



City of Canby

Staff Report File #: VAR 21-03 Canby Utility Phase II – Security Fence

HEARING DATE: June 14, 2021
STAFF REPORT DATE: June 4, 2021
TO: Planning Commission
STAFF: Ryan Potter, AICP, Senior Planner

Applicant Request

The project applicant, Canby Utility, requests Planning Commission approval of a Major Variance to construct a 10-foot-tall security fence embedded with 11-foot-tall vehicular gates. These improvements would be installed as part of Phase II of the previously approved Canby Utility Combined Service Center project (DR 17-01), which is currently under construction. The proposed fence height is two feet taller than the maximum allowed in the M-1 Light Industrial zone.

Vicinity Map



Property/Owner Information

Location: 1265 SE 3rd Avenue
Tax Lots: 31E34C 00800
Property Size: 5.91 acres
Comprehensive Plan: LI – Light Industrial
Current Zoning: M-1, Light Industrial
Owner: Canby Utility
Applicant: Brian Varricchione, PE
Mackenzie
Application Type: Major Variance (VAR)
City File Number: VAR 21-03

Staff Recommendation

Based on the application submitted and the facts, findings, and conclusions of this report, Planning Staff recommends **Approval** of Major Variance VAR 21-03 pursuant to the Condition of Approval identified in Section V of this Staff Report.

Attachments

- A.** Variance Application
- B.** Application Narrative and Exhibits
- C.** Public Comment Letter

Background and Existing Conditions

A new center of operations for Canby Utility was approved by the City of Canby Planning Commission in 2017 (City File 17-01). The project was split into two phases, with the utility provider's administration and customer service office opening in 2018 on the northern half of the subject property. Improvements with this phase included parking, landscaping, and street frontage improvements. The original project design approved in 2017 included an eight-foot security fence for the secure portion of the project site. After a theft at the construction site of Phase I, Canby Utility installed a 10-foot wire mesh security fence around the secure area.

The project's second phase began in 2020 and is under construction on the southern half of the subject property. This phase contains a warehouse, mechanic shop, paint shop, metal shop, outdoor storage, and parking. In May 2020, an administrative approval for minor modifications to the previously approved design for Phase II (City File MOD 20-02) was processed by the Planning Director. With construction of Phase II underway, all portions of the subject property now feature structures and improvements.

The subject property is zoned M-1, Light Industrial and is correspondingly designated LI - Light Industrial in the Canby Comprehensive Plan. The southern half of the property is surrounded by a mixture of light industrial and residential uses. To the east are light industrial (Kittyhawk Products) and storage (Canby RV & Boat Storage) uses, both zoned M-1, Light Industrial. To the south and west are residential uses (The Orchards Apartments and the Pine Crossing manufactured home community) that are both zoned R-2, High Density Residential. The latter is located across S Pine Street.

Project Overview

The "proposed project" contemplated by this Staff Report is limited to 10-foot-high security fencing and two associated 11-foot-high vehicular gates that would be located along the S Pine Street frontage of Phase II. As described and shown in the applicant's submittal materials (see attachments to this Staff Report), the proposed fences and gates would be designed to match the black wire mesh fences installed on Phase I, which are largely vertical but angle inward at the top. The proposed fences are intended to screen Canby Utility's outdoor storage yard and prevent theft. Shorter four-foot-high fences would be constructed closer to the street, fencing in Phase II's storm water detention basin.

Analysis and Findings

I. Applicable Criteria

Applicable criteria used in evaluating this application are listed in the following chapters of the City of Canby's Land Development and Planning Ordinance:

- 16.08 General Provisions
- 16.32 M-1 Light Industrial Zone
- 16.53 Variances

The following two chapters also apply to the requested Major Variance, but do not include approval criteria. Consistent with Chapter 16.89, the variance request has been processed using a Type III application procedures, including a noticing radius covering all properties within 200 feet of the subject property.

- 16.88 General Standards and Procedures
- 16.89 Application and Review Procedures

II. Facts and Findings

The analysis below evaluates the proposed project's conformance with applicable approval criteria and other municipal code sections, as listed above in Section I. Sections of the Canby Municipal Code (CMC) are analyzed in the order that they appear in the code.

Subsection 16.08.110: Fences

This subsection of the CMC states that, "fences of up to eight feet in height are permitted for any development in C-2, C-M, M-1 or M-2, or Planned Unit Development zones." The subject property is located in the M-1 zone; therefore this standard applies to the proposed project. As noted in the applicant's narrative, at the time of the Canby Utility project's original land use approval in 2017, this section of the code was worded differently and only stated that the Planning Commission "may require" fences up to eight feet in height. Therefore, no request for a variance related to Phase I was submitted to the City.

Finding 1: The proposed project includes 10-foot-high fences and 11-foot-high vehicular gates within those fences. Because these heights exceed what is allowed by Subsection 16.08.110, Planning Staff finds that the request is not consistent with this provision of the CMC. However, the project applicant has applied for a Major Variance to address and remedy this discrepancy.

Chapter 16.32: M-1, Light Industrial Zone

Lists of allowable uses, and development standards for those uses, are generally found in the respective code chapters for each zone. The subject property is zoned M-1, Light Industrial. However, the Canby Utility project's overall consistency with this chapter was evaluated during the original design review approval in 2017. The proposed security fence and gates would not affect this consistency. Although fences are mentioned in Chapter 16.32, this is only in regard to "zero-lot line development," and therefore the provision is not relevant to the proposed project.

Finding 2: For the above reasons, Planning Staff finds that the request is consistent with applicable provisions of the CMC.

Chapter 16.53: Variances

This chapter of the CMC defines “minor” and “major” variances. As minor variances are limited to ten percent reductions in setbacks, other variances from approval criteria are considered major variances.

The Planning Commission is authorized to approve variances owing to “special and unique circumstances” related to a specific piece of property. In granting a variance, the commission may attach conditions which it finds necessary to protect the best interests of the surrounding neighborhood.

A variance may be granted only upon determination that all of the following conditions are present:

1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the city and within the same zone. These exceptional or extraordinary circumstances result from tract size or shape, topography or other circumstances over which the owners of the property have no control. Actions of previous owners do not constitute other exceptional or extraordinary circumstances.
2. The variance is necessary to assure that the applicant maintains substantially the same property rights as are possessed by the owners of other property in the city and within the same zone.
3. Granting of this variance will not be materially detrimental to the intent or purposes of the city's Comprehensive Plan or the Land Development and Planning Ordinance.
4. Granting of this variance will not be materially detrimental to other property within the same vicinity.
5. The variance requested is the minimum variance which will alleviate the hardship.
6. The exceptional or unique conditions of the property which necessitate the issuance of a variance were not caused by the applicant, or the applicant's employees or relatives.

Finding 3: The project applicant's narrative describes their reasoning for the variance request, which includes a need for added security and the agency's role in providing essential utility service to the community. Planning Staff concurs with the applicant's findings supporting their request for a major variance, including the following:

- The *exceptional circumstances* related to the subject property are associated with Canby Utility's role in providing essential infrastructure to the community, including reliable water and electrical service. The facilities and materials stored at the subject property, including valuable specialized equipment necessary for responding to emergencies, require a well-secured perimeter that prevents individuals from trespassing on the site. Because there are no comparable quasi-public entities providing similarly essential utility services in Canby, these circumstances would not apply to other properties in the M-1 Zone. As noted in the applicant's materials, the subject property is one of few industrially-zoned parcels in the City that directly abuts high-density residential uses.

- Because the proposed fences and gates would not affect the site's overall land use or functionality, the variance would not provide Canby Utility with *property rights* beyond those possessed by owners of other properties in the same zone.
- Planning Staff concur with the project applicant that the CMC does not explicitly state the *intent or purpose* of the eight foot height limit. However, the applicant does offer that the design of the proposed fence avoids adverse visual impacts commonly associated with tall industrial fences (e.g., foreboding, opaque walls with no transparency) that were likely contemplated when maximum heights were set. Furthermore, the fact that the CMC broadly contemplates fences in industrial areas acknowledges that security fences of some height are an essential component of industrial uses.
- The proposed street spacing would not be *materially detrimental to other properties* in the vicinity, because the taller fences will provide additional visual screening of the site from residential uses to the west. The project applicant has intentionally chosen a fence design and material that avoids the menacing quality of barbed wire and the fortress-like appearance of blank, 10-foot solid walls. For this reason, Planning Staff believe that the fence is an aesthetically pleasing solution to the site's security issue.
- The variance request is the *minimum variance* which will alleviate the hardship since the proposed fences are not excessively taller than what is allowed. Furthermore, the taller fences are only proposed to surround the secure area and are not proposed along the more public-facing SE 3rd Street frontage. Lastly, because the 10-foot fences installed as part of Phase I successfully prevented additional onsite theft, Planning Staff believe the installation of similar fencing on Phase II is a reasonable minor change to the facility's design.
- As discussed in the applicant narrative, the City's own charter delegates responsibility for provision of water and electrical service to Canby Utility; therefore, issuance of the requested variance would not be solely for the benefit of a private landowner but a necessary measure to ensure the security of public infrastructure. Also, because the threat of theft originates from external parties, Planning Staff find that the hardship of securing the site from theft is not *caused or created* by the project applicant.

For the above reasons, Planning Staff recommend that the Planning Commission approve the requested Major Variance.

III. **Public and Agency Comments**

Notice of this application and the opportunity to provide comment was sent to property owners and residents within a 200-foot radius. Due to the status of the overall Canby Utility project as under construction, and the limited scope of the requested variance, this application was not circulated to public agencies and service providers for comment. At the time of this writing, one email was received by Planning Staff from an adjacent property owner, as summarized below:

- **Canby RV and Boat Storage:** The commenter inquired about the location and design of the proposed security fence.

IV. Conclusion

Staff has reviewed the applicant's narrative and submitted application materials and finds that the application identified above conforms to the applicable review criteria and standards, subject to the condition of approval noted in Section V of this Staff Report. Planning Staff recommends that the Planning Commission **Approve** Major Variance application VAR 21-03 subject to the identified condition of approval.

V. Conditions of Approval

Building Permits:

1. The project applicant shall apply for a City of Canby Site Plan Permit showing the final fence and gate design. Planning Staff shall transmit a corresponding site plan release letter to Clackamas County Building Services, for release of the associated building permits. (R. Potter)