

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

**DATE:** January 5, 2023

**FILE NO.:** 22-051 DR

**PROJECT NAME:** Best Western Fire Pit Seating

**APPLICANT/OWNER:** Best Western Sandy Inn OMRS LLC

**LEGAL DESCRIPTION:** Parcel 2 of Partition Plat No. 2007-037

**TAX IDENTIFICATION:** T2S R4E Section 14, Tax Lot 204

**SITUS ADDRESS:** 37465 Highway 26

The above-referenced proposal was reviewed as a Type I Design Review. The following exhibits, findings of fact, and conditions (bold text) explain the proposal and the conditions of approval.

**EXHIBITS:**

**Applicant's Submittals**

- A. Land Use Application
- B. Site Plan
- C. Email regarding landscaping (January 4, 2023)
- D. Email regarding lighting (January 4, 2023)

**Agency Comments**

- E. Sandy Fire Marshal (December 26, 2022)

**FINDINGS OF FACT**

**General**

1. These findings are based on the applicant's submittal materials received on December 22, 2022.
2. The subject site is north of Highway 26 and to the east of Kate Schmitz Avenue and contains an existing Best Western hotel.
3. The parcel has a Plan Map designation of Commercial and a Zoning Map designation of C-2, General Commercial.

4. Bobbie Wilburn submitted an application on behalf of the Best Western Sandy Inn to install a fire pit, seating area for the fire pit, and new landscaping at the southeast corner of the existing building. The proposed improvements will impact the existing bicycle rack. **The applicant shall submit details on the proposed location of the bicycle rack for staff review and approval.**
5. The Sandy Fire District Fire Marshal, Gary Boyles, submitted an email on December 26, 2022, (Exhibit E) with several comments. Mr. Boyles' conditions were as follows:
  - a. **Location of fire pit to be a minimum of 15-feet from any structure or combustible material (considerations of less than 15-feet will be considered if installed and used in accordance with the manufacturer's instruction).**
  - b. **A fire extinguisher shall be mounted near the front desk. The minimum size fire extinguisher shall be a 2A:10B:C.**
  - c. **Fire protection features such as fire hydrants or fire department connections shall not be obstructed.**
  - d. **Recreational fires are allowed year-round only under "Low Fire Danger Levels."**

#### 17.44 – General Commercial (C-2)

6. The applicant is not proposing to change the use of the site. The existing use is overnight lodging, which is a permitted outright use per Section 17.44.10(B.9.).
7. The applicant is not proposing any changes to setbacks or the existing building, nor the parking lot. The proposal will add a seating area, which qualifies as a civic space and includes planting of new landscaping.

#### 17.84 – Improvements Required with Development

8. Chapter 17.84 provides general information regarding improvements required in association with development. Sections 17.84.60 and 17.84.70 relate to public utilities, including storm drainage. The applicant is proposing pavers, which should allow stormwater to infiltrate naturally into the ground. **If any stormwater management is installed it shall conform to the requirements in the City of Portland Stormwater Management Manual and the requirements in Sections 13.18 and 13.20 of the Sandy Municipal Code.**

#### 17.90 – Design Standards

9. The applicant proposes to install a fire pit, seating area for the fire pit, and new landscaping at the southeast corner of the existing building. As such, the proposal is subject to all the requirements for Design Review as stated in Section 17.90.00. Because the subject property is located in the C-2 zoning district the application was reviewed for compliance with the provisions of Section 17.90.120.
10. Section 17.90.70 specifies that **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.**
11. Section 17.90.120(G) has requirements for civic space. Civic space improvements may include plazas, private extensions of sidewalks and walkways (i.e., to accommodate outdoor seating), public art, pedestrian-scale lighting, bus waiting areas, tourist amenities (e.g., way finding signs as approved by the city) or similar pedestrian amenities as approved through Design Review. The proposed fire pit and seating area qualifies as a civic space. This civic space is required to be

at least 64 square feet. **The seating area shall meet all ADA requirements for accessible routes and the fire pit shall meet the requirements of the Oregon Building, Mechanical, and Fire Codes.**

17.92 – Landscaping and Screening

12. The subject property is zoned General Commercial, C-2. Section 17.92.20 requires that a minimum of 20 percent of the site be landscaped in the C-2 zoning district. The applicant removed existing landscaping for the fire pit and seating area but is proposing some new landscaping. **If the proposed excavation is anticipated to impact existing trees on the subject property or on adjacent properties, the applicant shall consult with an ISA Certified Arborist and follow their recommendations to minimize negative impact to the trees. Any future tree removal shall require additional permit approvals.** In accordance with Section 17.92.10 (F) up to 35 percent of the total required landscaped area may be developed into pedestrian amenities, including, but not limited to sidewalk cafes, seating, water features, and plazas, as approved by the Director or Planning Commission. The fire pit and seating area qualifies as a pedestrian amenity.
13. Section 17.92.40 requires that all landscaping be irrigated, either with a manual or automatic system. The applicant did not submit an irrigation plan. **Prior to any work at the subject site, the applicant shall submit details on the proposed irrigation system for review and approval by City staff. As required by Section 17.92.140, the applicant shall maintain all vegetation planted in the development and shall replace any dead or dying plants during that period. As required by Section 17.92.10(L), all landscaping shall be continually maintained, including necessary water, weeding, pruning, and replacing.**
14. Section 17.92.50 specifies the types and sizes of plant materials for landscaping areas. The development code requires that all deciduous trees shall be at least 1.5 inches caliper and all coniferous trees shall be a minimum of 5 feet in height at planting. All shrubs/plants are required to be a minimum of 1 gallon in size or 2 feet in height at planting. City staff received an email (Exhibit C) stating the proposed landscaping is the following:
  - 6 - Euyonmus greenspire - 3 gallon
  - 3 - Swordfern - 1 gallon
  - 3 - Nandina gulfstream - 3 gallon
  - 1 - Mountain hemlock - 10 gallon
  - 3 - Hamelin "little bunny" - 1 gallon
  - 1 - Miss Kim lilac - 3 gallon
  - 18 - Liriope "big blue" - 1 gallon
  - 3 - Huechera - 1 gallon
  - 10 - Portuguese laurel - 7 gallon

Portuguese laurel is a nuisance species and is toxic if burned or ingested. **The applicant shall not plant Portuguese laurel. The applicant shall submit a landscape plan detailing the placement of all proposed landscaping at the appropriate sizes per Section 17.92.50, and with a replacement for Portuguese laurel. All trees shall be planted per the City of Sandy standard planting detail. If the trees are staked, the ties shall be loose twine so as not to damage the trunk; the twine shall be removed after one growing season (or a maximum of 1 year).**

### 15.30 – Dark Sky Ordinance

15. Chapter 15.30 contains the City of Sandy’s Dark Sky Ordinance, which regulates outdoor lighting in order to reduce or prevent light pollution. The Dark Sky ordinance requires that all new lighting be full-cutoff and downward facing. City staff received an email (Exhibit D) stating the proposed lighting as follows: “We plan to install a total of 4 low voltage lights - 2 under each side of the seats around the firepit area for safety so you can see the seating before you sit down at night time as there's not a lot of light in the area at night time.” **The applicant shall submit a photometric analysis and lighting fixture cut sheets for staff review and approval; proposed lighting shall comply with Dark Skies requirements (including downward facing, full-cutoff lights that do not exceed 4,125 Kelvins).**

### 15.44 – Erosion Control Regulations

16. All erosion control and grading shall comply with Section 15.44 of the Municipal Code. **If the area impacted for this project exceeds 1,000 square feet, then a grading and erosion control permit is required. 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. Site grading shall not in any way impede, impound, or inundate the surface drainage flow from the adjoining properties without a proper collection system.**

## **DECISION**

For the reasons described above, the request by Best Western Sandy Inn OMRS LLC to install a fire pit, seating area, and landscaping is hereby **approved as modified by the conditions of approval listed below.**

## **CONDITIONS OF APPROVAL**

- A. If the area impacted for this project exceeds 1,000 square feet, then a grading and erosion control permit is required.**
- B. The applicant shall contact the Building Division to determine the appropriate trade permits required for this project. The applicant shall contact the Fire Marshal regarding the location of the fire pit. The fire pit shall be a minimum of 15-feet from any structure or combustible material (considerations of less than 15-feet will be considered if installed and used in accordance with the manufacturer's instruction).**
- C. Prior to any additional work at the subject site, the applicant shall submit the following information to City staff for review and approval:**
  - 1. The proposed location of the bicycle rack.
  - 2. An irrigation plan detailing the proposed irrigation system.

3. A landscape plan detailing the placement of all proposed landscaping at the appropriate sizes per Section 17.92.50, and with a replacement for Portuguese laurel.
4. A photometric analysis and lighting fixture cut sheets; proposed lighting shall comply with Dark Skies requirements (including downward facing, full-cutoff lights that do not exceed 4,125 Kelvins).
5. Written confirmation from the Fire Marshal that the fire pit location is approved.

**D. The applicant shall install all landscaping, and other site improvements as detailed in this final order, including the approvals that occur in Conditions B and C, above.**

**E. 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. The seating area shall meet all ADA requirements for accessible routes and the fire pit shall meet the requirements of the current Oregon Building, Mechanical, and Fire Codes.
3. A fire extinguisher shall be mounted near the front desk. The minimum size fire extinguisher shall be a 2A:10B:C.
4. Fire protection features such as fire hydrants or fire department connections shall not be obstructed.
5. Recreational fires are allowed year-round only under "Low Fire Danger Levels."
6. If any stormwater management is installed it shall conform to the requirements in the City of Portland Stormwater Management Manual and the requirements in Sections 13.18 and 13.20 of the Sandy Municipal Code.
7. Any trees that are planted shall be planted per the City of Sandy standard planting detail. If the trees are staked, the ties shall be loose twine so as not to damage the trunk; the twine shall be removed after one growing season (or a maximum of 1 year).
8. If the proposed excavation is anticipated to impact existing trees on the subject property or on adjacent properties, the applicant shall consult with an ISA Certified Arborist and follow their recommendations to minimize negative impact to the trees. Any future tree removal shall require additional permit approvals.
9. If additional exterior lights or replacement lighting is desired in the future, the applicant shall submit a photometric analysis and lighting fixture cut sheets for staff review and approval; proposed lighting shall comply with Dark Skies requirements (including downward facing, full-cutoff lights that do not exceed 4,125 Kelvins).
10. As required by Section 17.92.140, the applicant shall maintain all vegetation planted with the development and shall replace any dead or dying plants. As required by Section 17.92.10(L), all landscaping shall be continually maintained, including necessary water, weeding, pruning, and replacing.

11. 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.
12. Site grading shall not in any way impede, impound, or inundate the surface drainage flow from the adjoining properties without a proper collection system.
13. Successors-in-interest of the applicant shall comply with site development requirements prior to the issuance of building permits.
14. Comply with all other conditions or regulations imposed by the Sandy Fire District, or state and federal agencies. Compliance is made a part of this approval and any violations of these conditions and/or regulations may result in the review of this approval and/or revocation of approval.



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Kelly O'Neill Jr.  
Development Services Director

## **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 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.