

# City of Canby

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## Staff Report/Notice of Decision File #: MOD 23-07 Chipotle

**STAFF REPORT DATE:** February 15, 2024  
**DIRECTOR DECISION:** February 15, 2024  
**STAFF:** Emma Porricolo, Associate Planner

### I. Introduction

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#### Applicant Request

The project applicant, MAJ Canby LLC, requests approval to modify an existing commercial development to remodel and site improvements for a new tenant at 597 SW 1<sup>st</sup> Avenue. The proposed improvements will significantly remodel the existing structure at the site while primarily retaining the existing building shell. Site improvements include reconfiguration of the northern parking area, a new pedestrian walkway from the sidewalk to the building entrance, and a complete exterior renovation of the building. There are two existing accesses at the site, one is a shared access with the adjacent property to the east. The western access will be modified to permit ingress only.

#### Property/Owner Information

**Location:** 597 SW 1<sup>st</sup> Avenue  
**Tax Lots:** 31E33CC06501  
**Property Size:** 0.61 acres  
**Comprehensive Plan:** HC - Highway Commercial  
**Zoning:** C-2, Highway Commercial Zone; (DCO) Downtown Canby Overlay  
**Owner:** MAJ Canby LLC  
**Applicant:** MAJ Canby LLC  
**Application Type:** Intermediate Modification (MOD)  
**City File Number:** MOD 23-07

#### Attachments

- A. Application Packet
  - 1. Application Form, Pre-application Conference Notes (City of Canby & ODOT), Title Report, Joint Access Easement

2. Narrative, Construction Budget, and Appraisal Report<sup>1</sup>
  3. Traffic Study
  4. Stormwater Memorandum
  5. Plan Set
  6. Building Elevations and Trash Enclosure Plan
  7. Lighting Plan (Updated 1/5/24)
- B. Public and Agency Comments (Curran-McLeod Engineering, DirectLink, Canby Utility, Public Works, Canby Fire)
- C. ODOT Comments

**Existing Conditions**

The subject property is located along the Highway 99E commercial corridor. The site, located at 597 SW 1st Avenue, is south of Highway 99E between S Birch Street and S Elm Street. The site is home to the former Dairy Queen. The building has been occupied by Dairy Queen since 1980; the age of the building is unknown. Existing on the site is a 2,750-square-foot building with a drive-through window, two accesses onto Highway 99E (one of them a shared access), parking areas in the front and back of the building, and landscaping areas.

The property is zoned C-2, Highway Commercial; parcels to the south and east are also zoned C-2. The sites west and north of the subject site are zoned C-M, Commercial Manufacturing. To the east is U.S. Bank, to the south is the Pacific Pride Station, and to the west is Marc Nelson Oil Products (a fuel supplier). To the north across Highway 99E is a narrow vacant lot between the highway and the railroad.

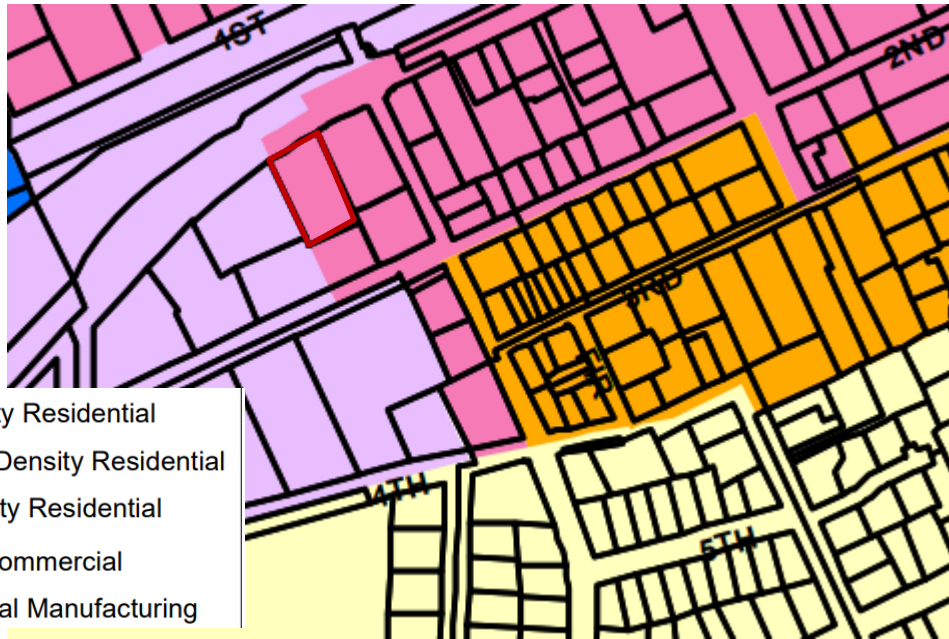
**Vicinity Map**



**Zoning Map (site outlined in red)**

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<sup>1</sup> Appraisal Report Summary is found in Attachments. Full report is available in project folder, MOD 23-07.

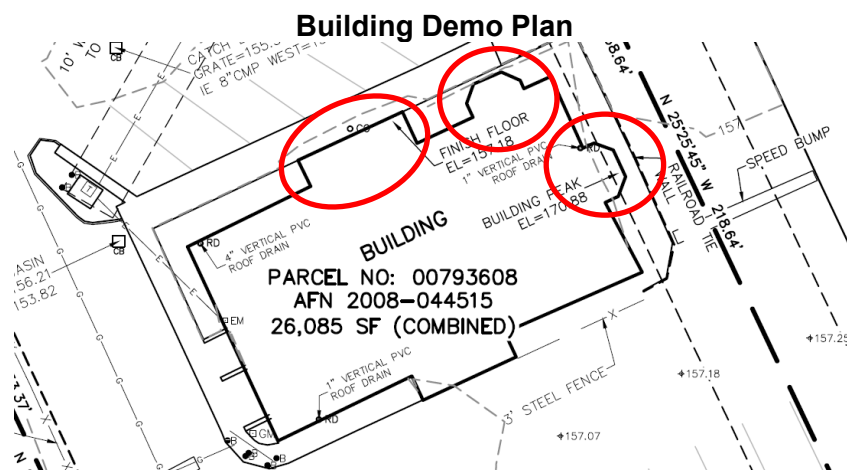


- R-1 Low Density Residential
- R-1.5 Medium Density Residential
- R-2 High Density Residential
- C-2 Highway Commercial
- C-M Commercial Manufacturing

**Proposed Development**

The Applicant, MAJ Canby LLC, is proposing a remodel to the existing 2,750 square foot drive-through restaurant, and several site improvements such as parking lot improvements and a new trash enclosure. The remodel will modernize the building’s façades.

The building’s footprint and shell will be largely the same as the existing structure and utilize the existing building shell. Aside from the drive-through window on the south façade, currently the building has three small projections including two bay windows and an enclosed entry vestibule. There are two bay window projections on the north and east façade and an entryway projection for the main entrance at the north façade. Those three sections of the building will be removed during the remodel (locations shown in the figure below). In total, the building area to be removed equals approximately 183 square feet or 0.6% of the existing building floor area.



The façade will be modernized with a significant change to the roof form, partial changes to the siding, and new paint colors. The removal of the building projections on the north façade will

create a modernized façade. The new roof will use layering of roof heights, which is intended to enhance the one-story building and draw attention to the entrances.

The existing site has minimal directional signage and parking striping, and much of it is faded. The parking and maneuvering areas south of the building will have new striping but will otherwise remain unchanged. The parking area in front of the building (or north of the building) will allow vehicular travel in both directions. New pedestrian crossing areas will be added to the parking lot. One from the southwest edge of the building and another to the northeast corner of the building connecting to the sidewalk on Highway 99E. The existing western access will become ingress only, and the eastern access, a shared access with the adjacent lot, will remain the same.

A new outdoor seating patio is proposed to be located in the northeast corner of the building. The new bicycle parking will also be located there. Additionally, a new trash enclosure is proposed in the southwest corner of the parking lot. The existing landscape areas on the site will change slightly to accommodate new pathways and some enhanced landscaping, but otherwise will remain generally the same.

### **Application**

The proposed improvements are subject to a Type II Intermediate Modification process. The building use will remain the same, a drive-through restaurant. The site layout will remain largely the same, and therefore Planning Staff determined that the proposed project represents an Intermediate modification, not Minor or Major. A Site and Design Review (DR) application is not triggered because the remodel and associated improvements are below the 60% cost threshold identified in the Municipal Code. The cost of the proposed improvements are 58.5% of the market value of the property and no new buildings are proposed. The Planning Director authorized the market value of the property to be used for the remodel cost percentage calculation. Since the DR application triggers are not met, the application is subject to a Modification application. Given the scope of improvements, a Type II Intermediate Modification application is required. Although there are nonconforming elements of the building, the nonconforming structure is not being expanded. Therefore, a Nonconforming application is not required.

This Staff review reviews the project's compliance with the applicable chapters of the Canby Development Code, Chapter 16 of the Canby Municipal Code (CMC). They are as follows:

- Ch. 16.08 General Provisions
- Ch. 16.10 Off-street Parking and Loading
- Ch. 16.28 C-2, Highway Commercial Zone
- Ch. 16.41 Downtown Canby Overlay (DCO)
- Ch. 16.42 Signs
- Ch. 16.43 Outdoor Lighting Standards
- Ch. 16.46 Access Limitations on Project Density
- Ch. 16.49 Site and Design Review Criteria
- Ch. 16.52 Nonconforming Uses and Structures
- Ch. 16.89 Application Review and Procedures

## II. Applicable Criteria

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Section 16.89.90 of Chapter 16.89, *Application and Review Procedures*, of the CMC outlines criteria for processing modifications to previously approved land use applications. The section identifies three types of modifications:

- A. **Minor Modification.** Minor modifications have a negligible impact on an approved site plan, land use decision, or condition of approval. The Planning Director will review all minor modifications under the Type I process.
- B. **Intermediate Modification.** Intermediate modifications are those that do not fit the definitions in 16.89.090(A) or (C). The Planning Director will review intermediate modifications under the Type II process. If the Planning Director approves an intermediate modification, notice of the decision will be made in accordance with the Type II process. The individuals noticed may obtain a public hearing on the issue by filing a request in writing within ten days of the notice mailing date. Any additional costs of such hearings shall be paid by the modification applicant. Hearing notice shall follow the requirements of the procedure type of the original application.
- C. **Major Modification.** Any modification that would result in a substantial impact to an approved site plan, land use decision, or condition of approval is a major modification. Major modifications shall be processed using the procedure type of the original application.

**Finding 1:** The proposed improvements include modest site plan modifications and a significant remodel of the building exterior; however, it does not trigger a Site and Design Review application. Per CMC 16.49.030.A.3. a major building remodel is subject to a Site and Design Review only when the remodel is “above 60% of the value.” The proposed remodel is 58.5% of the market-value (see Finding 18 for more information). Therefore, the proposed improvements does not trigger a Site and Design Review and is instead subject to a Modification application as it is modifying an already developed site.

As shown above, the three types of modifications are not explicitly defined. However, because the proposed project does not result in a change of use or a significant change in the existing site configuration (e.g., building and parking location and access points) and the proposed changes will bring several of the site’s many nonconforming elements further or entirely into compliance with current standards of the CMC. The existing building footprint will remain mostly the same, with the exception of the removal of three projections from the building with an entirely redesigned façade that complies with the building design standards in the DCO. Thus, the Planning Director has determined the proposed improvements are not subject to a Type II Intermediate Modification.

### III. Analysis and Findings

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The applicable chapters and sections of the Canby Development Code, or Chapter 16 of the CMC are analyzed below.

#### Chapter 16.08 General Provisions

##### **16.08.150: Traffic Impact Study**

This section of the CMC outlines requirements for studying the transportation impacts of a proposed project, when applicable.

**Finding 2:** A Transportation Impact Analysis (TIA) was prepared for the approved project by Lancaster Mobley in October 2023. The study was reviewed by DKS Associates (as the City's traffic consultant) and ODOT. Below is a summary of the TIA; the full report is found in Attachment A.3.

The proposed Chipotle Mexican Grill restaurant project will result in no additional site trip generation compared to the previous use. Therefore, no additional impact on the transportation system is anticipated to occur as part of the application.

Since the proposed improvements will not result in a change in site trip generation no additional impacts to residential streets, nearby pedestrian facilities, or bicycle routes would occur. Additionally, connectivity between the project site and Highway 99E will be improved via the construction of a pedestrian path between the north parking lot and existing street sidewalks. No mitigation is necessary or recommended to address street impacts or connectivity as part of the proposed improvements.

Since the application does not constitute a change in use per ODOT standards (i.e., no increase or change in site trips generated will occur) and no modifications to the existing access driveways are proposed beyond revising the west access from two-way travel to ingress only, no mitigation is required at site access driveways related to access spacing and driveway widths as part of this application.

The drive-through lane will have sufficient storage space to accommodate expected queues which may form at the drive-through pickup window, and queues are not anticipated to extend back to the site adjacent roadway of Highway 99E or impede vehicle circulation within the site. No mitigation is necessary or recommended with regard to the proposed drive-through lane.

The applicant was required to complete a queueing analysis for the site's drive-through window and approximately 100-foot-long queueing lane. Based on the information, the analysis determined that the drive-through lane will have sufficient storage space to accommodate expected queues which may form at the drive-through pickup window, and queues will not extend back to the site adjacent roadway of Highway 99E or impede vehicle circulation within the site. No mitigation is necessary or recommended with regard to the proposed drive-through lane.

Based on the findings above, Planning Staff finds the proposed improvements meet the applicable criteria in CMC 16.08.160.

### **16.08.160: Safety and Functionality Standards**

This section of the CMC aims to ensure that development does not occur in areas where the surrounding public facilities, particularly roads, are inadequate.

**Finding 3:** Subsection A of this chapter requires adequate street drainage. No street drainage issues have been identified by City staff. Subsection C requires adequate public facilities. Utilities and services to the site exist, and where upgrades are necessary, approval by the associated utility or service provider is required. Provider comments are found in Section IV of this report.

The TIA addresses subsection B, related to safe access and clear vision at the intersections. The analysis determined that adequate intersection sight distance will be available at the approaches to allow for safe and efficient operation of each intersection. Thus, no mitigation is necessary or recommended.

Subsection D, E and F require sufficient access, adequate frontage improvements and compliance with applicable mobility standards. The site will continue to take access to Highway 99E via two existing driveways that currently serve the site. As part of the proposed development application, adequate horizontal right-of-way clearances will be provided along the site frontage with Highway 99E to meet ODOT standards. No other mitigation is necessary or recommended.

Since the proposed improvements will not result in an increase in site trip generation, no additional impacts to the transportation system will occur. Therefore, the proposed improvements will not create further deficiencies to the system.

Based on the above review of applicable safety and functionality standards, Staff finds the standards of CMC 16.08.160 are met.

## **Chapter 16.10: Off-Street Parking and Loading**

This chapter of the CMC identifies requirements for vehicular parking, bicycle parking, and loading facilities when new development occurs.

### **16.10.050 Parking standards designated**

Per Table 16.10.050. for a take-out restaurant, 8 spaces per 1,000 square feet of floor area. Buildings under 5,000 square feet are not required to have a loading berth.

**Finding 4:** The proposed improvements will reconfigure some of the existing parking to accommodate other site elements, such as a pedestrian walkway, a new outdoor patio, and ADA parking. Based on the required 8 spaces per 1,000 square feet of floor area for “take-out or drive-through restaurants,” 22 spaces are required for the 2,750-square-foot building. As shown on the site plan, 22 parking spaces, including the 2 ADA spaces, are proposed. Staff finds the standard is met.

### **16.10.060 Loading**

**Finding 5:** No loading area is proposed or required for the building since the floor area is under 5,000 square feet. Staff finds the standard is not applicable.

### **16.10.070 Parking lots and access**

Table 16.10.070 describes the required minimum dimensions for parking areas.

**Finding 6:** There are two separate parking areas on the site north and south of the building. North of the building, the front parking area has parking stalls that meet the minimum dimensions required. All of these parking stalls are 9 feet by 18 feet, meeting the minimum stall dimensions. The “clear isle width” is 24 feet, meeting the required minimum width.

The south parking area behind the building will remain unchanged, with the exception of updating the outdated striping. The 10 existing parking stalls are below the minimum stall dimensions currently required. They measure 17 feet by 8.8 feet. They are 1 foot short of the required depth of standard spaces. Compact spaces are permitted to be 8 feet by 16 feet. CMC 16.10.070.A.2. permits 30% of a site’s parking to be compact spaces. The southern parking area exceeds 30% of site parking, it is 45% of the total parking on site. With the existing building footprint remaining, there is limited space south of the building to accommodate a drive-through, using the existing configuration, a vehicle access lane for parking, and the parking spaces. The existing site has the minimum parking required and no additional spaces to spare. Given that the spaces are existing and will not change with the proposed improvements, Staff permits the exception to the parking lot dimension standards allowing the compact spaces for all 10 spaces south of the building. Those spaces must be labeled as compact. Such label markings are not shown on the site plan but are required pursuant to the Conditions of Approval (COAs).

Additionally, the “clear isle width” standards in Table 16.10.070 do not address how to treat the clear isle width when the travel isle is one-way. The general standard is 24 feet. Therefore, the 14 feet for one-way vehicle travel shall be sufficient for one-way travel. The drive-through travel lane abutting the parking isle will have markings to indicate the separation.

Per CMC 16.10.070.B.6, required sidewalks shall extend from ground floor entrance to the sidewalks to provide required access and egress. The site does not currently have a pedestrian walkway connecting to Highway 99E. A new connection is proposed. The location is shown on the Site Plan (Plan Set, Attachment A.5).

For access provisions, CMC 16.10.070.B.9 states that the access drives must have a width of 20 feet. The west access has only 18 feet of width. The curvature of Highway 99E at the location of the access prompted Staff to require the west access be ingress only. ODOT supports the requirement. The driveway spacing requirements are not applicable to the proposed improvements since a change in the access locations are not proposed. Note, the existing spacing of the accesses do not meet City or ODOT standards.

Staff finds that, as conditioned, the standards are met.



**16.10.090 Drive-up uses.**

Drive-up lanes are required to have a minimum capacity for 2 automobiles or 40 feet in length. Additionally, the “stacking area shall not interfere with safe and efficient access to other parking.”

**Finding 7:** The existing drive-through lane has 88 feet for vehicular queuing, or space for 4 cars. According to the applicant, “it should be noted that the drive-through lane is considered a Go Mobile Lane such that no orders will be taken at the drive-through lane (there will not be a menu board nor a cashier to take payment).” The stacking area will not interfere with safe and efficient access to the parking areas on the subject parcel. The fifteen (15) foot wide one-way vehicular drive aisle serving the parking south of the building is separate from the drive-through aisle. According to the Traffic Study (Attachment A.3), “the drive-through lane will have sufficient storage space to accommodate expected queues which may form at the drive-through pickup window, and queues will not extend back to the site adjacent roadway of Highway 99E or impede vehicle circulation within the site.” Staff finds the standard is met.

**16.10.100 Bike parking**

**Finding 8:** The approximately 2,750 square foot building requires 3 bicycle parking spaces. Two racks with a total of 4 bicycle parking spaces are proposed along the building’s front façade near the outdoor patio area. The racks are within the required distance from the building’s entrance. Per COAs, the applicant will need to provide specifications for the bicycle rack to ensure the dimensions meets the standards in CMC 16.10.100.A. Staff finds the standard is met.

**Chapter 16.28: C-2, Highway Commercial Zone**

This chapter of the CMC identifies which land uses are allowed in the C-2 Zone and identifies development standards for those uses.

**16.28.010 Uses Permitted Outright**

**Finding 9:** Drive-through restaurants are a permitted use in the zone, listed under CMC 16.28.010.E. Staff finds the use is permitted outright in the zone.

**16.28.030 Development Standards**

**Finding 10:** The setback standards are superseded by the DCO setback standards. The maximum building height permitted is 45 feet; with the remodel, the building will be under 23 feet tall. The maximum lot coverage in the zone is 60%, the building lot coverage is 10.5%.

Sidewalks eight feet in width are required for properties along Highway 99E, except in cases where building locations or street width necessitate a narrower design. Pursuant to the COAs, the project is required to have sidewalks to be consistent with current City and ODOT standards.

Vision clearance distances are required to be 15 feet from driveways. Per the COAs, the applicant will need to demonstrate that the proposed

landscaping, and existing 8" maple tree near the east entrance does not violate the vision clearance requirements. Any new signage on the lot will also be subject to vision clearance standards.

Staff finds all applicable development standards, with the associated COAs, in CMC 16.28.030 are met.

## **Chapter 16.41: Downtown Canby Overlay (DCO) Zone**

The DCO overlay has use provisions, development standards, and site and design standards for lots in the overlay. The overlay has three subareas, the subject site is located in the Outer Highway Commercial (OHC) overlay.

### **16.41.030 Uses permitted outright**

**Finding 11:** This section does not change the use permitted in the zone, nor is it listed in the conditional uses under CMC 16.41.040. The proposed use is a permitted use under CMC 16.28.010.E. The site is located in the Outer Highway Commercial (OHC) subarea of the DCO.

### **16.41.050 Development standards**

This section has requirements for minimum and maximum setbacks, floor area ratio, building footprint, and building height.

**Finding 12:** Conformance with the development standards for the OHC subarea are addressed below. The building is nonconforming to setback and floor area ratio requirements but meets all other development standards found in Section 16.41.050.

- **Setbacks** - In the OHC subarea the minimum required setback is 10 feet, and there is no maximum setback from street lot lines. Per CMC 16.41.050.A. and Table 2, at least 40% of the lot frontage shall be developed with buildings built at the minimum setback for street lot lines.

The lot has one street frontage along Highway 99E. Per the requirements, 40% of the building should be at a 10-foot setback. Currently the building is at a minimum setback of approximately 70 feet. The existing setbacks are legal nonconforming and will minimally change. Therefore, the nonconformance is permitted to remain. The existing bay window and entrance project approximately 5 feet from the building on the north façade are to be removed, reducing the setback to a minimum of approximately 75 feet. Although this add 7% to the nonconforming setback, there are benefits to the removal. The removal allows an outdoor seating patio and a more continuous pedestrian walkway along the front of the building. Both changes promote pedestrian comfort and an activated storefront.

The intent of the maximum setback standard is not described in the code. However, based on urban planning principles, Staff believe engaging the building frontage and public sidewalks is one of the

intents of the standard. The proposed setback modification includes other design elements that will meet some of the intent of the maximum setback standard. Therefore, the proposed modification to the existing setback is minor and Staff finds the standard is met.

- Floor Area Ratio – The building floor area ratio (FAR) is 0.105, or 0.045 or 1,162 square feet under the required FAR. The existing floor area is also well under the minimum FAR required. As described above, the minor removal of the building’s facade projections has associated benefits, and therefore Staff accept the negligible decrease in nonconformance for the maximum setback and minimum FAR standard.
- Maximum Building Footprint – The building footprint will remain generally the same, remaining well below the maximum building footprint of 80,000 square feet.
- Maximum Building Height – The maximum building height permitted the in OHC subarea is 45 feet. The proposed building height is approximately 22 feet.
- Screening - This standard suggests enclosures be located 1) out of public view, 2) is of material that complements adjacent buildings, and 3) is buffered on all sides. A trash enclosure is proposed to be located in the southwest corner of the parking lot. It will be 6.7 feet tall to entirely screen the trash area and will be constructed of painted masonry and a metal gate painted a color that matches building façade colors.

The applicant has not stated if there is rooftop mechanical structures proposed or if the parapet meets the minimum height for screening. Pursuant to the COAs, the applicant will be required to show that that if rooftop mechanical equipment is proposed, the parapet meets the height and screening requirements.

Based on the findings above, with the applicable COAs, Staff finds the standards are met.

**Section 16.41.060 DCO site and design review guidelines.**

**Finding 13:** Per CMC 16.41.060.B.b the design standards apply to “remodels which represent 60% tax assessed or more of the value of the existing building” and “façade improvements that would later the exterior structure of the building.” The proposed remodel will significantly alter the exterior of the existing structure and therefore, is subject to the DCO design standards.

The building is an existing structure that was built prior to adoption of the DCO standards. The proposed improvements aim to meet the current standard to the extent feasible. Some requirements may not be possible given the limitations of the existing structure and retaining the existing shell.

#### **16.41.070 DCO site and design review standards.**

**Finding 14:** Compliance with the DCO design standards are addressed below. The site is located in the OHC subarea and is subject to only the OHC standards.

- Ground Floor Windows - The proposed ground floor windows will be clear glass with visual transmittance of 0.6 or higher. 0.6 transmittance is the minimum permitted. The building's new north façade will have 61% glazing, exceeding the minimum 50% glazing required for street facades in the OHC subarea.
- Building Entry – The building entry on the north façade will be comprised of 40% or more of glass, meeting the minimum requirement. The entryway has transom windows, meeting the requirement for flanking or transom window. The entrance's two required design features are canopies above the entry doors and articulated parapets with increased height around the entrance to highlight the entry.
- Architectural Bays – In the OHC subarea, bay divisions must be a minimum of 50 feet apart. The north, street-facing façade is divided into four (4) bays, divided by columns. The bays are spaced no more than 50 feet on center. The two (2) design elements for the architectural bays proposed are engaged columns, and transom windows over doorways. It also incorporates overhangs. The two (2) decorative accents are window mullions and building lighting (wall sconces and recessed canopy lighting).
- Distinct Base, Middle, Top of Building – As shown on the elevations (Attachment A.6), the building remodel design provides a clear and distinct base, middle, and top utilizing changes in color and material with projections a minimum of 3 inches and bands of not less than 8 inches all the way around the building including the street-facing façade to break up the vertical mass.
- Roof Form and Design – A flat roof is proposed. The applicant's materials do not provide sufficient information to determine if all the requirements of CMC 16.41.070.C.2.4.b., particularly the 24-inch minimum height for parapets. Pursuant to the COAs, the applicant must provide that information to show the standard is met.
- Building Materials – In the OHC subarea, the building must consist of the following: 70% primary materials, 25% secondary materials, and 10% accent materials. The primary material is stucco that covers the middle (color) portion of all the facades and the drive-through window. Additionally, the existing low masonry wall around the base of the building. The proposed building elevations provide stucco as the primary material to consist of a minimum 70% or more of the facades (excluding windows and doors), brick/concrete as the secondary materials up to 25% of facades (excluding windows and doors), and metal trim as an accent material up to 10% of facades (excluding

windows and doors). As a flat roof is proposed for the project, the roof materials do not apply.

- Color Palette – The project will use #SW-2844 ‘Roycroft Mist Gray’ and #SW-2848 ‘Roycroft Pewter’ colors from the Sherwin Williams Arts and Crafts color palette as required by the code.

Based on the findings above, Staff finds that with the conditions of approval, the standards are met.

#### **Chapter 16.42: Signs**

This chapter of the CMC identifies standards for the location, number, and size of signs, and gives specific attention to the relationship between signage and a building’s exterior elevations.

**Finding 15:** The applicant’s materials do not include sufficient information to determine if the proposed signage complies with standards in Chapter 16.42. The applicant shall submit a sign permit for all proposed signage per the COAs.

#### **Chapter 16.43: Outdoor Lighting Standards**

The purpose of this chapter is to provide regulations for outdoor lighting that will minimize glare and light trespass, among other goals. The chapter identifies requirements related to the placement, shielding, height, and intensity of outdoor light fixtures.

**Finding 16:** The site is located in the LZ 2 lighting zone and triggers compliance with the lighting standards based on the applicability triggers found in CMC 16.43.030. The submitted lighting plan complies with all LZ 2 lighting zone standards. All lighting will meet the illumination limits in Table 16.43.070 as well as the height limits in CMC 16.43.080. Staff finds the standard is met.

#### **Chapter 16.46: Access Limitations on Project Density**

This chapter addresses the number of street access points required compared to the level of development proposed, along with minimum dimensions of private drives.

**Finding 17:** There are two existing accesses at the site. The western access is 18-foot wide, and the eastern access, a shared access with the adjacent tax lot (31E33CC06700) currently occupied by U.S. Bank, is 24-foot wide. The joint access easement with tax lot 31E33CC06700 is found in Attachment A.1. Per CMC 16.46.080, State highway standards, ODOT regulates access on Highway 99E. The applicant is required to make the western access ingress only. See Finding 6 for more information. Staff finds the applicable standards of Chapter 16.46 are met.

#### **Chapter 16.49: Site and Design Review Criteria**

This chapter provides review criteria to be used in the design review process. Although the proposed improvements do not trigger a Site and Design Review application, several standards for site design, such as landscaping and bicycle and pedestrian facilities still apply. Compliance with the applicable standards of Chapter 16.49 are addressed below.

***16.49.030 Site and design review plan approval required.***

**Finding 18:** Pursuant to this section, a “major building remodeling above 60% of value” is subject to a Site and Design Review application. The application has provided documentation showing the proposed remodel is under 60% of the market value. The construction cost of the remodel is \$954,301 with a current market value of \$1.63 million (see Construction Budget and the Appraisal report in Attachment A.2). Therefore, the proposed remodel is 58.5% the market value and does not trigger a Site and Design Review application.

#### **16.49.065 Bicycle and Pedestrian Facilities**

**Finding 19:** A new pedestrian walkway is proposed from the front door of the building to the sidewalk along SW 1st Avenue. There are marked pedestrian ways across the vehicle maneuvering areas on the north and south side of the building. Additionally, two bicycle racks are proposed along the front of the building allowing parking for four bicycle parking spaces. Staff finds the standard is met.

#### **16.49.080 General Provisions for Landscaping**

**Finding 20:** The site meets the minimum 15% landscaping requirement by providing approximately 21% of the site in landscaping. This includes landscape areas around the building, within the parking lot and along the southern portion of the site that contains a large lawn area with seven (7) large mature oak, pine and birch trees proposed to remain. Existing landscape areas are to remain with proposed plantings in new landscape areas designed to match existing adjacent landscaping. Staff finds the standards are met.

#### **16.49.120 Parking Lot Landscaping Standards**

**Finding 21:** For the north parking lot area, there are landscape islands for every 8 parking stalls. One deciduous tree has also been provided in each parking lot island.

The south parking area is to remain the same. Therefore, the 10 parking stalls do not have any landscape islands. The 10 parking stalls are necessary for the proposed development to meet the minimum parking requirements. Additionally, as shown on the Landscape Plan (Attachment A.5), there are four large oak trees in the landscaped area just south of the parking stalls. Given the proximity of the trees to the parking stalls, many of the benefits of landscaping islands are provided with the existing trees.

While only 12.4% of the revised parking area is provided in landscaping, no additional room is available for additional landscape areas as the minimum parking has been provided throughout the site. As such, the existing landscape area with mature oak, pine and birch trees in the southern portion of the site shall be used to meet the intent of the code. Additionally, a shrub hedge and tree have been proposed between the parking and SW 1st Avenue in compliance with this section. The existing irrigation system shall be revised to accommodate new/modified landscape areas. Although the proposed improvements are shy of the 15% parking lot landscaping, given the site’s constraints and the benefits of retaining the existing mature trees on the site, Staff finds the proposed landscaping is sufficient and the standard is met.

## Chapter 16.52: Nonconforming Uses and Structures

This chapter addresses the criteria for changes to nonconforming structures or buildings.

**Finding 22:** The existing building to remain is nonconforming to the maximum setbacks and to the minimum FAR in the DCO OHC subarea. The use for the nonconforming structure is to remain the same with the new tenant, a restaurant with drive-through. The use is a permitted use in the zone.

Chapter 16.52 addresses the address expansion or rebuilding of nonconforming structures and changes of nonconforming uses. However, the chapter does not address remodels of nonconforming uses where there is no additional floor area or and the new use or tenant in this case is not a nonconforming use. Therefore, the provisions of the nonconforming chapter are not applicable to the proposed improvements. Regardless, many elements of the project will bring the building into compliance with current standards while the nonconforming elements of the site, maximum setback and FAR, are to remain relatively unchanged.

Staff finds the provisions of Chapter 16.52 are not applicable to the proposed improvements.

## Chapter 16.89: Application and Review Procedures

This chapter of the CMC identifies procedures for processing different types of applications, including requirements for public notice and hearings.

**Finding 23:** The Intermediate Modification application are subject to Type II procedures that require notice. Public notice and request for comments were sent to property owners and occupants within 100 feet of the site on January 2, 2024. After the Planning Director decision, a notice of decision will be sent. Staff finds that the procedural requirements for a Type II application, as defined in CMC 16.89.040, are met.

City Staff and the applicant team met with ODOT regarding the timeline of ODOT approvals and issuance of building permit(s). Collectively it was determined the City will not issue any type of occupancy permit (including a temporary occupancy permit) until completion of ODOT's State Highway Approach Road permit process. However, the City may issue building permits prior to completion of the State Highway Approach Road permit process. For more information see COA #34.

## IV. Comments

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- A. Public Comments. The Public Comment period was open from January 2, 2024, to January 16, 2024. No public comments were received.
- B. Agency Comments
  - ODOT
    - See comments in Attachment C
  - Curran-McLeod Engineering – Curt McLeod
    - Provide a temporary pedestrian access route during driveway reconstruction.

- In response to the developer's question, an easement is not required for the sanitary sewer service.
- DirectLink – Matt Downs
  - Protect all utilities on site.
  - The communication is located on the SW corner of the building by the drive through isle.
- Canby Utility Electric – Josh Muravez
  - We will need to know the load and panel size.
  - Provide a year of electric service to another like location.
  - We will need to know if the transformer will need to be relocated.
  - Add to the plans a street light on the west side of the east driveway. Developer to work with Oregon Department of Transportation on the installation of the street light in their right-of-way.
- Canby Utility Water – Joe Brennan
  - We will need to know your water service needs.
  - If usage peak daily usage will exceed what the existing 1" meter is capable of the service will need to be upsized.
  - We will require an RP device behind the meter.
  - We will need to have the existing fire hydrant adjacent to the driveway approach protected.
- Public Works Department – Pretreatment and Stormwater – Dave Conner & Neil Olsen
  - All private stormwater will stay on site and is under the jurisdiction of Clackamas County. The stormwater system in 99E is under the jurisdiction of the Oregon Department of Transportation.
  - Your pretreatment requirements on your plans look good, if you have any questions concerning pretreatment, contact Neil Olsen.
- Public Works Department – Collections – Chris Goetz
  - A grease interceptor must be installed.
  - Clean and inspect sewer line to verify the condition of the sewer line.
- Public Works Department – Streets – Spencer Polack
  - No comments
- Canby Fire – Matt English
  - The shared access drive for the site's east access must be painted red and have no parking labeling to allow adequate emergency fire response access.
  - A 13 foot 6 inch overhead clearance on drive surfaces is required. The trees on the back of the building may need to be trimmed to meet the standard.
  - Water supply is good with the hydrant in the front on Highway 99E.
  - Citation for comments is Appendix D of the Oregon Fire Code.

## V. Conclusion and Decision

Planning Staff find that given the scope of the proposed improvements, it complies with and is subject to an Intermediate Modification application. Based on the application materials submitted as part of the record and the facts, findings, and conclusions reached and provided in this report, the City of Canby Planning Director **Approves** Intermediate Modification File MOD 23-07 with the Conditions of Approval identified below in Section VI. The criteria for a Type II Intermediate Modification have been met.



## **VI. Conditions of Approval**

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The Planning Director **approves** the application (MOD 23-07), subject to the following Conditions of Approval.

### General Conditions:

1. This application does not authorize any new signage at the site. For new signage, the applicant must submit a Sign Application. Proposed signs shall conform to provisions of Chapter 16.42 of the CMC and shall secure a building permit from Clackamas County Building Services prior to their installation if applicable. (Planning)
2. During construction, trees to be retained within the area of impact must be protected in a manner consistent with CMC 16.49.080.F. (Planning)
3. The applicant will provide plans that show the proposed bicycle parking will meet the rack specifications and dimensional requirements found in CMC 16.10.100.A. (Planning)
4. The applicant must demonstrate that the proposed landscaping and existing 8" maple tree near the east entrance do not violate the vision clearance requirements. Any new signage on the lot will also be subject to vision clearance standards. (Planning)
5. All ten (10) parking spaces located south of the building must be labeled as compact.
6. If rooftop mechanical structures are proposed, the applicant shall provide a roof plan that shows the location and height of the structures and provide plans that meet the standards in CMC 16.41.050.3.d. (Planning)
7. The applicant shall provide plans that show compliance with the requirements of CMC 16.41.070.C.2.4.b. regarding the required design elements for flat roofs. (Planning)

### Public and Utility Improvements:

8. Curb and sidewalk shall be constructed as necessary to be consistent with local, ODOT, and ADA standards. (ODOT)
9. Right of way donated to ODOT as necessary to accommodate the planned cross section shall be provided. The deed must be to the State of Oregon, Oregon Department of Transportation. The ODOT District contact will assist in coordinating the transfer. ODOT should provide verification to the local jurisdiction that this requirement has been fulfilled. The property owner must be the signatory for the deed and will be responsible for a certified environmental assessment of the site prior to transfer of property to the Department. Note: It may take up to 6 months or longer to transfer ownership of property to ODOT. (ODOT)
10. A State Highway Approach Road Upgrade Permit from ODOT for the proposed use is required. The access shall be demarcated as entrance only. Site access to the state highway is regulated by OAR 734.51. For application information go to <http://www.oregon.gov/ODOT/HWY/ACCESSMGT/Pages/Application-Forms.aspx>. Note: It may take up to 6 months to 1 year or longer to process a State Highway Approach Road Permit depending on the level of complexity of the project and plan review timeline. (ODOT)
11. An ODOT Miscellaneous Permit must be obtained for all work in the highway right of way. When the total value of improvements within the ODOT right of way is estimated to be \$100,000 or more, an agreement with ODOT is required to address the transfer of ownership of the improvement to ODOT. An Intergovernmental Agreement (IGA) is

required for agreements involving local governments and a Cooperative Improvement Agreement (CIA) is required for private sector agreements. The agreement shall address the work standards that must be followed, maintenance responsibilities, and compliance with ORS 276.071, which includes State of Oregon prevailing wage requirements. Note: If a CIA is required, it may take 6 months or longer to process. (ODOT)

12. The applicant must obtain an ODOT permit to place trees in the state right of way. Tree spacing and design must be consistent with the ODOT Highway Design Manual section 4.2.6 ([http://www.oregon.gov/ODOT/Engineering/Documents\\_RoadwayEng/HDM\\_04-Cross-Sections.pdf](http://www.oregon.gov/ODOT/Engineering/Documents_RoadwayEng/HDM_04-Cross-Sections.pdf)). If proposed tree placement deviate from ODOT standards (such as placement in a planter strip), a Design Exception Request for clear zone must be prepared by a licensed engineer for review by ODOT Technical Services. Preparation of a Design Exception request does not guarantee its ultimate approval. Note: It may take 4 months or longer to process a Design Exception. (ODOT)
13. Illumination within the ODOT right of way must be in accordance with AASHTO illumination standards and the ODOT Lighting Policy and Guidelines, which states that local jurisdictions must enter into an Intergovernmental Agreement (IGA) with ODOT wherein the local jurisdiction is responsible for installation, maintenance, operation, and energy costs. (ODOT)
14. The contractor shall make an advance deposit or place a performance bond with ODOT equal to engineering cost estimate for the frontage improvements within the State's ROW required by the City. (ODOT)
15. Add to the plans a street light on the west side of the east driveway. Developer to work with Oregon Department of Transportation on the installation of the street light in their right-of-way. (Canby Utility)
16. The existing fire hydrant adjacent to the driveway approach must protected. (Canby Utility Water)
17. An RP device behind the meter is required. (Canby Utility Water)
18. During driveway construction, a temporary pedestrian access route must be provided. (City Engineer)
19. All private stormwater will stay on site and is under the jurisdiction of Clackamas County. The stormwater system in 99E is under the jurisdiction of the Oregon Department of Transportation. (Public Works – Pretreatment and Stormwater)
20. A grease interceptor must be installed. (Public Works – Collections)
21. Clean and inspect sewer line to verify the condition of the sewer line. (Public Works – Collections)
22. A 13 foot 6 inch overhead clearance is required on drive surfaces. The trees in the back of the building need to be trimmed to meet the clearance. (Canby Fire)
23. The shared access drive for the site's east access must be painted red and have no parking labeling. (Canby Fire)
24. The applicant is responsible for obtaining approval from utility and service providers. (Planning)

Project Design/Site Plan Approval:

25. Prior to the issuance of a building permit, the installation of public or private utilities, or any other site work other than rough site grading, construction plans must be approved by the City and all other utility/service providers. The design, location, and planned installation of all roadway improvements and utilities including but not limited to water, electric, sanitary sewer, natural gas, telephone, storm water, cable television, and emergency service provisions is subject to approval by the appropriate utility/service provider. (Planning)
26. A Site Plan Review (Type I) application with the final plans must be submitted to the Planning Department. A narrative with accompanying materials that demonstrates how the project is consistent with the conditions of approval stated in this Staff Report shall be provided with the application. Building Permits will not be issued until the Site Plan Review application is approved. (Planning)

Building Permits:

27. Pursuant to CMC 16.49.060, Site and Design Review approvals shall be void after twelve (12) months unless: A building permit has been issued and substantial construction pursuant thereto has taken place, as defined by the state Uniform Building Code; or the Planning Director finds that there have been no changes in any Ordinances, standards, regulations, or other conditions affecting the previously approved project so as to warrant its resubmittal. (Planning)
28. An erosion control permit from the City of Canby is required prior to any on-site disturbance. Erosion control plans shall demonstrate that construction activities will not discharge materials or pollutants into the in-street storm drain. (Planning)
29. The project applicant shall apply for a City of Canby Site Plan Review Permit, Clackamas County Building permits (including grading permits), and a City of Canby Erosion Control Permit prior to project construction. (Planning)
30. Clackamas County Building Services will provide structural, electrical, plumbing, and mechanical plan review and inspection services. (Planning)
31. Construction plans shall be designed and stamped by a Professional Engineer registered in the State of Oregon. (Planning)

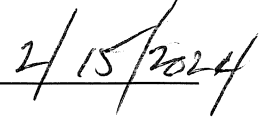
Prior to Occupancy:

32. A narrative with accompanying materials shall be provided during the final certificate of occupancy process that demonstrates how the project is consistent with the conditions of approval identified in this Staff Report. (Planning)
33. The City shall not issue any type of Occupancy permit (including a temporary occupancy permit) until completion of the State Highway Approach Road Permit process. All ODOT permits including approval of the plans, construction of the approach and inspections shall be completed before the ODOT District 2B contact will sign-off for the City to issue their occupancy permit. (ODOT)
34. The new landscaping and ADA parking must be fully installed prior to Occupancy. If weather/seasonal conditions prevent any installation of plantings, the project applicant shall identify a specific timeline for the completion of that landscaping subject to approval by the Planning Director. (Planning)

Signatures:



Don Hardy, Planning Director



DATE



Emma Porricolo, Associate Planner



DATE