



DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
1600 SE 190th Avenue
Portland, OR 97233 (503) 248-3043

DECISION OF THE PLANNING DIRECTOR

Floodplain Development Permit

Case File: FD 6-99

Date Decision Issued: Thursday, July 22, 1999

Proposal: Approximately 200 cubic yards of cut and fill work, a portion of which is to occur below the base flood elevation of the 100-year floodplain. Such activities are associated with the reconstruction of a retaining wall.

Related Case: Grading and Erosion Control Permit (GEC) 14-99
Zoning Violation (ZV) 7-99

Location: 21650 & 21622 NE Blue Lake Road
W 18'; Lot 1, Lots 2 & 3, Lakesend Estates
Section 21, T1N, R3E, W.M.
Tax Acct #R-46410-0100 & 0200

Applicant/Owner: Michael Nicholson
43385 SE Music Camp Road
Sandy, Oregon 97055
(21622 NE Blue Lake Road)

Owner: Kathleen Stafford
21650 NE Blue Lake Road
Fairview, Oregon 97024
(21650 NE Blue Lake Road)

Site Size: 36,070 square feet

Present Zoning: Urban Low Density Residential (LR-10)
Flood Hazard (FH)

Approval Criteria: Multnomah County Code (MCC): MCC 11.15.6301, Flood Hazard; Comprehensive Plan Policies 13, 14, 22, 37, 38, & 40.

Decision: **Approve, subject to the conditions below, 200 cubic yards of cut and fill below the base flood elevation of the 100-year floodplain, such activities being associated with the reconstruction of a retaining wall. This approval is based on the following findings and conclusions.**

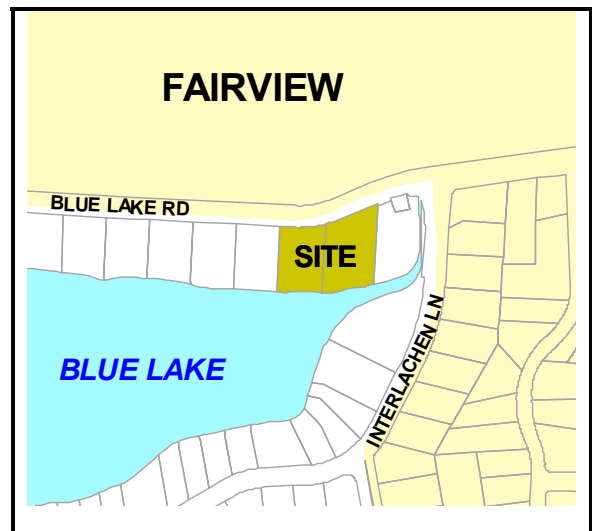
Conditions of Approval

1. This approval is based on the submitted written narrative(s), and site plan. No excavation or fill shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
2. All grading activities shall be conducted in compliance with an approved Grading and Erosion Control Permit.
3. The new rock retaining wall shall be constructed where located on the enclosed site plan. Such wall shall not encroach beyond the toe of the bank line, established by the existing wooden wall and documented with the 1998 aerial photograph of the parcels included in the permanent case file.
4. The applicant shall construct the retaining wall in compliance with applicable Oregon State Building Codes and, if required, obtain a building permit prior to initiating work on the structure.
5. No additional land use action and/or permit requests shall be accepted, relating to the subject application, until such time as all required fees for said application have been paid in full.

Findings of Fact

1. The applicant requests approval to replace an existing wood retaining wall that runs along the lakeside of Lot 2 & 3, Lakesend Estates, with a new four (4) foot high rock retaining wall. The project involves the removal of about 80 to 100 cubic yards of dirt from behind the existing wall, demolition and replacement of the wall, backfill of the excavated soils, and stabilization, with grass, of all scarred areas.
2. The subject parcels, in sum, are approximately 36,070 square feet in size, and are located roughly 100 feet west of the intersection of Blue Lake Road and Interlachen Lane. The north bank of Blue Lake abuts the south line of each parcel. Both parcels are residentially developed.

Vicinity Map: Scale 1" = 400'



3. As established under MCC 29.602, Flood Hazard regulations apply to all areas within the 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and Flood Insurance Rate Maps (FIRM) as published by FEMA. After reviewing these maps, it appears that portions of the project may extend onto lands that are within the 100-year flood boundary for Blue Lake (FIRM Panel #4101790215B, dated March 18, 1986 (attached)).
4. Excavation or fill on lands within the 100-year flood boundary is prohibited unless a Floodplain Development Permit is obtained from the County specifically authorizing the proposed work (MCC 29.603). Consistent with this requirement, the applicant has filed this application for a Floodplain Development Permit. Compliance with applicable Floodplain Development Permit criteria is as follows:

- a) MCC 29.605(E) requires that evidence be provided, when necessary, of any prior approval from other agencies with jurisdiction over the proposed development. The Division of State Lands (DSL) has jurisdiction over development that will alter 50 cubic yards or more of material within waters of the State. In a letter dated, July 1, 1999, the Division of State Lands found that less than 50 cubic yards of material is to permanently reside on land within their jurisdiction and, therefore, a permit from their agency is not required for this project (attached).
- b) MCC 29.606 contains development standards for structures proposed within the 100-year floodplain. Much of this sub-section relates specifically to buildings, however, the requirement that new construction comply with Oregon State Building Codes, consist of materials resistant to flood damage, and use methods and practices that minimize flood damage, appears applicable to a retaining wall. It is evident that the latter two requirements have been satisfied, the new wall being constructed of rock and being placed such that it should minimize the risk of flood damage to upland improvements. Compliance with the State Building Codes will be achieved through building permit review.
- c) MCC 29.609 prohibits encroachment into a watercourse unless it is demonstrated, through detailed hydraulic analysis, that; (a) the flood carrying capacity of the watercourse will be maintained; (b) the area subject to inundation by base flood discharge will not be increased; and (c) the encroachment will not cause a measurable increase in base flood levels.

Under MCC 29.601, encroachment is defined as development beyond the original bank line of the watercourse. Bank stabilization or restoration of a watercourse, which does not protrude beyond the original bank line, is not considered an encroachment.

After reviewing the applicant's site plan (attached), written narrative, and aerial photographs of the parcels from 1986 and 1998 (case file), it does not appear that work proposed will extend into Blue Lake nor expand beyond the existing bank line established by the wood structure that is to be replaced. Given these circumstances, this project does not constitute an encroachment, as defined.

5. The following Multnomah County Comprehensive Plan Policies require that, for all quasi-judicial actions, findings be made demonstrating that proposed activities comply with the Policy objectives. A Floodplain Development Permit is a quasi-judicial land use action, therefore, findings have been prepared:
 - a) Policy 13, Air, Water And Noise Quality, requires a finding that all standards can be met with respect to air quality, water quality, and noise levels. Any water quality impacts related to this development are to be mitigated consistent with a Grading and Erosion Control Permit, an application for which is currently being reviewed by the County (GEC 14-99). No impacts to air quality or noise levels are anticipated as a result of this development.
 - b) Policy 14, Developmental Limitations, requires that the County direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations existing on the subject property include slopes exceeding 20% (retaining wall), soil erosion potential, and land within the 100 year flood plain;

This permit addresses the impacts that this development will have on flood levels within the 100-year floodplain. A grading and erosion control permit will address any soil erosion or slope concerns related to this proposal.

- c) Policy 22, Energy Conservation, contains a number of factors tailored to address energy resource issues related to large-scale urban development and, therefore, is not applicable to this request.
- d) Policy 37, Utilities, relates to adequacy of those utilities necessary to facilitate development (i.e. water, sewer, stormwater, communications, etc.). This project does not generate a demand for any utilities, therefore, this policy is not applicable.
- e) Policy 38, Facilities, requires that Fire, Police, and School services are adequate to support development. Proposed grading activities relate to the replacement of a retaining wall, a form of development that will not generate a demand for these public services.
- f) Policy 40, Development Requirements, relates to adequacy and connectivity of parks, trails, and bicycle facilities. This proposal does not impact any of these facilities.

Conclusion

Considering the findings and other information provided herein, this application for approval of less than 200 cubic yards of cut and fill work below the base flood elevation of the 100-year floodplain, as conditioned, satisfies applicable Comprehensive Framework Plan policies and Multnomah County Zoning Ordinance requirements.

Exhibits

All materials submitted by the applicant, prepared by county staff, or provided by public agencies or members of the general public relating to this request are hereby adopted as exhibits hereto and may be found as part of the permanent record for this application.

In the matter of: FD 6-99

Multnomah County Department of Environmental Services
Transportation and Land Use Planning Division

By: _____
Derrick I. Tokos, AICP – Planner

For: Kathy Busse – Planning Director

This decision filed with the Director of the Department of
Environmental Services on Thursday, July 22, 1999

NOTICE

This decision may be appealed within 10 days of the above date, pursuant to the provisions of MCC 11.15.8290. An appeal requires a \$100.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 248-3043).