

FINDINGS OF FACT and FINAL ORDER TYPE II VARIANCE

DATE:	August 14, 2026
FILE NO.:	26-037 VAR – Pedestrian Path Variance
ADDRESS:	15212 Jewelberry Avenue
APPLICATION:	Type II – Variance
APPLICANT:	RMH Bartels Construction
PROJECT NAME:	15212 Jewelberry - Pedestrian Path Variance
OWNER:	Russ Bartels
ZONING:	Single Family Residential (SFR)
MAP AND TAX LOT:	24E11AC, Tax Lot 2600
STAFF CONTACT:	Patrick Depa, Senior Planner

BACKGROUND

Jewelberry Meadows subdivision was approved under File No. 19-018 SUB and recorded March 31, 2022. The subdivision has twenty (20) lot with lots 1-5 facing Jewelberry Avenue. Jewelberry Avenue is considered a transit street. A transit street is defined as any street designated as a collector or arterial, or other streets meeting the "transit street" definition in the 2020 Sandy Transit Master Plan.

Houses constructed on lots 1-5 are subject to the requirements in Chapter 17.82 Special Setbacks on Transit Streets. The intent of Section 17.82.00 is to provide convenient, direct, and accessible pedestrian access to and from public sidewalks and transit facilities. Condition 5 under the final order File No. 19-018 SUB reads:

5. Structures on Lots 1-4 shall have their primary entrance oriented toward SE Jewelberry Avenue while Lots 10 and 20 shall have their primary entrance oriented toward Agnes Street. Lot 5 shall provide one main entrance oriented to either transit street or to the corner where two transit streets intersect.

Section 17.82.20.B. states that all residential buildings shall have at least one primary entrance oriented toward a transit street rather than a parking area, or if not adjacent to a transit street, toward a public right-of-way or private walkway which leads to a transit street. Section 17.82.20.C. states that all dwellings shall have a primary entrance connecting directly between the street and building interior. A lighted pedestrian route shall be provided to the entrance, from the transit street. The connection may not be more than 20 feet longer or 120 percent of the straight-line distance.

PROPOSAL

The applicant is requesting a variance to Section 17.82.20.C. for the construction of a pedestrian path greater than 120 percent from a direct path from the transit street sidewalk to an adjacent primary entrance. The hardship is directly related to the protection of identified retention trees. The applicant has already built a concrete pedestrian path along the north property line (see Figure 1).

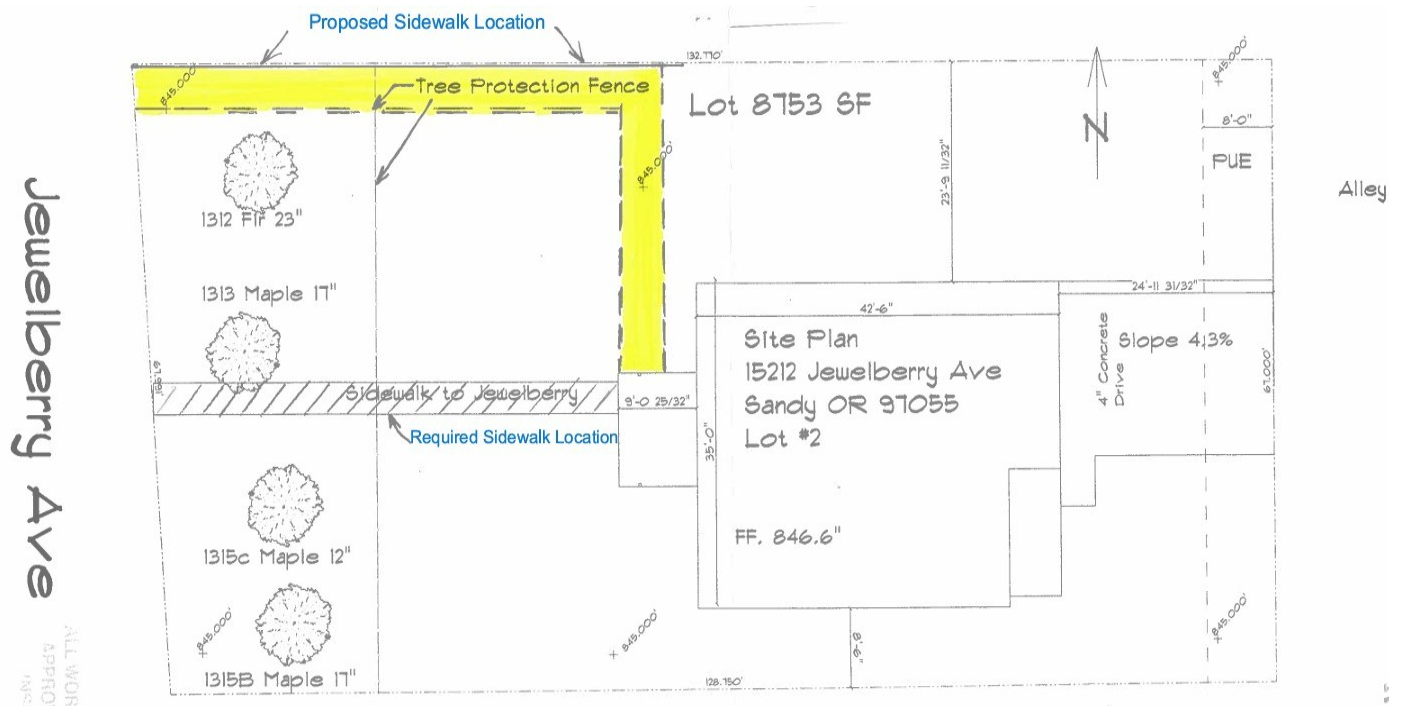


Figure 1

EXHIBITS

Applicants' Submittals:

- A. Land Use Application
- B. PNW Tree Consulting
- C. Site Plan
- D. Photos

GENERAL FINDINGS OF FACT

- Finding 1.** The developer contacted the City on July 9, 2026, asking for a final inspection and the issuance of their certificate of occupancy (C of O).
- Finding 2.** The inspection revealed that that required pedestrian path location under Section 17.82.20.C. was not met and their final C of O was denied.
- Finding 3.** The developer was presented with the options of constructing a new pedestrian path in the required location or applying for a variance to the required location. The applicant chose to apply for a variance.
- Finding 4.** The City received the application and corresponding documents from the applicant on July 16, 2026. The application was deemed complete on July 20, 2016, upon receipt of the mailing labels.

- Finding 5.** Notice was sent on July 21, 2026, to all property owners within 300 feet of the subject property. No comments were received at the time the final order was written.
- Finding 6.** The Jewelberry Meadows subdivision was previously reviewed and approved as File No. 19-018 SUB. The subject site is Lot 2 of the approved subdivision.
- Finding 7.** The approved subdivision decision conditioned the applicant to adhere to the measures outlined in their tree protection plan and record a restrictive covenant (2021-106812). There are eighteen (18) trees in the restrictive covenant with four (4) of the protected/retention trees located on Lot 2 (see Figure 2).

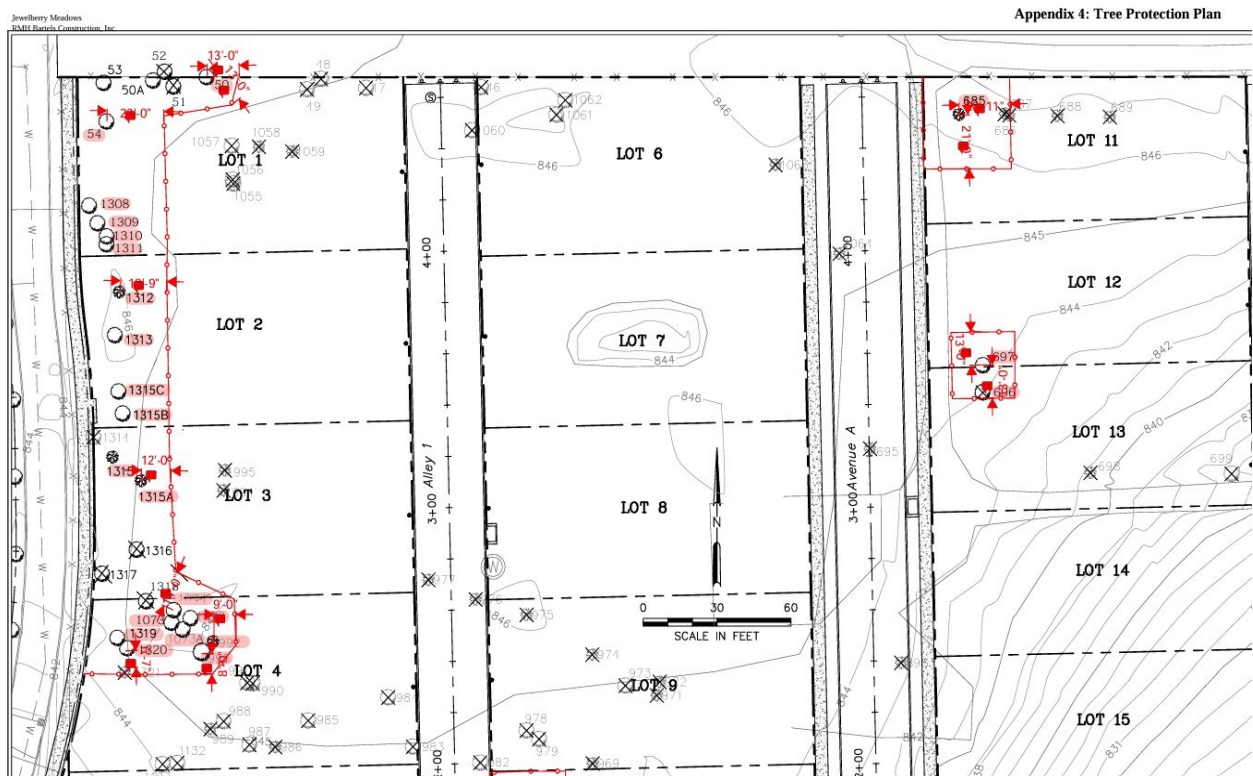


Figure 2

- Finding 8.** The subject site is approximately 8,753 square feet in size and has vehicle access from the alley on the east side of the dwelling.
- Finding 9.** The property is zoned Single Family Residential (SFR). The adjacent zoning to the north, south, east, and west are also zoned Single Family Residential (SFR).

FINDINGS APPLYING SANDY DEVELOPMENT CODE CRITERIA

CHAPTER 17.82 SPECIAL SETBACKS ON TRANSIT STREETS

Section 17.82.20. Building orientation.

- A. For the purposes of this section, a building entrance that is "oriented toward" a street or other feature shall:
 - 1. Face the street/feature or be at an angle of up to 45 degrees from the street/feature; and
 - 2. Be located within 25 feet of the street/feature.
- B. All residential buildings shall have at least one primary entrance oriented toward a transit street rather than a parking area, or if not adjacent to a transit street, toward a public right-of-way or private walkway which leads to a transit street.
- C. Dwellings shall have a primary entrance connecting directly between the street and building interior. A lighted pedestrian route shall be provided to the entrance, from the transit street. The connection may not be more than 20 feet longer or 120 percent of the straight-line distance. The pedestrian route shall consist of concrete, asphalt, stone, brick, or permeable pavers and shall be permanently affixed to the ground with gravel subsurface. Other materials may be requested as part of a discretionary review and approved by the Director.

Finding 10. The dwelling is orientated toward Jewelberry Avenue at a 90-degree angle.

Finding 11. The dwelling has a primary entrance oriented toward Jewelberry Avenue with a covered porch over nine feet in depth.

Finding 12. A pedestrian path connects the primary entrance under the porch to Jewelberry Avenue. There is a four-foot-high fence along the Jewelberry Avenue property line and the pedestrian path connects to the sidewalk in the public right-of-way via a decorative gate.

Finding 13. The covered porch is visible from Jewelberry Avenue and is architecturally blended with transom windows, two ornamental light fixtures flanking the entry, a larger door with over 50 percent transparent glazing, and columns that frame the doorway.

Finding 14. The pedestrian path, also described as a private walkway, consists of concrete paving and is permanently affixed to the ground with gravel subsurface. However, the pedestrian path between Jewelberry Avenue and the dwelling exceeds the maximum 120 percent of a straight-line connection between the two, thus requiring a variance.

CHAPTER 17.66 ADJUSTMENTS AND VARIANCES

Sec. 17.66.70. Type II and type III variance criteria. The authority to grant a variance does not include authority to approve a development that is designed, arranged, or intended for a use not otherwise approvable in the location. The criteria are as follows:

A. The circumstances necessitating the variance are not of the applicant's making.

Finding 15. The circumstances requiring the variance are not of the applicant's making but are dictated by the conditions set forth in the Jewelberry Meadows subdivision approval. The deviation from the required location is directly due to the prescribed tree protection conditioned in the final order to maintain the four (4) retention trees identified on Lot 2.

Furthermore, the arborist report states that a minimum of one tree would have to be removed and another would be at risk of root damage if the pedestrian path is installed where required. The arborist recommends allowing the pedestrian path to be relocated to the north side of the property to preserve and protect the existing trees meant to be retained. ***Criteria A is met.***

B. The hardship does not arise from a violation of this Code, and approval will not allow otherwise prohibited uses in the district in which the property is located.

Finding 16. The hardship arises from new construction and adherence to Chapter 17.102 Urban Forestry and not a violation of the code. Chapter 17.102 is intended to conserve and replenish the ecological, aesthetic, and economic benefits of urban forests, by regulating tree removal on individual properties or projects greater than one acre.

The retention trees on Lot 2 are directly adjacent to the Jewelberry Avenue right-of-way and have established root systems. According to the arborists report, the installation of a permanent concrete path on a gravel sub-base in the area of these mature trees presents a risk of root damage and the eventual decline in these trees' health. The arborist recommends allowing for the path to be moved or the installation of the path in the required area may ultimately lead to the trees dying in a short period of time.

A single-family home is a permitted use in the Single Family Residential (SFR) district and the granting of the variance will not allow a prohibited use in the SFR district. ***Criteria B is met.***

C. Granting of the variance will not adversely affect implementation of the Comprehensive Plan.

Finding 17. Granting this variance will in no way affect the overall use or implementation of comprehensive plan policies. ***Criteria C is met.***

- D. The variance authorized will not be materially detrimental to the public welfare or materially injurious to other property in the vicinity.

Finding 18. Approval of the variance request will not be materially detrimental to the public welfare but on the contrary could be beneficial to the other properties in the vicinity. The retention of these mature trees along the Jewelberry Avenue property line will create a healthier urban tree canopy and improve the aesthetic of the streetscape, acting as a physical barrier to the residential homes in the neighborhood while shielding sun exposure, relieving stormwater facilities, and dampening vehicle noise. ***Criteria D is met.***

- E. The development will be the same as development permitted under this Code and City standards to the greatest extent that is reasonably possible while permitting some economic use of the land.

Finding 19. The intent of the development code will still be maintained through the dwelling's orientation to the street and the installed location of the pedestrian path which still provides connection to the public right-of-way. The intent to provide for convenient, direct, and accessible pedestrian access to and from public sidewalks and transit facilities, and provide a safe, pleasant, and enjoyable pedestrian experience will be met (see Figures 3 and 4). ***Criteria E is met.***



Figure 3



Figure 4

- F. Special circumstances or conditions apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape (legally existing prior to the effective date of this Code), topography, or other circumstances over which the applicant has no control.

Finding 20. Lot 2, as well as all lots 1-5 in the Jewelberry Meadows subdivision, have the special circumstance of having retention trees located directly in the area where a pedestrian path is required to be installed. The decision to adjust the pedestrian path more than 120 percent of a straight-line from the right-of-way to the primary entranceway is

preferred over the removal of a healthy Doug fir over 20-inch DBH and three Big Leaf Maples all over 15-inch DBH. **Criteria F is met.**

DECISION

For the reasons described above in the findings of fact and adherence to the criteria, the variance request to construct a pedestrian path greater than 120 percent of a straight-line from the primary transit street entrance and along the north property line of 15212 Jewelberry Avenue is hereby **approved** with compliance to the conditions listed below.

CONDITIONS OF APPROVAL

A. The applicant shall contact the Building Division regarding submission requirements. Within 30 days of the issuance of this final order the applicant shall provide the Building Division the following:

1. The contractor shall provide the City an updated site plan identifying the approved pedestrian path location to be included with the 15212 Jewelberry Avenue (Lot 2) building permit package.

B. General Conditions of Approval:

1. All other conditions of approval for File No. 19-018 SUB shall be met.
2. Future tree removal from the subject property shall require additional permit approvals and if a permit is not obtained prior to removal of a tree, this violation may be subject to a fine per occurrence as specified in Section 17.06.80.
3. Tree pruning shall follow ANSI A300 pruning standards, including not removing more than 25 percent of the live crown of any tree.
4. Successors-in-interest of the applicant shall comply with requirements of this final order. In the event the applicant should sell or lease the property upon which the conditions contained in this document apply, the sale or lease will be subject to the restrictions and conditions described herein. The conditions shall run with the land and are binding on the applicant's heirs, personal representatives, successors, and assigns.

A handwritten signature in blue ink, appearing to read "Patrick Depa", is positioned above a horizontal line.

Patrick Depa, Senior Planner

RIGHT OF APPEAL

A decision on a land use proposal or permit may be appealed to the Planning Commission by a party with appeal standings 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) or 500 feet of the subject property for appeal of a Type II or Type III decision. The property owner list and labels shall be obtained from a Title Company no more than seven days prior to submitting the appeal. Note that a Type IV decision may be appealed to the Land Use Board of Appeals (LUBA) or to other tribunals in accordance with Oregon law.