



City of Portland, Oregon Bureau of Development Services Land Use Services

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Date: August 4, 2011

To: Interested Person

From: Sean Williams, Land Use Services

503-823-7612 / sean.williams@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 10-180877 TV

GENERAL INFORMATION

Applicant: Nik & Sa-Angporn Merrick

9231 N Haven Avenue Portland, OR 97203-2850

Site Address: 4007 SE Taylor Street

Legal Description: LOT 2 TL 5502, PARTITION PLAT 2007-24

Tax Account No.: R649870940 **State ID No.:** R51E01AD 05502

Quarter Section: 3134

Neighborhood: Sunnyside, contact Paul Loney at 503-233-8265.

Business District: Belmont Business Association, contact John Barker at 503-231-9118.

District Coalition: Southeast Uplift, contact Leah Hyman at 503-232-0010.

Plan District: None

Zoning: Residential 2,500 (R2.5) **Case Type:** Tree Violation (TV)

Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

PROPOSAL: The applicant has applied for a tree violation review as a tree required to be preserved through LU 06-135398 LDP was allegedly damaged and removed without an appropriate review. A 15-inch English walnut tree was required to be preserved on Parcel 2 (4007 SE Taylor Street) through tree preservation standards (33.630) implemented in the land division review which created this lot. The applicant has proposed to mitigate for the loss of this tree through preservation of a 22-inch Cherry tree that is located on the common property line with 4000 SE Yamhill Street.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Section **33.853.040.C**, **Approval Criteria for Corrections to Violations.**

ANALYSIS

Site and Vicinity: The site is located on the north side of SE Taylor Street approximately 375 feet east of the intersection with Cesar E Chavez Boulevard. A single family dwelling is currently be constructed on the site under building permit 10-138523 RS. A 22-inch Cherry tree is located on the northern property line of this flag lot. The surrounding vicinity is primarily composed of single dwelling development with comparable zoning designations.

Zoning: The R2.5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

Land Use History: City records indicate that prior land use reviews include the following:

- **LU 06-135398 LDP:** Approval of a Preliminary Plan for a 2-lot Partition, that resulted in one standard lot and one flag lot. The 15-inch English walnut subject to the tree review was preserved through this land division on the flag lot (Parcel 2 of PP 2007-24).
- **LU 10-138536 AD:** Proposed adjustment to flag lot setback standards associated with a new single family residence. The applicant altered building permit plans and withdrew this land use case.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **October 15, 2010**. The Water Bureau, Fire Bureau, Site Development Section of BDS, Bureau of Transportation, Life Safety Plans Examiner and Bureau of Parks-Forestry Division all have no concerns regarding the tree violation application (Exhibit E-2/3). The following Bureau has responded with comments:

<u>Bureau of Environmental Services</u>: "Since the proposed replacement tree is not located entirely on the site, and was not identified in the original land division, BES recommends that the mitigation plan include additional tree planting and/or payment into the tree fund. It is recommended that native tree species be used when mitigating for the removal of the mature tree. Native vegetation not only filters stormwater, it is suited to our climate and therefore needs less watering and does not require pesticides and fertilizers." See Exhibit E-1.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on October 15, 2010. A total of three written responses have been received from notified property owners in response to the proposal (Exhibit F-1/2/3). The general sentiment of the responses is that the proposed method of mitigation does not meet the purpose of the tree violation regulations nor does retention of the existing Cherry tree provide the same benefits as the 15-inch English walnut tree that was removed. These issues are addressed in the findings associated with the approval criteria for corrections to violations.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR TREE REVIEW

33.853.040 Approval Criteria

- C. Corrections to violations. For corrections to violations of tree protection and tree preservation regulations of this Title, or violations of tree preservations plans or the approved method of tree preservation or mitigation, the applicant must show the review body that all of the following approval criteria are met:
 - 1. Mitigation Plan;

- a. The applicant's mitigation plan meets the purpose of the regulation that was violated. Where the violation is of a tree preservation plan or the approved method of tree preservation or mitigation, the mitigation plan meets the purpose of the regulation that required the preservation plan;
- b. The mitigation plan includes replacement of trees cut, or the preservation and protection of additional trees on the site not originally proposed for preservation. If replacement of trees is proposed, the plan must at a minimum meet the requirements of Table 853-2. If additional trees on the site are proposed for preservation and protection, the total diameter of additional trees preserved must exceed the total diameter of trees cut.

Table 853-2 Tree Replacement for Violation	
Size of tree removed (inches in diameter)	Number of Trees to be Planted
6 to 12	3 trees
13 to 18	5 trees
19 to 24	7 trees
25 to 30	10 trees
Over 30	15 trees

2. Replacement trees must be planted as follows:

- a. On the site where the violation occurred;
- b. If it is not possible to plant the trees on the site where the violation occurred, then the trees must be planted on other property owned by the applicant within the City of Portland, this includes property owned by a Homeowners' Association to which the applicant belongs;
- c. If it is not possible to plant the trees on the site where the violation occurred, or on other property owned by the applicant within the City of Portland, then the trees must be planted in a City of Portland park, as approved by the Bureau of Parks and Recreation, or on a site approved by the Bureau of Environmental Services.
- 3. Replacement trees must meet the requirements of Section 33.248.030, Plant Materials.

Findings: This review is for violation of a tree preservation plan in accordance with Chapter 33.630, Tree Preservation. The purpose of the regulation that required the preservation plan is as follows:

33.630.010 Purpose

The regulations of this chapter preserve trees and mitigate for the loss of trees to:

- Protect public health through the absorption of air pollutants and contamination;
- Provide buffering from noise, wind, and storms;
- Provide visual screening and summer cooling;
- Reduce urban heat island impacts;
- Maintain property values;
- Maintain wildlife habitat; and
- Maintain the beauty of the City and its natural heritage.

The preservation of trees on a land division site also will:

• Preserve trees when it is feasible to preserve trees and still meet the other regulations of this Title;

- · Reduce erosion, siltation, and flooding;
- Filter stormwater and reduce stormwater runoff;
- Stabilize slopes; and
- Retain options for property owners to preserve trees and vegetation at the time of development.

Tree Preservation standards require a certain percentage of existing viable tree diameter to be preserved on new lots within a land division site. A two-parcel land division (LU 06-135398 LDP) was preliminarily approved with a tree preservation plan (Exhibit C-2) that met the standards of Option 1 (33.630.100.A.1). This plan required a 15-inch English walnut tree to be preserved along the eastern property line of the "flag" portion of Parcel 2.

In the course of site preparation associated with the construction of a new single family dwelling, the applicant indicated that the 15-inch English walnut tree was irreparably damaged as a result of the felling of a larger nearby tree not required to be preserved. The tree service performing this work then removed the English walnut tree due to a determination that the damage was irrevocable and posed an immediate danger to surrounding property (Exhibit A-2). A code compliance case (10-151173 CC) is currently under review for this site due to violation of the relevant land use condition of approval pertaining to retention of the removed tree.

The total non-exempt tree diameter on the site at the time of the land division was 32 inches. Option 1 of the tree preservation standards requires at least 35 percent, or in this case approximately 11 inches, of the total tree diameter on the site to be preserved. Preservation of the 15-inch English walnut tree met the requirements of Option 1 as it equated to 42 percent of the total non-exempt tree diameter on site. Therefore, in order for the proposed method of mitigation to meet the purpose of the regulation that required the preservation plan, the applicant will be required to mitigate for the equivalent of 11 diameter inches of trees.

The applicant has proposed to mitigate for the removal of this tree via preservation of a 22-inch Cherry tree that is located on the common property line with 4000 SE Yamhill Street. However, a formal agreement with the adjacent property owner granting permission for this commonly owned tree to be used for the stated purpose was never reached. Therefore, this option is not viable for the purposes of this review. Although preservation of the cherry tree will not be allowed to fulfill the mitigation requirements, it may be applied towards satisfaction of the T1 tree planting requirement (33.248.020.H) applicable to new building permits and the landscaped buffer area requirement associated with flag lot development standards (33.110.240.F.2). An arborist report (Exhibit A-3) was submitted documenting measures that were taken to ensure this tree's viability during construction as well as continued monitoring and maintenance.

In lieu of the proposed method of mitigation, the applicant will be required to plant new trees on the subject property equivalent to the 11 diameter inches of trees that was required to be preserved at the time of the land division. As recommended by the Bureau of Environmental Services, the required trees must be native and selected from the *Portland Plant List*. The replacement trees must also meet the minimum planting sizes identified in Section 33.248.030, Plant Materials. The required mitigation is consistent with the purpose of Chapter 33.630, Tree Preservation as requiring the replacement trees to be native species, chosen from the Portland Plant List, will help to foster and maintain the City's natural heritage as well as providing the identified environmental benefits of filtering stormwater and reducing runoff. Dispersion of the replacement trees will also allow more areas of the site to reap the benefits of trees that are described in the purpose statement for the Tree Preservation Chapter.

Subject to final inspection approval of a Zoning Permit to plant the equivalent of 11 diameter inches of native trees, selected from the *Portland Plant List*, this criterion is met.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

As part of a 2-parcel land division (LU 06-135398 LDP) that established the subject property, a 15-inch English walnut tree was required to be preserved. This tree was allegedly damaged and removed without an appropriate review. In order to address the Violation resulting from removal of this tree, the applicant will be required to plant the equivalent of 11 diameter inches of native trees, selected from the *Portland Plant List*. As addressed in the findings above, the required method of mitigation is able to meet the purpose of Chapter 33.630, Tree Preservation and should be approved.

ADMINISTRATIVE DECISION

Approval of a Tree Violation Review to correct a violation resulting from the removal of a 15-inch English walnut tree that was required to be preserved as a part of LU 06-135398 LDP. The following conditions shall be satisfied within 30 days of this land use approval for closure of code compliance case 10-151173 CC:

A. The applicant shall receive final inspection approval of a Zoning Permit to plant the equivalent of 11 diameter inches of trees. The replacement trees shall be native, selected from the *Portland Plant List* and must meet the requirements of Section 33.248.030, Plant Materials.

Staff Planner: Sean Williams

Decision rendered by: ______ on August 2, 2011

By authority of the Director of the Bureau of Development Services

Decision mailed: August 4, 2011

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on September 30, 2010, and was determined to be complete on **October 12, 2010**.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on September 30, 2010.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant extended the 120-day review period as stated in Exhibit G-3.

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed by 4:30 PM on August 18, 2011 at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. An appeal fee of \$250 will be charged. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- Unless appealed, The final decision may be recorded on or after August 19, 2011 (the day following the last day to appeal).
- A building or zoning permit will be issued only after the final decision is recorded. The applicant, builder, or a representative may record the final decision as follows:
- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034 For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review:
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

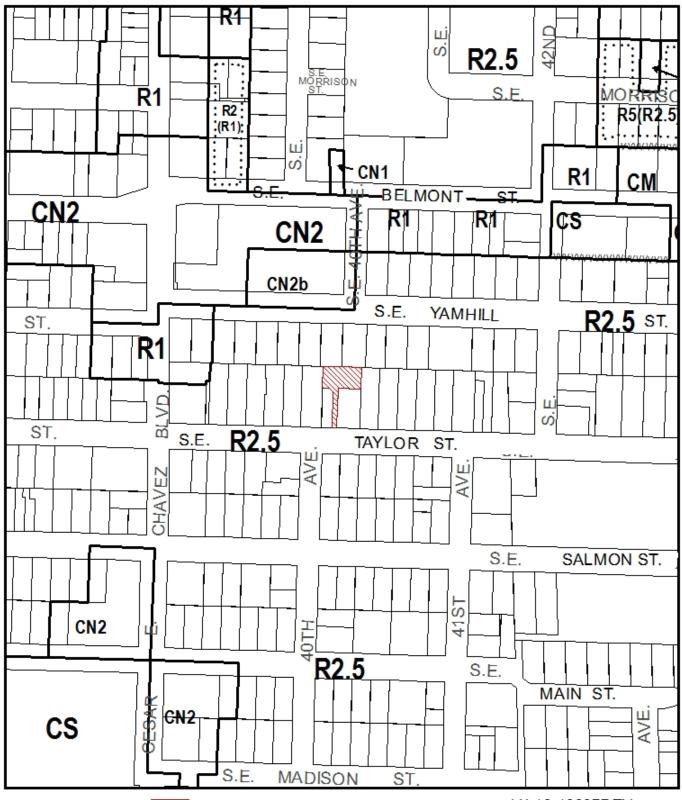
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Review/Project Description & Mitigation Plan
 - 2. Letter from Portland Metro Tree Care
 - 3. Arborist Report (Overlook Tree Preservation, Inc)
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Tree preservation plan (LU 06-135398 LDP)
- D. Notification information:
 - 1. Mailing list

- 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Water Bureau
 - 3. Fire Bureau; Site Development Review Section of BDS; Bureau of Parks, Forestry Division; Bureau of Transportation Engineering and Development Review; Life Safety Plans Examiner
- F. Correspondence:
 - 1. Cheri Klimpel & Marylin Nelson (11/4/10)
 - 2. Vincent Dawans (11/2/10)
 - 3. Holly Cook (11/3/10)
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Request for extension of 120-day review period

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING



File No. LU 10-180877 TV

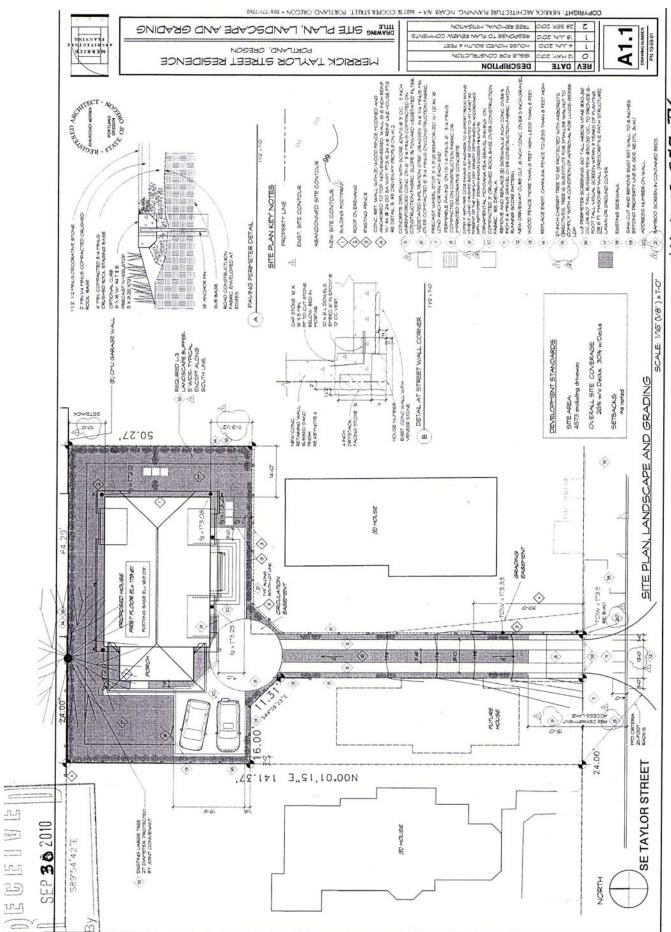
1/4 Section 3134

Scale 1 inch = 200 feet

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Exhibit B (0ct 07,2010)





VT 10-180877 TV

CASE NO. (0-180877

EXHIBIT C-1