



TO: Development Review Commission

FROM: Leslie Hamilton, Senior Planner
Planning and Building Services Department

SUBJECT: Additional written testimony and rebuttal for LU 13-0040

DATE: February 3, 2014

At the January 15, 2014 hearing, the Commission left the record open for additional written testimony only until January 22, with the applicant's rebuttal due on January 27, 2014. Written testimony in opposition to the proposed development was received from the appellants, Daniel Johnson and Elizabeth Bounds (Exhibit G209) and Bruce Henderson (Exhibit G210). The applicant's written testimony and rebuttal are found in Exhibits F4 and F5.

The applicant's testimony includes a revised site plan (Exhibit F4). Under LOC 50.04.003.3.a, Front Yard Setback Averaging, if there are structures on both abutting lots that are non-conforming to the front yard setback standard, the minimum front setback is the average of the abutting yards, but no less than 15 feet. At the time the application was submitted (August 12, 2013), the abutting property to the south had a front yard setback of 22.5 feet, and the abutting property to the north (Johnson) had a front yard setback of 9.9 feet. The average of these two setbacks was 16.2 feet, which is the front setback originally proposed by the applicant (Exhibit E4). On December 28, 2013, Johnson received a RID review approval for several exceptions on his property, including lot coverage, front yard setback, Oswego Lake setback, and both side yard setbacks (LU 13-0048). This approval reduced Johnson's front yard from 9.9 feet to six feet. With the further reduction in Johnson's front yard setback, the average front yard setback for the site is now 15 feet. As shown in the applicant's revised site plan and elevations (Exhibit F4), the applicant now proposes a front yard setback of 15.05 feet. Additionally, the footprint and design of the dwelling has been altered as follows:

- The rear yard setback has been increased from 25 feet to 30 feet at the northwest corner of the dwelling closest to the Johnson house; this 30-foot setback is maintained for 10 feet.

- The scope of the rear yard setback exception has been reduced from 25 feet to 27.5 feet at a point that is 15 feet from the north property line. The elevated deck on the rear of the proposed dwelling is 27.5 from the rear property line.
- As shown in the elevations (Exhibits F4), the north elevation has been revised to remove the first floor window facing the Johnson residence, shorten the wall plane adjacent to the Johnson residence, and create more steps in the wall planes along this elevation.
- The scope of the lot coverage exception has been reduced by approximately 34 square feet (from 33% to 31.9%).

Staff finds that the modified application continues to comply with all applicable criteria, and staff recommends approval of LU 13-0040, subject to the following conditions of approval:

A. Prior to Issuance of any Building Permit, the Applicant/Owner Shall:

1. Submit final building plans for review and approval of staff that are the same or substantially similar to the site plan and elevations illustrated on Exhibit F4, with the following modifications:
 - a. Show compliance with the Vision Clearance standards of LOC 42.03.130 for the proposed driveway.
2. Submit a "Notice of Development Restriction" for staff review and approval containing the following restrictions:
 - a. The dwelling on the site received exceptions to lot coverage, **and** rear yard setback ~~and side yard setback plane~~ standards for the R-7.5 zone through the Residential Infill Design Review process and was specifically approved for its design. No external additions or alterations of the dwelling (including changes to or removal of approved building design features, colors or materials) shall be permitted, including changes during construction, without prior written approval by the City of Lake Oswego, per City of Lake Oswego Planning Division File No LU 13-0040.
3. Record the "Notice of Development Restriction" required by Condition A(2), above, with the Clackamas County Clerk's Office, and submit a copy of the recorded Notice of Development Restriction to staff.
4. Apply for and obtain a verification tree removal permit for the following trees approved for removal in this action: three 30" oak trees. The verification tree removal application shall include an 8½" x 11" copy of the tree removal plan, and a mitigation plan showing replacement trees on a 1:1 basis. Replacement trees shall not be dwarf or ornamental varieties and shall be at least 2 inches in caliper if deciduous or at least 6-8 feet tall (excluding the leader) if evergreens.

B. Prior to Any Construction Activity on the Site, the Applicant/Owner Shall:

1. Install all tree protection measures as required by the Code Requirement (1), below. The tree protection fencing shall be inspected and approved by City staff prior to commencing any construction activities.
2. Apply for and obtain an erosion control permit, and install all erosion control measures.

C. Prior to Final Building Inspection or Occupancy of the Dwelling, the Applicant/Owner Shall:

1. Request a final inspection by the Planning staff to assure that the dwelling complies with the approved final plans, per Conditions A(1), above.

Code Requirements:

1. **Expiration of Development Permit:** Per LOC 50.07.003.17, the Development Permit approved by this decision shall expire three years following the effective date of this approval, and can be extended by the City Manager pursuant to the provisions of this section.
2. **Tree Protection:** Submit a tree protection plan and application as required by LOC 55.08.020 and 55.08.030 for review and approval by staff, including off-site trees that are within the construction zone. The plan shall include:
 - a. The location of temporary tree protection fencing, consisting of a minimum 6-foot high cyclone fence secured by steel posts around the tree protection zone, or as recommended by the project arborist and approved by the City.
 - b. A note stating that no fill or compaction shall occur within the critical root zones of any of the trees, or that if fill or compaction is unavoidable, measures will be taken as recommended by a certified arborist to reduce or mitigate the impact of the fill or compaction. The note shall also inform contractors that the project arborist shall be on site and oversee all construction activities within the tree protection zone.
 - c. A note that clearly informs all site contractors about the necessity of preventing damage to the trees, including bark and root zone. The applicant and contractor(s) shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction.

- d. A sign shall be attached to the tree protection fencing which states that inside the fencing is a tree protection zone, not to be disturbed unless prior written approval has been obtained from the City Manager and project arborist.

Note:

1. The applicant is advised to take part in a post-Land Use Approval meeting. City staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting, please contact the staff coordinator at (503) 635-0290.
2. The land use approval for this project does not imply approval of a particular design, product, material, size, method of work, or layout of public infrastructure except where a condition of approval has been devised to control a particular design element or material.
3. Development plans review, permit approval, and inspections by the City of Lake Oswego Planning and Building Services Department are limited to compliance with the Lake Oswego Community Development Code, and related code provisions. The applicants are advised to review plans for compliance with applicable state and federal laws and regulations that could relate to the development, i.e., Americans with Disabilities Act, Endangered Species Act. Staff may advise the applicants of issues regarding state and federal laws that staff member believes would be helpful to the applicants, but any such advice or comment is not a determination or interpretation of federal or state law or regulation.

Copies of these exhibits were distributed to the Commission and are available online at the following link: <http://www.ci.oswego.or.us/planning/lu-13-0040-request-rid-review-order-construct-new-single-family-dwelling>

F4 Applicant's written testimony, dated January 22, 2014

F5 Applicant's rebuttal, dated January 27, 2014

G209 Daniel Johnson and Elizabeth Bounds written testimony, dated January 22, 2014

G210 Bruce Henderson written testimony, dated January 22, 2014