



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

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Date: January 19, 2023
To: Interested Person
From: Amanda Rhoads, 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 22-171106 AD

GENERAL INFORMATION

Applicant: Christopher Green | Harper Houf Peterson Righellis, Inc
 205 SE Spokane St #200 | Portland, OR 97202
 503-221-1131 | chrisgreen@hhpr.com

Owner: Cheree Millikan
 935 Holiday Ct S | Salem, OR 97302

Site Address: SW SHERWOOD DR at SW NOTTINGHAM DR

Legal Description: LOT 2, WEISS ADD
Tax Account No.: R889500050
State ID No.: 1S1E09BC 05300
Quarter Section: 3327
Neighborhood: Southwest Hills Residential League, contact at landuse@swhrl.org
Business District: None
District Coalition: Neighbors West/Northwest, contact Darlene Urban Garrett at darlene@nwnw.org

Zoning: R10c,p,z – Residential 10,000 with Environmental Conservation, Environmental Protection, and Constrained Sites overlay zoning

Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:
 The applicant proposes a new house on the vacant site, taking access from SW Nottingham Dr through an existing access easement through 3008 SW Nottingham Dr. The applicant intends to meet the Environmental Overlay development standards of 33.430.140 in lieu of going through Environmental Review. Two base zone standards, however, are not met, and the applicant requests Adjustments to those standards:

- Adjustment to Zoning Code Section 33.110.220.B and Table 110-4 to reduce the required east side building setback from 10 feet to 5 feet for the steel support beams for the new house, and 7 feet for the building walls. The roof eave setback for the east side would be reduced from 8 feet to 3 feet.
- Adjustment to Zoning Code Section 33.110.215.B and Table 110-4 to increase the height of the house from 30 feet to 35.5 feet. The applicant had previously requested an Adjustment to height up to 46 feet, but subsequently redesigned the proposal to reduce the height increase to 35.5 feet in height.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The site is a hillside, forested lot in the West Hills, between Council Crest Park almost a half mile away, and OHSU and the VA Hospital, less than a mile away. The area is a mixture of steeply-sloping, forested open space and medium-to-low density residential development that follows the contours of the topography more than it follows any traditional grid pattern, per se.

The subject site is accessed via an access easement over a shared 135+/- foot-long driveway that leads to a common turnaround and parking access area about 35 feet up-slope from SW Nottingham Dr. The turnaround is shared by three lots, including the subject site and two lots to its south. The site is steeply sloping down to the north, dropping off quickly from the flat area that adjoins the turnaround.

About 50 feet below and 60 feet away from the proposed building site, a creek runs adjacent to the property south to north. The creek is a tributary of Marquam Creek, which gathers water from a number of tributaries as it runs down the canyon that is the centerpiece of Marquam Nature Park and its central trail, which can be accessed from SW Sherwood Dr, about 400 feet north of the end of the site's driveway, as it climbs and switchbacks from its base near Duniway Park to its high point at Council Crest Park. The trail system in the vicinity of the subject site is extensive and provides opportunities to explore the natural resources of the SW hills.

Zoning: The Residential 10,000 (R10) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Minimum lot size is 6,000 square feet, with minimum width and depth dimensions of 50 and 60 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 10,000 square feet of site area.

The Environmental Conservation Zone "c" overlay conserves important resources and functional values in areas where the resources and functional values can be protected while following environmentally sensitive urban development.

The Environmental Protection Zone "p" overlay provides the highest level of protection to the most important resources and functional values. These resources and functional values are identified and assigned value in the inventory and economic, social, environmental, and energy (ESEE) analysis for each specific study area. Development will be approved in the environmental protection zone only in rare and unusual circumstances.

Under some circumstances, more than two dwelling units are allowed on lots in the R20 through R2.5 zones. The Constrained Sites "z" overlay zone reduces development potential to

comply with protective measures adopted and acknowledged pursuant to statewide land use planning goals. This overlay zone reduces risk to life or property from certain natural hazards.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **September 27, 2022**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1);
- Bureau of Transportation (Exhibit E.2);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.5); and
- BDS Life Safety Plans Examiner (Exhibit E.6).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on September 27, 2022. Staff received a total of five written responses from six neighbors in opposition to the proposal. Some of the common concerns expressed included the following:

- Several lots in the immediate area which previously had been undeveloped and heavily treed are now under development, which will be a big change for the immediate area. Several neighbors expressed concern about slope stability and one asked that the City prevent development in the area (Exhibit F.5).
- The modern design of the house, with so much glass and on stilts, will make it more visible and disruptive at the taller height than a house with less glass and no stilts. One neighbor called the proposed house “a veritable lighthouse” (Exhibit F.4); another, “a brightly lit eyesore” (Exhibit F.1). “Houses in the neighborhood have a ‘woody’ feel, not a giant ultra-modern gleaming feel” (Exhibit F.1). Several referenced approval criterion 33.805.040.B, making the case that the design of the house is not consistent with the desired character of the area (Exhibits F.2, F.4).
- Approving these Adjustments is in conflict with the Environmental overlays on the property and the natural resources in the area (Exhibits F.3, F.4, F.5).

Staff Response: The subject site is an R10-zoned lot that is a legal, developable lot created as part of the Weiss Addition in 1968. The fact that other nearby or adjacent lots are under development around the same time as this one does not have bearing on this case. Slope stability is addressed through the permit process. The applicant submitted a geotechnical report (Exhibit A.12) and a Site Development staff member noted “no concerns” with the application (Exhibit E.5).

The style of the home in itself, and the fact that it is different than the houses in the area built decades earlier, is not relevant to the criteria. Elements that could cause privacy impacts or other offsite impacts are addressed in Criterion B below. Note that in residential zones, that criterion has us consider the livability and appearance of the residential area. We do not consider the classifications of the adjacent streets or the desired character of the area in residential zones; that portion of the criterion is for sites zoned OS, C, E, I, or CI2.

When a site has any environmental overlays, and proposes new development or alterations on the site, the Zoning Code offers both a standards path and a review path for that development. The proposed development does not require Environmental Review because the relevant General Development Standards of Zoning Code Section 33.430.140 are met or will be shown to be met at time of building permit. The requested Adjustments are not to standards in the Environmental Zones chapter of the code, but rather to the base zone standards of height and setbacks. Adjustments to the relevant General Development Standards of 33.430.140 are prohibited and none are proposed here. If during permit review it is determined the proposal cannot meet the applicable General Development Standards of 33.430.140, the applicant would be required to

meet the standards or gain an Environmental Review approval. Impacts on environmental resources are addressed further in criterion F below.

NOTE: The neighbor comments were in response to an earlier design of the house. In response to neighborhood comments (Exhibits F.1 through F.5) and staff concerns, the applicant has since modified the request by moving the bedroom level of the dwelling unit below the garage and main living level. This lowered the overall height and bulk of the dwelling (Exhibit C.2 compared with Exhibit A.6).

ZONING CODE APPROVAL CRITERIA

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

Setback Adjustment (33.110.220.B)

Findings: The applicant requests an Adjustment to the minimum building setback requirement from the east side lot line for the new house. Zoning Code Section 33.110.220.A states the purposes for the setback requirement:

The setback regulations for buildings and garage entrances serve several purposes:

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of residences in the city's single-dwelling neighborhoods;*
- *They foster a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

Staff addresses each of the relevant bullet points below:

- *They maintain light, air, separation for fire protection, and access for fire fighting;*

The three steel beams are proposed at 5 feet from the eastern property line; the building wall is proposed at 7 feet; and the building eave is proposed at 3 feet. The length of the building is just over 60 feet, and the length of the east property line is 158.7 feet (see Exhibit C.1). The length of the building in the setback is under 38 percent of the length of the property line. Therefore, much of the setback area from the east lot line will remain open and unobstructed, preserving light, air, and access for firefighters. Further, for approximately 40 feet of that 60 feet, the house is above grade, allowing free air flow under the house and to the neighboring property. One neighbor disagreed with this assessment, stating that the area under a stilt house “is generally considered to be a dead zone, nothing will grow, air will not move” (Exhibit F.3).

The applicant addressed this concern as follows: “The concern is anecdotal and contrary to the position of our registered and licensed landscape architect who designed the plantings with native plants and the opinion of our natural resource scientist that plants will grow in that area like plants that are already located within the natural existing understory of the site that receive little to no light. Further, the natural resource scientist confirmed that the wildlife within the area will in fact travel beneath the home and use it as habitat and protection if needed” (Exhibit A.18, page 5). Staff defers to the subject matter experts on this issue.

During the building permit review and inspection process, the new construction will be required to meet current fire protection requirements in the residential building code. The Fire Bureau and BDS’ Life Safety Review Section both reviewed the Adjustment proposal and responded with no objections to approval (Exhibits E.4 and E.6, respectively).

- *They reflect the general building scale and placement of residences in the city's single-dwelling neighborhoods;*
- *They foster a reasonable physical relationship between residences;*

On steeply sloping lots, house location is often guided by proximity to the vehicle access, proximity to top of the slope, and often situated to enable preservation of mature trees. On sites with environmental overlay zoning such as this, front setbacks are reduced to 0 to minimize disturbance. In this case, the site slopes steeply upward from SW Sherwood Dr rather than downhill. Therefore, the placement of the house off of the access easement at the top of the slope does reflect the general building scale and placement of residences in neighborhoods with steeply-sloping lots.

The neighboring property to the east just received tentative Environmental Review approval for development of that site (LU 22-138292 ENM). The proposed house and garage on that site will also be located close to the shared access easement off of SW Nottingham Dr as well. While those two structures are shown in the site plan, the final location of both the garage and the house are further from the shared property line than what is depicted in Exhibit C.1. The garage is further south than the proposed house under review here; the proposed house on that adjacent site is at its closest point 11 feet, 9 inches from the shared property line, and at most, more than 15 feet away. Therefore, at their closest point, the walls of the two houses will be 18.75 feet apart, and more than 20 feet for most of the length of the adjacent house, thus resulting in a separation between houses that is comparable to what is required by the minimum setbacks. This separation fosters a reasonable physical relationship between residences.

- *They promote options for privacy for neighboring properties;*

Privacy is being assured from the property to the east in several ways. First, the applicant originally proposed decks on two levels that would extend to 7 feet from the

east property line. The final proposal limited the decks to the west side of the house, distant from any property line (see Exhibit C.1).

Second, the applicant made a major change to the program in order to reduce the height of the overall structure, digging further into the hillside at the south end of the site and, in essence, moving the original second level of the house under the first level. This does two things. First of all, the overall structure is roughly 10 feet shorter, which will limit and reduce potential views into neighboring properties. Second, the main bedroom level of the house is much closer to grade, which makes screening this level with landscaping much more effective.

Third, the applicant provided a landscape plan that shows robust plantings in the area of the reduced setback (Exhibit C.3), including groundcovers, shrubs, and seven trees. A neighbor raised concerns about growing trees under a 4-foot eave (Exhibit F.3); however, the height of the eave above grade is from 20 to 40 feet, and light filtering in from the south will not be impeded by the eave. There is sufficient room for a tree to grow and provide middle-height screening between properties.

There are two mature trees in the setback of the adjacent property, noted on the Tree Removal and Protection Plan (Exhibit C.4) as trees 2281 (a 43-inch-diameter Bigleaf Maple) and 2167 (a 27-inch-diameter Douglas fir). These trees provide substantial screening between the two properties, especially at those higher elevations. Normally we would not consider plants on adjacent properties as reliable screening since the applicant has no control over those plantings. However, in this case, the recently-concluded Environmental Review required preservation of tree 2167 as a condition of approval for the requested Modification. The project arborist for the development on the subject site had already planned to protect both of these trees with several measures during construction. These are described in the arborist report (Exhibit A.11) and reproduced below:

Foundation Construction - *To minimize root zone impacts, the dwelling will be elevated on piers with a shallow grade beam connecting the piers at ground level. Prior to construction, a 12- to 18-inch layer of wood chips shall be placed over geotextile fabric to minimize compaction from heavy equipment needed to construct the piers, grade beam, and structure. The project arborist shall be onsite to oversee pneumatic excavation of the piers and grade beam. The project arborist will approve the pruning of roots over 2-inches in diameter at the pier locations and direct the preservation of roots over 2-inches in diameter during construction of the grade beam. The project team has determined the grade beam elevation can be adjusted as needed to preserve roots identified by the project arborist. The fabric and wood chips placed for compaction prevention shall be removed as soon as construction is complete, and compaction is no longer an issue.*

Aligned with this proposal, staff imposes a condition of approval to ensure the protection of the two trees on the adjacent property, identified on Exhibit C.4 as trees 2281 and 2167, by implementing the measures proposed in the arborist report during foundation construction, including placing a layer of wood chips in the area; having the project arborist onsite to approve pruning of roots over 2 inches in diameter; and ensuring flexibility in the location of the pier locations and grade beam as needed determined by the arborist. This condition will ensure another, mature layer of screening, some of which is evergreen, remains between the proposed house and the development on the adjacent site.

- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*

The Zoning Code states in 33.110.010.B that the development standards for single-dwelling zones “are generally written for houses on flat, regularly shaped lots. Other situations are addressed through special regulations or exceptions.” The applicant states the owner considered meeting the setback for the east building wall by shifting the proposed home 3 feet to the west. “[T]he civil and structural group were concerned that additional grading to relocate the home would be substantive, but the more important factor to consider was that the project arborist was concerned that the relocated footprint would substantially impact two large groupings of trees that are slated for preservation on site” (Exhibit A.18). Given the competing interests of tree preservation in this environmental zone and ensuring adequate spacing between residences, the applicant determined the current proposal met both goals best; staff concurs.

This purpose statement mentions an allowance of architectural diversity. Some neighbors who wrote in were in opposition to the modern design of the home, saying it would not fit in with the neighborhood. The Zoning Code does not promote one style of home over another and the current neighborhood already has a variety of styles, generally reflecting the period in which they were built. As new houses are constructed, new styles are likely to be added to the mix; the design alone is not a viable reason to object to an Adjustment request. The generous use of glass in the design could lead to privacy issues, but as stated above, given the reduction in height of the proposal, the moving of the bedrooms to the ground level, and the substantial existing and proposed screening, this reduction to building setback will not result in excessive privacy impacts.

For the reasons stated above, and with the condition that the project arborist be on site and taking measures to additionally protect the two trees on the neighboring property as described above, staff finds the proposal to reduce the east side setback to equally meet the purpose of the regulation.

Height Adjustment (33.110.215.B)

Findings: The applicant requests an Adjustment to Zoning Code Section 33.110.215.B and Table 110-4 to increase the height of the house from 30 feet to 35.5 feet. Zoning Code Section 33.110.215.A states the purposes for the setback requirement:

A. Purpose. *The height standards serve several purposes:*

- *They foster 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 single-dwelling neighborhoods.*

Each bullet point is addressed below.

- *They reflect the general building scale and placement of houses in the city's single-dwelling neighborhoods.*

The site fronts on SW Sherwood Dr, but access will be taken from the access easement over a shared driveway with common turnaround and parking access area about 35 feet up-slope from SW Nottingham Dr. This easement provides access to four lots: Lots 1, 2, 3, and 4 of the Weiss Addition. North of the access, the site slopes steeply to the north with an average slope across the site of approximately 30 percent. The surrounding area is densely wooded and very hilly, with several vacant lots with single-dwelling residences currently proposed for development.

The Zoning Code considers the north lot line to be the front lot line. However, due to the extreme slope, the front of the new home will face roughly south, toward the shared driveway, at the high point of the site. Since the south lot point is not the front for zoning purposes, the height Adjustment is necessary because building height is measured from the lowest grade within a 5-foot horizontal distance of the building (Zoning Code Section 33.930.050.A.2). Since this site slopes very steeply from south to north (approximately 30 percent average slope), the building height above the lowest grade in the northeast part of the site will be taller than allowed using Base Point 2.

There is an allowance in the code for steeply sloping lots that slope downward from the street to have a 23-foot maximum height above the average grade of the front lot line (Zoning Code Section 33.110.215.D.1). In this case, the house faces the shared access easement driveway, and will only have 16-18 feet of building exposed on the south façade. Viewed from the access easement, the new house will have a one-story building height, lower than many houses in the area.

Since the site slopes up from the street, however, and not down, and since the property abutting the access easement is not a front lot line, the site cannot use this allowance for steeply sloping lots. However, the impact of the development is similar: the view of the house from the direction it fronts is lower than would otherwise be allowed, and the additional height of the structure is not visible from this vantage point. This is similar to how other houses on steeply-sloping lots are developed, including those just north of the site on SW Sherwood Dr on the downward sloping side, which all have 1-2 stories facing the street and the bulk of the development is in the downslope area. In this way, the proposal reflects the general building scale and placement of houses in steeply-sloping neighborhoods.

- *They promote options for privacy for neighboring properties; and*
- *They foster a reasonable building scale and relationship of one residence to another;*

The applicant has designed the project to retain several significant trees both to the west of the building and to the east on the adjacent property. This is done by building on stilts instead of extensive excavation, and moving the building to the east several feet to locate further from the roots of these trees. The resulting house is only 24 feet wide plus a 9-foot-wide stair and hallway corridor. The revised design that dropped the height of the building 10 feet and reversed the floor plan so that the bedrooms were below the main level rather than above changes the expected impacts of the proposed structure on neighboring properties, reducing views and privacy impacts on immediately adjacent properties and increasing the likelihood that the proposed screening will be effective sooner as plants mature.

Further, the two-story wraparound decks that had been proposed to the west and the north, and into the east setback, have been scaled back and are now focused on the west side as shown in the final site plan (Exhibit C.1). This pulls the outdoor area away from the eastern site and also away from the property two lots to the east and focuses it toward the street and the significant forested area of the site to the west. This not only protects privacy of these nearby properties but fosters a reasonable relationship of this residence to its neighbors.

The numerous existing trees on the subject site slated to be retained and on neighboring lots will obscure the full building height on the lower, northern part of the site from improved streets and from existing, neighboring homes. An inventory of all trees onsite and their size and condition is provided in Exhibit A.11. However, even if future tree removal or development exposes the northern part of the site to greater view, staff finds the building scale illustrated in Exhibits C.1 through C.4 will not appear unusual for steeply sloping lots in the immediate area. The two-story house on stilts is in fact a smaller scale than many houses on such lots, which are often designed to fill

in the underside of the house with a third, fourth and sometimes even fifth level below the initial grade.

For all these reasons, staff finds the proposal is equally consistent with the purpose of the building height standard. Therefore, approval criterion A is met.

- B.** If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: Since the site is in the R10 residential zone, the proposed Adjustments must not significantly detract from the livability or appearance of the residential area. The residential area can be considered the area where the proposal is likely to have an impact. For purposes of noticing, we share information about this type of proposal to all properties within 150 feet of the site, which in this case includes roughly two properties in every direction.

As discussed in the findings for approval criterion A, with the condition of approval to provide tree protection for two trees on the adjacent property using the specified performance path tree protection plan detailed in Exhibit A.11, the proposal with its reduced setback and height increase promotes a reasonable building scale and relationship of one residence to another, promotes options for privacy for neighboring properties, and reflects the general building scale and placement of houses in the city's neighborhoods. The applicant has stated the proposal meets the exterior light standard of Zoning Code Section 33.430.140.R and that the applicant will not propose any exterior lighting that exceeds the brightness of a 200-watt bulb, nor will the lighting shine into the resource area (Exhibit A.3, page 14). Staff sees no evidence in the record that, with the provided screening, the height increase will result in any privacy or light impacts greater than what is allowed by right.

Appearance is not determined by style of home; nothing about the two requested Adjustments will affect the overall appearance of the residential area, and the number of retained trees on the site will continue the wooded feel of the neighborhood.

For these reasons, and with the aforementioned condition, the proposal will not significantly detract from neighborhood livability or appearance. Approval criterion B is 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: The purpose of single-dwelling residential zones such as R10 is described in Zoning Code Section 33.110.010:

The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing.

- A. Use regulations. The use regulations are intended to create, maintain and promote single-dwelling neighborhoods. They allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood.*
- B. Development standards. The development standards preserve the character of neighborhoods by providing six different zones with different densities and development standards. The development standards work*

together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed. The development standards are generally written for houses on flat, regularly shaped lots. Other situations are addressed through special regulations or exceptions.

The proposal will develop a vacant lot with a new single-dwelling house, increasing the supply of housing and reinforcing the single-dwelling residential character of the area. As stated above, requests for exceptions to zoning requirements are anticipated for unusual situations.

For reasons outlined in the findings for approval criteria A and B, staff finds the cumulative effect of the two Adjustments will result in an appropriate development for a very steeply sloping, unusually situated lot without creating an unattractive or incompatible appearance. Reducing the building setback to the east will facilitate the retention of several mature trees. These trees will also contribute to screening the new house from adjacent lots and rights-of-way. Viewed from the shared access easement used by four lots, the building height will be modest. The building height from the much lower ground elevation to the north will be tall, but this height will not be fully exposed to public view and is typical for steeply sloping lots in the Southwest Hills.

Given the substantial existing and proposed screening, the changes made to the design that lowers the height and relocates the bedrooms to closer to grade, staff finds the Adjustments requested will not negatively impact neighbors' privacy. The Adjustments will not affect safety nor opportunities for energy conservation and recreation on the site. The minimum outdoor area requirement in Zoning Code Section 33.110.235 will be met outright, and all building safety and energy conservation requirements will be enforced during building permit review and inspection.

For these reasons, staff finds the cumulative effect of the Adjustments is still consistent with the overall purpose of the R10 zone. Approval criterion C is met.

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: Staff has identified one condition in tandem with a recently-completed Environmental Review on the adjacent property that will provide greater screening between the proposed house and the proposed neighboring house to the east to mitigate possible privacy impacts from the reduced building setback. This condition will ensure that two trees on the adjacent property but close to the property line (one of which is required for retention through that other review) are protected during construction by the project arborist using the proposed performance path tree preservation plan (Exhibit A.11). With this condition in place, staff has identified no other negative impacts resulting from either of the Adjustment requests that require mitigation. With the condition of approval mentioned above, this criterion is 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: Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). The northeastern corner of this triangular property has the Environmental Protection overlay zoning; the remainder of the site has the Environmental Conservation overlay zoning.

As mentioned above, development in Environmental overlay areas are governed by Zoning Code Chapter 430, Environmental Zones. Development is subject to a set of standards; if the standards cannot be met, the development is subject to Environmental Review. In this case, the applicant plans to use the standards path. The purpose of the development standards is, among other things, to ensure that new development is compatible with and preserves the resources and functional values protected by the environmental zones.

One neighbor claimed the reduced side setback would negatively impact the stream that is the environmental resource by decreasing permeable area between the house and the stream; and that the taller house would impact temperature and moisture of the area by blocking more light (Exhibit F.3). The site plan (Exhibit C.1) shows the proposal meets the relevant Environmental Development Standards for maximum disturbance area and a setback of 50 feet from the top of bank of any identified water body. Staff finds the reduced setback does not increase impermeable area close to the stream. There is also no evidence in the record that a house at 35.5 feet would significantly impact moisture or temperature of the area more than a house at 30 feet.

The applicant reviews each applicable development standard in Exhibit A.3, with details on tree mitigation in the revised Arborist Report in Exhibit A.11. Overall, the applicant proposes to plant 59 trees and 225 shrubs (Exhibit A.3, page 12) to mitigate for the removal of 193 diameter-inches of non-exempt trees (6 non-exempt trees total) (Exhibit A.11).

As described above, the applicant states the project arborist weighed in on moving the building to the west 3 feet to get the building walls out of the setback and determined that placement would have impact on several trees that are proposed for preservation currently (exhibit A.18, page 1), including three Douglas firs measuring 21, 31, and 33 inches in diameter at breast height (DBH) and all noted as being in “good” condition (Exhibit A.11, page 12). From the condition report of trees being removed east of the house, it appears these three trees are overall larger and are in better health than the two trees to be removed to the east of the house – two bigleaf maples, one 11-inch tree noted in poor condition, and a 35-inch bigleaf maple in fair condition – that potentially could be retained if the house met the setbacks outright. In this way, the Adjustment request reduces environmental impacts over a proposal that would have the house shifted to the west so that the east side of the house met setback requirements.

As described above, the recent Environmental Review approval on the adjacent property to the east included a condition that the 27-inch Douglas fir tree, identified on Exhibit C.4 as #2167, be protected in accordance with the submitted arborist report. Since this tree and the tree to the north also on the adjacent property both will contribute screening from the reduction in setback, a condition of approval will also require that the two trees be protected in accordance with the applicant’s arborist report (Exhibit A.11) is proposed for this decision as well.

The applicant is meeting all applicable environmental development standards and the setback Adjustment supports retention of three larger healthy evergreen trees. With the condition of approval addressing preservation of trees on the adjacent site, staff finds 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

The subject property slopes very steeply up from the SW Sherwood Dr frontage. In this situation, the proposed Adjustments are found to be consistent with the overall purpose of the R10 residential zone and with the specific purposes of the requirements to be modified. Staff finds the Adjustments will not cause the new development to significantly detract from the livability or appearance of the residential area. Staff finds that all applicable approval criteria are met. Since the approval criteria are found to be met, the proposal must be approved.

ADMINISTRATIVE DECISION


Approval of the following Adjustments:

- Adjustment to Zoning Code Section 33.110.220.B and Table 110-4 to reduce the required east side building setback from 10 feet to 5 feet for the steel support beams for the new house, and 7 feet for the building walls. The roof eave setback for the east side would be reduced from 8 feet to 3 feet.
- Adjustment to Zoning Code Section 33.110.215.B and Table 110-4 to increase the height of the house from 30 feet to 35.5 feet. The applicant had previously requested an Adjustment to height up to 46 feet, but subsequently redesigned the proposal to reduce the height increase to 35.5 feet in height.

Approval is per the approved site plans, Exhibits C.1 through C.4, signed and dated January 13, 2023, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition B 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 22-171106 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The applicant must implement the proposed tree protection measures identified in the submitted revised arborist report (Exhibit A.11) to additionally preserve two trees identified on Exhibit C.4 as trees 2281 and 2167. Measures include but are not limited to the following:
 - The project arborist will be onsite to oversee pneumatic excavation of the piers and grade beam for the house's foundation;
 - The project arborist will approve the pruning of roots over 2 inches in diameter at the pier locations and direct the preservation of roots over 2 inches in diameter during construction of the grade beam;
 - The grade beam elevation shall be adjusted as needed to preserve roots identified by the project arborist.
 - Any pruning shall be completed by a qualified, certified arborist and shall be the minimum necessary to achieve the required objective.

Staff Planner: Amanda Rhoads



Decision rendered by: _____ **on January 13, 2023**

By authority of the Director of the Bureau of Development Services

Decision mailed: January 19, 2023

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 August 8, 2022, and was determined to be complete on September 23, 2022.

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 August 8, 2022.

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 by 56 days (Exhibits A.13, A.15, and A.16). Unless further extended by the applicant, **the 120 days will expire on: March 18, 2023.**

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 Adjustment Committee, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on February 2, 2023. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIX decisions on property within the organization’s

boundaries. The vote to appeal must be in accordance with the organization's bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

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 Adjustment Committee 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 Adjustment Committee 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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **February 2, 2023** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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
 - 1. Original Narrative (superseded by A.3)
 - 2. Original Plans (superseded by A.10)
 - 3. Updated Narrative, September 8, 2022
 - 4. Civil Plan Set, September 8, 2022
 - 5. Landscape Plan, September 8, 2022
 - 6. Building Elevations, September 8, 2022
 - 7. Arborist Report, September 8, 2022 (superseded by A.11)
 - 8. Stormwater Memo, September 8, 2022
 - 9. Tax Map
 - 10. Updated Plans, September 23, 2022
 - 11. Updated Arborist Report, October 10, 2022
 - 12. Geotechnical Report, October 10, 2022
 - 13. 21-day timeline extension, October 26, 2022
 - 14. Site Photos, November 7, 2022
 - 15. 14-day timeline extension, November 7, 2022
 - 16. 21-day timeline extension, December 6, 2022
 - 17. Applicant Memo, December 13, 2022
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations (attached)
 - 3. Landscape Plan
 - 4. Tree Preservation Plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Plans Examiner
- F. Correspondence:
 - 1. Eric Koldinger, October 15, 2022, in opposition
 - 2. Marilyn Stewart, October 17, 2022, in opposition
 - 3. Ethan Wallenberg and Tricia Chamberlain, October 17, 2022, in opposition
 - 4. Christine Hamm, October 18, 2022, in opposition
 - 5. Jennifer Harrington, October 18, 2022, in opposition
- G. Other:
 - 1. Original Land Use Application
 - 2. Incomplete Letter, August 23, 2022

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).