



City of
Portland, Oregon
Bureau of Development Services
FROM CONCEPT TO CONSTRUCTION

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Date: April 18, 2017
To: Interested Person
From: Shawn Burgett, Land Use Services
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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 mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 17-126304 TV

GENERAL INFORMATION

Applicant: Dan Williams
Faster Permits
14334 NW Eagleridge Lane
Portland, OR 97229

Owner: Everett Custom Homes Inc
3330 NW Yeon Ave #100
Portland, OR 97210-1531

Site Address: 3023 SW IDAHO ST

Legal Description: LOT 2, PARTITION PLAT 2016-92
Tax Account No.: R649673650, R649673660
State ID No.: 1S1E17DC 05001, 1S1E17DC 05002
Quarter Section: 3626
Neighborhood: Hayhurst, contact Janet Hawkins at 503-988-3707.
Business District: None
District Coalition: Southwest Neighborhoods Inc., contact Sylvia Bogert at 503-823-4592.

Zoning: R5 (Single Family Residential 5,000 sq. ft.)
Case Type: TV (Tree Violation)
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant has applied for a Tree Violation review to address the removal of a 12-inch Chestnut Tree that was no longer viable for preservation due to construction impacts associated with a new single family residence. This tree was required to be preserved as a part of a land division review (LU 15-177535 LDP) that created this Parcel (shown as Parcel 2). The applicant has proposed to mitigate for this tree via making a payment into the City tree preservation and planting fund. In addition, the applicant will be required to plant new trees

on the site to meet Urban Forestry tree planting requirements associated with new residential development.

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 lot is approximately 5,803 square feet in size and located on an interior lot with frontage SW Idaho St. The single family home that was previously located on the site has been demolished. Most of the site topography is relatively flat, however the sites slopes downward toward the north end of the site. Development in the vicinity is primarily composed of single family homes.

Zoning: The R5 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 15-177535 LDP:** Approval of a Preliminary Plan for a 2-parcel partition that will result in two standard lots. The final plat was approved by the City on November 3 of 2016.

Agency Review: Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits "E" contain the complete responses.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **March 15, 2017**. No written response was received from a notified property owner or Neighborhood Association in response to the proposal.

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 preservation requirements of a land use review, 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 requirement of a land use review, the mitigation plan meets the purpose of the regulation that required the preservation plan; and
 - 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 853-1. If additional trees on the site are proposed for preservation and protection, the applicant must submit an arborist's assessment indicating the suitability of the trees for preservation, recommendations for protection methods, and any remedial treatment that may be necessary to ensure the long term viability of the trees. The total diameter of additional trees preserved must exceed the total diameter of trees cut.

Table 853-1 Tree Replacement for Violation	
Size of tree removed (inches in diameter)	Number of Trees to be Planted
Up to 12	3 trees
More than 12 to up to 20	5 trees
More than 20 to up to 25	7 trees
More than 25 to up to 30	10 trees
More than 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 may 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 as described in 2.a or b, then a payment in lieu of planting may be made to the Tree Planting and Preservation Fund
3. Replacement trees must meet the requirements of Section 33.248.030, Plant Materials, unless the mitigation plan calls for different planting specifications to address concerns about plant survival or impacts on the site.

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 land division process provides the flexibility and opportunity to promote creative site design that considers multiple objectives, including integration of trees. The regulations of this chapter require that trees be considered early in the design process with the goal of preserving high value trees and mitigating for the loss of trees. Desired benefits of trees include:

- Protecting public health through the absorption of air pollutants, contamination, and capturing carbon dioxide;
- Buffering from noise, wind, and storms;
- Providing visual screening and summer cooling;
- Reducing energy demand and urban heat island impacts;
- Filtering stormwater and reducing stormwater runoff;
- Reducing erosion, siltation, and flooding;
- Stabilizing slopes;
- Enhancing property values;
- Providing fish and wildlife habitat, including support for native species biodiversity through the preservation and planting of native trees;
- Providing food for people and wildlife; and
- Contributing to the beauty of the City, its natural heritage, and the character of its neighborhoods.

Tree Preservation standards of 33.630 require a certain percentage of existing viable tree diameter to be preserved on new lots within a land division site. A 2 lot land division (LU 15-177535 LDP) was approved with a tree preservation plan that met the standards of Option 4 (33.630.100.A.4). This plan required a 12" Chestnut Tree to be preserved on Parcel 2. This tree was damaged and removed from the site during construction activities associated with construction of the new single family home on the site. The building permit for this home has not yet been finalized. Therefore, the applicant is in violation of the tree preservation plan approved through the aforementioned land division review. The applicant has proposed to

mitigation for the removal of 12" tree diameter with payment into the City Tree Preservation and Planting fund.

According to Table 853-1, three trees are required to replace the 12" Chestnut Tree as mitigation. However, since the applicant will be required to meet minimum on-site tree density requirements of Urban Forestry under Title 11 (11.50.050) in correlation with the new development proposed on Parcel 2, it does not seem appropriate to plant 3 additional new trees on this 5,803 sq. ft. lot as mitigation since this would likely result in future overcrowding of trees on this lot.

Therefore, per Zoning Code section 33.853.040.C.2.c, since it is not possible to plant the mitigation trees on the site where the violation occurred due to concerns regarding tree overcrowding in the future, the applicants proposed method of mitigation via payment into the City Tree Preservation and Planting Fund for the equivalent of 12" is appropriate. The mitigation payment will be utilized to plant additional trees in the City that provide the desired benefit of trees as stated in the purpose statement above for Zoning Code section 33.630.010.

In order to satisfy the mitigation requirements, the applicant shall submit a revision to the active building permit under review on the site, this revision will need to demonstrate how the proposal is meeting the Title 11 tree density requirements noted above and make a payment into the City Tree fund for 12" of tree diameter prior to the final of the building permit.

The required mitigation is consistent with the purpose of Chapter 33.630, Tree Preservation, as the tree mitigation fee will provide the benefits of trees described in the purpose statement of the Tree Preservation Chapter.

With the conditions of approval described above, 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 15-177535 LDP) that established the subject property, one Chestnut tree was required to be preserved on Parcel 2. This tree was removed in violation of this requirement. To address this violation, the applicant will be required to mitigate via payment in the City tree preservation and planting fund. 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 one Chestnut Tree required to be preserved as a part of LU 15-177535 LDP, as illustrated on Exhibit C.1 and subject to the following conditions:

1. Prior to the final inspection approval of a building permit on Parcel 2 (3023 SW Idaho St.), the applicant will be required to submit a revision to the permit demonstrating compliance with Title 11 tree density standards and pay into the tree fund for the equivalent of 12 inches of tree diameter.

Staff Planner: Shawn Burgett

Decision rendered by: S. Burgett **on April 13, 2017**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 18, 2017

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 February 24, 2017, and was determined to be complete on March 10, 2017.

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 February 24, 2017.

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 did not waive or extend the 120-day review period. **The 120 days will expire on: 7/8/2017**

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 5/2/17** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 **May 3, 2017 – (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.

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

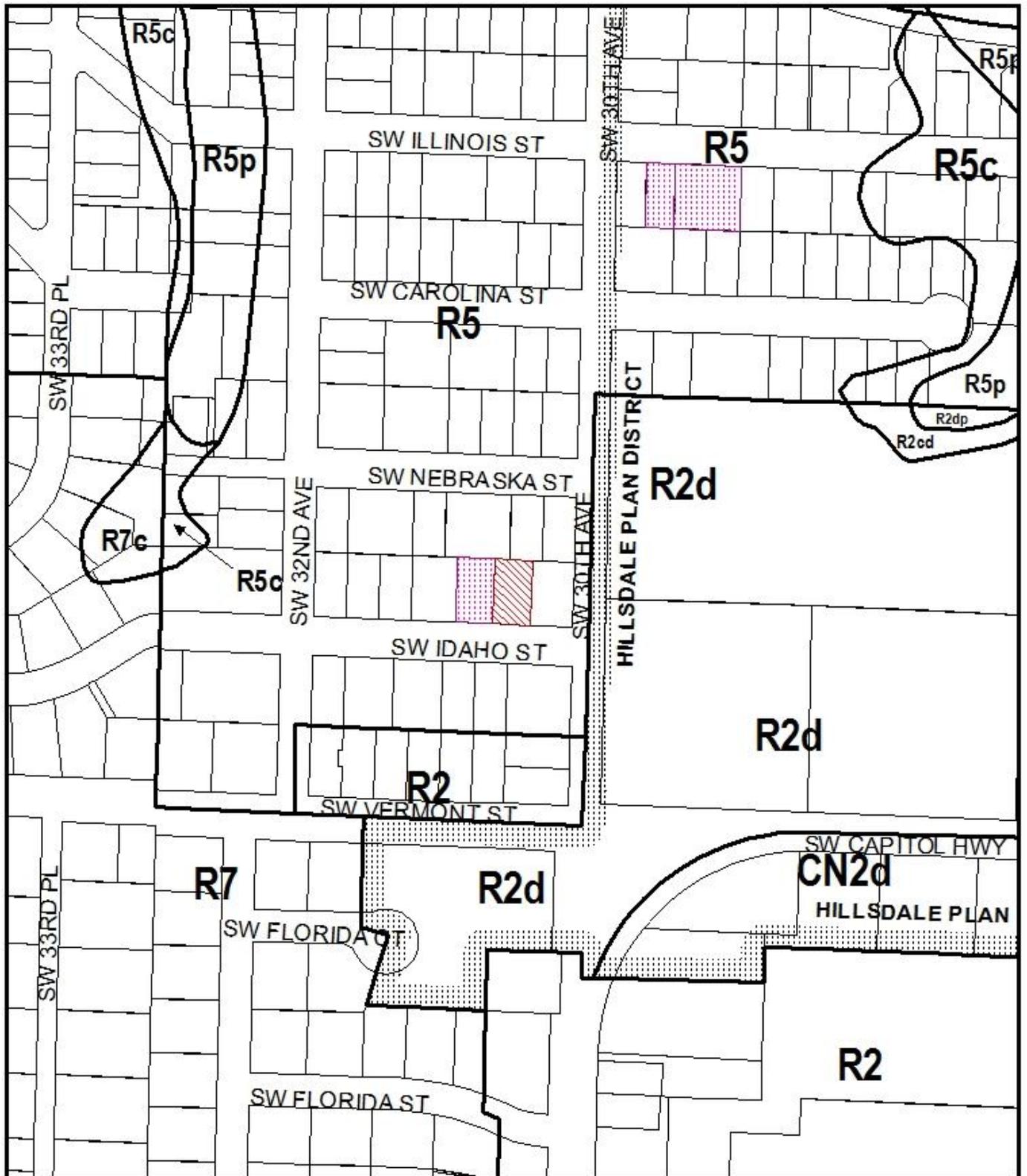
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. 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
 - 7. Life Safety
- F. Correspondence: (none received)
- G. Other:
 - 1. Original LU Application
 - 2. Land Use History

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

-  Site
-  Also Owned Parcels



File No.	<u>LU 17-126304 TV</u>
1/4 Section	<u>3626</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E17DC 5002</u>
Exhibit	<u>B</u> (Mar 10, 2017)

