



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

Carmen Rubio, Commissioner  
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[www.portland.gov/bds](http://www.portland.gov/bds)

**Date:** March 2, 2023  
**To:** Interested Person  
**From:** Andrew Gulizia, Land Use Services  
503-865-6714 / [Andrew.Gulizia@portlandoregon.gov](mailto:Andrew.Gulizia@portlandoregon.gov)

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

The Bureau of Development Services has approved a proposal in your neighborhood. The 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 22-211807 AD**

#### **GENERAL INFORMATION**

**Applicant:** Brian Hoeft  
Scott Edwards Architecture  
2525 E Burnside St.  
Portland, OR 97214  
(503) 226-3617  
[bhoeft@seallp.com](mailto:bhoeft@seallp.com)

**Property Owner:** Meals On Wheels People Inc.  
7710 SW 31<sup>st</sup> Ave.  
Portland, OR 97219

**Site Address:** 4003-4035 SE 82nd Ave.

**Legal Description:** BLOCK 1 LOT 1 EXC PT IN ST LOT 2-4, LA DENE PK; BLOCK 1 LOT 23-25 LOT 26 EXC PT IN ST, LA DENE PK

**Tax Account No.:** R461300010, R461300440

**State ID No.:** 1S2E08DD 01300, 1S2E08DD 01400

**Quarter Section:** 3438

**Neighborhood:** Foster-Powell, contact Joseph Liu at [land.use@fosterpowell.com](mailto:land.use@fosterpowell.com)

**Business District:** Eighty-Second Ave of Roses Business Association, contact at [82ndaveba@gmail.com](mailto:82ndaveba@gmail.com)

**District Coalition:** Southeast Uplift, contact Matchu Williams at [matchu@seuplift.org](mailto:matchu@seuplift.org)

**Zoning:** CE – Commercial Employment

**Case Type:** AD – Adjustment Review

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

**Proposal:** To support the planned use of this site as a distribution hub for Meals on Wheels, a new generator is planned between the existing building and the north lot line abutting SE

Center Street. The generator will be screened by a freestanding, 11'-8"-tall masonry wall that will be set back 1.7 feet from the north lot line. Since Zoning Code Section 33.130.270.C.1 limits the height of solid, freestanding walls within 10 feet of street lot lines to 3.5 feet, the applicant requests an Adjustment to increase the allowable height of this wall to 11'-8" so it's tall enough to fully screen the generator behind. This wall will be adjacent to a new trash and recycling collection area enclosed by a wall of the same height. However, an Adjustment is not required for the trash and recycling enclosure because that area will be covered by a roof, and Zoning Code Section 33.130.270.C.1 only applies to freestanding fences and walls.

**Relevant Approval Criteria:** To be approved, this proposal must comply with the Adjustment Review approval criteria in Zoning Code Section 33.805.040.A-F.

## ANALYSIS

**Site and Vicinity:** The site totals 30,000 square feet in area and is composed of two abutting tax lots under common ownership. The site is in the Foster-Powell neighborhood in Southeast Portland, and the property fronts on three streets: SE Center Street to the north, SE 82<sup>nd</sup> Avenue to the east, and SE Gladstone Street to the south. The site is developed with a single-story commercial building and surface parking areas. Neighboring properties along SE 82<sup>nd</sup> Avenue are developed with a variety of commercial uses. Properties to the west of the site along SE Center Street and SE Gladstone Street are developed with homes.

**Zoning:** The Commercial Employment (CE) zone is a medium-scale commercial/mixed use zone intended for sites along corridors with a Neighborhood Collector or higher traffic classification, especially along Civic Corridors that are also Major Truck Streets or Priority Truck Streets. The zone allows commercial and residential uses, including auto-accommodating development and drive-through facilities, as well as some light manufacturing and distribution uses that have few off-site impacts.

**Land Use Review History:** The only prior land use reviews for this site were Variances from the 1960s. Conditions of approval from these reviews no longer apply per Zoning Code Section 33.700.110.A.

**Agency Review:** A "Notice of Proposal" was sent January 18, 2023 (Exhibit D-2). The following Bureaus responded with no concerns about the proposed Adjustment:

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

**Neighborhood Review:** No written responses to the mailed "Notice of Proposal" were received from either the Neighborhood Association or notified neighbors.

## ZONING CODE APPROVAL CRITERIA

### 33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated 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 applicant requests an Adjustment to the height limit for a sight-obscuring fence or freestanding wall (Zoning Code Sections 33.130.270.B, 33.130.270.C.1). Zoning Code Section 33.130.270.A states the purpose of the requirement to be modified:

*The fence regulations promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences near streets are kept low in order to allow visibility into and out of the site and to ensure visibility for motorists. Fences in any required side or rear setback are limited in height so as to not conflict with the purpose for the setback.*

The proposed wall will be along a front lot line and will screen a generator to be installed on the north side of the existing building (Exhibit C-1). The north building wall has no existing or proposed windows, except for one existing window which is set too high in the wall to allow visibility between the building interior and the street (Exhibit C-2). Therefore, the new wall will not block existing visibility into or out of the building.

The new wall will be approximately 30 feet from the driveway entrance to the site and approximately 50 feet from the intersection of SE 82<sup>nd</sup> Avenue and SE Center Street (Exhibit C-1), so the proposal will not affect visibility for motorists.

Though the new wall will be significantly taller than the 3.5-foot height allowed without this Adjustment, the wall will be just tall enough to fully screen the generator behind (Exhibit C-2). A lower screening wall would leave parts of the equipment visible from the sidewalk, creating a less attractive appearance than the taller wall.

In response to staff concerns about negative visual impacts from a blank wall near the sidewalk, the applicant proposed to plant sword ferns in front of the wall to soften the appearance (Exhibit C-3) and to install an art mural facing the sidewalk to create visual interest (Exhibit C-2).

For these reasons, and with conditions of approval for the new landscaping and the mural, staff finds the proposal to be equally consistent with the purpose of the regulation. With the conditions of 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 a commercial/mixed use zone, the Adjustment proposal must be consistent with the classifications of the adjacent streets and the desired character of the area.

Street classifications

The classifications of the adjacent streets in the Transportation Element of the Comprehensive Plan are as follows:

	Traffic	Transit	Bikeway	Pedestrian	Freight
SE 82 <sup>nd</sup> Ave.	Major City Traffic Street	Major Transit Priority Street	City Bikeway	Major City Walkway	Major Truck Street
SE Center St.	Local Service	Local Service	Local Service	Local Service	Local Service
SE Gladstone St.	Local Service	Local Service	Local Service	Local Service	Local Service

The Adjustment request relates to the height of a screening wall and will not increase travel demand or affect service levels on the adjacent streets. The Portland Bureau of Transportation reviewed the proposal and responded with no concerns (Exhibit E-2). Therefore, staff finds the proposal is consistent with the classifications of adjacent streets.

### Desired character of area

“Desired character” is defined in Zoning Code Chapter 33.910. Pursuant to this definition, the desired character for this location is determined by the character statement for the CE zone and the area plans adopted by the City Council which include this site (the Foster-Powell Neighborhood Plan and the Outer Southeast Community Plan).

### CE zone

The character statement for the CE zone is in Zoning Code Section 33.130.030.E:

*The Commercial Employment (CE) zone is a medium-scale zone intended for sites along corridors with a Neighborhood Collector or higher traffic classification, especially along civic corridors that are also Major Truck Streets or Priority Truck Streets. This zone is generally not appropriate in designated centers, except on a site that is currently developed in an auto-oriented manner and where more urban development is not yet economically feasible. The zone allows a mix of commercial uses, including auto-accommodating development and drive-through facilities, as well as some light manufacturing and distribution uses that have few off-site impacts. The emphasis of this zone is on commercial and employment uses, but residential uses are also allowed. Buildings in this zone will generally be up to four stories tall. This zone is intended to allow for development with auto-accommodating configurations, while also including pedestrian-oriented design features that support transit and pedestrian access.*

This character statement relates more to the types of land uses intended for the CE zone than specifics of development plans. However, the above statement also calls for pedestrian-oriented design features. The proposed use of this site as a distribution hub is consistent with the CE zoning, and staff finds the new shrubs along the screening wall and the art mural to face the sidewalk will enhance the pedestrian environment as intended. Therefore, with conditions of approval for the landscaping and the art mural, staff finds the proposal is consistent with the character statement for the CE zone.

### Area plans

Staff finds the following statements from the Foster-Powell Neighborhood Plan to be relevant:

*Policy 2: Neighborhood Livability. Improve the appearance and livability of the Foster-Powell Neighborhood.*

*Policy 7: Commercial Areas: Improve the Foster Road and 82<sup>nd</sup> Avenue commercial areas. Encourage businesses that serve Foster-Powell and surrounding neighborhoods to locate in these areas. Create a better pedestrian environment.*

Staff finds the following statement from the Outer Southeast Community Plan to be relevant:

*Open Space and Environment Policy, Objective 9: Improve the appearance and livability of outer southeast neighborhoods.*

The increased height of the screening wall will allow full screening of the generator behind, creating a more attractive, pedestrian-friendly appearance along the sidewalk than exposed equipment. The proposed shrubs at the base of the wall and the proposed art mural facing the sidewalk will further support an attractive environment. Therefore, with conditions of approval for the shrubs and the art mural, staff finds the proposal is consistent with these statements from the Foster-Powell Neighborhood Plan and the Outer Southeast Community Plan.

### Summary

With the conditions of approval mentioned above for new shrubs and an art mural, staff finds the proposal to be consistent with the classifications of the adjacent streets and the desired character of the area. With these conditions of 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:** Only one Adjustment is requested, so this criterion is not applicable.

- D.** City-designated scenic resources and historic resources in Historic, Conservation and National Register Districts and within the boundaries of Historic, Conservation and National Register Landmarks are preserved; and

**Findings:** City-designated scenic resources are identified on the official zoning maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic resources or historic resources mapped on the subject site, this criterion is not applicable.

- E.** Any impacts resulting from the Adjustment are mitigated to the extent practical; and

**Findings:** A tall screening wall near the sidewalk has the potential to negatively impact the pedestrian environment by creating a blank, unattractive appearance. The applicant’s proposal will mitigate this by planting sword ferns at the base of the wall to soften the appearance and by installing an art mural facing the sidewalk to create visual interest. With conditions of approval for these improvements, staff finds impacts are mitigated to the extent practical and that criterion E 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). As there are no environmental overlay zones mapped on the site, this criterion is not applicable.

## 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

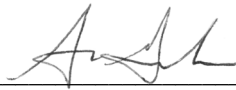
The Adjustment request is found to be consistent with the purpose of the requirement to be modified and with the character intended for the site. With the new shrubs in front of the wall and the art mural on the face of the wall, staff finds the Adjustment Review approval criteria are met. Therefore, with the conditions of approval below, the Adjustment Review is approved.

## ADMINISTRATIVE DECISION

**Approval** of an Adjustment to Zoning Code Section 33.130.270.C.1 to increase the maximum height of a solid, freestanding wall within 10 feet of a street lot line from 3.5 feet to 11’-8”. Approval is per the approved plans, Exhibits C-1 through C-3, signed and dated February 22, 2023, subject to the following conditions:

- A. The plans for pending building permit 22-128968 CO must be revised as follows:
- to show the new sword fern or similar evergreen shrubs along the north side of the screening wall, as illustrated in Exhibit C-3;
  - to show the location for the future original art mural, as illustrated in Exhibit C-2 and regulated by Condition C, below; and
  - to include a note on the site plan and north building elevation that says, "Proposal and design as approved in Case File # LU 22-211807 AD."
- B. Before the final inspection approval for building permit 22-128968 CO, sword fern or similar evergreen shrubs on the north side of the screening wall must be planted as illustrated in Exhibit C-3. These plants must be continuously maintained, including ensuring the plants do not impede pedestrian circulation along the abutting sidewalk, and plants that die must be replaced.
- C. Within one year of the date of this land use review approval, the applicant must obtain an original art mural permit from the City of Portland to install an art mural on the north side of the screening wall. The mural approved in the original art mural permit must be installed within one year of the final inspection for building permit 22-128968 CO, and the mural must be maintained as long as the wall approved in this Adjustment Review remains.

**Staff Planner: Andrew Gulizia**

**Decision rendered by:**  **on February 22, 2023**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: March 2, 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 December 15, 2022 and was determined to be complete on January 12, 2023.

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 December 15, 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 did not waive or extend the 120-day review period. Unless extended by the applicant, **the 120 days will expire on May 12, 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.portland.gov/sites/default/files/2020/lu\\_type2\\_2x\\_appeal\\_form\\_071116.pdf](https://www.portland.gov/sites/default/files/2020/lu_type2_2x_appeal_form_071116.pdf). Appeals must be received **by 4:30 PM on March 16, 2023. The completed appeal application form must be emailed to [LandUseIntake@portlandoregon.gov](mailto:LandUseIntake@portlandoregon.gov) and to the planner listed on the first page of this decision.** If you do not have access to email, 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 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 **March 16, 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 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 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 plans
  - 2. Revised plans, submitted January 12, 2023
  - 3. Narrative
- B. Zoning map (attached)
- C. Plans/Drawings:
  - 1. Site plan (attached)
  - 2. Elevation drawing (attached)
  - 3. Landscaping plan (attached)
- D. Notification Information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Portland Bureau of Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Life Safety Review Section of BDS
- F. Correspondence (none received)
- G. Other:
  - 1. Land use application form
  - 2. Incompleteness determination letter, dated December 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).**