



HATHAWAY LARSON

Koback · Connors · Heth

January 24, 2024

VIA EMAIL

Rachel Vickers
Associate Planner
City of La Pine
16345 Sixth Street
La Pine, OR 97739
rvickers@lapineoregon.gov

Re: Pre-Application for Walgreens

Dear Ms. Vickers:

I represent the Dickerhoofs, who, as you know, own the property in La Pine located at 51392 and 51396 Highway 97. I am writing to address an issue raised in the pre-application notes you provided on January 10, 2024, specifically the comment that parking areas cannot be located between the building and Highway 97/Finley Butte.

The subject property is within the Downtown Overlay Zone and has frontage on both Highway 97 and Finley Butte, both of which are designated Pedestrian Friendly Streets. The proposal for the property is a Walgreens store with a drive-through. Currently, Walgreens is located within the BiMart store, and the proposed location is a replacement for that, with the added convenience for residents of having a drive-through facility. As proposed, the storefront faces Finley Butte. The proposal does not have any parking or vehicle circulation areas located between that storefront and Finley Butte. To accommodate a drive-through facility on site with safe and proper circulation, the owner proposes parking on the west side of the proposed store between the side of the building and Highway 97.

The proposed use with a drive-through is permitted on the site. La Pine Municipal Code Section ("LMC") 15.40.030 provides that uses allowed within the underlying zone are permitted in the downtown overlay zone, except for certain uses listed in that section that are not allowed on sites abutting a storefront street. Uses with drive-through facilities are included in that list. The specific code provision at issue is in LMC 15.40.060–Setbacks. Specifically, Section 15.40.060.C provides:

Location of parking areas. No vehicle parking or circulation areas are permitted between the front of the building and a storefront street or pedestrian-friendly street. (See Figure 15.40-3). If the development site has frontage on both types of streets, then this standard only applies to the frontage on the storefront street. If the

Christopher P. Koback
1125 NW Couch Street, Suite 550
Portland, OR 97209
chris@hathawaylarson.com
(503) 303-3107 Direct
(503) 303-3101 Main

development site has frontage on more than one storefront street, then this standard shall only apply to one storefront street. (Underlining added).

In interpreting local ordinances, the courts apply the rules set forth in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-612, (1993), as modified by *State v. Gaines*, 346 Or 160, 171-172 (2009). The correct methodology begins by examining the text and context of the disputed provision considering any relevant legislative history provided by the parties. ORS 174.010 also comes into play in the first part of the analysis and directs courts to not insert terms to a provision that the drafters omitted or to omit terms that the drafter included. If after undertaking that first level of analysis, the meaning of the disputed provision remains unclear, the courts can look to relevant maxims of construction.

In interpreting LMC 15.40.060.C, as it applies to the proposal, there is no need to look past the plain text. It states unequivocally that no vehicle parking or circulation areas are permitted between the front of the building and a storefront street or a pedestrian-friendly street. A building has one front, one back, and two sides. The proposed building was designed with the front of the building facing Finley Butte to comply with the plain text. The proposal depicts parking between Highway 97 and a side of the building, but no parking or circulation between the front of the building and Finley Butte. The proposal is completely compliant with the setback parking requirement.

As I understand staff's interpretation, it reads the term "front" out of the code provisions. It reads the regulation to prohibit parking and circulation areas *between all sides of a building* and a pedestrian-friendly street. That apparent interpretation violates ORS 174.010. It requires the reader to omit the term "front" of the building and insert additional text making the restriction applicable to all sides of the building.

In your January 9, 2024 email, you focused on other text that recites:

If the development site has a frontage on both types of streets, then this standard only applies to frontage on the storefront street. If the development site has frontage on more than one storefront street, then this standard shall apply to one storefront street.

Staff postulates that there is no such exception for sites that have two pedestrian-friendly streets. The exception on which staff focuses is not relevant. It is an exception to the base standard; it does not change the base standard. That standard is plain and unambiguous. Parking and circulation areas are not allowed between the front of the building and a pedestrian-friendly street. If anything, the above text provides additional context that supports our interpretation. If a development site has a storefront street and a pedestrian-friendly street, the above text allows parking on the pedestrian-friendly street as long as the front of the store does not face that street.

If a site has two pedestrian-friendly streets, it makes no sense to not allow parking on one of those streets as long as it is not the side where the front of the building is located.

Interpreting LMC 15.40.060.C in the context of the larger section 15.40 further supports our interpretation. Clearly, the standards for storefront streets are stricter than the standards for pedestrian-friendly streets. Begin with the definitions for the two types of streets:

Storefront streets. Storefront streets prioritize the pedestrian experience. These streets provide places to walk that are not only safe and comfortable, but that also provide visually interesting and engaging experiences. This is achieved through placing buildings closer to the street, designing buildings with architectural detail, and encouraging storefront shopping.

Pedestrian-friendly streets. Pedestrian-friendly streets balance the pedestrian experience with the need to accommodate a range of development types. These streets are safe and comfortable for pedestrians. Buildings are encouraged to be placed close to the street, but not required. Other standards are relaxed slightly to provide flexibility in design while maintaining a pedestrian-friendly environment.

Storefront streets are subjected to a stricter standard. On storefront streets, buildings must be located close to the street. It is not simply encouraged like on pedestrian-friendly streets. There is no balancing between the objectives behind the storefront street regulations and allowing various types of development. In contrast, the text informs that on pedestrian-friendly streets, the drafters intended to create flexibility. There must be a balance between the location of buildings and the need to accommodate a range of development types. As I noted, more vehicular oriented uses are allowed on pedestrian-friendly streets than uses on storefront streets. For example, uses with drive-throughs are permitted on pedestrian-friendly streets but not storefront streets. That is a further indication that the standards were intended to be more relaxed on pedestrian-friendly streets than on storefront street sites.

Thus, under what I understand to be staff's interpretation, endorsed by legal counsel, if there is a site with two storefront streets where the standards are clearly more restrictive, the owner can obtain approval for uses with parking between the building and one of the storefront streets. However, if another owner has a site on two pedestrian-friendly streets where the standards do not even require building close to the street, that owner is strictly prohibited from having parking on any side of the building even where the code only restricts parking between a pedestrian-friendly street and the front of the building. That interpretation renders the text in the definition of a pedestrian-friendly street meaningless.

The interpretation that staff presented is further undercut by additional context for LMC 15.40.060.C. Without question, if a site has two storefront streets, parking is allowed between one side of the building and one of the storefront streets. Even as staff interprets the provision, the

Rachel Vickers
January 24, 2024
Page 4

restriction on parking only applies to one of the storefront streets. Where a site has frontage on two pedestrian-friendly streets, it is unreasonable to interpret the code to restrict parking to both frontages and yet allow parking on one frontage where there are two storefront frontages.

You mention LMC 15.40.060.D as further support for staff's interpretation. I do not read that provision as you do. The restriction in LMC 15.40.060.D relates to the building-to-line standard and requires 75% of the building width to be within five feet of a storefront street. LMC 15.40.060.D does not have anything to do with parking on a site. If anything, it is further contextual support for our interpretation because it is another example of where the standards are intended to be stricter on storefront streets. The 75% standard does not apply to building on pedestrian-friendly streets.

It seems that you read the line "No Parking between Primary Building and a Pedestrian Friendly or Storefront Street" as if it were part of LMC 15.40.060.D. Clearly it is not. That is just the caption Figure 15.40-3 mentioned in LMC 15.40.060.C. The text simply recites what is depicted in the diagram. It has little, if any, relevance to our situation because it does not even depict a situation where there are two street frontages. It certainly does not provide support for staff reading the word "front" out of the sentence that restricts parking between the front of a building and a street. In any event, even if one could consider the caption for Figure 15-3 as part of LMC 15.40.060.D, it is a general statement on parking. It cannot prevail over the specific regulation on the location of parking in LMC 15.40.060.C. *Preble v. Centennial School District* 287, 298 Or App 357 (2019).

Staff's interpretation is contrary to the text and context of the relevant provisions. It is inconsistent with how the courts instruct ones to apply code language. To my knowledge, there is no formal interpretation of the disputed text by City Council. Consequently, at this stage, the deferential standard of review does not apply. However, even if it did, the staff interpretation does not pass muster because it is implausible. It is directly inconsistent with the express text that only restricts parking between the front of the building and a pedestrian-friendly street.

My clients appreciate staff's consideration of their position.

Very truly yours,

HATHAWAY LARSON LLP

s/ Christopher P. Koback

Christopher P. Koback

CPK/ep