

**FINDINGS OF FACT and FINAL ORDER
TYPE II ADJUSTMENT**

DATE: December 10, 2020

FILE NO.: 20-047 ADJ

APPLICANT/OWNER: Lennar Northwest, Inc.

LOCATION: 38463 Maple Street

LEGAL: T2S R4E Section 24BC Tax Lot 21400 (Lot 10, Marshall Ridge subdivision)

DECISION: Approved with conditions

EXHIBITS:

Applicant's Submission

- A. Land Use Application
- B. Narrative
- C. Site Plan

Additional Documents Submitted by Staff

- D. Marshall Ridge Tree Covenant (Clackamas County Document #2019-75523)
- E. Summary of Tree Retention Accounting
- F. Arborist Report (Tree Protection for Home Construction at Marshall Ridge Subdivision)

FINDINGS OF FACT

1. These findings are based on the applicant's submittal received on November 13, 2020. This application was deemed complete on November 24, 2020.
2. The applicant requests a Type II Adjustment to Section 17.34.30(E) and Section 17.54.80 to reduce the required side yard setbacks on both side yards from 7.5 feet to 6.6 feet (a 12 percent reduction) at 38463 Maple Street (Lot 10 of the Marshall Ridge subdivision). The reduced setback will allow construction of a 40 foot wide home on the lot.
3. The submitted site plan (Exhibit C) details the subject property at 53.2 feet wide with a 40 foot wide house footprint and two 6-foot-7-inch wide side yard setbacks. Both the land use application (Exhibit A) and narrative (Exhibit B) state the applicant is requesting to reduce the side yard setback by 1 foot on each side, from 7.5 feet to 6.5 feet (or 6-feet-6-inches). Thus, the materials submitted by the applicant are not consistent and the dimensions do not add up to the total lot width of 53.2 feet. Staff reviewed the math and determined that the applicant is requesting a 0.9 foot reduction to the required side yard

setback, from 7.5 feet to 6.6 feet (or 6-feet-7.2-inches). Two 6.6 foot side yard setbacks plus a 40 foot wide house footprint adds up to 53.2 feet.

4. Notification of the proposal was mailed to property owners within 300 feet of the subject property and affected agencies on November 24, 2020. No comments were received.

Chapter 17.34 – Single-Family Residential (SFR)

5. The subject property is zoned SFR, Single-Family Residential.
6. Section 17.34.30(E) contains setback requirements for the SFR zoning district; however, the subject lot was platted within the Marshall Ridge subdivision, which is located within the Bornstedt Village Overlay (BVO) district and, therefore, subject to the residential development standards of Section 17.54.80. Both Sections 17.34.30(E) and 17.54.80 require 7.5 foot interior side yard setbacks. The applicant is requesting a Type II Adjustment to reduce the required side yard setback for both side yards from 7.5 feet to 6.6 feet.

Chapter 17.54 – Specific Area Plan Overlay

7. The subject property is located in the Bornstedt Village Overlay (BVO) district and is therefore subject to the BVO development standards. Section 17.54.80 contains the residential development standards for properties in the BVO. The minimum required interior side yard setback in the SFR zone is 7.5 feet. The applicant is requesting a Type II Adjustment to reduce the required side yard setback for both side yards from 7.5 feet to 6.6 feet.

Chapter 17.66 – Adjustments and Variances

8. The applicant is requesting an adjustment to the side yard setbacks to allow construction of a 40 foot wide home. The proposed side yard setbacks are 6.6 feet, which is a 0.9 foot or 12 percent reduction from the required 7.5 foot side yard setback and can thus be processed as a Type II Adjustment.
9. The Type II Adjustment procedure allows the Director to grant or deny an adjustment request that involves only the expansion or reduction of a quantifiable provision of the Sandy Development Code by not more than 20 percent.
10. Adjustment Criteria A. The reduction to side yard setbacks will not be contrary to the purposes of the Sandy Development Code, the policies of the Comprehensive Plan, or any other applicable policies and standards adopted by the City. Typically, six feet of separation would be required between structures for fire purposes. Criteria A is met.
11. Adjustment Criteria B. The reduction to side yard setbacks will not substantially reduce the amount of privacy enjoyed by the residents of neighboring structures. No surrounding property owners shall be encumbered by the structure being 0.9 feet closer to the side property lines. Criteria B is met.

12. Adjustment Criteria C. The reduction to side yard setbacks will not adversely affect existing physical systems and natural systems such as traffic, drainage, dramatic landforms or parks. Public and private utilities will not be affected by the setback adjustment. The narrative (Exhibit B) states that the 40 foot wide plan will provide a better use of the lot by providing more back yard and a structure that is not as close to the protected rear-yard trees on the adjacent lot to the west (Lot 9). The site plan (Exhibit C) details a tree protection area in the rear yard for the two protected trees on Lot 9. Per the tree covenant (Exhibit D) and summary of tree retention accounting (Exhibit E) for Marshall Ridge subdivision, the two retention trees on Lot 9 are Tree #2573 (a 51-inch DBH Douglas fir in good condition) and Tree #2574 (a 39-inch DBH Douglas fir in good condition). The proposed deck is located partially inside of the tree protection area for the two retention trees and the proposed house is located directly adjacent to the tree protection area. It is unclear whether the tree protection fencing detailed on the site plan is located at the outer edge of the critical root zone (1 foot per 1 inch DBH); however, it does not appear that the fencing is 51 feet from Tree #2573 or 39 feet from Tree #2574 and thus it is possible that both the deck and the house are proposed to be located within the critical root zones of Trees #2573 and 2574. The developer of the Marshall Ridge subdivision hired the project arborist (Todd Prager of Teragan & Associates) to prepare a report (dated July 1, 2020) addressing tree protection guidelines for home construction (Exhibit F). **The applicant shall follow all recommendations contained in the arborist report (Exhibit F) including, but not limited to, the following:**

- **Care will need to be taken to not contact or otherwise damage the crowns of trees that may extend into the construction area. If pruning of trees is required, it shall be the minimum required to achieve the pruning objectives in accordance with ANSI A300 pruning standards. Pruning shall be approved by the project arborist and pruning shall be completed by an ISA certified arborist.**
- **No grade changes, or cut and fill are permitted within the tree protection zones.**
- **The project arborist shall be notified prior to the cutting of woody roots from trees that are to be retained to evaluate and oversee the proper cutting of roots with sharp cutting tools.**
- **Deck posts may be constructed within the tree protection zones according to the following guidelines:**
 - **Post holes shall be hand dug within the tree protection zones and adjusted as needed to avoid roots greater than 2-inches in diameter. Tree protection fencing may be temporarily opened for the purpose of placing the deck posts.**
 - **If 2-inch diameter roots cannot be avoided, the project arborist shall be consulted to determine if the roots can be pruned without significant impacts to tree health or structural stability.**
 - **No heavy equipment, trash disposal, or dumping of waste is permitted within the tree protection zones during deck or house construction.**
 - **A 12-inch layer of wood chips over geotextile fabric shall be placed and maintained over foot traffic access routes within the tree protection zones to prevent soil compaction if there will be repeated foot traffic for deck**

construction. The fabric and wood chips shall be removed by hand (no heavy machinery) when construction is completed. Alternative measures to prevent soil compaction within the tree protection zones may be approved by the project arborist if requested.

With the additional tree protection measures, Criteria C can be met.

13. Adjustment Criteria D. Criterion D states: “Architectural features of the proposed development will be compatible to the design character of existing structures on adjoining properties and on the proposed development site.” The applicant is requesting a reduction to the side yard setbacks so that they can construct a new 40 foot wide home. A building permit will need to be submitted to construct the proposed home, which will need to be designed in accordance with the Sandy Style residential design standards in Section 17.90.150. Criteria D is met.

DECISION

The applicant's request for a Type II Adjustment to the side yard setbacks is **approved with conditions** in conformance with the criteria outlined in the Sandy Development Code, Section 17.66.40. The applicant is permitted to reduce both side yard setbacks to 6.6 feet at 38463 Maple Street. All conditions of approval shall be met.

CONDITIONS OF APPROVAL

1. The applicant shall obtain the appropriate permits from the City of Sandy and Clackamas County prior to construction of the residential dwelling.
2. The applicant shall follow all recommendations contained within the arborist report (Exhibit F) including, but not limited to, the following:
 - Care will need to be taken to not contact or otherwise damage the crowns of trees that may extend into the construction area. If pruning of trees is required, it shall be the minimum required to achieve the pruning objectives in accordance with ANSI A300 pruning standards. Pruning shall be approved by the project arborist and pruning shall be completed by an ISA certified arborist.
 - No grade changes, or cut and fill are permitted within the tree protection zones.
 - The project arborist shall be notified prior to the cutting of woody roots from trees that are to be retained to evaluate and oversee the proper cutting of roots with sharp cutting tools.
 - Deck posts may be constructed within the tree protection zones according to the following guidelines:
 - Post holes shall be hand dug within the tree protection zones and adjusted as needed to avoid roots greater than 2-inches in diameter. Tree protection fencing may be temporarily opened for the purpose of placing the deck posts.
 - If 2-inch diameter roots cannot be avoided, the project arborist shall be consulted to determine if the roots can be pruned without significant impacts to tree health or structural stability.

- No heavy equipment, trash disposal, or dumping of waste is permitted within the tree protection zones during deck or house construction.
 - A 12-inch layer of wood chips over geotextile fabric shall be placed and maintained over foot traffic access routes within the tree protection zones to prevent soil compaction if there will be repeated foot traffic for deck construction. The fabric and wood chips shall be removed by hand (no heavy machinery) when construction is completed. Alternative measures to prevent soil compaction within the tree protection zones may be approved by the project arborist if requested.
3. The City may revoke this Type II Adjustment if conditions of approval are not met. Approval does not grant authority for the unrestricted use of the structure or site.



Emily Meharg
Senior Planner

RIGHT OF APPEAL

A decision on a land use proposal or permit may be appealed to the Planning Commission by an affected party by filing an appeal with the Director within twelve (12) days of notice of the decision. The notice of 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.