

City of Portland

Bureau of Development Services

Land Use Services Division

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NOTICE OF FINAL FINDINGS, CONCLUSIONS AND DECISION OF THE CITY OF PORTLAND ADJUSTMENT COMMITTEE ON AN APPEALED ADMINISTRATIVE DECISION (Type II Process)

CASE FILE: LU 12-148390 AD

LOCATION: Vacant Lot south of, and adjacent to 604 NW MARLBOROUGH ST

The administrative decision for this case, published on October 18, 2012 was appealed to the Adjustment Committee by David L'Heureux, a notified neighbor.

A public hearing was held on December 18, 2012 at 9:00 AM. The original administrative analysis, with revised findings and conclusions were adopted by the Adjustment Committee and follow. The reasons for the **final** decision are included in the version located on the BDS website http://www.portlandonline.com/bds/index.cfm?c=46429.

GENERAL INFORMATION

Applicant/Owner: Saron & Joaquin Sufuentes

2264 NW Thorncroft Drive, # 423 / Hillsboro, OR 97124

Representative: Ryan Olsen

3850 N Mississippi #302 / Portland OR 97227

Appellant: David L'Heureux, 503 224 3231

530 NW Marlborough / Portland, OR 97210

Site Address: Vacant Lot south of, and adjacent to 604 NW MARLBOROUGH AV

Legal Description: BLOCK 7 LOT 9, ST FRANCES HILL

Tax Account No.: R737902390 **State ID No.:** R737902390 1N1E32AD 06800

Quarter Section: 2926

Neighborhood: Hillside, contact Peter Stark at 503-274-4331. Northwest District,

contact John Bradley at 503-313-7574.

District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.

Zoning: R7: Single Dwelling Residential 7,000

Case Type: AD: Adjustment

Procedure: Type II, an administrative decision with appeal to the Adjustment

Committee.

PROPOSAL:

The applicant plans to develop the steeply sloping lot with a new custom designed home. The home will be a two-story residence with a basement and a flat walkable roof with parapet walls and a small rooftop structure that allows a cover and sufficient space for a staircase to rise from the second floor to access the roof level.

The zoning code provides alternative height limits for steeply sloping lots at 33.110.215.D, which the applicant has chosen. Because the lot slopes downhill from the street, the code allows the maximum height of 23 feet above the average grade of the street. When this method is used, exceptions to the required setbacks are allowed, per 33.110.220.D.4, which allows the front building setback to be reduced to 10 feet from the 15 foot front setback required in the R7 zone

on flat lots. Additionally, garages are allowed a 5 foot setback in these circumstances. Use of the reduced setback exception also requires that height is reduced to 18 feet within the reduced 10foot setback. However, the applicant is not proposing a reduced front setback. Therefore, the maximum height in this situation is 23 feet. The original proposal requested a height adjustment to allow the proposed home to be 32 feet 1 inch tall.

After reviewing the response letters from neighbors expressing concerns regarding the proposal, the applicant revised the project by reducing the overall height of the structure to 30 feet and rather than take advantage of the code provision to reduce the front setback, the revised proposal will set the main façade of the home at 42 feet, with a cantilevered bay above the garage that will be 36 feet back from the front property line. The original proposal had the home set back 29 feet 10.5 inches.

Because the revised proposed home will be 30 feet in height, the applicant requests an Adjustment to allow the home to be 7 feet above the maximum 23 foot height limit.

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. have been met.

ANALYSIS

Site and Vicinity: The site is a vacant lot on the northerly side of NW Marlborough that is 7,352 square feet in area. This lot qualifies as 'steeply sloping' per the Portland Zoning Code definitions, because from front lot line to rear lot line is greater than a 20% slope. NW Marlboro is a designated Local Service street for all modes and is approximately 870 feet in length, ending in a cul-de-sac. NW Marlboro is a 30-foot wide public right of way, with an 18 foot wide paved roadway, with curb tight sidewalks, 6 feet in width on the south side, 5 feet in width on the north.

The surrounding area within 400 feet in all directions is classified as 'steeply sloping' [Exhibit G-6] and the residential development along NW Marlborough is typical of the NW Hills Plan District, which is generally developed with narrow, Local Service Streets contouring the topography such that one side of the street is 'uphill' and the opposite side 'downhill'. This general landform leads to residential development along these streets in a pattern where generally the uphill side of the street has homes that are relatively tall and multi-story, while the homes on the downhill side of the street tend to be situated with lower, single and two-story homes. In general, this sort of development pattern preserves views for each resident, although it is important to note that the zoning code protects views only within designated Scenic overlay zones and designated public Scenic viewpoints.

The alternative height and setback standards of Subsection 33.110.220.D apply to houses on steeply sloping lots. These alternative standards allow the front building setback for the dwelling to be reduced to 10 feet from the required 15 feet. Garage setbacks are also reduced for steeply sloping lots, from 18 to 5 feet. As a result of these allowances, it is not uncommon to find a development pattern along these narrow local streets where houses built more recently are set much closer to the front lot line and as a result present a more visually dominating façade to the pedestrian or traveler along the street.

The development pattern along NW Marlborough differs slightly from this typical configuration for two reasons: first, the homes on the 'uphill' side of NW Marlborough in this location have frontage on NW Maywood, a Local Service Street approximately 65 feet above NW Marlborough. These homes are 'through lots' in that the rear property lines have frontage along NW Marlborough. However, due to the steep topography, a pedestrian walking along NW Marlborough will see heavily vegetated slopes up to 30+ feet high before the rear facades of the Maywood Street houses start. As a result, to the pedestrian and the residents along the north

side of NW Marlborough 'across the street' consists of steep vegetated slopes, rather than the front facades of homes. Additionally, this means that the 'uphill' homes are significantly elevated above the homes along NW Marlborough so that views to the north from those homes are unimpeded by the homes along NW Marlborough.

The second reason this particular street differs somewhat from the 'typical' development configuration in the NW Hills is the fact that 8 of the 10 homes along the north side of Marlborough Street were built circa 1929-1938, prior to zoning regulations. Of these 8 homes from this era, four have nonconforming front setbacks, i.e. are closer to the street than the 10 foot minimum allowed by today's regulations. Two of these homes, built later, or having a second story added, have Variances or Adjustments for reduced front setback for the home, garage or second story. There are three relatively new houses on the 'uphill' side of NW Marlborough's cul de sac, built in 1990, 2006 and 2007. All three of these homes have Variances or Adjustments to allow reduced front setbacks, or took advantage of the reduced 10 foot front setback allowed by the zoning code.

There are a total of 13 homes with frontages on NW Marlborough. Three of these homes, built between 1929 and 1930 are developed on less steep lots between NW Westover and the subject site. These homes have front yard setbacks of 26, 19 and 34 feet, respectively. Of the remaining ten homes, 7 have reduced front setbacks, and one meets the 10 foot front setback, but had an Adjustment approved for an 18 inch increase in height.

As a result of these homes having a reduced front setback, the streetscape along NW Marlborough between the subject site and the cul de sac is characterized by visually dominating front facades of homes that appear to be much taller than they actually are, due to the significantly reduced front setbacks.

Exhibit G-7 documents the existing homes along the north side of Marlborough, showing their footprints relative to the street and notes which lots were developed with either Variances or Adjustments to the front setback standards. The subject site is the only remaining lot on the north side of Marlborough that is not yet developed. Exhibit G-8 documents the years the houses were built in the immediate area, along with pictures of street elevations of the homes.

Zoning: The site is zoned R7, which is a medium-density single-dwelling zone that allows new lots that average 7,000 square-feet in area. The required front setback in this zone is 15 feet, but when developing a steeply sloping lot, the front setback can be reduced to a minimum setback of 10 feet, with garages at 5 feet instead of 18 feet. Side and rear setbacks in the R7 zone are 5 feet.

Land Use History: City records indicate there are no prior land use reviews for this site. However, there is an easement along the shared property line of the site and 604 NW Marlborough, which is a 5 foot wide no build, landscaping only easement between the two lots.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **July 23, 2012**. All agency responses are found in the 'E' exhibits in the record for this review. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services responded with no concerns regarding the Adjustment request, and noted several requirements that will be imposed at time of building permit review.
- Bureau of Transportation Engineering
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division
- Water Bureau responded with no concerns regarding the Adjustment request, and noted several requirements that will be imposed at time of building permit review.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on July 23, 2012. Five written responses were received from notified property owners in response to the proposal.

The first letter, from the president of the homeowners association of Westover Terraces, notes that this community of 37 condominium residences is located directly downhill from the subject site. The homeowner's board of directors voted unanimously to oppose the adjustment, and notes that not only are there concerns regarding the height requested, but that there are additional concerns regarding having the site surveyed and staked so that any construction that occurs will be within the bounds of the lot; concerns regarding how stormwater management and soil management/erosion during construction is implemented to ensure that no adverse affects occur on the Terraces property.

<u>Staff comment</u>: The applicant has recorded full boundary line and topographic surveys with Multnomah County. All of the corners are located and staked with iron rods placed by the surveyor. The applicant notes that construction will be substantially set back from the rear property line, and an existing hedge of trees along the rear property line will remain in place to preserve privacy, screening and the natural run off and erosion prevention functions that a significant tree canopy provides.

Any new development is subject to the Bureau of Environmental Services Stormwater Management Manual and regulations. Stormwater management facilities will be reviewed at time of building permit review, but the response from BES [contained in Exhibit E-1 of the record] indicates that both storm and sanitary services will require significant design and engineering considerations in order to comply with all applicable regulations. The Site Development Section of BDS notes that a Landslide Hazard Study is required at time of building plan submittal, as well as a geotechnical report. Any new development is also subject to erosion control regulations which are subject to review and approval during the building plan review process. Because of the steep terrain in this area of the NW Hills Plan District, all ground disturbance/construction activity is prohibited between October 1 through April 30th.

The second letter, from a notified neighbor on NW Marlborough notes that the requested height represents a 40% increase over the maximum allowed by the zoning code. The letter cites the purpose statement for height in the zoning code and notes that such a significant increase would create a building scale that is not reasonable or typical of the other homes in the neighborhood. The homeowner notes that he has circulated his letter to other neighbors, and those who agree with the letter have signed it as well. This letter expresses strong opposition to the proposal, citing the degree of the request, and the resultant size and scale which in turn would detract from the livability and the appearance of the neighborhood.

Concerns regarding access to sunlight, water runoff, and that the proposed footprint of the house doesn't match the rear setbacks of nearby homes which will radically alter and destroy the privacy and livability of neighboring properties. The letter notes that as far as they know, no home on NW Marlborough or on the immediately surrounding streets has ever exceeded the height limit even by a few inches. The letter also expresses concerns about an approval setting a precedent that would result in a snowball effect of bigger and bigger homes in the area. The letter also notes a prior Adjustment request for additional height for a new home on the street was strongly opposed by neighbors and ultimately denied. The letter notes it would be unjust to grant an approval when similar requests have been denied.

<u>Staff comment</u>: The concerns raised regarding size, scale, appearance and privacy are directly relevant to the approval criteria, and are discussed in the findings below. City records demonstrate that a number of homes along NW Marlborough have received variances or adjustments to development standards, most consistently reducing the front setback. One home was approved for a height increase of 1 ½ feet; another such Adjustment request was approved through an Administrative Decision, which was reversed on appeal. Granting or denying an Adjustment does not set a precedent anywhere in the City. Each application and the facts and circumstances of the specific property and its relationship to its immediate surroundings are inherently different, and each Adjustment request is evaluated individually based on that request's particular facts.

The third letter is from the homeowners of the adjacent property to the north of the site. The letter raises a number of concerns, which were also raised by emails and telephone conversations with staff. The homeowner states that the plans attached to the public notice were not accurate, in that they called out a scale of 1 inch = 10 feet, but the plans attached to the notice did not match that scale. The homeowner also states that the footprint of his home adjacent to the site plan is also not accurate. The homeowner notes that he has requested the applicant to correct these drawing errors, but that has not occurred. The letter states that "[t]he combination of the wrongful depiction and inaccurate scale results in a ... drawing which does not truly illustrate the considerable difference in the rear setback of our home and the rear setback of the proposed construction." The letter notes that the rear setback of the proposed home is a 'lengthy, storied protrusion' which extends past our yard and goes well beyond all other neighborhood setbacks. This in turn will adversely impact the stability of the hillside; it will detract from the appearance of the neighborhood; and it will have a negative and intrusive effect on the backyard livability and general privacy of adjacent and other nearby homes.

Staff Comment: The plans attached to the public notice are reductions of the full sized plans, and as a result, while they remain 'to scale' they do not match the scale called out on the full sized plans because of the 8 ½ x 11" format of the mailed notice. The full sized plans in the record are available for any member of the public to examine. The footprint of the home at 604 NW Marlborough is accurately depicted, based on staff's review of aerial photos and building footprints on file with the City. The footprint is also depicted with a dashed property line bisecting the footprint through a portion of the garage segment, which is also accurate, as the lot includes an additional 16.66 feet to the north, per the county tax map and the property's legal description [ST FRANCES HILL, BLOCK 7, LOT 10, S 1/3 OF LOT 11] and Exhibit G-10, Tax Map. Any construction on the subject lot, regardless of height or setback, will require significant geotechnical engineering design and review, including Landslide Hazard Analysis, and the building plans must meet structural requirements as well. The homeowner maintains that the "U" shape at the back of the house is not accurate, yet the 'U' shape does follow the roofline of the house as depicted in multiple aerial photos. The location of the rear building wall is allowed by the zoning code to be located anywhere on the site, as long as it does not encroach into the side or rear setbacks. There is no zoning code requirement that rear setbacks must match the setbacks of other homes adjacent or in proximity to the site. The other concerns raised that are directly relevant to the approval criteria are discussed below in the findings of this decision.

The fourth letter was hand delivered to BDS on August 13, but is a duplicate of the second letter, described above. It contains no additional signatures.

The fifth letter is from the owner of the house directly above the site, on NW Maywood. The owner notes opposition to the height adjustment as it will detract from the livability or appearance of the residential area. The owner notes that a structure extending above the height limit will have both visual and physical appearance impacts. The owner further states objections to the open roof on the elevated structure because it is designed to be used as an active area, adding to the disruption of livability and appearance in the neighborhood.

<u>Staff Comment</u>: The objections and concerns raised are addressed, below, in the findings of this decision.

Procedural History: The applicant placed this application on hold August 21, 2012 in order to respond to the concerns raised by neighbors. The applicant revised the plans that resulted in an over all reduction in height, and a greater front setback than originally proposed. The applicant submitted revised plans on September 12, 2012 and requested that the application continue to be processed. Because the revisions resulted in a smaller building envelope than the original proposal, no new notice was required.

The administrative decision approved the revised proposal and was issued on October 18, 2012. The decision was appealed on November 1, 2012. A Notice of an Appeal Hearing was mailed on November 8, 2012. The Appeal Hearing before the Adjustment Committee was held on December FINAL DECISION ON APPEAL LU 12-148390 AD February 12, 2013

18, 2012. The matter was continued to January 22, 2013, and the Record was held open until 4:30 PM, December 28, 2012 for new evidence from all; until 4:30 PM, January 7, 2013 for all to respond to new evidence; until 4:30 PM, January 14, 2013 for applicant rebuttal only. The Adjustment Committee convened at 9:00 AM on January 22, 2013 and determined that there was no quorum due to illness. The matter was continued until January 29, 2013 for deliberations. After deliberation, the Committee voted 4-0 to deny the appeal, uphold the staff decision, and requested additions to the findings encompassing the additional testimony received during the open record period. On February 12, 2013, the Adjustment Committee voted to adopt revised findings for this Final Decision.

FINDINGS

33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified: and

Findings: The regulation the applicant requests to adjust is maximum height. The purpose of the height regulations is found at 33.110.215.A. which states:

Purpose. The height standards serve several purposes:

- They promote a reasonable building scale and relationship of one residence to another;
- They promote options for privacy for neighboring properties; and
- They reflect the general building scale and placement of houses in the city's neighborhoods.

The revised proposal equally meets the purpose of the height standard because despite the additional height of 7 feet, the front setback proposed is 42 feet to the main façade of the house, and 36 feet to the cantilevered 'bump out' over the garage entrance. The zoning code exception for steep lots would allow a home 15 feet from the front lot line and 23 feet in height. The code allows a reduced setback to 10 feet, but also requires the height to be lowered one foot for one foot of reduced setback. Therefore, on steeply sloping lots, a home with a 10 foot setback can only be 18 feet in height. The proposal sets the house back 4 times the reduced setback, more than 3 ½ times for the cantilevered bump out.

The additional deep front yard setback places the home within a reasonable relationship to other residences, because the adjacent home to the north is set back approximately 34 feet, which nearly matches the proposed bump-out on the front façade, while the adjacent home to the south has a particularly dominating front façade due to the reduced setback for the second story. As a result, the perspective for a pedestrian walking along the street would view the new home as generally the same height as adjacent homes due

to the increased setback. Additionally, even though the proposed house is set farther back, the overall footprint of the home is such that it will be partially visible from oblique angles of adjacent homes, but overall will not significantly impinge on views, light, and open air among all of the houses.

Several comments have noted that the proposed home will extend further toward the rear lot line than any of the other houses along NW Marlborough. Because this is inconsistent with the other houses, and because it will be seen from other houses, neighbors state that both the views for others and privacy for others will be compromised by the proposal.

The zoning code requires a 5 foot setback from the rear property line in the R7 zone. There is no zoning regulation that governs rear setbacks or requires the rear setback to match adjacent homes. Being able to see other nearby houses from another house in a residential neighborhood is expected. In fact, a home could be built on this lot without a height adjustment and still be set back as far as proposed, or further. In fact, theoretically the revised proposed house could be set back far enough on the property that it would comply with the 23 foot height limit [because the farther back the house is set back down hill, the lower the roof level becomes as measured from the street grade]. However, because of the steeply sloping lot and the necessary tie-ins to sanitary and stormwater facilities, the applicant has not set the house an additional 15+ feet. Under this scenario, no Adjustment would be necessary and the house would be allowed by right. The applicant is proposing the 42 foot setback as mitigation to reduce the visual impact of the additional height while locating the structure away from NW Marlborough in order to create an open and pleasing front yard area.

The design of the home includes a flat roof that will serve as an active area for the home owner as useable outdoor area since the topography is not conducive to an active back yard. The largest open area of the roof is toward the rear of the lot, which will afford views to the north, but also places activity on the roof well away from the adjacent houses on either side. Given the relationship of this roof area to the adjacent homes, any views from the roof would be oblique angles that would not provide a sightline that impinges on privacy. The proposed home meets or exceeds the side and rear setbacks, so the overall relationship of the home to adjacent homes is typical.

It is important to note that the height of the roof is shown at 22 feet 11 inches in height, thus complying with the maximum height of 23 feet; however, the 3 $\frac{1}{2}$ foot tall parapet around the edges of the flat roof create additional height as measured by the zoning code, as does the 10 x 20 access penthouse which provides a weather tight cover over the access stairway. This penthouse adds the additional height to equal 30 feet. This element of the rooftop will be set back from the front property line by 53 feet 9 $\frac{1}{2}$ inches.

The proposed home will reflect the general building scale and placement of houses along this street as the subject site is in a transition area between the three homes between the site and NW Westover, which are all set back from the street a significant amount [the closest being approximately 19 feet from the street lot line] while the rest of the homes along NW Marlborough are placed very close to the street. As such, the proposed home would provide a visual transition from relatively open front yards to very closely set dominating front facades of the rest of the homes along this side of NW Marlborough. As a transition from two very distinctly different development patterns, the proposal is intended to balance these characteristics without adversely impacting the appearance along the street or impacting the relatively open views the other houses have to the north.

The revised proposal requests a height adjustment to allow the proposed new home to be 30 feet in height, which is the maximum allowed by the R7 base zone standards. However, because the subject site qualifies as a steeply sloping lot, the zoning code

allows a maximum height of 23 feet above average street grade at a 15 foot setback, <u>or</u> a reduced front setback of 10 feet at 18 feet in height. The revised proposal places the main façade of the proposed home 42 feet from the front property line, with a small cantilevered bump out above the garage at 36 feet. Additional revisions to the proposed home includes modifying floor to ceiling heights within each story so that the overall height of the structure, as measured by the zoning code is 30 feet.

There are two elements of the home that impact the height calculation. These elements are: the 3 ½ foot high roof parapet around the edge of the flat roof, and a small access penthouse that encloses a stairway up to the roof. This small access penthouse is 7 feet 6 inches above the flat roof, with the lower 3 ½ feet screened behind the parapet. Because the access penthouse also has a flat shed style roof, the top of this penthouse brings the total height of the structure to 30 feet, 7 feet above the 23 foot height limit. This access penthouse will be set back from the front lot line by 53 feet 9 ½ inches. Also, the penthouse is oriented such that the long axis of the structure runs parallel with the street lot line, so the smaller end facades face the side lot lines and the adjacent house on each side of the site. As configured, the north façade of the penthouse is approximately 30 feet from the closest point of the adjacent home to the north, and the south façade of the penthouse will be set back approximately 15 feet from the closest point of the adjacent home to the south. [Note: These distances are scaled from the submitted plans, historic building footprints on file with the City and aerial photographs from 2011 and 2010].

Given the proposal and the surrounding development pattern, an increase in overall height of a structure has potential to impact the houses across NW Marlborough from the site, potential impacts to the condominium community at the bottom of the slope [The Westover Terraces] and the homes adjacent and in close proximity to the site along the north side of NW Marlborough Street.

As discussed earlier, the homes along the south side of Marlborough are on through-lots, thus they are oriented to NW Maywood Drive, the next street above Marlborough. Because of the through-lot configuration, the homes across the street from the subject site are actually well above NW Marlborough. This topography is important, as the frontage of the subject site is at approximately 350 feet AMSL [above mean sea level] while the frontage of the lot directly across Marlborough, but measured along Maywood is at approximately 410 feet AMSL, a difference of at least 60 feet. Given the elevation difference between Maywood and Marlborough, the open views to the north that houses along the north side of Maywood have, are not blocked by the houses along the north side of Marlborough, even when the majority of those homes have a significantly reduced front setback.

Views upslope from the residences below in the Westover Terraces are well screened by mature tree canopy, and given the distance between the proposed home and the closest condominium, calculated to be no less than 105 feet, the increase in height will be negligible.

Given that most of the homes along the north side of NW Marlborough are close or within 10 feet of so of the street lot lines, the views out the back of these homes to the north are relatively unimpeded by adjacent homes because of the general 'in-line' placement along the street edge. However, with the variations in the setbacks, including the three homes between NW Westover and the subject site, there are views from the homes that will include partial views of the adjacent homes. However, this is no different from any residential development pattern with 5 foot side setbacks; that is, given the proximity of the homes, it is expected that adjacent homes can be seen to a greater or lesser extent.

The applicant notes that setting the house back even further would allow the structure, as proposed, to be built by right, as the increased setback would offset the height above the average grade of the street such that as measured by the zoning code, the house would meet the maximum 23 foot height requirement. However, the outcome of such a severe setback would be two-fold: the new home would have less of a vantage point for the open views to the north, and by being located so far down slope, the new home would be readily apparent from multiple angles of the adjacent homes along NW Marlborough Street. Therefore, the revised proposal seeks to eliminate such impacts to adjacent homes. By placing the home 42 feet back from the street, the additional height, because of the perspective, will not create a significant visual impact. Staff based these conclusions on Exhibit G-9, Elevation analysis, revised plans C-1-C-2, as well as comparative perspective drawings Exhibit C-3.

During the open record period, additional written testimony, photographs, and "photo-simulations" of the proposed house in context to the existing homes were submitted by neighbors in opposition, as well as the applicant. Three common arguments raised by neighbors in opposition were:

- The proposed height does not create a reasonable building scale; and
- The "overly" large front setback does not create a reasonable relationship between residences; and
- The use of the roof top deck area will impinge on the privacy of multiple neighboring properties along NW Marlborough and the Westover Terraces located at the foot of the slope, where the rear property line of the subject site abuts a portion of the Terraces' property.

The neighbors note that the 42 foot front setback is incongruent with the existing development patterns. They state that with the excessive setback the proposed home would extend further east than any of the other existing homes and therefore would impact views currently enjoyed by neighbors from their decks.

Regarding height, the Adjustment Committee finds that the proposed development will not be more visually dominant or intrusive than other nearby residences along this section of NW Marlborough. The Committee notes that photographs of the existing streetscape demonstrate that a number of the adjacent homes to the south were built both closer to the street and at higher building heights than allowed by today's code standards.

Regarding the front setback, the Adjustment Committee finds that the proposed 42 foot setback of the proposed home visually alleviates appearance impacts of the increase height. The Committee notes that from the perspective of a pedestrian walking along the sidewalk a home meeting the height limit and set back 10 feet would appear to be taller than the proposed home at a greater setback. The Adjustment Committee notes that the proposed home meets all other development standards except for height. The Committee also notes that there is no code restriction on the placement of a home on a lot, as long as the structure does not encroach into any required setback.

The Committee further finds that although the placement of the proposed development on the lot does differ slightly from the dominant pattern and may obstruct existing sight lines from adjacent properties, the placement is allowed by right and there are no City-designated Scenic protections in the zoning code for such views enjoyed from private residences. The Committee notes that the proposed home could, by right, be placed further east on the subject lot, thereby resulting in materially higher levels of sightline obstruction for neighboring properties.

The Adjustment Committee finds that photo evidence submitted into the record during the public hearing and open record period documents that the existing pattern of privacy options in dwellings along the east side of NW Marlborough and south of the subject site are already constrained by an existing pattern of close placement of structures and the existing pattern of east facing decks which results in sight lines that distinctly limit privacy to adjacent residents. In fact, the proposed development, by not including an east facing deck is potentially less intrusive to neighbors' privacy than some of the existing nearby residences on the east side of NW Marlborough.

The proposed height adjustment allows for construction of a rooftop deck, rather than an east facing deck, which equally or better meets the purpose of promoting options for privacy by creating an outdoor area where sightlines to neighboring properties are at oblique downward angles that reduce impacts on privacy. The Committee finds that the stated concerns regarding reduced privacy and invasive sightlines due to the 42-foot front setback would require leaning over the parapet and assuming a contorted position in order to look back and down to see into adjacent homes. The Committee also notes that the proposed 42 foot setback is allowed by right, and is not the subject of this adjustment. The requested adjustment to allow a rooftop deck promotes options for privacy by directing natural sightlines up and away from neighboring properties toward the same expansive view to the east that is available from other existing decks in the neighborhood.

For all of the reasons above, this criterion is met.

B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: A concern raised by the neighbors is the potential for the increase in height to have a significant impact on both the livability and appearance of the immediate neighborhood area. In addition to the scale and placement of the proposed home, the responses raised concerns that the additional height, if granted, will result in an unacceptable level of impacts on privacy, livability and appearance. The zoning code does not define 'livability' per se in 33.910, Definitions. However, livability is specifically addressed in Conditional Use reviews for non residential uses in R zones [33.815.105.C.1-2] which lists the following aspects of development that can potentially impact on the livability of a residential area, and states:

- **C.** *Livability.* The proposal will not have significant adverse impacts on the livability of nearby residential-zoned lands due to:
- 1. Noise, glare from lights, late-night operations, odors, and litter; and
- 2. Privacy and safety issues.

The only anticipated noise associated with the proposed new home is the noise typical of all residential uses, including vehicle engines, doors opening and closing, visitors, lawn mowers, etc. There is nothing inherent in the proposed additional height that is expected to generate any significant and/or disruptive noise. Lighting will be residential in nature, however there is reason to be concerned about glare from any exterior lighting at roof level. Therefore, a condition is warranted that the exterior lighting of the roof deck must be both 'sky friendly' and 'neighbor friendly' by using fully shielded and down-tilted fixtures in order to prevent glare towards the sky and onto adjacent properties. The lighting should be installed to avoid light spillage beyond the edge of the roof at the roof deck onto adjacent properties that would exceed the glare standard of 33.264, Off-Site Impacts. Residential uses are not 'operations'; however individual residences can have some levels of activity 24/7, but typically these occur indoors during late night or early morning hours.

Concerns have been raised that because the house is designed with the flat roof to be used as an active area, those activities on the roof would be a significant disruption. Staff noted that the active roof area is no different than an outdoor deck, balcony or patio. Residential uses include activities in outdoor areas, many such areas include decks and balconies in neighborhoods with steep terrain as these are often the most reasonable way to enjoy the yard and home when the topography precludes a comfortable gathering area. The deck area of the roof is set back from all property lines, as measured from the parapet facade as follows: 42 feet from front, 45 from rear, 12 feet north [side] property line and 6 feet from the south [side] property line. There are no apparent aspects of the proposed height increase that would directly result in odors and / or litter.

Privacy and safety concerns are aspects that can be diminished by an overly tall structure that rises significantly and is placed such that adjacent properties are impacted. However, the proposed house meets or exceeds the side and rear lot setback requirements. Generally, privacy can be impacted when structures are located in close proximity because of a reduced setback. However, the active use of the roof could have privacy concerns, similar the impacts an elevated deck might cause, depending on its location to adjacent properties.

In this situation, it appears that the result of the increased front yard setback, along with the orientation of the access penthouse is such that the small [ten foot] façade of the penthouse is orientated toward the adjacent residences on either side of the site so that the visual impacts of the tallest element of the proposed house is minimized. Because of the penthouse orientation, the 20 foot wide façade faces the street [some 52+feet away] and the rear lot line, thus the larger sides of the penthouse have minimal impacts on adjacent properties to the rear, and downhill from the site, as well as minimize any impacts of the streetscape of NW Marlborough.

Because the homes 'across the street' are located well above, on NW Maywood, no residence has a sight line directly across from the proposed home. Staff notes that a homeowner directly above the site on NW Maywood has written with concerns regarding the visual appearance and disruption to the livability of the residential area. The distance between this homeowner's rear façade and the front façade of the proposed house is approximately 94 feet [42 foot front setback + 30 foot wide Marlborough right of way + 22 feet from rear façade to rear lot line]. The combination of this separation distance and the elevation differences of the steep terrain provides sufficient screening and buffering between the elevated active roof and this home.

Safety is a significant consideration with the proposed height increase. As discussed earlier, the top of the flat roof itself is 22 feet 11 inches above average street grade, therefore compliant with the maximum 23 foot height limit. However, the $3\frac{1}{2}$ foot roof parapet is a requirement by building code for safety. In addition, the 10×20 access penthouse that provides weather tight cover over the access stairs adds the additional height to bring the total to 30 feet. Removal of either of these elements results in hazards, therefore the proposed additional height. The applicant has revised the plans to achieve a better balance between safety, privacy, and distance [42 foot front setback]. Given the revisions to the proposal and the mitigating extra front setback, it appears that the balance between safety and privacy is achieved.

Many neighbors also raised concerns regarding the impact of the additional height on the overall appearance of the neighborhood. The NW Hills in general and this immediate area specifically is characterized by 'grand homes.' There is an eclectic mixture of architecture in this area, some homes built in the 1920's-1930's are still considered 'grand' by today's standards. More recently built homes often utilize a modern architectural vernacular. Many of the homes in the area are custom designed and built;

given the seismic, building and stormwater regulations in effect today, significant engineering is required to construct a home in this terrain.

The Adjustment Committee notes that livability may relate to appearance issues, and that existing residential development adjacent to and nearby along NW Marlborough is already characterized by considerable heterogeneity of appearance. Simply put, it is difficult to argue that a single style of pattern characterizes existing development which ranges from quite traditional treatments in vogue 80 or more years ago to quite modern appearing exteriors developed or re-developed in the past 20 or so years. Because of this existing pattern of pervasive stylistic variation it is difficult to view the modernist, contemporary nature of the proposal as anything other than an incremental contribution to the existing pattern of variation. As such the proposal does not detract from the existing pattern of variation in appearances, it reinforces this pattern.

The Committee also notes that the open front yard as a result of the front setback furthers the applicant's goal to make sure the garage is not a visually dominant element, and that the overall proposal will not impact the appearance of the residential area.

The proposed house is custom designed and will require significant engineering for construction. The proposal has been revised after consideration of the public comments, as well as direct conversations with some of the neighbors along the street. Extensive conversations have occurred between the applicant and the abutting homeowner to the north, and the applicant notes a number of side façade details, that ensure privacy is preserved by locating windows off axis from one another to create oblique angles versus straight sight lines between residences. Given the revisions made, the anticipated impacts on privacy appear to be *de minimus*, and on par with existing development.

Therefore, with a condition regarding lighting, as discussed above, this criterion can be found to be met.

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one adjustment is requested. This criterion is not applicable.

D. City-designated scenic resources and historic resources are preserved; and

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: There are potential impacts that could arise from an over height structure in a residential area. However, given the generous front yard setback of 42 feet to the main façade of the house, the additional distance between the street and the access penthouse, and the orientation of the axis of the penthouse so that the smaller facades face each abutting residence, the request to Adjust the height will be well mitigated, if the home is built in substantial compliance with the revised plans. Substantial compliance in this case specifically means:

• The main building wall of the home must be set back from the front property line 42 feet, with the cantilevered bump out to be set back 36 feet;

• The orientation of the access penthouse must reflect the plans submitted, with the longer façades roughly parallel to NW Marlborough and the rear property line, and the smaller facades facing abutting lots;

Additionally, because of the way the zoning code measures height, in combination with the specific design proposed for the new home, the roof parapet can either present a visual presence of bulk, if the parapet materials are solid, or can be minimized by using a transparent or semi transparent [visually porous] material. Therefore an additional condition of approval is warranted to insure that the materials used for the roof parapet are appropriate for building code regulations but also to help minimize the parapet's visual impacts. Such a condition will require that the roof parapet be constructed of transparent or semi transparent materials such as plexi-glass, cabled or metal netting, wrought iron or any other material that is no more than 50% sight obscuring.

Considerable testimony was received, arguing that the increased front setback was not appropriate mitigation for the increase in height, and many neighbors testified that the proposed home should be consistent with the front setbacks of the other homes along NW Marlborough. Testimony was also received from the applicant and the representative that there were significant engineering and design considerations for the home that could not be achieved with a significantly reduced front setback.

Further, the applicant demonstrated that the appearance of the proposed home would change significantly as the front setback was increased, at Exhibit C-3, via a series of perspective drawings where the observation point remained the same for each drawing. Further, the applicant's representative, at Exhibit H-16, has noted that at the current building height [of the revised proposal] "... it is not possible to move the building forward while maintaining the driveway slope without increasing the building height." During deliberations, staff confirmed that this is the case, because of the way the zoning code measures height in this situation, based on the average grade of the street, which would not change as the house was brought forward.

Based on these facts and evidence, the Committee concludes that sufficient mitigation has been provided for the height increase. The Committee notes that the zoning code does not restrict front setbacks to a maximum in the R 7 zone. Therefore, with the conditions as discussed above, this criterion can be found to be met.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: The site is not within an environmental zone. This criterion is not applicable.

CONCLUSIONS

The applicant plans to develop the steeply sloping lot with a new custom designed home. The home will be a two-story residence with a basement and a flat walkable roof with parapet walls and a small rooftop structure that allows a cover and sufficient space for a staircase to rise from the second floor to access the roof level.

The zoning code provides alternative height limits for steeply sloping lots at 33.110.215.D, which the applicant has chosen. Because the lot slopes downhill from the street, the code allows the maximum height of 23 feet above the average grade of the street. When this method is used, exceptions to the required setbacks are allowed, per 33.110.220.D.4, which allows the front building setback to be reduced to 10 feet from the 15 foot front setback required in the R7 zone on flat lots. Additionally, garages are allowed a 5 foot setback in these circumstances. Use of the reduced setback exception also requires that height is reduced to 18 feet within the reduced 10-foot setback. However, the applicant is not proposing a reduced front setback. Therefore, the

maximum height in this situation is 23 feet. The original proposal requested a height adjustment to allow the proposed home to be 32 feet 1 inch tall.

After reviewing the response letters from neighbors expressing concerns regarding the proposal, the applicant revised the project by reducing the overall height of the structure to 30 feet and rather than take advantage of the code provision to reduce the front setback, the revised proposal will set the main façade of the home at 42 feet, with a cantilevered bay above the garage that will be 36 feet back from the front property line. The original proposal had the home set back 29 feet 10.5 inches.

Because the revised proposed home will be 30 feet in height, the applicant requests an Adjustment to allow the home to be 7 feet above the maximum 23 foot height limit.

The revised proposal meets all applicable approval criteria, with conditions, and therefore should be approved.

ADJUSTMENT COMMITTEE DECISION

Deny the appeal and uphold the administrative decision of approval, subject to the following conditions:

Approval of:

- An Adjustment to 33.110.215 to allow the proposed home to be 30 feet in height, per the approved site plans, Exhibits C-1 Revised through C-2 Revised, signed and dated October 16, 2012, subject to the following conditions:
- A. As part of the building permit application submittal, the following development-related conditions (B through D) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE Case File LU 12-148390 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The home must be built in substantial compliance with the revised plans. Substantial compliance in this case specifically means:
 - The main building wall of the home must be set back from the front property line 42 feet, with the cantilevered bump outs to be set back 36 feet;
 - The orientation of the access penthouse must reflect the plans submitted, with the longer façades roughly parallel to NW Marlborough and the rear property line, and the smaller facades facing the abutting lots/homes to the north and south
 - C. To insure that the materials used for the roof parapet help minimize the parapet's visual impacts the roof parapet must be constructed of transparent or semi transparent materials such as, but not limited to, plexiglass, cabled or metal netting, wrought iron or any other solid material that is no more than 50% sight obscuring. The 50% sight obscuring standard of this condition of approval will be applied in the same way as the F-1 50% sight obscuring fence standard described at 33.248.020.F.
 - D. Exterior lighting for the roof deck must be 'sky friendly' as well as 'neighbor friendly'. It must be downward-facing and fully shielded to prevent glare, and installed to avoid light spillage beyond the edge of the roof at the roof deck onto adjacent properties that would exceed the glare standards of 33.264, Off-Site Impacts.

Staff Planner: Sylvia Cate

The original staff findings, with additions, conclusions and final decision were adopted by the Adjustment Committee on February 12, 2013 by a unanimous vote.

Adjustment Committee
Roger Alfred, Chair

Date Final Decision Effective/Mailed: February 14, 2013

120th day date: July 20, 2013

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 June 7, 2012, and was determined to be complete on July 19, 2012.

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 June 7, 2012.

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 requested that the 120-day review period be extended for 30 days per Exhibit A2 and then waived entirely per Exhibit A3. Unless further extended by the applicant, **the 120 days will expire on: July 20, 2013.**

Appeal of this Decision. This decision is final and becomes effective the day the notice of decision is mailed (noted above). This decision may not be appealed to City Council; however, it may be challenged by filing a "Notice of Intent to Appeal" with the State Land Use Board of Appeals (LUBA) within 21 days of the date the decision is mailed, pursuant to ORS 197.0 and 197.830. A fee is required, and the issue being appealed must have been raised b the close of the record and with sufficient specificity to afford the review body an opportunity to respond to the issue. For further information, contact LUBA at the Public Utility Commission Building, 550 Capitol Street NE, Salem, OR 97310. [Telephone: (503)373-1265]

Recording the Final Decision.

If this Land Use Review is approved, the final decision must be recorded with the Multnomah County Recorder. A building or zoning permit will be issued only after the final decision is recorded. The final decision may be recorded on or after the **February 14, 2013**.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in a separate mailing) and the final Land Use Review Decision with a check made payable to the Multnomah County Recorder to: Multnomah Count Recorder, PO 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 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. This decision expires three years from the date the Final Decision is rendered unless:

- A building permit has been issued, or
- The approved activity has begun, or
- In situations involving only the creation of lots, and the land decision has been recorded.

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

- All conditions imposed here.
- All applicable development standards, unless specifically exempted as part of this land
- All requirements of the building code.
- 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. Application narrative in 3 ring binder
 - 2. Extension of 120 day clock
 - 3. Second extension of 120 day clock
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Revised Site Plan (attached)
 - 2. Revised Elevations [attached]
 - 3. Series of perspective drawings showing setback/height combinations
 - 4. Original plan set submitted, superseded by revised plans above
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
 - 3. Mailing list
 - 4. Corrected Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. Sean Breen, for Homeowners Assn The Terraces, July 30, 2012; concerns and opposition
 - 2. David L'Heureux, et al, August 9, 2012, opposition and concerns
 - 3. Jerry and Judy Sawyer, August 11 2012, concerns and opposition
 - 4. David L'Heureux, et al, August 13, 2012, duplicate of F-2, hand delivered
 - 5. Denise Mullen, August 14, 2012, opposition
 - 6. David L'Heureux, email dated July 25, 2012, opposition
- G. Other:
 - 1. Original LU Application
 - 2. Letter to applicant, June 26, 2012 re: additional information needed
 - 3. LU 06-101479 AD
 - 4. LU 06-128624 AD

- 5. LU 03-171566 AD
- 6. Steeply sloping lots GIS overlay
- 7. Footprints of homes with VZ's, AD's indicated
- 8. Year built of homes with street elevations
- 9. Elevation analysis
- 10. Tax Map

H. ON APPEAL

- 1. Appeal Submittal
- 1.a. Neighborhood signatures, pgs 2 7
- 2. Appealed Decision
- 3. Notice of Appeal Hearing
- 4. Appeal Mailing List

(Received before Hearing)

- 5. Committee Appeal Packet Memo
- 6. Hearing Memorandum, Kelly S. Hossaini, Miller Nash LLP, 12-13-12.
- 7. Letter from owner, Joaquin Sufuentes with attached correspondence between owner & appellant's representative, emailed 12-17-12.

(Received During Hearing)

- 8. Decision Errata, Sylvia Cate
 - 1. PowerPoint Presentation to Hearing Body
- 9. Portland Maps, submitted by Kelly S. Hossaini
- 10. Photos, submitted by David J. Liss
- 11. Letter, submitted by Judy & Jerry Sawyer

(Received by 5:00 PM, December 28, 2012)

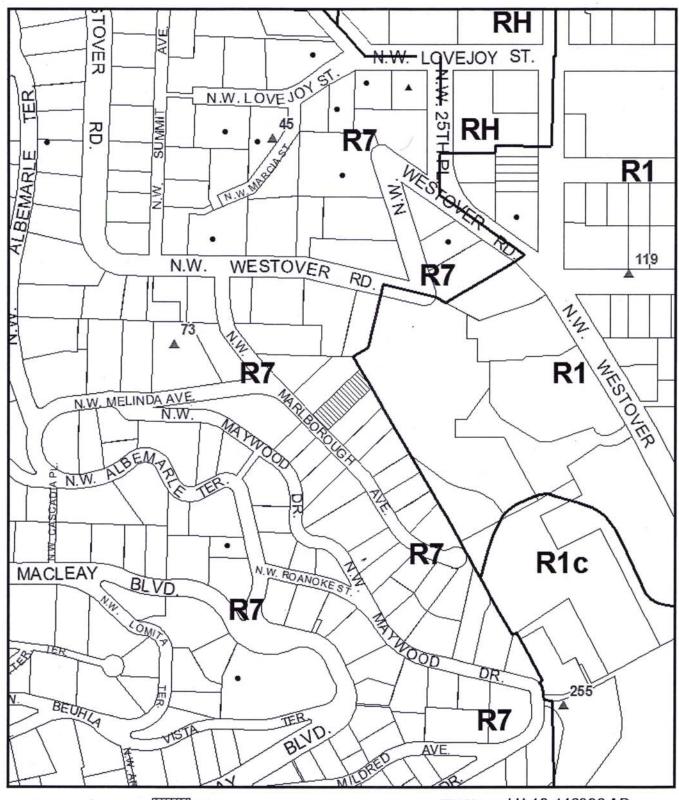
- 12. Letter from Justin Fuller, emailed 12-27-12.
- 13. Cover letter and attachments, David L'Heureux, 12-27-12
- 13a.Letter from David L'Heureux, 12-27-12
- 14. Email from Joaquin Sufuentes, 12-27-12
- 15. Letter from Judy and Jerry Sawyer, 12-28-12
- 16. Ryan Olsen email, 12-28-12
- 17. Letter from David Liss, 12-28-12

(Received by 5:00 PM, January 7, 2013)

H.18 Letter and Attachments, David L'Heureux, 1-7-13

(Received by 5:00 PM, January 14, 2013)

H.19 Final Rebuttal, Joaquin Sufuentes, 1-11-13



ZONING Site

Historic Landmark

NORTH

LU 12-148390 AD File No. 2926 1/4 Section 1 inch = 200 feet Scale. 1N1E32AD 6800 State Id . В (Jun 13,2012) Exhibit _

Ryan Olsen Custom Homes S *Approved* N.W. MARLBOROUGH AVE City of Portland - Bureau of Development Services Flanner ADTUSTAENT OMNIND FINE 2-12 Bureau of Development Services requested and is subject of applovaling requirements conditions and subject of the subject of th *Approved* City of Portland This approval applies of planner

EXHIBIT C-1 PZEVISED STREPAN

his approval applies only to the reviews requested and is subject tions of approval. Additional zoning requirements may apply

