

FINDINGS OF FACT and FINAL ORDER TYPE I LAND USE DECISION

ISSUANCE DATE:	October 6, 2023
FILE NO.:	23-037 DR
PROJECT NAME:	39600 Evans Street Duplex (Type I Review)
APPLICANT/OWNER:	Roger and Dawn Sayles
ADDRESS:	39600 Evans Street
TAX LOT:	24E13DC00246
ZONING DESIGNATION:	R-3 (High Density Residential)
COMP. PLAN DESIGNATION:	High Density Residential
STAFF CONTACT:	Patrick Depa, Senior Planner

BACKGROUND:

In February 2023, the former single-family dwelling at 39600 Evans Street had structural damage due to a fire and has since been demolished. In June 2023, the property owners started to explore the process of rebuilding on the subject lot. Since the zoning designation of the subject lot is R-3 (High Density Residential) they decided to increase the density.

The R-3 zoning district allows for a range of 10-20 dwelling units per acre. The subject property is .23 acres in size and therefore can accommodate 2-5 dwelling units per acre. On June 29, 2023, the property owner set up a pre-application conference with the City and proposed redeveloping the site by building two duplex structures, increasing the number of dwelling units from one (1) to four (4) units.

However, the City is under a moratorium (Resolutions 2022-24 and 2023-07) limiting new sanitary sewer connections and increased sanitary sewer flows. The City has outgrown the decades-old wastewater system and has negotiated a path forward with the Oregon Department of Environmental Quality (DEQ) and the United States Environmental Protection Agency (EPA). To comply with state and federal regulatory requirements, the City is improving infrastructure prior to allowing certain new development and subsequent sewer connections.

The City is currently conducting stress tests of the sanitary sewer treatment system, which will determine how much additional capacity has been created. After the stress tests occur, the City's ability to accept new applications with sanitary sewer connections could resume based upon the amount of additional connection capacity determined by the stress tests. The City will continue repair and upgrade projects to expand sewer system capacity for the foreseeable future.

Due to the moratorium, new sanitary sewer connections cannot be made, and additional flows cannot be allowed; however, the City is allowing duplexes on existing lots of record. So, during the moratorium the maximum number of dwelling units that can be constructed on the subject property is two (2) units. Although the applicant can only build two dwelling units at this time, they have applied to build four dwelling units with two dwelling units to be built at a later date. Prior to constructing the two additional units the applicant will have to complete a partition of the

subject lot as the submitted design is not for multifamily dwellings. Unfortunately, the moratorium does not allow for partitions that create new buildable lots at this time.

The City has informed the applicant that if they want to divide the duplex into individual lots in the future in accordance with Senate Bill 458 then each side of the duplex shall have separate utility services. Senate Bill 458 partition standards are in Section 17.100.50, middle housing land divisions.

An application to build a duplex on a single lot of record falls under a Type I Design Review. A Type I Design Review is an administrative review therefore, notification to surrounding property owners is not required. However, a two-week review period was given for agency comments. The agency comments have been incorporated into this review.

The following exhibits, findings of fact, and conditions (bold text) explain the proposal and the conditions of approval.

EXHIBITS:

Applicant Submittals

- A. Land Use Application Form
- B. Site Plan & Landscape Plan
- C. Architectural Plans (Elevations & Floor Plan)
- D. Erosion Control Plan
- E. Stormwater Report

Agency Comments:

- F. Public Works Comments
- G. Sandy Net Comments

FINDINGS OF FACT

Chapter 17.40 – High Density Residential (R-3) Zoning District

1. The applicant proposes to replace an existing single-family home with two duplex structures, totaling four (4) units which is permitted in the R-3 zoning district.
2. Section 17.40.30 details the development standards for the R-3 zoning district. The proposed layout of both buildings meets all the setback and height requirements of the district.
3. A Multi-family dwelling is defined as at least three dwelling units in any vertical or horizontal arrangement, located on a lot or development site. An existing dwelling may be utilized as part of a multi-family dwelling when redevelopment of the site occurs and does not have to be attached to another structure. Section 17.100.40 contains the requirements

for minor partition, major partitions, and replats. **To avoid the requirements under the multi-family design provisions, the applicant shall follow the requirements of Section 17.100.40, apply for the partition, create a survey, and meet all the required criteria to create two lots. The building permit for the second duplex cannot be issued until the partition application is submitted, approved, and recorded. The partition cannot be applied for until the sanitary sewer moratorium is repealed, expires, or is modified to allow partitions.**

5. Section 17.40.40 requires the improvements on the site to connect to municipal services including water and sanitary sewer. The applicant did not submit a Utility Plan but details that they will connect their sanitary sewer line into the existing main that runs along the west property line on the adjacent property. The submittal does not state how they will replace the water services to the four new units. Water services will have to be adequately sized to accommodate the increase from one to four dwellings. Each duplex will have to be located on a separate lot and therefore will require separate utility services. **The applicant shall submit a Utility Plan detailing any proposed changes to the utility connections. A larger water line and meter size shall require additional SDCs. Payment of SDCs and parks fee in-lieu will be required for one of the dwelling units with the first duplex and for both units with the second duplex. The house that was demolished will have SDC credits.**

Chapter 17.84 – Improvements Required with Development

6. **The applicant shall apply for and receive approval for a grading and erosion control permit in conformance with City standards detailed in Section 15.44 of the Municipal Code.**
7. **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.
8. **Sanitary Sewer. The Assistant Public Works Director (Exhibit F) reviewed the application for sanitary sewer connections and needs additional information. The applicant shall provide further detail on proposed sewer connection for the initial duplex. Confirm that the sewer lateral to be placed on the adjacent property is within a sewer easement. If it is not, an easement shall be recorded for any portion of the lateral outside of the easement. The future duplex will require its own lateral connection to the sewer main. This lateral will require an easement through the western property.**

9. Water. The Assistant Public Works Director (Exhibit F) reviewed the application for water connections and needs additional information. **To divide this lot, the water meter shall be moved west to be on the same property as the duplex. The second duplex will require its own meter in association with the future lot that is created by partition.**
10. Stormwater. The Assistant Public Works Director (Exhibit F) reviewed the application for stormwater and needs additional information. The applicant's site plan (Exhibit B) details the location of a soakage trench along the south property line. **The applicant shall submit additional details for stormwater swale overflow to be reviewed and approved by staff.**
11. Each lot is required to manage the stormwater runoff it generates on the same lot to the maximum extent feasible (for new construction and redevelopment). If the new development and/or redevelopment activities create or replace 500 square feet or more of impervious area on the property or in the right-of-way, the applicant shall submit a detailed stormwater management plan to be reviewed and approved by the Public Works Director, or her designee, per the standards of Subsection 13.18 and the City of Portland Stormwater Management Manual methods.
12. The applicant is adding an additional 3,848 square feet of impervious surface which triggered the requirement of a stormwater report and management plan. To manage onsite stormwater, the applicant is proposing to install a soakage trench to address the containment of run off from all impervious surfaces. The containment trench is sized to accommodate the stormwater runoff from the site. **Final drawings and calculations shall be reviewed and approved by the City engineer. All site runoff shall be detained such that post-development runoff does not exceed the predevelopment runoff rate for the 2, 5, 10 and 25 year storm events. Stormwater quality treatment shall be provided for all site drainage per the standards in the City of Portland Stormwater Management Manual (COP SWMM).**
13. Section 17.84.20 contains standards for timing of improvements. **All improvements required by the standards in Chapter 17.84 shall be installed concurrently with development. Where a land division is not proposed, the site shall have required public and franchise utility improvements installed or financially guaranteed in accordance with the provisions of Chapter 17 prior to temporary or final occupancy of structures.**
14. Section 17.84.30 contains pedestrian requirements. The subject property abuts an improved street that has curb and sidewalk but no defined planter strip. **Due to the demolition of the former single-family home and installation of new driveways and utilities the entire curb and frontage sidewalk along Evan's Street shall be replaced. The new sidewalk will be a curb tight sidewalk to match the existing sidewalk in both directions.** In addition, new and upgraded water and sanitary sewer connections may involve a connection to the infrastructure in the Evan's Street right-of-way that would require saw

cutting where the sidewalk is to be installed. This will avoid saw cutting the sidewalk for water and sewer connections when the second duplex is built.

15. Per Section 15.20.020 (B), “No building permit shall be issued for remodeling, alteration or addition to any building or structure when the estimated cost of the remodeling, alteration or addition exceeds 50 percent of the value of the building or structure before such remodeling, alteration or addition is commenced on any lot which is not served by underground utilities, unless the applicant agrees to construct equipment and related facilities to accept and receive all underground utility lines which shall serve the building or structure, including but not limited to those required for all electric communication and cable TV services in conjunction with the construction activity related to the building permit.” **The applicant shall place all utility lines underground in compliance with Section 15.20.020(B).**
16. More specifically, SandyNet (Exhibit G) will require that the applicant extend the existing service at the west end of the site to the east end of the site terminating at a new terminal. Each unit should have a dedicated conduit going to either the existing west pedestal or the new proposed east pedestal. **Before burying the mainline and drop conduit, SandyNet shall be notified to inspect and verify that the pipe is placed to meet SandyNet infrastructure requirements.**

Chapter 17.86 – Parkland and Open Space

17. Section 17.86.10 includes minimum parkland dedication requirements and requires residential developments, including duplexes, to provide parkland to serve the residents of the development. The proposal is for four (4) duplex units. One of the duplex units is replacing the single-family dwelling that existed on the site and is therefore given credit for parkland dedication. The three new units are required to provide 0.06 acres of parkland (3 units x 3 persons/units x 0.0068 per person parkland dedication factor). Section 17.86.10(C) and 17.86.40 pertain to fee in lieu of dedication. Section 17.86.40(A-C) states that the City shall accept a fee in lieu of dedication if the land area proposed for dedication is not identified in the 2022 Parks and Trails Master Plan proposed park system or proposed trail system and if the level of service standard for mini parks described in the 2022 Parks and Trails Master Plan has been satisfied. The subject property is not a desirable location for parkland. The current fee-in-lieu amount is \$869,242.00 per acre. A payment in lieu of land dedication is separate from Park Systems Development Charges (SDCs) and is not eligible for a credit of Park SDCs. **The applicant shall pay a fee in lieu of parkland dedication in the amount of \$52,154.52 for the three units, or \$17,384.84 per unit. The fee in lieu of dedication shall be paid prior to issuance of the building permits. The first duplex will have a \$17,384.84 parks fee in-lieu assessment and the second duplex will have a \$34,769.68 parks fee in-lieu assessment.**

Chapter 17.90 – Design Standards

18. Section 17.90.10 contains the applicability of residential design standards as well as exemptions. Duplexes are exempt from all requirements of this chapter except for Section 17.90.150. Section 17.90.150 requires design elements on street facing facades based on the orientation of the structure. Section 17.90.150.E - Number of Required Design Standards, requires that the number of design elements for a primary street facing façade with no garage is four (4) elements.

The applicant has submitted architectural plans (Exhibit C) incorporating five (5) of Sandy's design elements. The five elements that are approved are the dormers greater than three feet wide, roof overhangs greater than sixteen inches, decorative gable ends on the dormers, windows in the front doors and windows and front door occupying more than ten percent (10%) of the front facade. The requirements of Section 17.90.150(E) have been met.

19. All duplex units shall have separate addresses assigned. The City Building Division assigns new addresses for a nominal fee. **The applicant shall pay addressing fees at the existing rate per the fee schedule.**

Chapter 17.92 – Landscaping and Screening

20. Chapter 17.92 contains standards for landscaping and screening. Section 17.92.10(C) states that significant plant and tree specimens should be preserved to the greatest extent practicable and integrated into the design of a development. Significant trees are defined as those that are approximately 8-inches diameter at breast height (DBH) or greater.
21. The applicant has submitted a landscape plan proposing to retain eight existing trees on site: three Douglas firs and five maples. All eight trees are a minimum of 8-inches DBH. Two of the maples being retained are located on the west side of one of the duplexes in the side yard setback. These trees will be at risk during the construction phase and may have to be removed. The City suggests that the builder should determine if removing these two trees prior to construction would be best for the homeowner to avoid them dying during or right after construction is complete. **The applicant shall request an inspection of erosion control measures and tree protection measures as specified in Section 17.102.50(C) prior to construction activities or grading. All trees being retained shall have protective fencing installed to limit damage to tree roots. The fencing shall be chain link or no jump horse fencing. The tree protection fencing and erosion control measures shall be approved by City staff prior to earthwork, grading, or excavation.**
22. Per Section 17.92.10(L), **all landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacement of dead or dying vegetation. Any areas disturbed during modification of the existing site shall be re-vegetated to pre-project condition.**

23. Per section 17.92.20, development in the R-3 zoning district is required to retain a minimum of 25 percent of landscape area on site. The applicant is proposing 60 percent. No additional information on what type of ground cover landscaping was proposed. However, three of the large maple trees and two of the large Douglas firs are located in the rear yard. The applicant is proposing four Dwarf Cranberry trees in the front yard on both sides of the proposed driveways and between the driveways.
24. Section 17.92.30 requires street trees spaced approximately 30 feet on center. The width of the lot is approximately 110 feet. **The applicant is required to install four street trees per their linear feet of street frontage. Two of the street trees proposed are an aforementioned existing Douglas Fir and a maple tree. The other two trees being proposed are Dogwoods or an equivalent. Street trees are required to be a minimum caliper of 1.5-inches measured 6 inches from grade and shall be planted per the City of Sandy standard planting detail. Trees shall be planted, staked, and the planter strip shall be graded and backfilled as necessary, and bark mulch, vegetation, or other approved material installed prior to occupancy. Tree ties shall be loosely tied twine or other soft material and shall be removed after one growing season (or a maximum of 1 year).** The street tree requirement has been met.
25. Section 17.92.40 requires that all landscaping shall be irrigated, either with a manual or automatic system. **As required by Section 17.92.140, the developer and lot owners shall be required to maintain all vegetation planted in the development for two (2) years from the date of completion, and shall replace any dead or dying plants during that period.**
26. The applicant has not indicated what will be used as groundcover on the remainder of the site. All areas outside the building footprint and other impervious surfaces shall be landscaped. **All areas of exposed soils resulting from construction or tree removal shall be replanted with a groundcover of native species within 30 days of harvest during the active growing season, or by June 1st of the following year.**
27. Section 17.92.130 contains standards for a performance bond. The applicant has the option to defer the installation of street trees and/or landscaping for weather-related reasons. Staff recommends the applicant utilize this option rather than install trees and landscaping during the dry summer months. Consistent with the warranty period in Section 17.92.140, staff recommends a two-year maintenance and warranty period for street trees based on the standard establishment period of a tree. **If the applicant chooses to postpone street tree and/or landscaping installation, the applicant shall post a performance bond equal to 120 percent of the cost of the street trees/landscaping, assuring installation within 6 months. The cost of the street trees shall be based on the average of three estimates from three landscaping contractors; the estimates shall include as separate items all materials, labor, and other costs of the required action, including a two-year maintenance and warranty period.**

Chapter 17.98 – Parking, Loading, & Access Requirements

28. The applicant is proposing to demolish the existing driveway that provided access to the single-family home and replace it with two new driveways directly in front of the proposed duplexes.
29. Section 17.98.20(A.8) indicates that a duplex is required to provide one off-street parking space per unit for a total of two (2) off-street parking spaces. The applicant is not proposing a garage at either of the proposed duplexes. Instead, the applicant is proposing to install a twenty-five foot by twenty-two foot drive/parking area in front of each duplex creating one parking space for each unit. The proposed parking areas are in compliance with the off-street parking requirements.
30. Section 17.98.130 requires all parking areas, driveways, and driveway approaches to be paved with concrete, asphalt, or comparable surfacing and be constructed to City standards for off-street vehicle areas. **The driveway approaches shall be constructed in accordance with applicable City standards and the entire driveway shall be paved with asphalt or concrete. The applicant is proposing the driveways to be 22 feet wide. Driveways shall not exceed 24 feet in width and shall not exceed a slope of 15 percent.**

Chapter 17.102 – Urban Forestry

31. Chapter 17.102, Urban Forestry, applies to properties within the Sandy Urban Growth Boundary that are greater than one acre in area, including contiguous parcels under the same ownership. The subject site is .23 acres and does not require additional review or compliance.

DECISION:

For the reasons described above, this application to replace a single-family dwelling with two duplex dwellings totaling four (4) units is **approved** subject to the conditions below.

CONDITIONS OF APPROVAL:

- A. **To avoid the requirements under the multi-family design provisions, the applicant shall follow the requirements of Section 17.100.40, apply for the partition, create a survey, and meet all the required criteria to create two lots. The building permit for the second duplex cannot be issued until the partition application is submitted, approved, and recorded. The partition cannot be applied for until the sanitary sewer moratorium is repealed, expires, or is modified to allow partitions.**
- B. **Prior to applying for a grading and erosion control permit or building/plumbing/mechanical permits, the applicant shall submit additional information as identified below:**

1. A request for new addresses and the applicable fee at the existing rate per the fee schedule.
2. Submit final drawings and calculations on the stormwater system to be reviewed by the City Engineer.
3. A revised plan set with the following modifications:
 - a. Provide further detail on the proposed sewer connection for the initial duplex. Confirm that the sewer lateral to be placed on the adjacent property is within sewer easement. If it is not, an easement shall be recorded for any portion of the lateral outside of the easement. The future duplex will require its own lateral connection to the sewer main. This lateral will require an easement through the western property.
 - b. The water meter moved west to be on the same property as the duplex.
 - c. Additional details for stormwater swale overflow.

C. Prior to earthwork, grading, excavation, or tree removal the applicant shall complete the following and receive necessary approvals as described:

1. Apply for and receive approval for all grading, erosion control, and stormwater management permits.
2. All trees being retained shall have protective fencing installed to limit damage to tree roots. The fencing shall be chain link or no jump horse fencing.
3. Request an inspection of erosion control measures and tree protection fencing.
4. If the trees are removed during prime nesting season (February 1- July 31), the applicant shall check for nests prior to tree removal. If nests are discovered, the applicant shall delay tree removal until after the nesting season or shall hire a professional to relocate the nests to an appropriate nearby location, provided the species using the nest is not invasive.

D. The applicant shall apply for and receive approval for all necessary building, plumbing, mechanical, and electrical permits prior to any construction. Contact the City Building Division for submission requirements. Electrical permits shall be coordinated with Clackamas County and/or PGE as applicable. The applicant shall complete the following prior to the issuance of building permits:

1. Pay a fee in lieu of parkland dedication in the amount of \$17,384.84 for the second unit associated with the first duplex. The second duplex will have a \$34,769.68 parks fee in-lieu assessment.

2. Payment of SDCs for the second unit associated with the first duplex. The second duplex will have associated SDCs when the building permit is issued for the second duplex. The house that was demolished will have SDC credits.
3. Remove trash and debris from the areas where stormwater management has established drainageways.

E. Prior to issuance of a certificate of occupancy the applicant shall complete the following:

1. Install required street trees, new sidewalks, new curbs, and new driveway aprons.
2. Install all required site improvements, including the stormwater facility.
3. Before burying the mainline and drop conduit, SandyNet shall be notified to inspect and verify that the pipe is placed to meet SandyNet infrastructure requirements.

F. 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 second duplex will require its own utility connections.
3. All site runoff shall be detained such that post-development runoff does not exceed the predevelopment runoff rate for the 2, 5, 10 and 25 year storm events. Stormwater quality treatment shall be provided for all site drainage per the standards in the City of Portland Stormwater Management Manual (COP SWMM).
4. All improvements required by the standards in Chapter 17.84 shall be installed concurrently with development. The site shall have required public and franchise utility improvements installed or financially guaranteed in accordance with the provisions of Chapter 17 prior to temporary or final occupancy of structures.
5. All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacement of dead or dying vegetation.
6. All areas of exposed soils resulting from construction or tree removal shall be replanted with a groundcover of native species within 30 days of harvest during the active growing season, or by June 1st of the following year.
7. Due to the demolition of the former single-family home and installation of new driveways and utilities the entire curb and frontage sidewalk along Evan's Street shall be replaced. The new sidewalk will be a curb tight sidewalk to match the existing sidewalk in both directions.

8. 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.
9. The City suggests that the builder should determine if removing two trees along the west property line prior to construction would be best for the homeowner to avoid them dying during or right after construction is complete.
10. Street trees are required to be a minimum caliper of 1.5-inches measured 6 inches from grade and shall be planted per the City of Sandy standard planting detail. Trees shall be planted, staked, and the planter strip shall be graded and backfilled as necessary, and bark mulch, vegetation, or other approved material installed prior to occupancy. Tree ties shall be loosely tied twine or other soft material and shall be removed after one growing season (or a maximum of 1 year).
11. If the applicant chooses to postpone street tree and/or landscaping installation, the applicant shall post a performance bond equal to 120 percent of the cost of the street trees/landscaping, assuring installation within 6 months. The cost of the street trees shall be based on the average of three estimates from three landscaping contractors; the estimates shall include as separate items all materials, labor, and other costs of the required action, including a two-year maintenance and warranty period.
12. The building shall be provided with approved address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property. The address shall be plainly legible and visible from the street. In addition, the address numbers shall be a minimum of 4-inches and contrasting colors.
13. The driveway approaches shall be constructed in accordance with applicable City standards and the entire driveway shall be paved with asphalt or concrete. Driveways shall not exceed 24 feet in width and shall not exceed a slope of 15 percent.
14. Land use approval does not connote approval of utility or public improvement plans submitted with the land use application. Applicable plan details will be reviewed by the City Engineer and Public Works Director.
15. Successors-in-interest of the applicant shall comply with site development requirements prior to the issuance of building permits.
16. Comply with all other conditions or regulations imposed by Clackamas County, Fire District No. 72, 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.

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 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.