

City of Portland, Oregon Bureau of Development Services Land Use Services

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FROM CONCEPT TO CONSTRUCTION

Date: March 28, 2013

To: Interested Person

From: Sheila Frugoli, Land Use Services 503-823-7817 / Sheila.Frugoli@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <u>http://www.portlandonline.com/bds/index.cfm?c=46429</u>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 13-116554 AD GENERAL INFORMATION

Applicant:	Kristin Calhoun / Regional Arts And Culture Council 411 NW Park Avenue, Suite 101 / Portland, OR 97209
Owner:	City of Portland 1120 SW 5th Ave #600 / Portland, OR 97204-1926
Site Address:	3732 SE 99TH AVE
Legal Description:	LOT 1, PARTITION PLAT 2012-13
Tax Account No.:	R649630490
State ID No.:	1S2E09DA 06603
Quarter Section:	3440
Neighborhood:	Lents, contact Cora Potter at 503-823-4550. Powellhurst-Gilbert, contact Mark White at 503-761-0222.
Business District:	Midway, contact Bill Dayton at 503-252-2017.
District Coalition:	East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.
Plan District:	Johnson Creek Basin
Zoning:	R2a, Multi-Dwelling Residential 2,000 zone and the "a", Alternative
	Design Density overlay zone
Case Type:	AD, Adjustment Review
Procedure:	Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal: The applicant is requesting an Adjustment to a required setback to install a large art piece, a Percent for Art project, at the new Emergency Coordination Center (ECC). The Adjustment request is to reduce the required setback for the accessory structure from 10 feet to zero. The location of the structure is intended to help connect the ECC to the adjacent Ed Benedict Park. The structure will be located at the southwest entrance to the park, near the new ECC parking lot.

The proposed art, called the "Heart Beacon" will be an interactive sculpture. The sculpture will consist of stainless steel columns, acrylic panels, LED lighting and heart beat sensor. When visitors enter the 18-foot tall structure, it will display, with lights and color, the heartbeats of those who lay their hands on the piece. The applicant explains that the proposed sculpture takes inspiration from the life saving mission of the ECC.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria have been met.

ANALYSIS

Site and Vicinity: The project site is located on one of the numerous tax lots that when combined, totals more than four acres of City-owned property. There is approximately 3.1 acres in the EG2 zone that is developed with the 911 Call Center Building. The balance of the site includes 37,132 square feet of additional properties in the R2 and R5 zones. The site has frontage along SE Powell Boulevard [Highway 26] to the north, SE 99th Avenue to the west, and SE Bush Street to the south. The east property line abuts the Ed Benedict Park. The City park is approximately 13 acres in size and is zoned OS, Open Space. As part of the recent Emergency Center expansion, SE Bush Street was realigned via Ordinance 185178.

Directly across SE 99th, to the west is a large parcel zoned IG2, occupied with a Tri Met facility that includes the eastside LIFT transportation dispatch and bus maintenance facility. To the south are lots and parcels in the R5 zone developed with residential uses. To the north of the site, across SE Powell are parcels zoned IG2, developed with industrial-related businesses that include auto repair, machine rental and camping trailer sales.

Zoning: The City-owned site is split zoned, with the majority zoned EG2, General Employment 2 and OS, Open Space. Additional residentially-zoned lots were acquired for the ECC project. The proposed sculpture is located within the R2, Multi-Dwelling Residential 2,000 zone. The ECC facility was approved as an Instutional Use in an R-zone, through the Conditional Use Review process.

Land Use History: City records indicate that prior land use reviews include the following:

- **LUR 92-00488 ZC CP AD:** The City Council approved a Comprehensive Plan Map Amendment from Open Space to General Employment and a Zone Change from OS to EG2, with Adjustments, in order to construct the 911 Emergency Communications facility and a radio/computer equipment maintenance shop.
- **LUR 94-00183 MS:** The Hearings Officer approved a conditional Use Master Plan for the development of a City park on 10.5 acres comprising Ed Benedict Park. Development included playgrounds, a basketball court, soccer and softball fields, an informal play field, a community garden area, picnic areas, restrooms, and a concession structure with 8 foot wide paved paths throughout the park. A 45-space parking lot near the primary vehicle access to the park, near SE 104th and SE Powell was also approved. The Conditional Use Master Plan also proposed to allow park visitors to

utilize a 39-space parking lot on the south side of the 911 site after 5 pm on weekdays and during weekends and holidays.

- **LUR 96-00871 CP ZC:** The City approved a zone mapping error that occurred during the legislative process of the Southeast Community Plan. The zone map error corrected the zoning on the 911 site from R2a back to EG2. When the zoning error was corrected, a Buffer overlay, that was applied as a Condition of Approval under LUR 92-00488 ZC CP AD was not restored. The intention of that Condition had already been met by installation of additional landscaping and larger setbacks between the southerly parking lot for the 911 facility and adjacent residentially zoned lots.
- **LU 10-167491 CU AD:** In December 2010, the Hearings Officer approved, with conditions, a Conditional Use for a public safety facility which comprises a new two-story Emergency Coordination Center building, an associated 150-foot tall radio transmission tower, and accessory parking lots; and approval of setback and landscaping Adjustments.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **February 28, 2013**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Life Safety Plan Review Section of BDS
- Portland Bureau of Transportation
- Bureau of Parks-Forestry Division

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on February 28, 2013. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below, have been met.

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The purpose statements for the setback standard are found under Section 33.120.275.A and 33.120.280.A, as follows:

- **33.120.275.A.** <u>Purpose.</u> The general base zone development standards in the R3 through RX zones are designed for residential buildings. Different development standards are needed for institutional uses which may be allowed in multi-dwelling zones. The intent is to maintain compatibility with and limit the negative impacts on surrounding residential areas.
- **33.120.280.A.** <u>Purpose</u>. This section regulates structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site. The standards provide for necessary access around structures, help maintain privacy to abutting lots, and maintain open front yard areas.

The proposed public art sculpture will be located on a City-owned institutional use site, approved as a Conditional Use. The sculpture will be located near an interior pedestrian path that connects the Ed Benedict Park facilities to the new parking lot that serves the Emergency Communication Center. The City property does not abut residential lots. SE Bush and SE 100th Avenue create

separation, at least 60 feet, between the art sculpture and the other public facilities from the private residences. The sculpture will not reduce the level of privacy currently afforded the nearby homes.

The Regional Arts Council representative states that the electrical feed to the interactive sculpture can be set to a timer and/or adjusted as needed. In order to maintain compatibility with, and to limit the negative impacts on surrounding residential areas, a condition will require the electrical feed to the sculpture be turned off during the hours when the park is "closed". The current park hours are 5 am to midnight.

Through compliance with the condition, the proposal will satisfy this approval criterion.

B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: As described above, the sculpture will be located at least 60 feet from the closest residence. It will be located on a site that generates significant day time activities—recreation and governmental emergency management. In order to reduce potential negative impacts during nighttime, a condition will require the interactive element of the sculpture be "turned off" when use of the park is required to end. *Note: The applicant states that personnel at the ECC will have the ability to override the timing of the electrical feed, if there are issues or problems that necessitate additional hours when the sculpture will be turned off.*

Through compliance with the condition, this approval criterion will be met.

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Because only one Adjustment is requested, this criterion is not applicable.

D. City-designated scenic resources and historic resources are preserved; and

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot. There are no such resources present on the site. Therefore, this criterion is not applicable.

E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: Condition B is applied to address criterion A and B. No additional impacts need to be mitigated. This criterion is satisfied.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: The site is not located within the environmental overlay zones. This criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

A condition that requires the interactive element of the art to be turned off during nighttime hours will reduce any potential impacts. As reflected in the findings, this proposal will meet the approval and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the required setback for accessory structures from 10 feet to zero (33.120.275.C.1) for a proposed interactive sculpture. The sculpture will be located at the southwest entrance to the Ed Benedict Park, near the new Emergency Community Center parking lot, per the approved site plans, Exhibits C.1 and C.2 signed and dated March 26, 2013, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition B must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE Case File LU 13-116554 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The installation must include equipment that terminates the electrical feed to the interactive elements (light and sound) of the sculpture. The electricity must be turned off during the hours when the Ed Benedict Park is closed.

Note: Personnel at the ECC will have the ability to override the timing of the electrical feed, if there are issues or problems that necessitate additional hours when the sculpture will be turned off.

Staff Planner: Sheila Frugoli	
1191	
Decision rendered by:	on March 26, 2013
By authority of the Director of the Bure	au of Development Services

Decision mailed: March 28, 2013

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on February 15, 2013, and was determined to be complete on **February 22, 2013**.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on February 15, 2013.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on April 11, 2013** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. An appeal fee of \$250 will be charged. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- Unless appealed, The final decision may be recorded on or after April 12, 2013.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034 For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

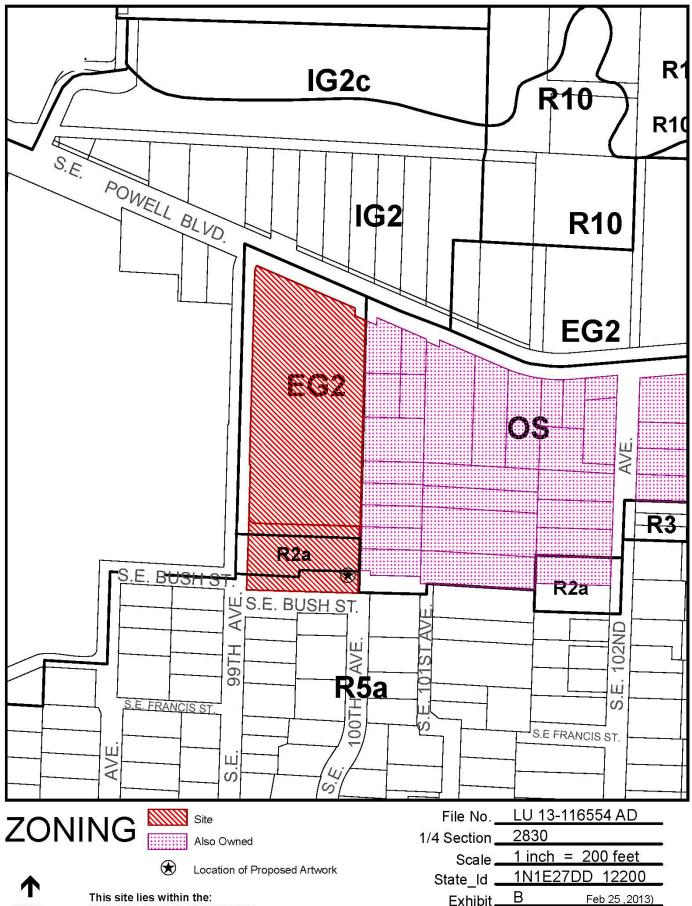
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Sculpture Design (attached)
 - 3. Color Rendering of Sculpture
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Water Bureau
 - 2. Life Safety Plan Review Section of BDS
 - 3. TRACS print-out showing "no concerns" from: Bureau of Environmental Services, Bureau of Transportation Engineering and Development Review, Site Development Review Section of BDS, Fire Bureau, and Bureau of Parks, Forestry Division
- F. Correspondence: NONE
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



CENTRAL CITY PLAN DISTRICT

NORTH

