

**FINDINGS OF FACT and FINAL ORDER**  
**TYPE I DECISION**

**DATE:** October 17, 2022

**FILE NO.:** 22-032 DR/ADJ

**PROJECT NAME:** Wippersnappers Covered Structure

**APPLICANTS:** City of Sandy Economic Development Office; Hans Wipper

**OWNER:** Michael Maiden, LLC

**LEGAL DESCRIPTION:** T2S R4E Section 24E, Tax Lot 01116

The above-referenced proposal was reviewed as a Type I Design Review with a Type I Adjustment. The following exhibits, findings of fact, and conditions (bold text) explain the proposal and the conditions of approval.

**EXHIBITS:**

**Applicant's Submittals:**

- A. Page 1: Land Use Application
  - Page 2: Parking Analysis
  - Pages 2-3: Setback Measurement
  - Pages 4-17: 19-009 MOD Final Order
- B. Narrative
- C. Site Plan
- D. Engineering Specifications
- E. Elevations
  - Sheet A-1.1 – Northeast Elevation
  - Sheet A-1.2 – Southeast Elevation
  - Sheet A-1.3 – Southwest Elevation
  - Sheet A-1.4 – Northwest Elevation
  - Sheet S-1.0a – Structural Notes
  - Sheet S-1.0b – Structural Notes
  - Sheet S-2.1 – Foundation Plan
  - Sheet S-2.2 – Roof Framing Plan
  - Sheets S-3.1 - S-3.2 – Foundation Detail
  - Sheets S-3.3 - S-3.11 – Roof Details
- F. Correspondence from Economic Development Department (September 13, 2022)

**Additional Exhibits Provided by Staff:**

- G. 16-007 DR Final Order

## FINDINGS OF FACT

### General

1. These findings are based on the applicant's submittal received on August 2, 2022, additional information received from the applicant on September 13, 2022, and a Final Order related to a 2016 design review application for the property, 16-007 DR. The subject land use application was deemed complete on September 19, 2022.
2. This final order is based upon the Exhibits listed above.
3. The subject site is approximately 3.99 acres. The site is located at the northeast corner of Industrial Way and SE 362nd Ave.
4. The parcel has a Comprehensive Plan Map designation of Light Industrial and a Zoning Map designation of I-2, Light Industrial.
5. The City of Sandy Economic Development Office submitted an application on behalf of Hans Wipper to build a covered structure for outdoor dining at Wippersnappers Kids Play Place. The proposed structure will be 19 feet by 46.5 feet, T-shaped, and will be tied back to the building façade. Structural elements will include a 6:12 pitched metal roof, heavy timber construction with metal bracketing, stone wrapping at the base of the supports, at least one light fixture, and multiple electrical outlets. The structure will replace three (3) non-ADA parking spaces.

### 17.50 – I-2 Light Industrial

6. Section 17.50.10 lists primary uses and accessory uses permitted outright in the I-2 zone. The existing use is a primary use permitted outright per Section 17.50.10. The proposed covered structure for outdoor dining is a use customarily incidental and subordinate to a use permitted outright, which is an accessory use permitted outright per Section 17.50.10(B.1).
7. Section 17.50.30 contains development standards for buildings in the I-2 zone. Based on the submitted Site Plan (Exhibit B), the proposed covered structure is approximately 25 feet from the side lot line. Section 17.50.10 requires that the minimum side lot line setback be 50 feet if the property abuts a more restrictive zoning district. This Code criterion applies as the abutting property to the west is zoned C-2, General Commercial, which is a more restrictive zoning district than I-2, Light Industrial. However, the subject property and the adjacent property zoned C-2 are separated by approximately 75 feet of right-of-way. Given that the intent of the setback requirement is to provide an appropriate buffer distance between industrial uses and non-industrial uses, the intent of the Code is satisfied.
8. The maximum height of the covered structure is 14 feet as measured to the mid-point of the gable, which is less than the 45 feet allowed by this section.

### 17.84 – Improvements Required with Development

9. The submitted land use application (Exhibit A) states that the applicant is proposing at least one light fixture and multiple electrical outlets. Per Section 17.84.90(E), **all utilities shall be placed underground.**

10. The proposed covered structure will occupy the area of three (3) existing paved parking spaces, with an extension over the walkway that connects to the existing building entrance. Thus, no additional impervious surface will be added. The elevations (Exhibit E) detail gutters and downspouts, but it is unclear where the downspouts are proposed to drain.  
**Stormwater management shall conform to the requirements in the City of Portland Stormwater Management Manual and the requirements in Sections 13.18 and 13.20 of the Sandy Municipal Code.**

#### 17.90 – Design Standards

11. The applicant proposes construction of a covered structure for outdoor dining within the I-2 zoning district. As such, the application is subject to the provisions of Chapter 17.90, Design Standards.
12. Section 17.90.70 specifies that **design review approval shall be void after two (2) years from the date of the Final Order, unless the applicant has submitted plans for building permit approval.**
13. Because the subject property is located in the I-2 zoning district the application was reviewed for compliance with the provisions of Section 17.90.130. It is important to note that the subject property is in the process of being converted to I-1 zoning. This was approved by the City Council with File No. 14-028 ZC. The original expiration date was June 1, 2018. The Development Services Director provided an extension to July 29, 2019, and a second extension to July 29, 2020. An additional extension was granted by the City Council with File No. 20-029 EXT allowing for a modified expiration date of July 29, 2025. The applicant and property owner are also receiving grant assistance from the City of Sandy and therefore the City wants more robust design standards than the I-2 zoning district requires. Requirements relevant to the design of the covered structure are addressed below.
14. Section 17.90.130(C.1) requires that buildings be articulated, varied, and provide visual interest. The proposed covered structure is T-shaped, thus providing the visual interest required by this section.
15. Section 17.90.130(C.2) requires that exterior building materials shall convey an impression of durability. The submitted elevations (Exhibit E) details exposed heavy timber posts, metal brackets, and a metal roof in compliance with this section.
16. Section 17.90.130(C.3) specifies approved siding materials. The proposed covered structure is an open-air structure without walls or siding.
17. Section 17.90.130(C.4) requires that where masonry is used for exterior finish, decorative patterns must be incorporated. An example of a decorative pattern includes stone or cast stone in layered or geometric patterns. The structure elevations (Exhibit E) indicate that masonry will be used to wrap the bases of the structure supports in a decorative geometric pattern.
18. Section 17.90.130(C.6) requires exterior building colors to include warm earth tones that conform to the Color Palette in Chapter 17.90, Appendix C. The proposed covered structure

does not have walls. The posts and beams will be heavy timber. **If the applicant uses a wood stain, it shall be a natural wood color.**

19. Section 17.90.130(D.1) requires a minimum roof pitch of 3:12. The land use application (Exhibit A) and elevations (Exhibit E) detail a gabled roof at a 6:12 pitch in compliance with this section and the City of Sandy grant obligations.
20. Section 17.90.130(C.4) states that visible roof materials must be wood shingle or architectural grade composition shingle, slate, or concrete tile. Metal with standing or batten seam may also be used conforming to the Color Palette in Appendix D. The land use application (Exhibit A) states that the proposed roof is a metal roof but does not specify a color or seam. **The applicant shall submit the proposed metal roof color and seam type for staff review and approval.**
21. Section 17.90.130(C.5) states that all roof and wall-mounted mechanical, electrical, communications, and service equipment, including satellite dishes and vent pipes, shall be screened from view from all adjacent public rights-of-way and civic spaces by parapets, walls, or by other approved means. **If roof equipment is desired, it shall be screened from view from all adjacent public rights-of-way and civic spaces.**
22. Sections 17.90.130(E) and 17.90.130(F) contain standards related to building orientation and entrances and windows respectively. The proposed covered structure is an open-air, accessory structure without walls or a primary entrance; therefore, these sections are not applicable.

#### 17.98 – Parking, Loading, and Access Requirements

23. Section 17.98.20 contains off-street parking requirements. The submitted application (Exhibit A) states that the proposed covered structure will replace three (3) existing parking spaces.
24. According to the submitted parking analysis (Exhibit A), the subject property is served by a shared off-street parking lot which contains a total of 149 total parking spaces, five (5) of which are ADA-compliant. Construction of the proposed covered structure would leave 146 total parking spaces and maintain all five (5) ADA-compliant parking spaces.
25. According to Section 17.98.20(A.11), a customer-facing industrial land use requires one (1) parking spot per 1,000 square feet plus one (1) parking spot per two (2) employees.
26. The applicant has requested a Type I Adjustment to the off-street parking standards in order to account for the loss of three (3) parking spaces. The analysis for this request is contained in the next section of this final order.

#### 17.66 – Adjustments and Variances

27. According to 17.66.20, a Type I Adjustment is reserved for requests that involve the expansion or reduction by not more than ten percent (10%) of one or more quantifiable provisions of the Code.

28. The off-street parking facility serves multiple uses on the subject property. According to the 19-009 MOD Final Order submitted by the applicant (Exhibit A), which analyzes a design review application for structures on the property, there is an approximate total of 48,000 square feet of building footprint on the property. This would require 48 parking spaces, leaving 98 parking spaces available for a total of 196 employees.
29. Neither the 19-009 MOD Final Order (Exhibit A) nor the 16-007 DR Final Order (Exhibit G) included a full parking analysis of the subject property. However, if we assume that the current total of 149 spaces meets the minimum number of parking spaces as prescribed by the Code, a reduction of three (3) spaces would constitute a 2.1% reduction, which is well within the allowance of a Type I Adjustment.
30. Staff believes that it would be unnecessarily cumbersome on the applicant to provide a total number of employees employed by each facility on the property. Additionally, based on multiple staff site visits, there are consistently many empty parking spaces in the lot.
31. The approval criteria for a Type I Adjustment which apply to the proposed request as outlined in Section 17.66.40 are as follows:
  1. The proposed development will not be contrary to the purposes of this chapter, policies of the Comprehensive Plan, and any other applicable policies and standards adopted by the City.
  2. The proposed development will not substantially reduce the amount of privacy enjoyed by users of nearby structures when compared to the same development located as specified by this Code.
  3. The proposed development will not adversely affect existing physical systems and natural systems, such as traffic, drainage, dramatic land forms, or parks.

Staff does not believe that a reduction of the parking facility by three (3) parking spaces will be contrary to any City policies or standards, will reduce any amount of privacy enjoyed by nearby users, or adversely affect any physical or natural systems.

#### 15.30 – Dark Sky Ordinance

32. Chapter 15.30 regulates outdoor lighting in order to reduce or prevent light pollution. The Dark Sky ordinance requires that all new exterior lighting be full-cutoff and downward facing. The submitted land use application (Exhibit A) states that there will be one light fixture. **Chapter 15.30, Dark Sky Ordinance, recommends 3,000 Kelvins or less, but in no circumstance shall the lighting exceed 4,125 Kelvins. Exterior lighting fixtures shall be downward facing and full cutoff. The applicant shall submit lighting cut-sheets for staff review and approval.**

## DECISION

For the reasons described above, the request by the City of Sandy Economic Development Office on behalf of Hans Wipper to construct a covered structure for outdoor dining as an accessory

structure to Wippersnappers Kids Play Place is hereby **approved as modified by the conditions listed below.**

#### **CONDITIONS OF APPROVAL**

**A. All conditions from Final Order 16-007 DR and Final Order 19-009 MOD shall be met unless specifically modified by this Final Order.**

**B. Prior to all construction activities, except grading and/or excavation, the applicant shall submit additional information with the Building Permit plans and complete required items during construction as identified below:**

1. Submit the proposed metal roof color and seam type for staff review and approval.
2. Submit lighting cut-sheets. Exterior lighting fixtures shall be downward facing, full cutoff, and not exceed 4,125 Kelvins.

**C. Prior to occupancy (temporary or final) of the covered structure, the applicant shall complete the following or provide assurance for their completion:**

1. All required improvements shall be installed or financially guaranteed prior to final occupancy of the covered structure.

#### **D. General Conditions:**

1. Design review and adjustment approval shall be void after two (2) years from the date of the Final Order, unless the applicant has submitted plans for building permit approval.
2. All utilities including franchise utilities shall be installed underground to City standards.
3. If the applicant uses a wood stain, it shall be a natural wood color.
4. If roof equipment is desired, it shall be screened from view from all adjacent public rights-of-way and civic spaces.
5. Prior to any future development of the site, the applicant shall be required to submit an updated parking analysis.
6. Stormwater management shall conform to the requirements in the City of Portland Stormwater Management Manual and the requirements in Sections 13.18 and 13.20 of the Sandy Municipal Code.
7. Successors-in-interest of the applicant shall comply with site development requirements prior to the issuance of building permits.
8. Comply with all other conditions or regulations imposed by Clackamas County, Fire District No. 72, or state and federal agencies. Compliance is made a part of this approval

and any violations of these conditions and/or regulations may result in the review of this approval and/or revocation of approval.

*Shelley Denison*

10/17/2022

Shelley Denison  
Associate Planner

Date

### RIGHT OF APPEAL

A decision on a land use proposal or permit may be appealed to the Planning Commission by an affected party by filing an appeal with the Director within twelve (12) calendar days of notice of the decision. Any person interested in filing an appeal should contact the city to obtain the form, "*Notice of Appeal*," and Chapter 17.28 of the Sandy Development Code regulating appeals. All applications for an appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

An application for an appeal shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision;
2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings;
3. The specific grounds relied upon for review;
4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Chapter 17.28.50; and,
5. Payment of required filing fees.