



# City of Canby

**STAFF REPORT & NOTICE OF DECISION  
REPLACEMENT OF A NON-CONFORMING STRUCTURE  
Wally's Chinese Kitchen  
679 SE 1<sup>st</sup> Ave  
FILE #: NCS 26-01**

**STAFF REPORT / NOTICE OF DECISION DATE:** July 9, 2026

**STAFF:** Maxwell Taylor, Associate Planner and Don Hardy, Planning Director

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## I. EXECUTIVE SUMMARY

Planning staff have approved the application NCS 26-01 to repair and update the destroyed structural awning at 679 SE 1<sup>st</sup> Ave. The applicants, Christopher Nestlerode and Benjamin Chan, proposed a

replacement of a canopy that was approved and constructed before the current setback requirements were established. The canopy was damaged by a third party in November 2025 and had to be removed for safety, but the support poles remain. The sign is also intended to be replaced, and the sign pole is still intact. The canopy design has been altered so that there is no overhang into Oregon Department of Transportation (ODOT) right-of-way or slope easement, but the design and size of the canopy will be largely the same as what existed previously.

The project site, Tax Lot 31E33DA01100, is zoned C-2 Highway Commercial and falls within the “Outer Highway Commercial” subarea of the Downtown Canby Overlay (DCO). It is bordered by C-2 Highway Commercial-zoned property on all sides. Planning staff have evaluated the proposal’s compliance with the applicable Development Code criteria. Notable findings include the following.

- The proposed improvements differ little from what existed prior to the damaging incident. There is no noted increase in non-conformity as a result of this repair.
- The use and location of the primary building remains unchanged.
- The project will not necessitate the creation of additional parking.
- The replacement canopy will not protrude into City or ODOT right-of-way.
- The replacement canopy will not significantly alter the function, purpose, or design of the existing structure.
- The project exceeds the minimum parking standard by 10 parking spaces.

The proposal to repair/replace the structure without bringing the site into conformity triggered a Non-Conforming structure application, in which approval or denial is made at the staff level. The Non-Conforming application allows elements of the existing building that do not meet standards to remain, so long as the proposal is consistent with the approval criteria. The criteria for either 1) expanding or 2) changing the use of a Non-Conforming structure requires consideration of site, surrounding area, and use characteristics. Also, the proposal is required to meet all standards, aside from the ones it’s Non-Conforming to be approved.

The structure currently has no setback from the public right-of-way, which is less than the 20-foot setback required in its base zone of C-2 Highway Commercial and the requirement for 40% of the structure to be at the minimum setbacks set forth in the Downtown Canby Overlay Zone (DCO). This is the only known non-conformity of the proposal. No alterations are being made to the site or primary structure beyond replacement of the surrounding awning.

Staff have approved the proposed project as it meets all applicable criteria, except the criteria to which it is non-conforming.

## **II. INTRODUCTION**

### **A. APPLICANT'S REQUEST AND STAFF DECISION**

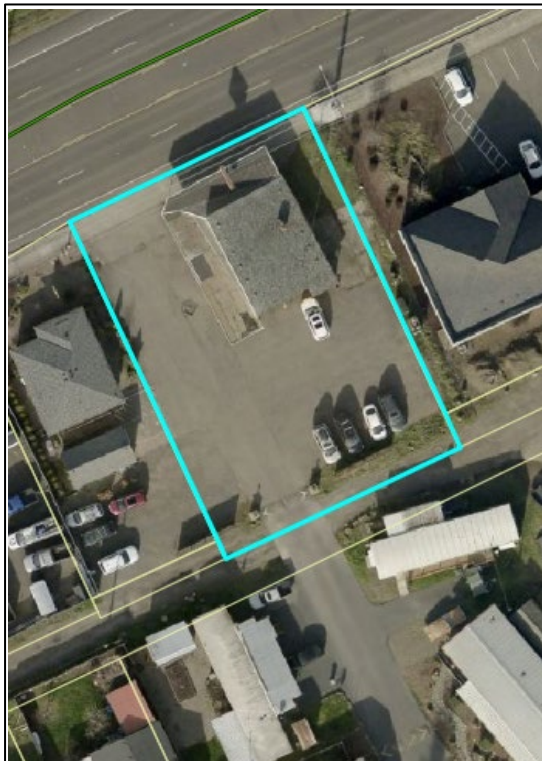
The applicant is requesting land use approval to replace a canopy that was approved and constructed before the current setback requirements were established. The canopy was damaged by a third party and had to be removed for safety, but the support poles remain. The sign is also intended to be replaced, and the sign pole is still intact. The canopy design has been altered so that there is no overhang into ODOT

right-of-way or slope easement, but the design and size of the canopy will be largely the same as what existed previously.

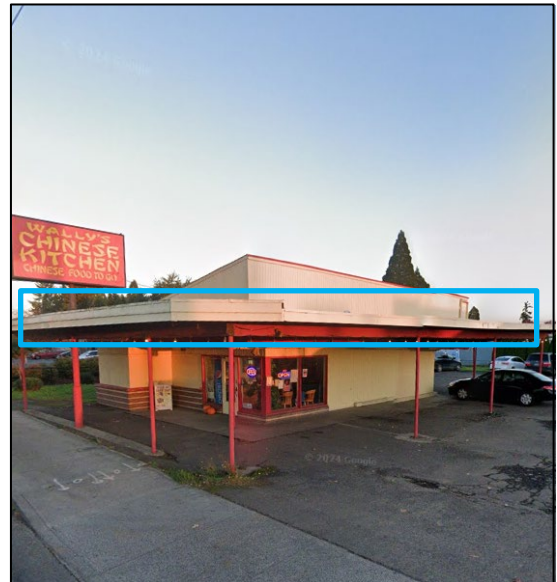
Based on the application submitted and the facts, findings, and conclusions of this report, staff **Approve Application NCS 26-01** pursuant to the Conditions of Approval (COA) identified in Section V of this staff Report.

## B. SITE HISTORY AND OVERVIEW

The site under consideration of this review is a 0.33 Acre Commercial site located at 679 SE 1<sup>st</sup> Ave. The site contains one structure, an approximately 1,500-square-foot restaurant currently owned and operated by Wally's Chinese Kitchen. Earliest records indicate that the use of the site has been a restaurant since at least 1963, and that the building remained in its prior configuration until the awning was removed due to damage in November 2025.



***Aerial Map***



: Awning to be replaced.  
Currently removed due to damage.

***Street View 2023***

## C. PROJECT OVERVIEW

|                                               |                                                   |
|-----------------------------------------------|---------------------------------------------------|
| <b><u>Location:</u></b>                       | 679 SE 1 <sup>st</sup> Ave, Canby, OR 97013       |
| <b><u>Tax Lots:</u></b>                       | 31E33DA01100                                      |
| <b><u>Zoning:</u></b>                         | C-2 Highway Commercial                            |
| <b><u>Comprehensive Plan Designation:</u></b> | HC, Highway Commercial                            |
| <b><u>Lot Size:</u></b>                       | 0.33 Acres                                        |
| <b><u>Owner:</u></b>                          | Benjamin Y. Chan & Chun P. Zhen                   |
| <b><u>Applicant:</u></b>                      | Christopher Nestlerode                            |
| <b><u>Application Type:</u></b>               | Non-Conforming Structure or Use (Type II process) |

The proposed development will generally retain the site's existing overall layout and utilize the existing building for the renovation. Proposed replacement/improvements include:

- Replacement of awning surrounding the building's north and west elevations.
- Replacement of sign.

The awning that was removed after damage will be replaced like-for-like, with the exception of non-significant variations in materials and a slight reduction in size to remove overlap with ODOT right-of-way. The pole sign will be replaced like-for-like through a separate application.

## D. LAND USE PROCESS

Planning staff (staff) carefully considered what applications were triggered by the proposed improvements. Typically, a replacement of damaged or destroyed property would warrant only a Site Plan Application (Type I). However, because the site is classified as legal non-conforming due to the existing structure not meeting setback requirements, a Non-Conforming Structure (Type II) application is warranted.

Typically, when development does not trigger a Site and Design Review, the default application is a Type I Site Plan review (lowest level of review) that has no notice or conditions of approval. However, in this case the existing structure for the proposed use triggers a Type II Non-Conforming Structure application. Unlike a Type I Site Plan application, the Type II process allows conditions of approval and pre- and post-decision notice to neighboring properties. A Type II application is a staff-level decision.

### **Non-Conforming Structure Application**

The proposal would acknowledge and memorialize the continued use of an existing non-conforming structure because the building does not meet the setback required from Highway 99E. In accordance with Table 16.89.020, Non-Conforming Structure or Use applications are subject to a Type II application procedure. As such, prior to notice of decision a notice is mailed to owners and occupants of properties within 100 feet of the subject property. Notice of decision is provided within five days of the decision to the same parties.

Existing elements of the building do not warrant a variance and are covered via the Non-Conforming application that is related to nonconformance of building setbacks. The proposal is non-conforming to building setbacks.

In order to receive approval for a Non-Conforming application, the proposal must meet the Non-Conforming application criteria found in CMC 16.52.050. Those criteria require the application to comply with all other applicable standards, aside from the standard to which it is non-Conforming. For this proposal, the applicable chapters are the following:

- 16.08: General Provisions
- 16.10: Off-street Parking and Loading
- 16.28: C-2 Highway Commercial Zone
- 16.41: Downtown Canby Overlay (DCO) Zone
- 16.42: Signs
- 16.52: Non-Conforming Uses and Structures
- 16.89: Application and Review Procedures

### **Appeal Procedure**

Pursuant to CMC 16.89.020, Type II applications must be considered first by the Planning Director. If there is any doubt that the application conforms to City adopted land use policies and regulations, the Planning Director must condition or deny the application.

Anyone who disagrees with the Director's decision may request that the application be considered by the City of Canby Planning Commission after an appeal. According to state law, the appeal "shall be raised with enough specificity so as to afford the governing body, Planning Commission, hearings body or hearings officer, and parties, an adequate opportunity to respond to each issue." A Planning Commission public hearing is held on appeals subject to the appellant paying a \$500 fee (appeal form available [online](#) and by request to the Planning Department). Request for consideration by the Planning Commission (i.e., an appeal) must be in writing and received within 10 days of the mailing date of the Notice of Decision and received by the planning office at 222 NE 2<sup>nd</sup> Ave., Canby. Following a request to appeal the decision, a Planning Commission hearing will be scheduled.

### **E. REPORT ATTACHMENTS**

The following documents are attached to this report.

- A. Applicant Materials
  - i. Application Form
  - ii. Applicant Narrative
  - iii. Assessor Map & Deeds
  - iv. Miscellaneous Information Provided by Applicant
  - v. Site Plan
- B. Request for Public Comments
- C. Comments Received

## **III. ANALYSIS AND FINDINGS**

### **A. APPLICABLE CRITERIA**

An approval criterion of a non-conforming structure or use application (CMC 16.52.050.A) requires "the proposal to be consistent with the requirements of the Land Development and Planning Ordinance (also known as Chapter 16, Zoning/Development Code), other than those specific zoning standards to which the use or structure is Non-Conforming."

The applicable criteria used in evaluating this application are found in the Zoning/Development Code, Chapter 16 of the Canby Municipal Code as follows:

- 16.08: General Provisions
- 16.28: C-2 Highway Commercial Zone
- 16.41: Downtown Canby Overlay (DCO) Zone
- 16.52: Non-Conforming Uses and Structures
- 16.89: Application and Review Procedures

## **B. FACTS AND FINDINGS**

### **16.08. GENERAL PROVISIONS**

#### **16.08.070 Illegally created lots**

*In no case shall a lot that has been created in violation of state statute or city ordinance be considered as a lot of record for development purposes, until such violation has been legally remedied.*

**Finding 1:** The subject tax lot is 31E33DA01100. The documents provided in the application (Attachment A.III) indicate that the subject tax lots are legally existing tax lots. Staff finds the standard is met.

#### **16.08.090 Sidewalks required.**

A. In all commercially zoned areas, the construction of sidewalks and curbs (with appropriate ramps for the handicapped on each corner lot) shall be required as a condition of the issuance of a building permit for new construction or substantial remodeling, where such work is estimated to exceed a valuation of twenty thousand dollars, as determined by the building code. Where multiple permits are issued for construction on the same site, this requirement shall be imposed when the total valuation exceeds twenty thousand dollars in any calendar year. B. The Planning Commission may impose appropriate sidewalk and curbing requirements as a condition of approving any discretionary application it reviews. (Ord. 740 section 10.3.05(I), 1984)

**Finding 2:** The existing sidewalks along 99E are deemed by the City of Canby Public Works Department and ODOT to be within standard; staff finds the standard is met.

#### **16.08.160 Safety and Functionality Standards.**

*A. Adequate Street drainage, as determined by the city.*

**Finding 3:** No street drainage improvements are required of the proposed development. Existing street drainage is sufficient. Therefore, the standard is not applicable.

*B. Safe access and clear vision at intersections, as determined by the city.*

**Finding 4:** There is no proposed change of use or site that would necessitate a change in access. The existing access point on 99E and secondary access along the access alleyway are sufficiently distant from all other access points. The standard is met.

*C. Adequate public utilities, as determined by the city.*

**Finding 5:** Existing public utilities on the site are generally adequate. There is no change of use necessitating evaluation. Therefore, this standard is not applicable.

*D. Access onto a public street with the minimum paved widths as stated in Subsection E below.*

**Finding 6:** Access to the site is not proposed to change and is deemed sufficient per Finding 4. Staff finds this standard not applicable.

*E. Adequate frontage improvements as follows:*

- 1. For local streets and neighborhood connectors, a minimum paved width of 16 feet along the site's frontage.*
- 2. For collector and arterial streets, a minimum paved width of 20 feet along the site's frontage.*
- 3. For all streets, a minimum horizontal right-of-way clearance of 20 feet along the site's frontage.*

**Finding 7:** The proposed site has frontage along Highway 99E. Current conditions of Highway 99E meet all frontage requirements. Staff finds this standard to be met.

## **16.28. C-2 HIGHWAY COMMERCIAL ZONE**

### **16.28.030 Development standards.**

The following subsections indicate the required development standards of the C-2 zone:

A. Minimum lot area: none;

**Finding 8:** No requirement, standard met.

B. Minimum width and frontage: none;

**Finding 9:** No requirement, standard met.

C. Minimum yard requirements:

1. Street yard: twenty feet where abutting Highway 99-E and S. Ivy Street. Gas station canopies shall be exempted from the twenty foot setback requirements. Remaining property none, except ten feet where abutting a residential zone. Sign setbacks along Highway 99-E and S. Ivy Street are to be measured from the face of the curb rather than the lot line. Where no curb exists, the setback shall be measured from the property line. Other than signs which are Non-Conforming structures and street banners which have been approved per the requirements of the Uniform Sign Code, no signs will be allowed to be located within or to project over a street right-of-way;
2. Interior yard: none, except ten feet where abutting a residential zone. 3. Rear yard: none, except ten feet where abutting a residential zone.

**Finding 10:** In this case, "minimum yard requirements" refers to mandatory setbacks. The proposed structure replacement does not meet the twenty-foot setback standard where abutting Highway 99E. It does meet the standard for interior yard setback, and

does not abut a residential zone. Signage is not included in this application and will be reviewed separately.

The Oregon Department of Transportation (ODOT) has reviewed the application and found the proposed replacement to be within safety and right-of-way requirements, provided that it is modified as proposed to remove minor overlap with ODOT right-of-way. To bring the structure into full conformity would require moving the entire primary structure which is out of the scope of a repair. With satisfaction of Conditions 1 & 2, this standard is met to the extent feasible.

D. Maximum building height:

1. Freestanding signs: thirty feet;
2. All other structures: forty-five feet.

**Finding 11:** The existing structure height is well below the limit. The proposed height of the awning is well below the limit and is below that of the primary structure. Therefore, this standard is met.

E. Maximum lot coverage: sixty percent;

**Finding 12:** Lot coverage prior to damage, and the proposed lot coverage are approximately 27%. Therefore, this standard is met.

## **16.41 DOWNTOWN CANBY OVERLAY (DCO) ZONE**

### **16.41.050 Development standards.**

The following subsections indicate development standards required in the DCO zone. These standards supplement, and in some cases replace, the development standards in the underlying base zones. Where the standards set forth in the following subsections conflict with standards in the underlying base zone, the DCO development standards set forth below supersede the base zone standards.

A. Setbacks, Floor Area Ratio, Building Footprint and Height Requirements.

1. Setbacks. Minimum and maximum setbacks for each DCO subarea are described in Table 1 and must meet the following requirements:
  - a. Mechanical units used for the heating/cooling of dwelling units are exempt from interior yard and rear yard setback requirements.
  - b. At least x% of the length of each lot frontage shall be developed with a building(s) built at the minimum setback from the street lot line (see Table 1 and 2 and Figure 12). The remainder of the building frontage shall be setback no more than the maximum setback listed in Table 1 below

**Table 1. Setback Requirements**

| <b>Standards</b>                      | <b>CC subarea</b> | <b>TC subarea</b> | <b>OHC subarea</b> |
|---------------------------------------|-------------------|-------------------|--------------------|
| Minimum setback                       | 0 feet            | 0 feet            | 10 feet            |
| Maximum setback from street lot lines | 10 feet           | 15 feet           | --                 |

**Table 2. Street Lot Minimum Setback Requirements**

| <b>Standards</b>       | <b>CC subarea</b> | <b>TC subarea</b> | <b>OHC subarea</b> |
|------------------------|-------------------|-------------------|--------------------|
| Minimum percentage (x) | 60%               | 60%               | 40%                |

**Finding 13:** The development standards in regard to minimum setback partially override those of the underlying zone, C-2. The proposed structure replacement does not meet the requirement for 40% of the structure frontage to be at a 10-foot setback. The existing structure components not within the scope of this review are fairly close to meeting this requirement with 42% of the structure at 14.45 feet and 58% of the structure at approximately 21.55 feet. To bring the structure into full conformity would require moving the entire primary structure which is out of the scope of a repair. With satisfaction of Conditions 1 & 2, this standard is met to the extent feasible.

## **16.52. NON-CONFORMING USES AND STRUCTURES**

### **16.52.020 Non-Conforming structure.**

A structure conforming as to use but Non-Conforming as to height, setback, or coverage may be altered or extended as follows:

- A. If the new or reconstructed area meets all development standards and code requirements, a non-conforming structure application is not required.

**Finding 14:** The reconstructed area does not meet development standards related to setbacks. Therefore, the application resulting in this review was required.

- B. The Planning Commission may allow existing Non-Conforming structures to be reconstructed over existing legally approved building footprints. Approval of a non-conforming structure application under this Chapter is required.

**Finding 15:** The existing non-conforming structure is proposed to be rebuilt over the existing footprint. However, modifications were required to bring the structure into less non-conformity. Therefore, this Non-Conforming structure application was required.

- C. The Planning Commission may allow additions to structures that are non-conforming as to height or setbacks if the new building area is no more out of conformance than the existing structure. For example, an addition to a home with a reduced side yard setback may be allowed if the addition has the same reduced side year setback or is less out of conformance. Approval of a Non-Conforming structure application under this Chapter is required. This Chapter may not be used to allow additions further out of conformance as to building height or setbacks than existing structures.

**Finding 16:** The proposal includes no additions to the primary structure, only replacement of an existing component of the primary structure. Therefore, this standard is not applicable.

**Staff Note:**

*Standards in this section reference Planning Commission approval or review. Under the current code, the application for Non-Conforming Structures is a Type II application. As such, all NCS applications are reviewed and approved administratively by the Planning Director and not the Planning Commission.*

## 16.89. APPLICATION AND REVIEW PROCEDURES

### 16.89.020 Description and summary of processes.

All land use and development applications shall be decided by using the procedures contained in this Chapter. Specific procedures for each type of permit are contained in Sections 16.89.030 through 16.89.060. The procedure type assigned to each permit governs the decision-making process for that permit. Additional requirements may be found in the individual chapters governing each permit type. The applicable type of procedure is described below. Table 16.89.020 lists the City's land use and development applications and their required procedures.

*B. Type II Procedure (Administrative). Type II decisions are made by the Planning Director with public notice and an opportunity for a public hearing. The appeal of a Type II decision is heard by the Planning Commission.*

TABLE 16.89.020  
Land Use and Development Application Procedures

| <b><i>Application Type</i></b>      | <b><i>Process Type</i></b> | <b><i>Notice Radius (ft)</i></b> | <b><i>Neighborhood Meeting Required</i></b> |
|-------------------------------------|----------------------------|----------------------------------|---------------------------------------------|
| <i>Non-Conforming Structure/Use</i> | <i>II</i>                  | <i>100</i>                       | <i>No</i>                                   |

**Finding 17:** Per Section 2 Subsection D, the proposed project is subject to a Type II Non-Conforming Structure/Use Application. The Non-Conforming element of the structure is described in FINDING. A neighborhood meeting is not required prior to filing the application.

The application was determined to be complete on June 4, 2026. A Notice of Application was mailed on June 4, 2026, to all property owners and residents within 100 feet of the subject property, pursuant to Table 16.89.020. Public comments received can be found in Section IV of this report. Staff finds the standards for the Type II procedure are met.

The appeal procedure for a Type II application is described in Section II Subsection D of this report.

## IV. COMMENTS

Comments were solicited from the public within 100 feet of the subject properties and appropriate agencies.

### A. PUBLIC COMMENTS

A request for public comments was sent prior to notice of decision, see Attachment B. No comments were received during the public comment period from June 4, 2026, date to June 14, 2026. Therefore, this section will remain empty.

### B. AGENCY COMMENTS

#### ***City of Canby Public Works Department:***

The plans meet with the approval of this agency. There are no additional concerns.

#### ***Oregon Department of Transportation (ODOT):***

ODOT understands from the application materials the applicant proposes to rebuild the previous canopy in the vicinity of an existing ODOT slope easement along SE 1st Ave (OR 99E) and that no changes to the existing use or restaurant are proposed. The permanent slope easement is five feet in width as shown on the applicant's site plan.

The applicant contacted ODOT in December 2025 and again in January 2026 to discuss the existing conditions. ODOT noted that structures should not overhang the existing easement. ODOT has reviewed the materials submitted for the application and it appears there is no longer a conflict between the proposed canopy replacement and ODOT's existing slope easement. Therefore, no additional State review is required.

## V. DECISION

Based upon the findings and conclusions in this report and the information submitted by the applicant, the staff finds that the Non-Conforming structure replacement request is in conformance with the applicable approval criteria and **APPROVES** the Non-Conforming Structure File NCS 26-01, subject to the conditions of approval listed below.

#### **Conditions of Approval (COA):**

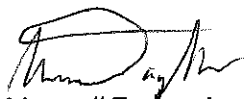
#### ***Oregon Department of Transportation:***

1. The structure will be replaced as proposed to ensure no encroachment into existing ODOT Right-of-Way or the existing ODOT slope easement along OR 99E.

#### ***City of Canby:***

2. While the structure originally included a pole sign and the infrastructure associated with it, the applicant will submit a supplementary sign application and will not reconstruct or alter the existing sign until such application is approved.

Signed:



Maxwell Taylor, Associate Planner

July 9, 2026  
Date:



Ryan Potter, AICP, Planning Manager for  
Don Hardy, Planning Director

July 9, 2026  
Date: