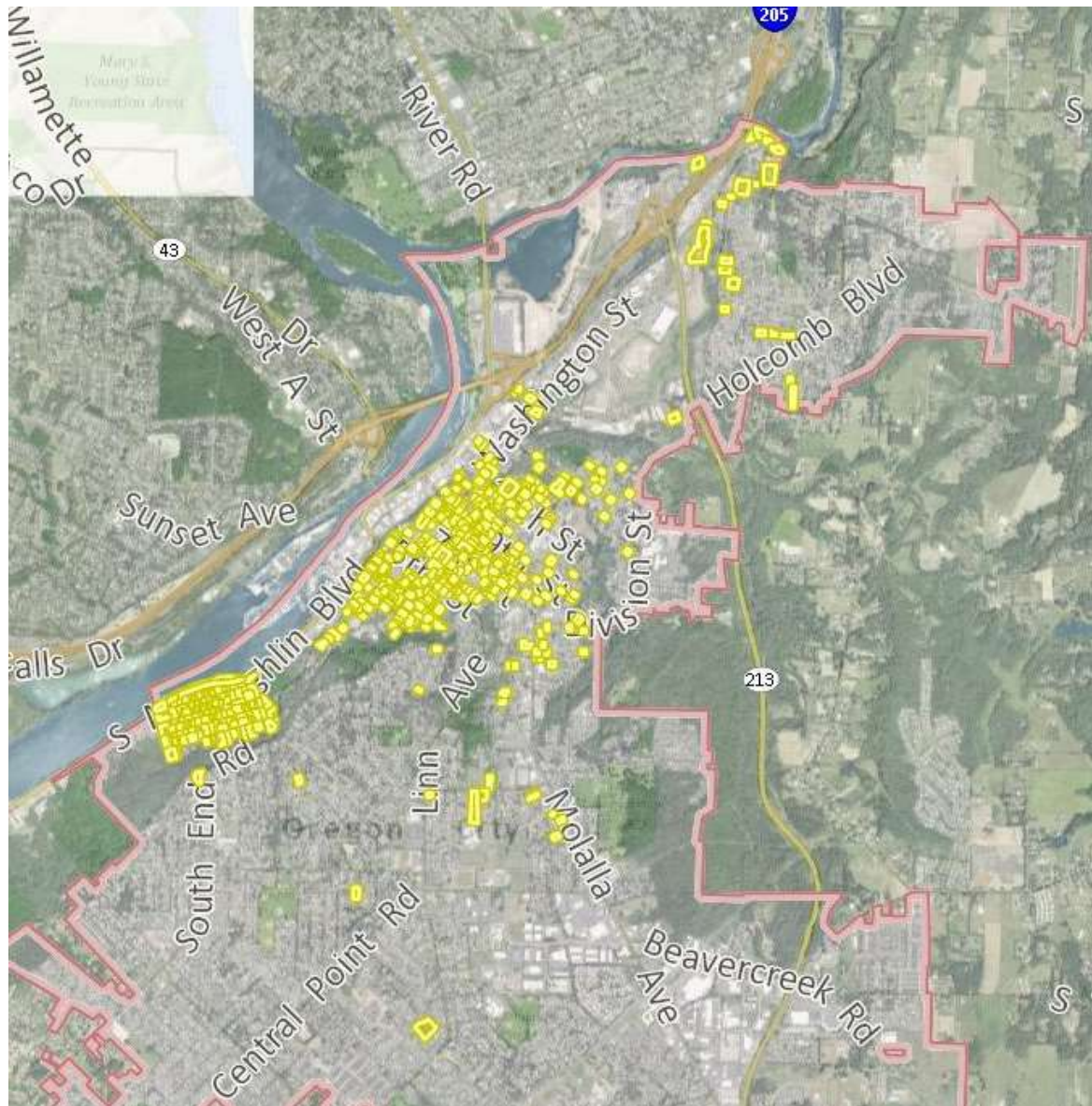
7. In the event no request for hearing is filed, the historic review board, through its chairperson and planning staff, shall issue a certificate of appropriateness in accordance with the notice given without further hearing.

8. The board may adopt policies for review of applications of certificates of appropriateness in the historic overlay district. Such policies shall be adopted only after notice and an opportunity to be heard is provided and shall include specific opportunity for comment by the planning staff, the planning commission, and the city commission. Such policies shall carry out the city's comprehensive plan, especially those elements relating to historic preservation. In the absence of such policies, the board shall apply such elements directly.



# Maps of Areas Subject to Chapter 17.40\*

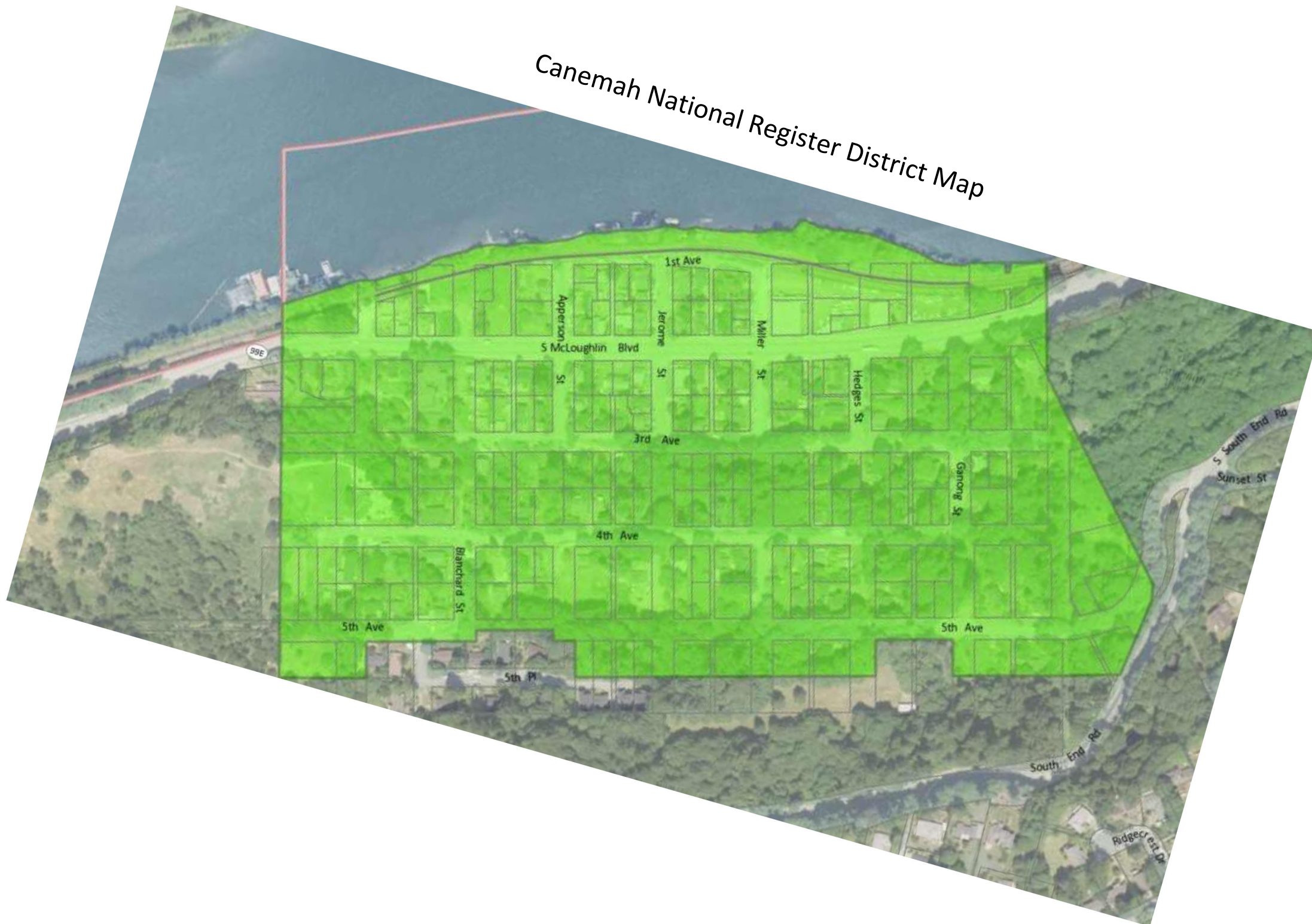
## Citywide Map



\*These maps are intended to illustrate areas where the historic overlay zone applies.

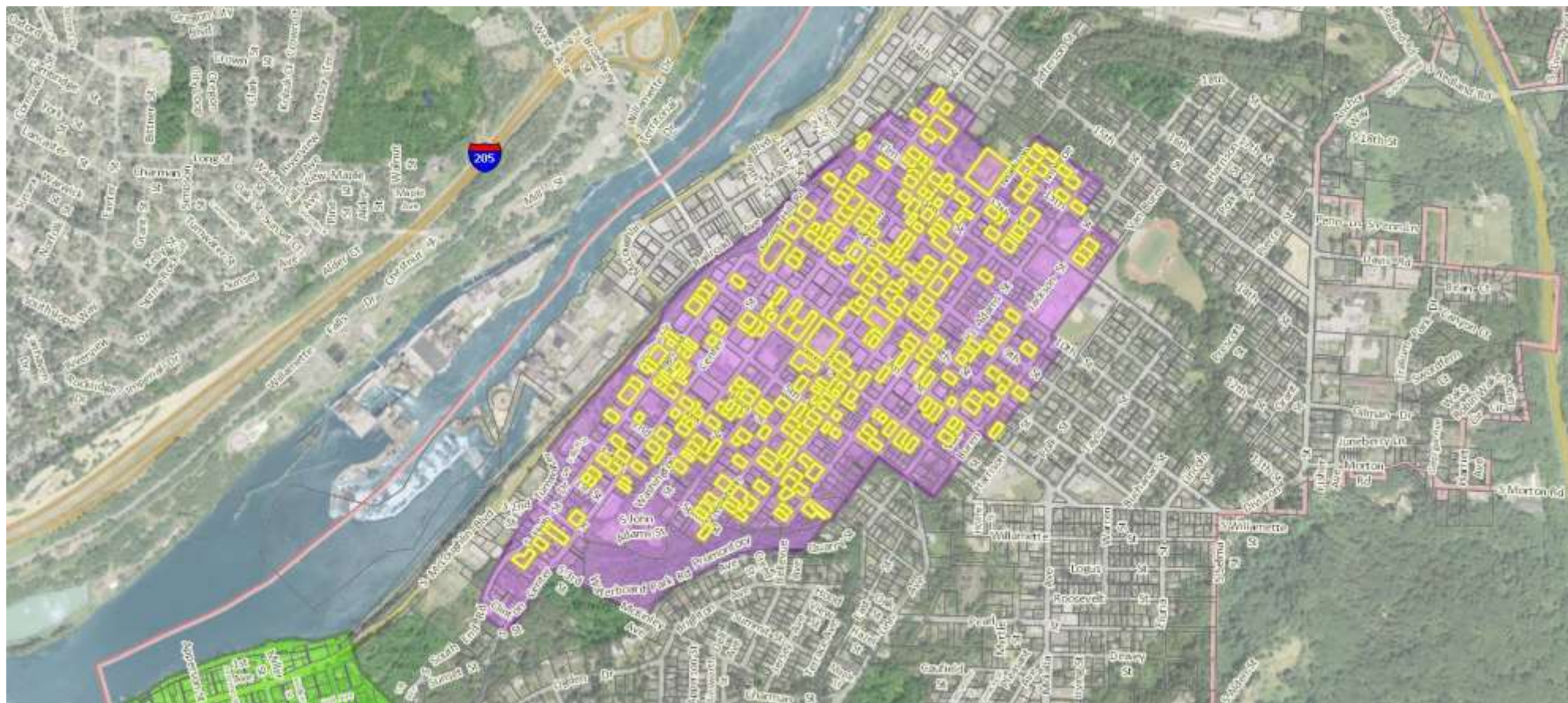


# Canemah National Register District Map





## McLoughlin Conservation District Map



The conservation district is shown in purple. Only the highlighted properties are subject to alterations reviews.