



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

Date: April 11, 2023
To: Interested Person
From: Amanda Rhoads, Land Use Services
 503-865-6514 / Amanda.Rhoads@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 23-006673 AD

GENERAL INFORMATION

Applicant: Philip Devasto | Hosmer Chiropractic Health
 7689 SW Capitol Hwy | Portland OR 97219
 617-365-1527 | phil@hosmerchiropractic.com

Owner: Evcomultnomah, LLC
 1316 Peartree Ln | Medford, OR 97504

Site Address: 7689 SW CAPITOL HWY

Legal Description: TL 6000 0.14 ACRES, SECTION 20 1S 1E; BUCKINGHAM HTS, BLOCK8, LOT 16

Tax Account No.: R991200550, R113801400

State ID No.: 1S1E20DB 06000, 1S1E20AC 12100

Quarter Section: 3726, 3826

Neighborhood: Multnomah, contact at contact-multnomah@swni.org

Business District: Multnomah Village, contact at switch.shoes@comcast.net

District Coalition: Office of Community & Civic Life, contact at CivicLife@portlandoregon.gov

Plan District: None

Zoning: CM2d – Commercial/Mixed Use 2 with “d” Design Overlay zoning

Case Type: AD – Adjustment Review

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

Proposal:
 The applicant has installed a new generator just north of the building, in the paved parking lot part of the site. Per Zoning Code Section 33.130.235, mechanical equipment like generators located on the ground must be screened from the street and any abutting residential zones by walls, fences, or vegetation. The required fence for this screening is a fence meeting the F2 standards of 33.248.020.G. F2 fences must be 6 feet high and 100 percent sight-obscuring, and be made of wood, metal, bricks, masonry or other permanent materials. The applicant has

installed a 6-foot-tall chain link fence with vinyl slats and asks for an Adjustment to Zoning Code Section 33.130.235.C to allow the existing fence (which doesn't meet the F2 standard) to serve as the required screening.

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 10,460-square-foot site is developed with a one-story commercial office building housing a chiropractic clinic and an accessory surface parking lot. The site is located on SW Capitol Hwy in Multnomah Village, directly across the street from the Multnomah Arts Center and adjacent to other commercial uses along SW Capitol Hwy. To the north, residential development is primarily single-dwelling with some duplexes and multi-dwelling sites.

Southwest Capitol Hwy in this area is classified as a District Collector Street; a Major Transit Priority Street; Major City Bikeway; Major City Walkway; a Truck Access Street; and a Major Emergency Response Street. Southwest 33rd Ave is classified as Local Service for all modes.

Zoning: The Commercial/Mixed Use 2 (CM2) zone is a medium-scale zone intended for sites in a variety of centers, along corridors, and in other mixed use areas that have frequent transit service. The zone allows a wide range and mix of commercial and residential uses, as well as employment uses that have limited off-site impacts. Buildings in this zone will generally be up to four stories tall unless height and floor area bonuses are used, or plan district provisions specify other height limits. Development is intended to be pedestrian-oriented, provide a strong relationship between buildings and sidewalks, and complement the scale of surrounding residentially zoned areas.

The Design overlay zone ensures that Portland is both a city designed for people and a city in harmony with nature. The Design overlay zone supports the city's evolution within current and emerging centers of civic life. The overlay promotes design excellence in the built environment through the application of additional design standards and design guidelines that:

- Build on context by enhancing the distinctive physical, natural, historic and cultural qualities of the location while accommodating growth and change;
- Contribute to a public realm that encourages social interaction and fosters inclusivity in people's daily experience; and
- Promotes quality and long-term resilience in the face of changing demographics, climate and economy.

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 **February 9, 2023**. 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).

The Life Safety Plans Examiner noted there was a mechanical permit currently under review and that they do not object to the approval of the proposal (Exhibit E.6).

Neighborhood Review: Two written responses were received from notified neighbors in response to the proposal. The first respondents own the property to the north and note that a

previous row of evergreen shrubs at the north end of the subject site parking lot died after the lot served as construction staging. The hedge, which had provided “sounds, pollution, and visual screening” for the neighbors to the north was replaced with a chain link fence with slats by the subject site’s owner. The respondent shared concerns about noise and smells from a generator, and objected to the Adjustment because smells and noise from the generator would not be masked by the fence that was installed (Exhibit F.1). The other respondent also had concerns about generator noise and wanted to know if there was a way to limit the generator’s use to business hours (Exhibit F.2).

Staff response: Parking areas abutting residential zones are required to have 5 feet of L3 high-screen landscaping. Removal of required landscaping would be a violation of Zoning Code Section 33.266.130.G.2 and Table 266-5. However, its removal is unrelated to the required screening for the generator, which the Zoning Code considers mechanical equipment.

Regarding the concerns about noise and smells, staff notes the screening standard under review is focused on visual impacts alone. The generator is allowed in the proposed location, and in fact is allowed as little as 5 feet from an adjacent residential property. The applicant has stated the generator is to provide back-up power to access medical records only in the event of a power outage (Exhibit A.2). If smells are noted from adjacent properties when the generator is running, or if noise levels exceed the limits set forth in the City’s Noise Title, Title 18, then again the subject site would be causing a code violation of the Off-Site Impacts chapter of the Zoning Code, either section 33.262.050 Noise, or 33.262.070, Odor. Future potential code violations are not relevant to the approval criteria at issue in this review, and staff is focused on the visual screening for the proposed mechanical equipment, not the mechanical equipment in particular.

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.

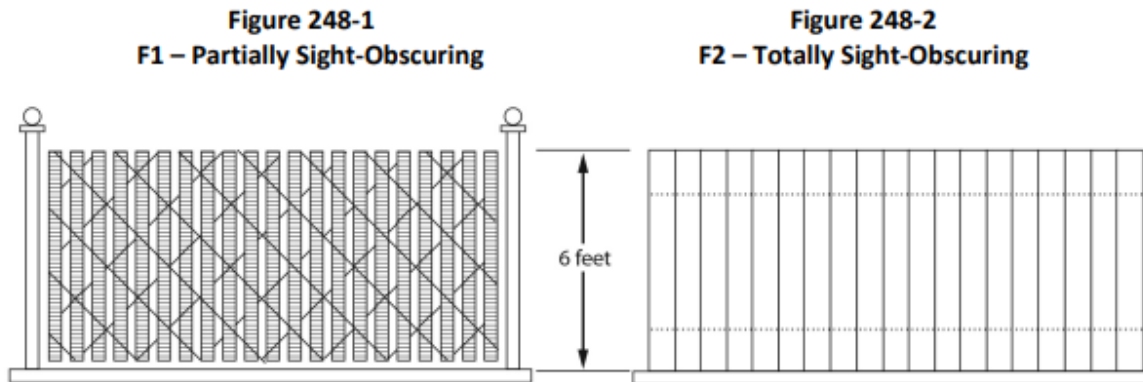
- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The purpose for the screening standard in commercial zones is stated in Zoning Code Section 33.130.235.A:

- A. Purpose. The screening standards address specific unsightly features which detract from the appearance of commercial/mixed use areas.*

The landscaping and screening chapter of the Zoning Code, chapter 33.248, has a pair of images showing the difference between an F1 fence, which does not provide full visual separation, and an F2 fence, which is fully sight-obscuring (See image below). The example of an F1 fence is a chain link fence with slats added to reduce visibility. This is the type of fence the applicant has proposed to serve as screening for the new generator on the site. However, the applicant makes the case that the fence he installed does not allow views to the inside because the vinyl slats have tighter spacing

and the fence as a whole is permanent and will not allow views into the generator enclosure over time (Exhibit A.1). The cut sheet for the slats (Exhibit A.4) describe them as “winged slats” which are “self-locking” and provide “95% approximate privacy.”



Staff concurs, after examining the product and the photos provided by the applicant, that the spacing of the vinyl slats does not allow views into the generator enclosure. Staff also agrees with the applicant’s supposition (Exhibit A.1) that a chain link fence is at least as permanent as a wood fence, which would be allowed (if the wood were spaced tightly) to serve as adequate screening per the standard under review.

However, there have been past concerns that the vinyl slats themselves tend not to have the same durability as the base fence material. Therefore, to ensure the longevity of this fence as adequate visual screening for the mechanical equipment, staff requires a condition of approval that any vinyl slats that become damaged or degraded over time will be replaced with new slats that continue to ensure no views through the fence. If these slats are no longer available at some point in the future, the fence will be replaced with a new fence meeting the standards of the F2 fully sight-obscuring fence. With that condition of approval, staff finds the proposal will equally meet the purpose of the regulation. This criterion 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: The site is in a commercial zone, and therefore the proposal must be consistent with the classifications of the adjacent streets and the desired character of the area. As stated under the “Site and Vicinity” section above, SW Capitol Hwy in this location is classified as a District Collector Street; a Major Transit Priority Street; Major City Bikeway; Major City Walkway; a Truck Access Street; and a Major Emergency Response Street. Southwest 33rd Ave is classified as Local Service for all modes.

The location of the generator screen is only visible from SW 33rd Ave. The “Local Service” designation is used for lower-traffic streets that do not function as significant through-ways for the various modes; they are expected primarily to be used by local residents. Using the chain link fence with the vinyl slats that are proposed, which prevent views to the generator, will shield views sufficiently to the mechanical equipment which is more than 50 feet away from the street. The placement of the generator or fence does not change the intensity of the use or alter the number of vehicles coming to the site. PBOT has indicated no concerns regarding the proposal’s consistency with the classification of adjacent streets (Exhibit E.2). For these reasons, the proposal is consistent with the classifications of the adjacent streets.

The Portland Zoning Code defines “desired character” as “the preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.” In this instance, “desired character” is defined by the character statement of the CM2 zone and the Design Overlay Zone, and the relevant design guidelines that would apply to this site.

The characteristics of the CM2 base zone and the Design Overlay Zone are stated above in the “Zoning” section. The addition of this screening fence behind the existing one-story building will not change the site’s relationship to the public realm or alter the scale or location of overall development, nor is the use proposed to change. The one-story commercial building houses an allowed use and the surface parking is pre-existing. The proposal was exempt from Design Review based on its small scale and distance from the street lot lines and location within an existing vehicle area (Zoning Code Section 33.420.045.B.4). From this, staff concludes the proposal is not likely to significantly impact the built environment of the area.

If the proposal required Design Review, the relevant design guidelines would be the Portland Citywide Design Guidelines. These nine guidelines are focused on building on the context of an area, contributing to the public realm, and promoting quality and resilience in the face of changing demographics, climate, and economy. The proposal is modest and tucked behind the existing building and 50-plus feet away from the nearest right-of-way, and the approval of this Adjustment will not have impacts on the public realm or the area context. The addition of the generator that requires screening will enable the business at this location to better address power losses that have been occurring in greater frequency in recent years due to extreme weather events thought to be tied to climate change, thus increasing resilience for the site.

The reason the current proposal needs the Adjustment, however, is that the Code does not consider vinyl slats to be a permanent, fully sight-obscuring material. While staff concurs with the applicant that the current slats do block views into the generator area, the quality and permanence of the vinyl slat material is still a concern. Therefore, as discussed above, staff has added a condition of approval that requires any slats that have deteriorated or been damaged over time to be replaced to ensure no visibility into the enclosure and to make up for any deficiencies in the material provided. With this condition, staff finds the proposal is consistent both with the Design Overlay Zone purpose, and the relevant design guidelines for the area.

With this condition, and for the reasons stated above, staff finds the proposal is consistent with the street classifications and the desired character of the area. This criterion 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. This criterion is not applicable.

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

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

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

Findings: There are no discernible impacts that would result from granting the requested adjustment. 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). As the site is not within an environmental zone, 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

Staff finds that, with the condition of approval ensuring maintenance of the vinyl slats over time, the proposal equally meets the purpose of the screening standard and is consistent with the street classifications and the desired character of the area. Staff does not find any impacts that require additional mitigation. The proposal meets the applicable approval criteria and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.130.235.C to allow a chain link fence with slats to serve as adequate screening. Approval is per the approved site plan, Exhibits C.1, signed and dated April 7, 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 23-006673 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. For the period of time this fence provides screening to the generator, the property owner must maintain the screening fence such that the slats continue to provide no views through the fence and any damaged or degraded slats are replaced as needed. If these slats are no longer available, the fence will be replaced with a new fence meeting the standards of the F2 fully sight-obscuring fence.

Staff Planner: Amanda Rhoads

Decision rendered by:  **on April 7, 2023**

By authority of the Director of the Bureau of Development Services

Decision mailed: April 11, 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 January 23, 2023, and was determined to be complete on February 6, 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 January 23, 2023.

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 further extended by the applicant, **the 120 days will expire on: June 6, 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 April 25, 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 **April 25, 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. Applicant Narrative
 - 2. Applicant Email, February 21, 2023
 - 3. Photo of east fence
 - 4. Spec Sheet of Winged Slats used in fence
- 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
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Plans Examiner
- F. Correspondence:
 - 1. Lynn and Dennis Baker, February 17, 2023, in opposition
 - 2. Lewis Sternberg, February 26, 2023, with concerns
- G. Other:
 - 1. Original Land Use Application

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).