

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

DATE: November 9, 2022

FILE NO.: 22-040 ADU/ADJ

PROJECT NAME: 15226 Birch Avenue ADU and Rear Yard Setback Adjustment

APPLICANT/OWNER: John Fouch, FBC Properties LLC

LOCATION: 15226 Birch Avenue

LEGAL: T2S R4E Section 11AC Tax Lot 3800 (Lot 14, Jewelberry Meadows subdivision)

The above-referenced proposal was reviewed as an accessory dwelling unit (ADU) with a Type II Adjustment. The following exhibits, findings of fact, and conditions (bold text) explain the proposal and the conditions of approval.

EXHIBITS:

Applicant's Submission

- A. Land Use Application
- B. Narrative
- C. Site Plan
- D. ADU Plan and Elevations

FINDINGS OF FACT

1. These findings are based on the applicant's submittal received on September 28, 2022, with additional items received on October 18, 2022. This application was deemed complete on October 24, 2022.
2. This land use application is not subject to the moratorium on development adopted by Resolution 2022-24 because it was submitted prior to the effective date of the moratorium.
3. The applicant requests an accessory dwelling unit (ADU) review and a Type II Adjustment to Section 17.34.30(E) to reduce the required rear yard setback from 20 feet to 16 feet (a 20 percent reduction) at 15226 Birch Avenue (Lot 14 of the Jewelberry Meadows subdivision). As stated in the application (Exhibit A), the reduced setback will allow the applicant's client's mother, who is limited in mobility, to be as close as possible to the alley and as far away from the main house as possible.

4. The Jewelberry Meadows Subdivision was previously reviewed and approved as File No. 19-018 SUB. **All conditions of approval for File No. 19-018 SUB shall be met.**
5. Notification of the proposal was mailed to property owners within 300 feet of the subject property on October 25, 2022. No comments were received.
6. There aren't currently any structures on the subject lot of record, though there are plans to construct a single-family home. The ADU is proposed to be a detached ADU located at the rear of the lot. **The proposed ADU shall be addressed separately from the primary dwelling for emergency services identification. The address shall be identified from both Birch Avenue and the alley. The applicant shall pay the addressing fee.**
7. **Construction of an ADU requires a building permit and shall adhere to the Oregon Building codes for structural, plumbing, electrical, and mechanical requirements. The applicant shall obtain a building permit from the City of Sandy prior to construction of the single-family home and ADU. The applicant shall follow all requirements of the building permit.** As explained in the moratorium resolution, during the time that Resolution 2022-24 is in effect, the Development Services Department will limit any new connections to the City's sanitary sewer system to 120 equivalent residential units (ERUs). The Department shall not issue building permits or other permits that in total would allow more than 120 new connections to the City sanitary sewer system. For purposes of this limitation, a connection is deemed to be the equivalent of a single-family dwelling. An ADU is 0.7 of an ERU. ERU allotment for each building permit is locked in once the City of Sandy has issued the building permit, not at time of building permit submission. Per Section 17.74.70(D.3), construction permit fees shall be based on the same fee schedule as a single-family dwelling. The applicant is proposing to build the ADU concurrently with construction of the primary residence, as permitted by Section 17.74.70(D.4).
8. The ADU requires payment of System Development Charges (SDCs). **SDCs for the ADU shall be calculated on the City's current practice for detached ADUs. The applicant shall be required to pay all SDCs at time of building permit issuance.**

Chapter 17.34 – Single-Family Residential (SFR)

9. The subject property is zoned SFR, Single-Family Residential.
10. Section 17.34.30(E) contains setback requirements for the SFR zoning district, including a required minimum 20-foot rear setback. The applicant is requesting a Type II Adjustment to Section 17.34.30(E) to reduce the required rear yard setback from 20 feet to 16 feet, which is discussed further in Chapter 17.66 of this document.

Chapter 17.66 – Adjustments and Variances

11. The applicant is requesting an adjustment to the rear yard setback. The proposed rear yard setback is 16 feet, which is a 4-foot, or 20 percent, reduction from the required minimum 20-foot rear yard setback and thus can be processed as a Type II Adjustment.

12. 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.
13. Adjustment Criteria A. Criterion A states: “The proposed development will not be contrary to the purposes of this chapter, policies of the Comprehensive Plan, and any other applicable policies and standards adopted by the City.” The reduction to the rear yard setback 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. The lot will maintain a 16-foot setback to the alley. The applicant’s narrative (Exhibit B) states: “The house is proposed for my client’s elderly mother, who prefers the house be as close to the alley as possible for easy handicap access and maintain as much clearance as reasonably possible from the main house.” Criteria A is met.
14. Adjustment Criteria B. Criterion B states: “The proposed development will not substantially reduce the amount of privacy enjoyed by users of nearby structures when compared to the same development located as specified by this Code.” As stated in the narrative (Exhibit B): “Additional sideyard setback has been provided for better privacy of neighbors to the side and the ADU shall face the rear of houses across the alley. In addition, the ADU is only single level with a standard pitched roof, so not overly tall.” As detailed on the site plan (Exhibit C), the south side yard setback to the ADU is 13 feet and the north side yard setback to the ADU is 19-feet-2.4-inches. In addition, the proposed ADU maintains a 16-foot setback from the alley. Criteria B is met.
15. Adjustment Criteria C. Criterion C states: “The proposed development will not adversely affect existing physical systems and natural systems, such as traffic, drainage, dramatic land forms, or parks.” The reduction to the rear yard setback 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. There are no retention trees, wetlands, or streams on the subject lot of record. Per the narrative (Exhibit B): “The proposed future resident has just one car and drives seldomly. The house will not affect the drainage, natural systems, etc. any more than a detached garage would.” Criteria C is met.
16. 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.” As stated in the narrative (Exhibit B): “The ADU plan was created custom by the same architect as the main house and with similar design features. Both plans were designed custom to conform to this development and surrounding neighborhood.” A building permit will need to be submitted to construct the proposed home and ADU, which will both need to be designed in accordance with the Sandy Style residential design standards in Section 17.90.150. Criteria D is met.

Chapter 17.74 – Accessory Development

17. Section 17.74.70(B) contains dimensional standards for ADUs. The maximum square footage for an ADU is 720 square feet. The proposed ADU is 600 square feet in compliance with this standard. **The ADU shall not exceed 720 square feet in area.**
18. Per Section 17.74.70(B), setbacks and structure height requirements for the ADU are the same as the underlying zoning district, which is SFR. The maximum allowed height in the SFR zone is 35 feet and the minimum setbacks are as follows: 10-foot front yard, 20-foot rear yard, and 7.5-foot side yard. The proposed ADU is a single-level structure that will be located at the rear of the lot with a front yard setback of 90 feet, a south side yard setback of 13 feet, and a north side yard setback of 19-feet-2.4-inches. The applicant is requesting a Type II Adjustment to allow the rear yard setback to be 16 feet, as discussed in Chapter 17.66 of this document.
19. Section 17.74.70(B) states there is no minimum off-street parking requirement for an ADU. The applicant is proposing one 10-foot by 20-foot concrete off-street parking space for the ADU that gains access from the alley. Per the Public Works Superintendent, the submitted construction plans for the Jewelberry Meadows subdivision detail parallel parking on the west side of the alley and multiple lots with driveways on the east side of the alley across from the subject property; however, the alley is detailed at 30 feet in width, which should provide sufficient maneuvering area for vehicle access to and from driveways. There is also a second proposed driveway on the subject lot for the primary residence with access from Birch Avenue. **Both off-street parking spaces and driveways, including driveway aprons and any necessary curb cuts, will need to be designed in accordance with the requirements in the Sandy Municipal Code and Public Works Standards. Per Section 17.98.130, the parking spaces shall be paved with concrete, asphalt, or comparable surfacing, constructed to City standards.**
20. Section 17.74.70(C) contains design standards for ADUs. The ADU is located at the rear of the lot and is subordinate to the primary residence in compliance with Section 17.74.70(C.1).
21. Section 17.74.70(C.2) states that the ADU shall have a pedestrian walkway that connects the primary entrance of the ADU to the public sidewalk. The applicant submitted a site plan (Exhibit C) that does not detail a path that connects the ADU entrance to the sidewalk on Birch Ave. **The applicant shall submit a site plan that details the location of an ingress/egress path that connects the entrance of the ADU to the sidewalk on Birch Ave.** As required by Section 17.74.70(C.2), **the pedestrian walkway shall consist of materials such as concrete, asphalt, stone, brick, permeable pavers, or other materials as approved by the Director. The pedestrian walkway shall be permanently affixed to the ground with gravel subsurface or a comparable subsurface as approved by the Director.**
22. Section 17.74.70(C.3) states that an ADU may be either stick-built or a modular dwelling unit in compliance with Section 17.90.140. Per the submitted narrative (Exhibit B): “The ADU plan was created custom by the same architect as the main house and with similar

design features. Both plans were designed custom to conform to this development and surrounding neighborhood.”

23. Section 17.74.70(C.4) states that detached ADUs shall provide at least three design standards consistent with Section 17.90.150 on the street-facing façade(s) and shall provide at least ten percent windows on the ground floor elevation of the street facing façade(s). The ADU is located at the rear of the subject lot adjacent to and visible from the alley. Therefore, the applicant is proposing that the ADU face the alley rather than Birch Avenue. As detailed in the ADU plans and elevations (Exhibit D), the proposed front elevation (facing the alley) details a covered porch and windows, though it is unclear whether the covered porch meets the minimum 40 square foot area and minimum five-foot depth requirements or whether the windows occupy a minimum of 10 percent of the front façade, which is specifically required by Section 17.74.70(C.4). **The applicant shall update the front ADU elevation (facing the alley) to detail at least three (3) design elements from the list in Section 17.90.150(F). The applicant shall confirm that the front ADU elevation (facing the alley) contains at least ten percent windows on the ground floor.**
24. Section 17.74.70(C.5) states that the ADU’s primary entrance shall not be in front of the primary residence. The proposed ADU is located in the rear yard behind the primary residence and the ADU’s front door is proposed to face the rear alley.
25. Section 17.74.70(E) contains additional requirements for an ADU. Per Section 17.74.70(E.1), **the ADU shall connect to municipal water and sanitary sewer.**

DECISION

The applicant's request for an ADU and a Type II Adjustment to the rear yard setback is **approved with conditions** in conformance with the criteria outlined in the Sandy Development Code, Sections 17.66.40 and 17.74.70. The applicant is permitted to reduce the rear yard setback to 16 feet at 15226 Birch Avenue. All conditions of approval shall be met.

CONDITIONS OF APPROVAL

A. Construction of an ADU requires a building permit and shall adhere to the Oregon Building codes for structural, plumbing, electrical, and mechanical requirements. The applicant shall obtain a building permit from the City of Sandy prior to construction of the single-family home and ADU. The applicant shall follow all requirements of the building permit. The applicant shall submit the following concurrent with building permit submittal:

1. An updated site plan that details the location of an ingress/egress path that connects the entrance of the ADU to the sidewalk on Birch Avenue. The pedestrian walkway shall consist of materials such as concrete, asphalt, stone, brick, permeable pavers, or other materials as approved by the Director. The pedestrian walkway shall be permanently affixed to the ground with gravel subsurface or a comparable subsurface as approved by the Director.

2. An updated front ADU elevation (facing the alley) that details at least three (3) design elements from the list in Section 17.90.150(F).
3. Confirmation that the front ADU elevation (facing the alley) contains at least ten percent windows on the ground floor.

B. General Conditions

1. All conditions of approval for File No. 19-018 SUB shall be met.
2. The proposed ADU shall be addressed separately from the primary dwelling for emergency services identification. The address shall be identified from both Birch Avenue and the alley. The applicant shall pay the addressing fee.
3. SDCs for the ADU shall be calculated on the City's current practice for detached ADUs. The applicant shall be required to pay all SDCs at time of building permit issuance.
4. The accessory dwelling unit shall not exceed 720 square feet in area.
5. Both off-street parking spaces and driveways, including driveway aprons and any necessary curb cuts, will need to be designed in accordance with the requirements in the Sandy Municipal Code and Public Works Standards.
6. The parking spaces shall be paved with concrete, asphalt, or comparable surfacing, constructed to City standards.
7. The ADU shall connect to municipal water and sanitary sewer.
8. The City may revoke this Accessory Dwelling Unit and/or Type II Adjustment if conditions of approval are not met. Approval does not grant authority for the unrestricted use of the structure or site.
9. Approval for the construction of the ADU shall be effective for a 2-year period from the date of this letter. If substantial construction of the ADU has not taken place by the end of the 2-year period, approval for the construction of the ADU will expire. The Director may grant a 1-year extension if the applicant requests such an extension prior to expiration of the initial time limit.



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 at least the following:

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 Section 17.28.50;
5. Payment of required filing fees. Payment of required filing fees is jurisdictional and must accompany an appeal at the time it is filed;
6. The name and mailing address of the person or entity appealing the decision; and
7. List and two sets of mailing labels for property owners within 300 feet of the subject property (for appeal of a Type I decision), 500 feet of the subject property for appeal of a Type II, III, or IV decision, or 1,000 feet for appeal of an annexation request. The property owner list and labels shall be obtained from a Title Company no more than seven days prior to submitting the appeal.