

BEFORE THE DEVELOPMENT REVIEW COMMISSION OF THE
CITY OF LAKE OSWEGO

Approved

RESIDENTIAL INFILL DESIGN VARIANCE AND) LU 18-0020-1954
REMOVAL OF THREE TREES IN ORDER TO) KIMBERLY ANN MOYER, TRUSTEE
CONSTRUCT A NEW SINGLE-FAMILY DWELLING) FINDINGS, CONCLUSIONS & ORDER

NATURE OF APPLICATION

The applicant is requesting approval of a Residential Infill Design (RID) variance to the required 10-foot south side yard setback to a variable 1.5 to 8.75 feet and removal of three trees in order to construct a new single-family dwelling.

The site is located at 1136 North Shore Road (21E10BB07600).

HEARINGS

The Development Review Commission held a public hearing and considered this application at its meeting of May 21, 2018.

The following exhibits were received after publication of the May 11, 2018 staff report, and were entered into the record at the May 21 meeting:

- Exhibit E9. Revised plans
- Exhibit F9. Applicant's letter of proposed revisions
- Exhibit G201. Letter from Mark and Katherine Frandsen, dated May 17, 2018
- Exhibit G202. Email from Dick Olson, dated May 18, 2018
- Exhibit G203. Letter from Allen Brown and Pam Bell, dated May 18, 2018
- Exhibit G204. Email from JX Donnelly, dated May 18, 2018

CRITERIA AND STANDARDS

A. City of Lake Oswego Community Development Code [LOC Chapter 50]:

LOC 50.03.002.2	Residential Use Table
LOC 50.04.001.1	Residential Low Density Zones Dimensional Standards
LOC 50.04.003.7	Oswego Lake Setback
LOC 50.06.001.2	Structure Design-Residential Zones
LOC 50.06.001.4	Garage Appearance and Location
LOC 50.06.002	Parking
LOC 50.06.006.2; 50.07.004.3	Hillside Protection
LOC 50.06.006.3; 50.07.004.1	Stormwater Management
LOC 50.06.007.2.C	Maximum Shade Point Height Standard
LOC 50.06.008; 50.07.004.11	Utilities
LOC 50.07.003.1	Application Procedures
LOC 50.07.003.5	Conditions on Development
LOC 50.07.003.6	Effect of Decision
LOC 50.07.003.7	Appeals
LOC 50.07.003.14	Minor Development Decisions

1 LOC 50.08.003 Design Variances

2
3 B. City of Lake Oswego Utility Code [LOC Chapter 38]:

4
5 LOC 38.25 Stormwater Management Code

6
7 C. City of Lake Oswego Streets and Sidewalks [LOC Chapter 42]:

8
9 LOC 42.03.130 Sight Distance at Roadway Intersections, Private
10 Streets and Driveways

11
12 D. City of Lake Oswego Tree Code [LOC Chapter 55]:

13
14 LOC 55.02.010-130 Tree Removal and Mitigation

15
16 E. Previous Cases:

17
18 None

19
20 **CONCLUSION**

21
22 The Development Review Commission concludes that LU 18-0020, as revised by Exhibit E9, can be made
23 to comply with all applicable criteria by the application of certain conditions.

24
25 **FINDINGS AND REASONS**

26
27 The Development Review Commission incorporates the May 11, 2018, Staff Report, (with all exhibits
28 attached thereto), and staff memorandum dated May 18, 2018 as support for its decision.

29
30 Following are the supplementary findings and conclusions of this Commission.

- 31
32 1. The Commission received testimony expressing concern that the reduction to the front yard
33 setback does not meet the variance criteria, specifically the relationship to the street criterion
34 (LOC 50.08.003.6.b), and therefore, the Commission should deny the request. Exhibit G-201.

35
36 Commission Finding: As stated in the staff memorandum on May 18, 2018, the applicant
37 submitted revised plans (Exhibit E9) that removed the third vehicle bay of the garage, and the
38 revised plans meet the front yard setback requirement; accordingly, the requested variance to
39 the front yard setback was withdrawn. This testimony is no longer applicable.

- 40
41 2. The Commission received testimony expressing support for the staff recommendations regarding
42 denial of the requested variances to the front yard setback and maximum floor area. Exhibits G-
43 202 and G-204.

44
45 Commission Finding: As stated in the staff memorandum on May 18, 2018, the applicant revised
46 the plans to meet both standards (Exhibit E9), and accordingly the requested variances to the
47 front yard setback and maximum floor area were withdrawn. This testimony is no longer
48 applicable.

- 1 3. The Commission received testimony expressing concern that moving the garage nearer to the
2 street and increasing the square footage of the house negatively impacts field of view. Exhibit G-
3 203.
4

5 Commission Finding: As stated in the staff memorandum on May 18, 2018, the applicant revised
6 the plans (Exhibit E9) and the revised plans meet the front yard setback and maximum floor area
7 standards; accordingly, the requested variances to the front yard setback and maximum floor
8 area were withdrawn. This testimony is no longer applicable.
9

- 10 4. The Commission received testimony expressing opposition to the proposed removal of significant
11 trees. The testimony states that the tree removal could cause wind impacts on their property [no
12 criteria cited; the Commission assumes LOC 55.02.080(2) is intended] and the trees are visible
13 [no criteria cited]. Exhibit G-203, by Allen and Pamela Bell.
14

15 Commission Finding: The applicant proposes to remove three trees: two maple trees near North
16 Shore Road and a large Douglas fir tree near the southeast corner of the site (Exhibit F3). The
17 Tree Code criteria for tree removal is addressed on pages 21-24 of the staff report.
18

19 The Commission finds that it does not appear that the cited “wind impacts” are impacts to trees -
20 - but rather is wind impact damage to structures or an annoyance in use of the property --
21 because no specific damage detail to *trees* are given.
22

23 LOC 55.02.080(2) provides:
24

25 “Removal of the tree, considering proposed mitigation measures, will not have a significant
26 negative impact on erosion, soil stability, flow of surface waters, *protection of adjacent trees,*
27 *or existing windbreaks.*”
28

29 The applicant’s arborist (Exhibit E3) stated that there were no nearby tree impacts from the
30 removal of either the Douglas Fir (Tree #9) or the maples (Trees #1 and 2). The maple trees
31 (Trees #1 and 2) are located near North Shore Road and are not near any adjacent trees and do
32 not provide protection from wind. The Douglas-fir (Tree #9) in the rear is located approximately
33 35 feet north of existing Oregon white oak trees. The prevailing winds come from the south and
34 the Douglas-fir tree proposed for removal does not provide protection to adjacent trees located
35 to the south (Staff Report, pg. 22). The Commission also adopts the staff’s finding that the
36 removal of the trees are shown not to have any impacts on adjacent trees.
37

38 a. Protection of Adjacent Trees. The Bell testimony does not state that the “wind impacts”
39 are to adjacent *trees*. Rather the testimony is that damage from winds has been experienced
40 since the removal of other trees last year, and that the Bells are benefitted from the wind buffer.
41 Absent any evidence contrary to the applicant’s arborist report that the removal of *these* trees
42 would not have a negative impact on the (existing) protection of *adjacent trees*, the Commission
43 finds the applicant has met its burden of proof to show that this element of the criterion is met.
44

45 b. Existing Windbreaks. The Bell testimony is that the removal of other trees last year
46 caused damage from winds off the lake. The applicant’s arborist stated that the removal of these
47 trees would not have an impact on nearby trees. There is no evidence by the adjacent owner
48 that *these* trees act as a windbreak to any portion of the Bell property.
49

50 The Commission also notes that the Douglas fir is a tree located by itself, is not part of a stand of
51 trees, and is more than 140 ft. from the Bell residence (Exhibit E2). The Commission also notes

1 that the two maple trees are not part of a stand of trees (Exhibit F3) and are at least 40 ft. away
2 from any portion of the Bell residence (the width of North Shore Road ROW).
3 The Commission interprets LOC 55.02.080(2)'s "existing windbreaks" as being related to impacts
4 to trees, not whether the trees proposed for removal will negatively impact adjacent structures
5 or remove a windbreak enjoyed by a structure and its occupants. The concern about removal of
6 trees that act as a windbreak is that downwind trees grow in reliance of the windbreak
7 protection offered by the outer edge trees, which grow more firmly rooted to withstand wind.
8 No evidence was introduced that the Bell residence was built in reliance on the continued
9 existence of the now 15" and 17" maples to serve as a windbreak to the residence (and the
10 Commission assumes that the maples were smaller when the Bell residence was built).

11
12 The Commission therefore finds that the applicant has met its burden of proof that the removal
13 of the three trees will not have a significant negative impact on other adjacent trees, either
14 directly or as acting as a windbreak.

- 15
16 5. Removal of Significant Trees / No Reasonable Alternative. It is not clear that any person testified
17 contrary to the staff's finding that only the Douglas fir (Tree #9) qualifies as a tree warranting
18 review under Exception (b) of LOC 55.02.080, as a "significant tree." The Bells (Exhibit G203)
19 states that they oppose the removal of "any significant trees," but they do not argue that any of
20 the three trees meet the "significant tree" criteria of LOC 55.02.080.

21
22 The Commission finds that the two maple trees are not a "significant tree" per LOC 55.02.080
23 and 55.02.020 due to poor health (Exhibit F8, and in the absence of contrary evidence). The
24 Commission adopts the findings in the staff report, pg. 21-24 in support of removal of the maple
25 trees (Trees #1 and 2) showing that all four criteria of LOC 55.02.080 are met.

26
27 The Commission finds the large Douglas fir tree is a "significant tree" for the reasons stated in the
28 staff report, pg.22, and the applicant must show that Exception b of LOC 55.02.080(3) is met:
29 "alternatives to the tree removal have been considered and no reasonable alternative exists to
30 allow the property to be used as permitted in the zone." The Commission finds that finishing
31 demolition of the existing dwelling is likely to cause "removal" of the tree, even before new
32 construction would occur (Exhibit F8). "Removal" means "cut down a tree or remove all or 50%
33 or more of the crown, trunk, or root system of a tree; or to damage a tree so as to cause the tree
34 to decline, die, or to qualify as hazardous (LOC 55.02.042(4))." LOC 55.02.020. Demolition of an
35 existing dwelling is permitted "development" under the Community Development Code (LOC
36 50.10.020.3, "Development"). Demolition and reconstruction of a dwelling is a permitted use in
37 the R-10 zone, as incidental to construction of a dwelling, which is allowing the property to be
38 "used as permitted in the zone." Accordingly, the Commission finds the removal of the Douglas
39 fir (Tree #9) was shown to meet the criteria of LOC 55.02.080(1, 2 and 4) per the staff report
40 findings, pg. 21-24, and Exception (b) to LOC 55.02.080(3), pg. 23, and the Commission approves
41 the requested Douglas fir tree removal.

- 42
43 6. Staff noted to the Commission that a total of four native mitigation trees, not three as identified
44 in the May 11 staff report, should be required because LOC 55.02.084.4.a.ii(A) requires a 2:1
45 mitigation ratio for the removal of a significant tree for development purposes. The fir tree (Tree
46 #9) is a significant tree and therefore two mitigation trees must be planted for its removal. The
47 conditions of approval are revised accordingly.

- 48
49 7. The Bechens, the abutting property owners to the south who are nearest to the proposed garage
50 and most affected the requested side yard setback variance, support the variance. Exhibit G104.
51 The Commission finds the requested variance to reduce the required 10-foot south side yard

1 setback to a variable 1.5 to 8.75 feet complies with the variance criteria as discussed on pages
2 12-20 of the staff report. Further, the exception allows a side-loading garage, which allows the
3 garage to minimize its impact upon the streetscape and preserves the existing view corridor (the
4 proposed garage replaces the existing garage in its existing footprint relative to the side lot line).
5 (The Commission noted vehicle maneuverability was cited as the basis for the side yard setback
6 reduction to 1.5 ft., and that concerns over access to the side of the garage and dwelling for
7 construction and maintenance may exist. However, the Commission finds that the RID criteria
8 has a design focus – the impact on the design upon the neighborhood and neighbors – rather
9 than a functional effect focus. It is up to the applicant to understand the functional limitations
10 arising from the requested exception.)

11
12 **ORDER**

13
14 **IT IS ORDERED BY THE DEVELOPMENT REVIEW COMMISSION of the City of Lake Oswego that:**

- 15
16 1. LU 18-0020 is approved, subject to compliance with the conditions of approval set forth in Subsection
17 2 of this Order.
18
19 2. The conditions for LU 18-0020 are as follows:

20
21 **A. Prior to Issuance of any Building Permits, the Applicant/Owner Shall:**

- 22
23 1. Submit plans for review and approval of staff that are in substantial compliance with
24 Exhibit E9 with the building permit application.
25
26 2. Submit a final drainage report, prepared by a registered engineer, in accordance with the
27 Stormwater Management Code and LOSWMM, to the satisfaction of the City Engineer.
28
29 3. Submit final drainage plans, including cross section details of each stormwater planter,
30 identifying the media and/or drain rock depths and elevations, in accordance with the sizing
31 calculations. The facility design must meet the minimum geometry requirements and
32 setbacks in LOSWMM, Section 4.6.1.
33
34 4. Obtain either approval from the Lake Corporation for stormwater management discharging
35 to the lake, or a final judicial determination that the drainage from the redeveloped site into
36 the lake is permissible.
37
38 5. Per LOC Chapter 52, apply for and obtain an erosion prevention and sediment control permit
39 issued through the City of Lake Oswego, and install and maintain all erosion control BMPs as
40 indicated in the permit.
41
42 6. Apply for and obtain a verification tree permit for the removal of the three trees approved
43 for removal in Exhibit F3. Four native mitigation trees shall be required that are selected
44 from LOC Appendix 55.02-1, Native Mitigation Tree List. Three of the mitigation trees must
45 be located in the southeast corner and one of the mitigation trees must be located in the
46 tree planter in the back patio near the boat house.

47
48 **B. Prior to the Final Building Inspection, the Applicant/Owner Shall:**

- 49
50 1. Request a final inspection by the Planning staff to ensure that the dwelling complies with the
51 approved final plans, per Condition A(1), above.

- 1
 - 2
 - 3
 - 4
 - 5
 - 6
 - 7
 - 8
 - 9
 - 10
 - 11
 - 12
2. Provide certification from the engineer of record that the stormwater facilities were constructed per the design and are functioning properly.
 3. Provide proof of recorded operations and maintenance plans (OMPs) for each stormwater facility. The OMP must describe how to properly maintain the facilities, the frequency of maintenance required and the party responsible for maintaining the facilities. The applicant may refer to the LOSWMM, Section 7 for maintenance activities specific to flow through planters.
 4. Plant the four native mitigation trees as required by Condition A(6), above.

1 DATED this 18th day of June, 2018.
2
3

4 David Poulson /s/

5 David Poulson, Chair
6 Development Review Commission
7

8
9 Janice Bader /s/

10 Janice Bader
11 Administrative Support III
12

13 **ATTEST:**
14

15 **TENTATIVE DECISION – MAY 21, 2018**

16 AYES: Poulson, Ahrend, Frankel and Shearer
17 NOES: Prichard, Smith and Shur
18 ABSTAIN: None
19 ABSENT: None
20

21 **WRITTEN FINDINGS – JULY 2, 2018**

22 AYES: Poulson, Ahrend, Frankel and Shearer
23 NOES: Prichard and Shur
24 ABSTAIN: None
25 ABSENT: Smith
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44