



1	LOC 50.05.006.1-8	Old Town Neighborhood Design Standards
2	LOC 50.06.002	Parking
3	LOC 50.06.003.2	On-Site Circulation – Driveway and Fire Access Roads
4	LOC 50.06.004.1	Landscaping, Screening and Buffering
5	LOC 50.06.004.2	Fences
6	LOC 50.06.004.3	Lighting Standard
7	LOC 50.06.005	Park and Open Space
8	LOC 50.06.006.1	Weak Foundation Soils
9	LOC 50.06.006.3.b	Drainage Standards for Major Development
10	LOC 50.06.009.1-10	Historic Preservation
11	LOC 50.06.008	Utilities
12	LOC 50.07.003.1	Application for Development, Burden of Proof
13	LOC 50.07.003.5	Conditions of Approval
14	LOC 50.07.003.7	Appeal of Minor and Major Development Decisions
15	LOC 50.07.003.14	Review Criteria for Minor Development
16	LOC 50.07.003.15	Review Criteria for Major Development
17	LOC 50.07.005	Conditional Use Permit
18	LOC 50.08.002	Minor Variances

19

20 C. City of Lake Oswego Streets and Sidewalks Code [LOC Chapter 42]:

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22	LOC 42.03.130	Sight Distance at Roadway Intersections, Private Streets and Driveways
23		
24		

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

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27	LOC 55.02.010-55.02.135	Tree Removal
28		

29 E. Prior Approvals

30

31 LU 12-0049

32

33 **CONCLUSION**

34

35 The Development Review Commission concludes that LU 16-0013 can be made to comply with all  
 36 applicable criteria by the application of certain conditions.

37

38 **FINDINGS AND REASONS**

39

40 The Development Review Commission (the “Commission”) incorporates the July 6, 2016, Staff Report  
 41 (with all exhibits attached thereto) as support for its decision supplemented by further findings and  
 42 conclusions below. If there is any inconsistency between the supplementary findings and the staff  
 43 report, the supplemental findings control. To the extent they are consistent with the approval granted  
 44 herein, the Commission adopts by reference its oral deliberations on this matter.

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1 Following are the supplementary findings and conclusions of this Commission:  
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- 3 1. 12" Clerodendron tree. The Commission received testimony that the tree is an unusual  
4 tree, is of historical value, and provides necessary screening for the abutting property to  
5 the west. No specific criteria was cited for the Commission to consider. The Commission  
6 elects to review the testimony against the following cited criteria as potentially relevant to  
7 the testimony.

8  
9 A. Historic Preservation

10  
11 The Cultural Resources Inventory (Exhibit F2) for the site did not identify any landscaping  
12 feature as being historically significant. The Commission finds removal of the tree would  
13 not be a "major alteration" or "minor alteration" of a historic landmarks under LOC  
14 50.06.009.7.b, c. and therefore would not be subject to review under those respective  
15 criteria.

16  
17 B. Tree Code

18  
19 The applicant requested removal under the Type II criteria of LOC 55.02.080:

- 20  
21 (1) There is a development or landscaping purpose;  
22 (2) No significant impact on erosion, adjacent trees, etc.;  
23 (3) No significant impact on the character, aesthetics, or property values of the  
24 neighborhood, except where alternatives to tree removal have been considered  
25 and no reasonable alternative exists to allow the property to be used as permitted  
26 in the zone; and  
27 (4) Not for sole purpose of enhancing views.

28  
29 The Commission finds:

- 30 • The criteria does not preclude or impose additional criteria for removal if a tree is  
31 "unusual" or "of historical value." (There was no evidence that the tree was  
32 designated previously as "heritage tree" under LOC 55.06.020, and thus is not  
33 subject to the additional criterion of LOC 55.06.040 for removal of heritage trees.)  
34 • As to the first criterion, the Commission finds that removal for "better visual  
35 access" as stated by the applicant and in the staff report is not a valid development  
36 purposes because "visual access" is not a use or development right permitted in  
37 the Community Development Code for the zone. However, the staff report, p. 14,  
38 inaccurately summarized the first criterion as being limited to development  
39 purposes; a tree may also be considered for removal for landscaping purposes.  
40 The Commission finds that removal of a tree that is in poor health is a "landscaping  
41 purpose." The applicant states that the tree is "under stress at its location and is in  
42 questionable health," and is "in poor health." (Exhibit F1, pg. 11, and internal  
43 exhibit 1B). Some Commission members, during their on-site visits, observed that  
44 the tree appears to be flowering. The Commission finds that based upon the  
45 un rebutted applicant's testimony, the tree is in poor health and, therefore, the  
46 applicant has met its burden to show that removal is for a landscaping purpose,  
47 under LOC 55.02.080(1).  
48 • As to the third criterion, there is no evidence that removal of the tree will have a  
49 significant negative impact upon the *neighborhood*. The tree removal would only  
50 affect one abutting property, not the neighborhood in general. Absent a significant

1 negative impact upon the neighborhood, the owner is not required to show that  
2 alternatives to tree removal have been considered and that no reasonable  
3 alternative exists to allow the property to be used as permitted in the zone.  
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5 C. Institutional Use Screening  
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7 The Commission finds that the structure will continue to appear to be a small residence  
8 (the historic Worker’s Cottage), with minimal perceived institutional usage due to its size  
9 and use (see staff report, pg. 5-8), and thus the subject site will continue to appear to be a  
10 single-family residence abutting a duplex to the west. The Commission adopts the staff  
11 report finding that even with removal of the 12” Clerodendron tree, there remain 4 trees  
12 on the site, which will provide adequate screening of the use because of the perceived  
13 residential similarity of the site to the west abutting property, per LOC  
14 50.06.004.1.b.iv(1)(c).  
15

- 16 2. The Commission received testimony that the trip estimate used by the applicant (Exhibit  
17 F4) was low and that alley access is limited because the alley is only 16 feet wide. No  
18 specific criteria was stated to which this testimony would be relevant.  
19

20 The Commission assumes the testimony is directed to the “functional characteristics /  
21 reasonably compatible” conditional use criterion, LOC 50.07.005.3.a.iv. The Commission  
22 finds that the trip estimates are reasonable due to the small size of the cottage, which  
23 limits the number of occupants to approximately 10, that the “target market” for meetings  
24 or tours of the museum would generally be residents or businesses in walking distance, or  
25 where people would carpool or take a multi-passenger vehicle, e.g., students being bussed  
26 to the museum. No alternative traffic study was presented. The Commission finds that a  
27 person’s doubt in the applicant’s traffic projection, without more supporting argument or  
28 evidence, is not sufficient to overcome the applicant’s evidence, and the Commission finds,  
29 per the staff report finding, pg. 6, that the trip estimate is reasonably compatible with uses  
30 in the vicinity.  
31

32 Further, the Commission does not find a relevance between the width of the alley, which is  
33 sufficient for vehicular access, and the number of vehicles accessing the site’s parking  
34 spaces. If the parking spaces are filled, there remains adequate alley width for additional  
35 vehicles to use the alley.  
36

37 **ORDER**  
38

39 **IT IS ORDERED BY THE DEVELOPMENT REVIEW COMMISSION of the City of Lake Oswego that:**  
40

- 41 1. LU 16-0013 is approved, subject to compliance with the conditions of approval set forth in  
42 Subsection 2 of this Order.  
43  
44 2. The conditions for LU 16-0013 are as follows:  
45

46 **A. Prior to Issuance of any Grading or Building Permits, the Applicant/Owner Shall:**  
47

- 48 1. Submit final site plans for review and approval of staff that are the same or substantially  
49 similar to the site plan as illustrated on Exhibit E4.  
50

- 1           2. Apply for and obtain a verification tree removal permit for the 12" Clerodendron tree  
2 approved for removal to construct the improvements. The verification permit submittal  
3 shall include an 8½" x 11" copy of the tree removal plan and a mitigation plan showing  
4 replacement trees on a 1:1 basis. Replacement trees shall not be dwarf or ornamental  
5 varieties and shall be at least two inches in caliper if deciduous or at least 6-8 feet tall  
6 (excluding the leader) if evergreens.  
7

8           **B. Prior to any Construction Activity on the Site, the Applicant/Owner Shall:**  
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- 10           1. Install all tree protection measures as required by the Code Requirement 2, below. The  
11 tree protection fencing shall be inspected and approved by City staff prior to commencing  
12 any construction activities.  
13  
14           2. Obtain a street opening permit for any work in the public right of way, including  
15 underground utility installation.  
16  
17           3. Apply for and obtain an erosion control permit, and install all erosion control measures.  
18

19           **Code Requirements:**  
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- 21           1. **Expiration of Development Permit:** Per LOC 50.07.003.17, the development approved by  
22 this decision shall expire three years following the effective date of the development  
23 permit, and can be extended by the City Manager pursuant to the provisions of this  
24 section.  
25  
26           2. **Tree Protection:** Submit a tree protection plan and application prepared by a certified  
27 arborist as required by LOC 50.08.020 and 55.08.030 for review and approval by staff,  
28 including off-site trees that are within the construction zone. The plan shall include:  
29  
30           a. The location of temporary tree protection fencing, consisting of a minimum 6-foot  
31 high cyclone fence secured by steel posts, around the tree protection zone, or as  
32 recommended by the project arborist and approved by the City.  
33  
34           b. A note stating that no fill or compaction shall occur within the critical root zones of  
35 any of the trees, or that if fill or compaction is unavoidable, measures will be taken as  
36 recommended by a certified arborist to reduce or mitigate the impact of the fill or  
37 compaction. Such measures shall be clearly outlined in the tree protection plan. The  
38 note shall also inform contractors that the project arborist shall be on site and  
39 oversee all construction activities within the tree protection zone.  
40  
41           c. A note that clearly informs all site contractors about the necessity of preventing  
42 damage to the trees, including bark and root zone. The applicant and contractor(s)  
43 shall be subject to fines, penalties and mitigation for trees that are damaged or  
44 destroyed during construction.  
45  
46           d. A sign shall be attached to the tree protection fencing, which states that inside the  
47 fencing is a tree protection zone, not to be disturbed unless prior approval has been  
48 obtained from the City Manager and project arborist.  
49

1 3. **Sign Code:** Obtain all necessary sign permits. The applicant/owner shall submit sign plans  
2 and elevations in accordance with the Sign Code for review and approval of staff. Colors  
3 and materials shall be compatible with the architectural details and colors of the cottage.  
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1 DATED this 15th day of August, 2016.  
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4 David Poulson /s/  
5 David Poulson, Vice-Chair  
6 Development Review Commission  
7

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9 Janice Bader /s/  
10 Janice Bader  
11 Administrative Support III  
12

13 **ATTEST:**  
14

15 **ORAL DECISION – July 18, 2016**

16 AYES: Rabbino, Shearer, Smith, Poulson, Prichard  
17 NOES: None  
18 ABSTAIN: None  
19 ABSENT: Ahrend, Melendez  
20

21 **WRITTEN FINDINGS – August 15, 2016**

22 AYES: Rabbino, Shearer, Smith, Poulson and Prichard  
23 NOES: None  
24 ABSTAIN: Melendez  
25 ABSENT: Ahrend  
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