

**FINDINGS OF FACT and FINAL ORDER
TYPE III LAND USE PROPOSAL**

DATE: August 3, 2020

FILE NO.: 20-015 CUP/VAR/DR

PROJECT NAME: Sandy Feeder Reinforcement Project

APPLICANT: NW Natural Gas

OWNER: Sandy Chainsaw, LLC

LEGAL DESCRIPTION: T2S R4E Section 14AD Tax Lot 2001

The above-referenced proposal was reviewed concurrently as a Type III conditional use permit, Type III special variance, and Type III design review. The following Findings of Fact are adopted supporting approval of the plan in accordance with Chapter 17 of the Sandy Municipal Code.

EXHIBITS:

Applicant's Submittals:

- A. Land Use Application
- B. Project Narrative (May 2020)
- C. Civil Plan Set
 - C-000 Cover Sheet
 - C-100 Site Analysis Plan
 - C-200 Site Plan
 - C-300 Public Street Improvement Plan
 - C-400 Site Grading Plan
- D. Landscaping Plan Set
 - L-100 Planting Plan
 - L-200 Irrigation Plan
 - L-300 Planting Details
 - L-301 Irrigation Details
 - L-302 Fencing Details
- E. Traffic Letter

Agency Comments:

- F. Public Works

Public Comments:

G. AMR Clackamas County
H. Jerry Reynolds

FINDINGS OF FACT

General

1. These findings are based on the applicant's submittal received on May 6, 2020 and additional information received on May 21, 2020. The application was initially deemed incomplete on May 19, 2020. The application was deemed complete on May 22, 2020.
2. Planning Commission approved this application with all associated conditions 7-0 on July 27, 2020. No public testimony was given at the meeting. Brad Kilby presented on behalf of the applicant.
3. This order is based upon the Exhibits listed above, as well as agency comments and public testimony.
4. The subject site is approximately 0.215 acres (9,370 SF). The site is located on University Avenue approximately 250 feet north of Highway 26.
5. The parcel has a Comprehensive Plan Map designation of Retail/Commercial and a Zoning Map designation of C-2 General Commercial.
6. The applicant, NW Natural Gas, is proposing to construct a natural gas regulator station. Natural gas is conveyed regionally through pressurized distribution lines. The purpose of the regulator station and associated equipment is to reduce the pressure of natural gas traveling through distribution lines to supply natural gas to the customers of the utility.
7. Notification of the proposed application was mailed to affected agencies on June 24, 2020 and to surrounding property owners within 500 feet of the subject property on June 9, 2020.
8. A legal notice was printed in the Sandy newspaper on July 13, 2020.
9. Agency comments were received from the City's Public Works Department.
10. Two written public comments were received from nearby property owners.
11. American Medical Response (AMR) of Clackamas County operates an ambulance station across the street from the subject site. The operations manager of AMR is concerned that a major incident at the regulator station could impede the ability of AMR to respond to medical emergencies. See exhibit G.

12. Jerry Reynolds owns two townhomes within 500 feet of the subject property. He would prefer that the property be used for residential purposes to match surrounding properties. See exhibit H.
13. The following individuals spoke on behalf of the applicant at the July 27, 2020 Planning Commission hearing:
 - a. Steven Walti;
 - b. Brad Kilby;
 - c. Andrea Kuehnel; and,
 - d. Pete Daniels

17.44 – General Commercial C-2

14. This facility qualifies as a major public facility, making it a conditional use in the C-2 zoning district.
15. According to the development requirements in Section 17.44.30, the required front setback must be at least 10 feet and no greater than 50 feet. The applicant is proposing a front yard setback of 12 feet 3 inches to proposed facilities.
16. The required landscaping is 20 percent of the subject site. The applicant is proposing that 20.4 percent of the subject site is landscaped. The other development requirements in this section are not applicable or will be addressed as a special variance.

17.66 – Adjustments and Variances

17. Subsection 17.90.110(D)(1) requires each building to be oriented to a public street or civic space. This standard is met when at least 50 percent of the subject site's street frontage is comprised of building(s) placed within 10 feet of a sidewalk or an approved civic space and not more than 20 percent of the off street parking on a parcel as required by SDC 17.98, tract or area of land is located between a building's front façade and the adjacent street(s).
18. This application proposes a special variance to the provisions of the Design Standards of Chapter 17.90 as the proposed development is for a major public facility that does not include a building, and this cannot meet design standards for buildings.
19. According to 17.66.80 (Type III Special Variances), the Planning Commission may grant a special variance waiving a specified provision under the Type III procedure if it finds that the provision is unreasonable and unwarranted due to the specific nature of the proposed development. Specifically, the Planning Commission must determine that the intent and purpose of the regulations and of the provisions to be waived will not be violated, and authorization of the special variance will not be materially detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted.

20. The proposed project meets the applicable intent of the regulations that are proposed to be waived. The proposed regulator station serves to enhance the city's quality of life through enhanced utility service. The natural gas industry is heavily regulated by safety standards, thus lowering its risk for damages to adjacent properties. Additionally, the proposed project does not preclude any other property in the area from being further developed.

17.68 – Conditional Uses

21. The proposed development has been interpreted to be a major public facility. Therefore, it is required to obtain conditional use approval.

22. According to the review criteria in Section 17.68.20, the project must meet criterion A through F.

23. Section 17.68.20 (A) states the use is listed as either a minor conditional use or conditional use in the underlying zoning district or has been interpreted to be similar in use to other conditional uses. This project has been interpreted to be a major public facility, which is a conditional use in the underlying zoning district.

24. Section 17.68.20 (B) states the characteristics of the site are suitable for the proposed use considering the size, shape, location, topography, and natural features. Staff has not determined that the characteristics of the site (size, shape, location, topography, and natural features) are unsuitable for the proposed use. It is a relatively flat site with grades ranging between 3 and 5 percent and does not contain any natural features.

25. Section 17.68.20 (C) states that the proposed use is timely considering the adequacy of the transportation systems, public facilities, and services existing or planned for the area affected by the use. The proposed use does not place demand on the existing public facilities, transportation systems such as streets or transit service, or other services within the City.

26. Section 17.68.20 (D) states the proposed use will not alter the character of the surrounding area in a manner which substantially limits, precludes, or impairs the use of surrounding properties for the primary uses listed in the underlying zoning district. Staff has determined that the proposed project would not limit or preclude other uses on surrounding properties.

27. Section 17.68.20 (E) states the proposed use will not result in the use of land for any purpose which may create or cause to be created any public nuisance. The proposed project is not expected to create any public nuisance. It will be screened from public view and fenced for security.

28. Section 17.68.20 (F) states the proposed use will be reasonably compatible with existing or planned neighboring uses based on review of the following: basic site design, visual elements, noise, noxious odors, lighting, signage, landscaping for buffering and screening, traffic, effects on off-street parking, effects on air quality and water quality. As proposed, the site is designed to accommodate all activities on site. The development will be landscaped for aesthetics and screening from the public right-of-way and neighboring properties. The equipment on site is not large and will be painted with flat and muted earth tones. No exterior

lighting is proposed. All parking is accommodated on site, and traffic to the facility will be minimal. The site will be fenced for security, and signage will be only placed for the purposes of addressing the identification of the facility. The facility is not expected to generate any noxious odors, and noise generated from the site will be minor. Within the fence line, it will sound like air flowing or an open water faucet. However, neighboring properties and the passing public will hear little to no noise.

29. Section 17.68.40 outlines a list of reasonable conditions to place on a land use proposal. One of these conditions, 17.68.40(H) allows the City to require additional landscaping, berming, screening, or fencing as a condition of the land use permit. The Planning Commission found that additional landscaping will provide a better aesthetic appearance along University Avenue and for the surrounding neighbors. This landscaping will also help provide an additional noise and visual nuisance buffer. **The applicant shall exceed the landscaping requirements found in Chapter 17.92 and include a 10 foot landscape buffer between the back of sidewalk on University Avenue and the proposed fence.**
30. The applicant proposes galvanized chain link fencing (Exhibit D). The Planning Commission found that a higher quality fence on all four sides of the property will provide a better aesthetic appearance along University Avenue and for the neighbors to the north, east, and south. In addition to a 10 foot landscape buffer behind the sidewalk, **the applicant shall install vertical metal fencing along all four sides of the property along with four stone pillars along University Avenue consisting of dressed fieldstone to provide elements of Sandy Style architecture. The applicant shall modify the fencing details and submit for staff review and approval.** Because there is no building to provide elements of Sandy Style architecture, this fence will help provide such elements.
31. Currently, the applicant is proposing a 20 foot by 10 foot permeable parking spot. **This shall be increased to at least 22 foot by 10 foot to account for the size of utility vehicles.** The Planning Commission does not want utility vehicles to impede the sidewalk.

17.84 – Improvements Required with Development

32. Chapter 17.84 provides general information regarding improvements required in association with development. **All required improvements shall be installed or financially guaranteed prior to final occupancy.**
33. All improvements will be constructed concurrently with the proposed development. Sheet C-300 under Exhibit C shows proposed public street improvement plans. **Land use approval does not connote utility or public improvements plan approval which will be reviewed and approved separately upon submittal of public improvement construction plans.**
34. Section 17.84.30 requires that a 5-foot sidewalk be constructed adjacent to the property along University Avenue, which is a local street. The sidewalk will meander east to allow for construction of a required planter strip. There are no pedestrian improvements beyond the sidewalk improvements along University Avenue within the City's Transportation System Plan (TSP).

35. Section 17.84.50(A) states that a traffic evaluation may be required. According to the applicant's project engineer, the proposed development is expected to generate one vehicle trip per month for the purposes of maintenance and security. Therefore, staff did not require a full traffic evaluation for the proposed use.
36. Section 17.84.50(D) states that where a development site abuts an existing public street not improved to City standards, the abutting street shall be improved to City standards along the full frontage of the property concurrent with development. As proposed, the applicant will dedicate the required amount of additional right-of-way and make improvements to the street to bring it into compliance with City standards. **The applicant shall submit construction plans to the Public Works Department for review and approval prior to any construction.**
37. Section 17.84.60 details requirements for public facility extensions. The only known public facilities that are proposed to be provided to the site are public water for irrigation and public storm to capture any water from the newly constructed street improvements.
38. Per the City's Public Works Department, since the amount of impervious surface proposed and existing is so small the applicant may utilize the Simplified Method in the City of Portland Stormwater Management Manual (COP SWMM) to comply with the requirements of Section 13.18 and 13.20 of the Sandy Municipal Code.

17.90 – Design Standards

39. A Type III special variance has been requested to the applicable standards of this chapter that cannot be satisfied by the proposed development due to the unique characteristics of the use.
40. According to Section 17.90.120(A)(1), all lots shall abut or have cross access to a dedicated public street. The subject site abuts University Avenue and is proposed to take access from University Avenue.
41. Many of the requirements in Section 17.90.120(A) are not applicable to the proposed project as the site does not have access to a public alley and is only proposing a single off-street parking space as analyzed in Chapter 17.98 of this document.
42. Many of the requirements in Section 17.90.120 are not applicable to the proposed project as the development does not include a building. Since the applicant is not proposing a building civic space is not required.
43. Section 17.90.120(I)(3) requires that all sites provide street address numbers measuring a minimum of six (6) inches high, which clearly locates buildings and their entries for patrons and emergency services. The proposed site does not have a proposed building, but the site needs an address for emergency service purposes. **The applicant shall provide street address numbers measuring a minimum of six (6) inches high, which clearly locates the facility. The applicant shall verify the location(s) of the address with the Building Official and emergency service providers.**

17.92 – Landscaping and Screening

44. Exhibit D details all proposed landscaping and screening plans. There are no significant plant or tree specimens currently located on the site.
45. As shown on the landscaping plan set (Exhibit D), the proposed planting areas are located outside of the fenced area and are all provided with a minimum width of 5 feet. As stated in Finding 26, staff recommends that this landscape buffer width be increased to 10 feet.
46. There are no proposed conifer trees or shrubs within the vision clearance areas of the street intersection with the driveway (See Sheet L-100 in Exhibit D), satisfying Section 17.92.10(E).
47. In accordance with Section 17.92.10(L), **all landscaping shall be continually maintained, including necessary watering, weeding, pruning and replacing.**
48. Section 17.92.20 requires that 20 percent of the property must be retained in landscaping according to the underlying zoning district. The applicant is proposing that 20.3 percent of the site be retained in landscaping.
49. Section 17.92.30 provides standards for tree plantings. Two street trees are proposed within a planter strip along University Avenue. The trees were selected from the City's approved street tree list. The tree planting detail on Sheet L-300 details polyethylene tree ties. **All street trees shall be a minimum of 1.5-inches in caliper measured 6 inches above the ground and shall be planted per the City of Sandy standard planting detail. All street trees shall be staked and tied with loose twine so as not to damage the trunk; the twine shall be removed after one growing season (or a maximum of 1 year). The applicant shall revise the submitted tree planting detail to meet the City of Sandy standard planting detail.**
50. Section 17.92.40 requires that landscaping shall be irrigated to sustain viable plant life. Sheet L-200 (Exhibit D) provides irrigation plans.
51. The proposed landscaping plans were prepared by a professional and licensed landscape architect. The selected planting materials were selected due to their propensity to thrive in the Pacific Northwest. Where possible, native plants are included in the overall planting plan. The plans in Exhibit D have been designed in accordance with these requirements and include a planting schedule that identify the size, spacing, and other details to ensure they are planted in accordance with the standards in Section 17.92.50. **The landscape plan and irrigation plan shall be revised and submitted for staff review and approval to detail a 10 foot landscape buffer width along the University Street frontage.**
52. All areas disturbed by the proposed development and not proposed to be used for the regulator station will be revegetated as required by Section 17.92.60.
53. The area located between the public street and the fenced area is proposed to be landscaped as required by Section 17.92.70.

54. Trees proposed by the applicant include skyrocket oak, cascara, and douglas fir. Shrubs proposed by the applicant include salal, Oregon grape, evergreen huckleberry, and nootka rose.
55. Buffering is provided between the proposed screening fence and all adjacent property lines as required by Section 17.92.80.
56. Section 17.92.100 explains that service facilities must be obscured by screening. The applicant is proposing to screen the entire facility with a combination of fencing and landscaping. The applicant desires to screen the entire facility for safety and security.

17.98 – Parking, Loading, and Access

57. The proposed use being proposed is not listed in the section applicable to off-street parking requirements (Section 17.98.20). Staff required the applicant to provide one paved off-street parking space for maintenance of the facility. Because the parking space will only be used approximately one time per month staff did not feel it was necessary to require a turnaround area on the subject site.
58. Section 17.98.50 details setback requirements. As required by this section, the proposed parking space is located within the fenced area. With the exception of the driveway the area between the proposed fence and University Avenue is proposed to be landscaped.
59. The proposed driveway which connects University Avenue to the parking space is 10 feet wide and will be improved with a concrete apron in accordance with Section 17.98.100.
60. Section 17.98.100 outlines vision clearance requirements. The proposed vision clearance areas are shown on the site plan (Sheet C-200, Exhibit C) consistent with the AASHTO provisions. Based on the vehicular speeds on University Avenue, there is adequate distance to the north from the site, but the service facility on the adjacent property to the south impacts the prescribed sight distance.

15.30 – Dark Sky Ordinance

61. Chapter 15.30 contains the City of Sandy’s Dark Sky Ordinance. **If lighting is proposed, the applicant shall submit a Photometric Plan and lighting cut-sheets detailing any proposed lighting that is full cut-off, does not exceed 0.25 foot candles at 10 feet beyond the property line, and does not exceed 4,125 Kelvins.**

15.44 – Erosion Control Regulations

62. All erosion control and grading shall comply with Section 15.44 of the Municipal Code. **All on-site earthwork activities including any retaining wall construction shall follow the requirements of the most current edition of the Oregon Structural Specialty Code (OSSC). If the proposal includes a retaining wall, the applicant shall submit additional**

details on the proposed retaining wall for staff review and approval. The earthwork activities shall be observed and documented under the supervision of a geotechnical engineer.

- 63. Site grading shall not in any way impede, impound, or inundate the surface drainage flow from the adjoining properties without a proper collection system. All the work within the public right-of-way and within the paved area should comply with American Public Works Association (APWA) and City requirements as amended. The applicant shall submit a grading and erosion control permit and request an inspection of installed devices prior to any additional grading onsite. The grading and erosion control plan shall include a re-vegetation plan for all areas disturbed during construction of the subdivision. All erosion control and grading shall comply with Section 15.44 of the Municipal Code.**

DECISION

For the reasons described above, the Planning Commission voted 7 (in favor) to 0 (not in favor) to **approve** the Type III Design Review, Type III Special Variance, and Type III Conditional Use Permit with all associate conditions below.

CONDITIONS OF APPROVAL

A. Prior to any construction, grading, or earthwork the applicant shall submit the following for staff review and approval:

1. A revised landscape plan and irrigation plan detailing a 10 foot wide landscape area along the frontage of University Avenue.
2. A modified fencing detail with vertical metal fencing along all four sides of the property along with four stone pillars along University Avenue consisting of dressed fieldstone to provide elements of Sandy Style architecture.
3. A modified site plan detailing the parking space at 22 foot by 10 foot to account for the size of utility vehicles.
4. If lighting is proposed, the applicant shall submit a photometric plan and lighting cut-sheets detailing any proposed lighting that is full cut-off, does not exceed 0.25 foot candles at 10 feet beyond the property line, and does not exceed 4,125 Kelvins.
5. Construction plans to the Public Works Department. Contact the Public Works Director, Mike Walker, to determine submittal requirements.
6. A grading and erosion control permit. Contact the Permit Technician II, Noryne Robinson, to determine submittal requirements.

7. A building permit for onsite items that require a building permit. Contact the Building Official, Terre Gift, to determine submittal requirements.

B. General Conditions of Approval

1. Design review approval shall be void after two (2) years from the date of the Final Order unless the applicant has submitted plans for building permit approval.
2. All required improvements shall be installed or financially guaranteed prior to final occupancy.
3. Request and obtain an approved inspection of installed devices prior to any onsite grading. The grading and erosion control plan shall include a re-vegetation plan for all areas disturbed during construction. All erosion control and grading shall comply with Section 15.44 of the Municipal Code.
4. Land use approval does not connote utility or public improvements plan approval which will be reviewed and approved separately upon submittal of public improvement construction plans.
5. The applicant shall provide street address numbers measuring a minimum of six (6) inches high, which clearly locates the facility. The applicant shall verify the location(s) of the address with the Building Official and emergency service providers.
6. All landscaping shall be continually maintained, including necessary watering, weeding, pruning and replacing.
7. All street trees shall be a minimum of 1.5-inches in caliper measured 6 inches above the ground and shall be planted per the City of Sandy standard planting detail. All street trees shall be staked and tied with loose twine so as not to damage the trunk; the twine shall be removed after one growing season (or a maximum of 1 year). The applicant shall revise the submitted tree planting detail to meet the City of Sandy standard planting detail.
8. All on-site earthwork activities including any retaining wall construction shall follow the requirements of the most current edition of the Oregon Structural Specialty Code (OSSC). If the proposal includes a retaining wall, the applicant shall submit additional details on the proposed retaining wall for staff review and approval. The earthwork activities shall be observed and documented under the supervision of a geotechnical engineer.
9. Site grading shall not in any way impede, impound, or inundate the surface drainage flow from the adjoining properties without a proper collection system. All the work within the public right-of-way and within the paved area should comply with American Public Works Association (APWA) and City requirements as amended. The applicant shall submit a grading and erosion control permit and request an inspection of installed devices prior to any additional grading onsite. The grading and erosion control plan shall include a re-vegetation plan for all areas disturbed during construction of the subdivision. All erosion control and grading shall comply with Section 15.44 of the Municipal Code.



Jerry Crosby
Planning Commission Chair

RIGHT OF APPEAL

A decision on a land use proposal or permit may be appealed to the City Council by an affected party by filing an appeal with the Director within twelve (12) calendar days of notice of the decision. Any person interested in filing an appeal should contact the city to obtain the form, “*Notice of Appeal*”, and Chapter 17.28 of the Sandy Development Code regulating appeals. All applications for an appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

An application for an appeal shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision;
2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings;
3. The specific grounds relied upon for review;
4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Chapter 17.28.50; and,
5. Payment of required filing fees.