

Development Review Staff Report, Decision, and Conditions of Approval Case File DEV REV 2022-10

Date: July 5, 2022

Case File: DEV REV 2022-10 Le

Project Contact: Diem Le

Property Owners: Diem Le

Situs Address: 1534 NE Hwy 101

Location: East side of Hwy 101, approximately 115 feet north of NE 15th St

Tax Map and Lot: 07-11-10-DB-20000-00

**Comprehensive
Plan Designation:** Oceanlake Plan (OP) District

Zoning District: Oceanlake Plan (OP-MSH) District

Site Size: 1,150 square feet

Proposal: Request for development review of replacement of a nonconforming building

**Surrounding
Land Uses
and Zones:**
North: Businesses; OP-MSH
South: Businesses; OP-MSH
East: Parking; OP-MSH
West: Businesses; OP-MSH

Authority: Section 17.76.040.A of the Lincoln City Municipal Code (LCMC) states that the review authority for Type II applications shall be the Planning and Community Development Director (Director). Table 17.76.020-1 of LCMC Chapter 17.76 lists development review as a Type II application with the Director listed as the review authority.

Procedure: The application was received on May 26, 2022. The application was deemed complete on June 16, 2022. On June 17, 2022, pursuant to LCMC 17.76.040.E, the Planning and Community Development Department mailed a notice of application to property owners within 250 feet of the subject property.



Applicable	LCMC Chapter 17.32 Oceanlake Plan (OP) District
Substantive	LCMC Chapter 17.52 Supplementary Regulations and Exceptions
Criteria:	LCMC Chapter 17.55 Landscaping Standards
	LCMC Chapter 17.56 Off-Street Parking and Loading
	LCMC Chapter 17.64 Nonconforming Situations
	LCMC Section 17.76.040 Type II Procedure
	LCMC Section 17.77.070 Development Review

BACKGROUND

The subject property (site) is addressed as 1534 NE Hwy 101. The tax lot number is 07-11-10-DB-20000-00, and the assessed site size is 1,150 square feet. The site is developed with an existing building that was built in 1800 and is now damaged and dangerous. The site's west boundary is Hwy 101. Businesses are to the north and south of the site, as well as across Hwy 101 to the west. There are parking lots to the east of the site. The site is in the OP-MSH zone, surrounded by properties in the OP-MSH zone.

Lincoln City's GIS mapping shows the site does not contain bluff erosion hazards, aesthetic resource, floodway, flood hazard areas, or natural resource overlays.

The proposal is to demolish the nonconforming damaged and dangerous building and replace it with a like-for-like building.

COMMENTS

No comments were received from the public.

Comments were received from Oregon Department of Transportation (ODOT), via email, on June 21, 2022, noting that the replacement building needs to be constructed outside of the highway right-of-way.

ANALYSIS

Chapter 17.50 Oceanlake Plan (OP) District
17.50.030 Permitted uses

Finding: The site is located in the OP-MSH zone. Per Table 17.50.030-1 in 17.50.030, the following are permitted uses in the OP-MSH zone: dwellings above a ground-floor commercial use; four flat dwellings; offices; vacation rental dwellings; retail sales and services; retail marijuana facility; basic utilities; and community services, including government use.

17.50.040 Development standards

Finding: The site is an existing developed site that is going to be redeveloped. No new lots are being created, so the minimum lot area, minimum lot width, and minimum lot depth standards are not applicable. The existing building is nonconforming and will be replaced with a like-for-like building at the former height and footprint, so the maximum building coverage, minimum height, maximum height requirements are not applicable. There are no setback requirements in the OP-MSH zone.

17.50.060 Landscaping

Landscaping shall be provided in accordance with Chapter 17.55 LCMC.

Finding: Compliance with landscaping requirements is addressed later in this report under Chapter 17.55.

17.50.070 Signs

Signs shall be allowed subject to the provisions of Chapters 9.34 and 17.72 LCMC.

Finding: The application package does not include any sign permit applications, request any signs, or show any proposed signs.

17.50.080 Supplementary regulations and exceptions

Supplementary regulations and exceptions shall be adhered to in accordance with Chapter 17.52 LCMC.

17.50.090 Off-street parking and loading

Off-street parking and loading shall be provided in accordance with Chapter 17.56 LCMC.

Finding: Compliance with off-street parking and loading requirements is addressed later in this report under Chapter 17.56.

17.50.100 Design standards

Design standards shall be adhered to in accordance with Chapter 17.74 LCMC.

Finding: Pursuant to 17.64.010.D, a nonconforming building may be restored to its former height and footprint. Pursuant to 17.64.040.E, the owner of a damaged lawful, nonconforming use or structure shall apply for a building structural permit for restoration or replacement no later than 24 months from the date of the damage, destruction, or demolition (whichever is the latest). Structural permit applications submitted for restoration or replacement of a damaged or destroyed (including demolition of dangerous buildings) within 24 months of the date of damage, destruction, or demolition **do not have to comply with design standards of Chapter 17.74**. After 24 months following the date of damage, destruction, or demolition, (whichever is the latest) the use or structure building will be subject to all current zoning regulations for the district zone in which the land and buildings structures are located. Provided the structural permit application is received within 24 months of the demolition, the new building may be built to the former height.

17.50.110 Restrictions

No development shall occur in the OP zone unless all city services (sewer and water) are available to serve such development.

Finding: The site is a developed site and contains all city services (sewer and water) already. Required disconnections and installations shall take place as part of the demolition and new construction.

Chapter 17.52 Supplementary Regulations and Exceptions

17.52.060 Clear-vision area requirement

- A. *Requirement to Provide Clear Vision. For public safety purposes, all properties shall have triangular clear-vision areas (aka clear-vision triangles) where streets (public or private) intersect with other streets, commercial alleys and commercial driveways. Clear-vision triangles shall be also be provided for street intersections with commercial driveways as provided herein. Clear-vision areas at local intersections shall meet the requirements in this section, which are meant to be adequate to allow drivers and pedestrians who are stopped or approaching with caution to see intersecting traffic in time to avoid collisions. Clear-vision areas at intersections with Highway 101 must meet with Oregon Department of Transportation approval and comply with the requirements of this section.*

Finding: The site does not contain any street intersections with other streets, commercial alleys, or commercial driveways, nor are any proposed. Accordingly, there are no clear-vision areas on the site.

17.52.120 Utilities

- B. *In all zones, all electrical, telephone and cable television utility service installations or connections made as part of new construction of a building or structure shall be placed underground in accordance with city standards.*

Finding: The project proposes new construction, so all electrical, telephone, and cable television utility service installations or connections made as part of the new construction shall be underground. This shall be reviewed for continued compliance as part of the structural permitting and construction process.

17.52.150 Exterior lighting.

Artificial exterior lighting shall not be designed to shine or create glares in any residential zone or residential use, adjacent dwelling unit or in a public right-of-way.

- A. Light poles must not exceed a height of 20 feet.*
- B. All lighting must be shielded to avoid glare, light pollution (night sky), and light spillover onto residential properties. Shielding must be integral to the light fixture and direct light downward.*
- C. Luminance at the property line, or no more than five feet over the property line, must be zero.*
- D. Maximum initial luminance of outdoor sales displays, outdoor storage areas, service station canopies, and similar areas must not exceed 20 foot-candles.*
- E. Maximum initial luminance of parking lots must not exceed four foot-candles.*
- F. Up-lighting is prohibited. The maximum illumination limits for wall washing are one foot-candle for dark colored surfaces and one-half foot-candle for light colored surfaces.*
- G. Pedestrian ways and building entrances not otherwise illuminated by building-mounted lights or streetlights must provide between one and two foot-candles of light from bollards, step lights, or other low-profile fixtures that are appropriate for walkways and plazas.*
- H. The manufacturer's data or measurement must demonstrate conformance with this section. Cut sheets, a photometric plan analysis, and an exterior lighting plan showing the locations, types, sizes, and heights of all exterior lighting fixtures shall be included with the applicable application submittal.*

Finding: No exterior lighting is proposed as part of this application.

17.52.160 Required setbacks – Exceptions

- A. Architectural Features. Architectural features such as cornices, eaves, canopies, sunshades, gutters, chimneys, flues, awnings, and bay windows may project up to 18 inches into a required setback area.*

Finding: The required setbacks for a commercial building in the OP-MSH zone are zero; therefore, this standard is not applicable.

- B. Accessory Structures. A required side or rear setback may be reduced to three feet for an accessory structure, provided the structure is detached from other structures by five feet or more and does not exceed a height of one story nor an area of 200 square feet.*

Finding: The project does not propose any accessory structures.

- C. Fences. Fences, within required setback areas up to and on the property line, may not exceed seven feet in height nor conflict with requirements of a clear vision area as provided in LCMC 17.52.060 or the clear vision areas of adjacent private driveways.*

Finding: The submitted materials show no proposed fences.

- D. Retaining Walls. Retaining walls may be constructed in required setback areas, subject to the following limitations:*
 - 1. One or more retaining walls, none of which individually exceeds six feet in height, may be used, in front or street side setback areas provided each successive wall is set back or stepped from the next lowest wall at least one foot for each one foot of height for that wall;*

2. *Within interior side and rear setback areas a retaining wall may be constructed up to eight feet in height.*
3. *All building code and structural permitting requirements shall be met prior to construction of any retaining wall.*

Finding: The submitted materials show no proposed retaining walls.

- E. *Disabled Access Facilities. Disabled access facilities may be constructed in required setback areas as additions to existing buildings...*
- F. *Bridges. Unenclosed and uncovered pedestrian or vehicular bridges for access to a dwelling may be constructed in a required setback area.*
- G. *Porches, Decks, and Stairs. Unenclosed and uncovered porches, decks, and stairs may be constructed in a required setback area, provided no part of the porch, deck, or stairs is more than 30 inches above the ground or otherwise requires a building permit.*

Finding: The required setbacks in the OP-MSH zone are zero; therefore, these requirements are not applicable.

17.52.170 Solid waste, garbage, trash, recycling, and composting receptacle storage areas. All solid waste, garbage, trash, recycling, and composting receptacles shall be located within a building or within an enclosure which screens the receptacle from the view of adjacent property and from right-of-way, except those receptacles associated with a detached single-unit dwelling, attached single-unit dwelling, duplex, or manufactured home.

Finding: The submitted materials do not show the location of the solid waste, garbage, trash, recycling, and composting receptacle storage area. As a condition of approval, the location of the receptacle storage area shall be identified as part of the structural permitting process with the screening method to screen the area from view of adjacent property and right-of-way.

17.52.180 Placement and screening of mechanical equipment

- A. *Any heating, air conditioning, or other mechanical equipment installed on or near a building to be used to serve the building or a function performed therein, and any propane tanks, shall be screened from the ground level view from adjacent property and from right-of-way, except those associated with a detached single-unit dwelling, attached single-unit dwelling, duplex, or manufactured home.*

Finding: The submitted materials do not show the placement or location of mechanical equipment. As a condition of approval, materials submitted with the structural permit application shall identify the type and location of mechanical equipment along with any required screening.

- B. *Rooftop mechanical units shall not exceed the allowable building height.*

Finding: The submitted materials do not indicate the presence of rooftop mechanical units. This shall be checked for compliance as part of the structural permitting process.

- C. *Ground-mounted mechanical units shall be limited to the sides or rears of buildings and screened from view from adjacent property and from right-of-way.*

Finding: The submitted materials do not provide a mechanical unit plan. This shall be reviewed for compliance as part of the structural permitting process.

- D. *Standpipes, meters, vaults, and similar equipment shall not be placed on a front elevation unless there is no other option.*

Finding: The submitted materials do not provide any mechanical equipment plans. This shall be reviewed for compliance as part of the structural permitting process.

17.52.190 Building height limitations

A. No structure used for human habitation that exceeds 45 feet in height...

Finding: The submitted materials indicate a two-story building. Typically each story is 10 to 15 feet making for a maximum height of 30 feet. This shall be reviewed for compliance as part of the structural permitting process. Building elevations were not included with the submitted materials for development review. However, pursuant to 17.64.010.D, a nonconforming building may be restored to its former height and footprint. Pursuant to 17.64.040.E, the owner of a damaged lawful, nonconforming use or structure shall apply for a building structural permit for restoration or replacement no later than 24 months from the date of the damage, destruction, or demolition (whichever is the latest). Structural permit applications submitted for restoration or replacement of a damaged or destroyed (including demolition of dangerous buildings) within 24 months of the date of damage, destruction, or demolition do not have to comply with design standards of Chapter 17.74. After 24 months following the date of damage, destruction, or demolition, (whichever is the latest) the use or structure building will be subject to all current zoning regulations for the district zone in which the land and buildings structures are located. Provided the structural permit application is received within 24 months of the demolition, the new building may be built to the former height.

B. No structure that exceeds 35 feet in height shall be permitted in a residential zone within 500 feet of any shoreline without prior approval as a Type III procedure.

Finding: The site is not in a residential zone. This standard is not applicable.

C. No structures used for human occupancy shall be permitted to exceed the building height limitations of the zones in which they are located. To ensure that this standard is met the following rules apply:

Finding: The maximum building height in the OP-MSH zone is 35 feet. Building elevations were not included with the submitted materials for development review. However, pursuant to 17.64.010.D, a nonconforming building may be restored to its former height and footprint. Pursuant to 17.64.040.E, the owner of a damaged lawful, nonconforming use or structure shall apply for a building structural permit for restoration or replacement no later than 24 months from the date of the damage, destruction, or demolition (whichever is the latest). Structural permit applications submitted for restoration or replacement of a damaged or destroyed (including demolition of dangerous buildings) within 24 months of the date of damage, destruction, or demolition do not have to comply with design standards of Chapter 17.74. After 24 months following the date of damage, destruction, or demolition, (whichever is the latest) the use or structure building will be subject to all current zoning regulations for the district zone in which the land and buildings structures are located. Provided the structural permit application is received within 24 months of the demolition, the new building may be built to the former height.

- 1. Building permit applications must include elevations of all exterior walls of the proposed structure showing:

 - a. The line of the approved grade in the plane of the wall; and*
 - b. The highest part of the structure.**

Finding: The application is for redevelopment of an existing site. The existing grade around the building is flat, and is considered the approved grade for the purposes of this review; therefore, no existing grade lines are necessary on the plans.

2. *The grade may not rely on retaining walls, riprap, other artificial restraints, or berming to increase elevation at the point of height measurement.*

Finding: The site grading is existing and was done when the current structure was built. No changes are proposed that would affect the building height. This standard has been met.

3. *For the purposes of this subsection, “approved grade” means:*
 - a. *The existing grade, meaning one of the following:*
 - b. *The grade shown on a grading plan approved as a part of one of the following:*
 - i. *A final master plan for a planned unit development under LCMC 17.77.120; or*
 - ii. *A partition or subdivision under Chapter 16.08 LCMC; or*
 - iii. *A development review under LCMC 17.77.070; or*
 - iv. *A conditional use permit under LCMC 17.77.060; or*
 - v. *A grading plan under Chapter 12.08 LCMC; or*
 - vi. *A building permit for a structure not subject to any approvals in subsections (C)(3)(b)(i) through (v) of this section.*

Finding: The proposed project is a redevelopment of an existing site, which has already been graded so no grading is necessary.

17.52.200 Building height limitations – General exception

Projections such as chimneys, spires, domes, elevator shaft housing, towers, aerials, flagpoles, and other similar objects not used for human occupancy are not subject to the building height restrictions of this title.

Finding: Building elevations were not included with the submitted materials for development review. However, pursuant to 17.64.010.D, a nonconforming building may be restored to its former height and footprint. Pursuant to 17.64.040.E, the owner of a damaged lawful, nonconforming use or structure shall apply for a building structural permit for restoration or replacement no later than 24 months from the date of the damage, destruction, or demolition (whichever is the latest). Structural permit applications submitted for restoration or replacement of a damaged or destroyed (including demolition of dangerous buildings) within 24 months of the date of damage, destruction, or demolition do not have to comply with design standards of Chapter 17.74. After 24 months following the date of damage, destruction, or demolition, (whichever is the latest) the use or structure building will be subject to all current zoning regulations for the district zone in which the land and buildings structures are located. Provided the structural permit application is received within 24 months of the demolition, the new building may be built to the former height.

17.52.220 Tree protection and removal

Finding: The site does not contain any existing trees, so there are no trees to either protect or remove.

17.52.230 Public infrastructure improvements

Finding: The site is fully improved with paved street frontage, sidewalk, city sewer, and city water. No additional impervious surfaces will be added to the site.

17.52.300 Traffic impact study (TIS) requirements

- B. *A TIS shall accompany a land use application at the request of the city engineer, if the proposal involves one or more of the following:*
 1. *An amendment to the Lincoln City comprehensive plan or zoning map;*
 2. *A new direct property approach road to US 101;*

3. *Likely generation of 50 or more p.m. peak-hour trips on US 101, or 100 or more p.m. peak-hour trips on the local transportation system, according to the Institute of Transportation Engineers (ITE) Trip Generation Manual;*
4. *If use on any street or direct property approach road intersecting with US 101 increases by 10 vehicles or more per day that exceed 20,000 pounds gross vehicle weight;*
5. *An existing or proposed access driveway that does not meet minimum spacing or sight distance requirements, or a driveway located where vehicles entering or leaving the property are restricted, or such vehicles are likely to queue or hesitate at an approach or access connection, thereby creating a safety hazard; or*
6. *A change in internal traffic patterns that may cause safety problems, such as back-up onto the highway or traffic crashes in the approach area.*

Finding: The project does not trigger the requirements for a TIS, nor did the city engineer request a TIS for this project.

Chapter 17.55 Landscaping

17.55.040 Landscaping requirements for all development other than detached single-unit dwellings, attached single-unit dwellings, manufactured dwellings, and duplexes.

- A. *Landscaping is required on all portions of the site not covered by buildings, structures, or impervious surfaces.*

Finding: The entire site will be covered by the building. There is no existing landscaping and no landscaping is proposed since the existing building covers the entire site and the new building will replace the existing building, like for like. Replacement of the nonconforming building is allowed pursuant to 17.64.010.D, which states: “Restoration of a Damaged Lawful, Nonconforming Structure or Use. A lawful, nonconforming structure or use that has been damaged may be restored to its former height and footprint, as approved through a Type II procedure as set forth in LCMC 17.76.040, with the application process outlined in LCMC 17.77.116.” Accordingly, restoration of the damaged and dangerous building to its former height and footprint is allowed.

Pursuant to 17.64.010.D, a nonconforming building may be restored to its former height and footprint. Pursuant to 17.64.040.E, the owner of a damaged lawful, nonconforming use or structure shall apply for a building structural permit for restoration or replacement no later than 24 months from the date of the damage, destruction, or demolition (whichever is the latest). Structural permit applications submitted for restoration or replacement of a damaged or destroyed (including demolition of dangerous buildings) within 24 months of the date of damage, destruction, or demolition do not have to comply with design standards of Chapter 17.74. After 24 months following the date of damage, destruction, or demolition, (whichever is the latest) the use or structure building will be subject to all current zoning regulations for the district zone in which the land and buildings structures are located.

Chapter 17.56 Off-street Parking and Loading Regulations

17.56.030 Number of off-street parking spaces required

- A. *The number of off-street parking spaces required shall be as set forth in Table 17.56.030-1.*

Finding: No off-street parking spaces are required, pursuant to 17.53.030.B. Additionally, the damaged and dangerous nonconforming building is being demolished to be replaced with a like-for-like building. The entire site will be covered by the building. There is no existing off-street parking and no off-street parking is proposed since the existing building covers the entire site and the new building will replace the existing building, like for like. Replacement of the nonconforming building is allowed pursuant to 17.64.010.D, which states: “Restoration of a Damaged Lawful, Nonconforming Structure or Use. A lawful, nonconforming structure or use that has been damaged may be restored to its former height and footprint, as approved through

a Type II procedure as set forth in LCMC 17.76.040, with the application process outlined in LCMC 17.77.116.” Accordingly, restoration of the damaged and dangerous building to its former height and footprint is allowed.

Pursuant to 17.64.010.D, a nonconforming building may be restored to its former height and footprint. Pursuant to 17.64.040.E, the owner of a damaged lawful, nonconforming use or structure shall apply for a building structural permit for restoration or replacement no later than 24 months from the date of the damage, destruction, or demolition (whichever is the latest). Structural permit applications submitted for restoration or replacement of a damaged or destroyed (including demolition of dangerous buildings) within 24 months of the date of damage, destruction, or demolition do not have to comply with design standards of Chapter 17.74. After 24 months following the date of damage, destruction, or demolition, (whichever is the latest) the use or structure building will be subject to all current zoning regulations for the district zone in which the land and buildings structures are located.

- B. Exceptions to the Number of Off-Street Parking Spaces Required. One or more exceptions may apply to a development.*
- 1. There are no off-street parking requirements for commercial uses, commercial buildings, or the commercial portion of mixed use buildings located within the boundaries of any of the pearls (Wecoma, Oceanlake, DeLake, Taft, Nelscott, Cutler City), said boundaries as identified on the city’s adopted zoning map.*

Finding: There are no off-street parking requirements for commercial uses, commercial buildings, or the commercial portion of mixed-use buildings located within the boundaries of Oceanlake. The site is located in Oceanlake, so there are no off-street parking requirements. Additionally, pursuant to 17.64.040.E, the owner of a damaged lawful, nonconforming use or structure shall apply for a building structural permit for restoration or replacement no later than 24 months from the date of the damage, destruction, or demolition (whichever is the latest). Structural permit applications submitted for restoration or replacement of a damaged or destroyed (including demolition of dangerous buildings) within 24 months of the date of damage, destruction, or demolition do not have to comply with design standards of Chapter 17.74. After 24 months following the date of damage, destruction, or demolition, (whichever is the latest) the use or structure building will be subject to all current zoning regulations for the district zone in which the land and buildings structures are located.

Chapter 17.74 Design Standards
17.74.020 Applicability

- A. Zoning Districts. The provisions of this chapter apply to the multiple-unit residential (R-M), recreation commercial (RC), general commercial (GC), Nelscott plan district (NP), Taft Village core (TVC), and Oceanlake Plan district (OP) zones as follows:*
- B. Conflicting Regulations. Where conflicts occur between this chapter and other municipal code regulations or ordinances, the strictest requirement shall apply.*
- C. The provisions of this chapter apply to the development of undeveloped sites, the redevelopment of previously developed sites, and/or new construction of any building or structure.*

Finding: The site is in the OP-MSH zone and the project involves both redevelopment of a previously developed site.

17.74.030 Exceptions and nonconformances

- A. Routine Repairs and Maintenance.*
- B. Additions or Expansion.*
- C. Residential Dwelling Exception.*

D. Nonconformances

Finding: Pursuant to 17.64.010.D, a nonconforming building may be restored to its former height and footprint. Pursuant to 17.64.040.E, the owner of a damaged lawful, nonconforming use or structure shall apply for a building structural permit for restoration or replacement no later than 24 months from the date of the damage, destruction, or demolition (whichever is the latest). Structural permit applications submitted for restoration or replacement of a damaged or destroyed (including demolition of dangerous buildings) within 24 months of the date of damage, destruction, or demolition do not have to comply with design standards of Chapter 17.74. After 24 months following the date of damage, destruction, or demolition, (whichever is the latest) the use or structure building will be subject to all current zoning regulations for the district zone in which the land and buildings structures are located.

Chapter 17.76 Procedures

17.76.040 Type II procedure

- A. General Description. Type II procedures apply to administrative permits and applications. Decisions on administrative applications are made by the director, based on reasonably objective approval criteria that require only limited discretion. Type II procedures require public notice and an opportunity for appeal, but do not require a public hearing or a public meeting.*
- B. When Applicable. Table 17.76.020-1 identifies Type II applications. Applications not listed in Table 17.76.020-1 may be identified as Type II by the director based on the general description in this section.*
- C. Pre-Application Conference. A pre-application conference is not required for Type II procedures.*

Finding: A pre-application conference is not required.

- D. Application Requirements. Type II applications shall:*
 - 1. Be submitted on application forms provided by the department and shall include all information, exhibits, plans, reports, and signatures requested on the application forms.*
 - 2. Be accompanied by the required fee as adopted by city council resolution.*
 - 3. Be subject to the completeness review procedure set forth in LCMC 17.76.110(D) and (E).*

Finding: The required application forms and materials were submitted, along with the required fee. The application was deemed complete in accordance with LCMC 17.76.110.D and E.

- E. Public Notice of Application and Comment Period. Type II applications require public notice of receipt of a complete application with an opportunity for area property owners and other interested parties to provide written comment prior to issuance of the decision.*
 - 1. After a Type II application has been accepted as completed under LCMC 17.76.110(E), the department shall mail a written public notice to the following:*
 - a. The applicant and applicant's representative;*
 - b. The owners of record of the subject property;*
 - c. Property owners of record within 250 feet of the perimeter property line of the property or properties subject to the application, using the most recently provided property tax assessment roll of the Lincoln County assessor's office as provided to the city to determine property owners of record; and*
 - d. Any neighborhood or community organization or association recognized by the governing body and whose boundaries include the site.*

Finding: The Planning and Community Development Department mailed the public notice of a complete application to the parties noted in LCMC 17.76.040.E.1.a through d.

2. *The written public notice shall include the following:*
 - a. *A brief description of the request;*
 - b. *The applicable criteria from the ordinance and the comprehensive plan that apply to the application at issue;*
 - c. *The street address or other easily understood geographical reference to the subject property;*
 - d. *Statement that failure of an issue to be raised in writing prior to the expiration of the public comment period, or failure to provide statements or evidence sufficient to afford the review authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA);*
 - e. *The name of a department staff member to contact and the telephone number where additional information may be obtained; and*
 - f. *Statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.*
3. *An affidavit of mailing of the public notice of receipt of a complete application shall be prepared with the mailing date noted and the list of parties to whom the notice was mailed attached to the affidavit, along with the notice itself.*
4. *Public notices for receipt of complete Type II applications shall include a written comment period of 14 days from the date the notice was mailed for the submission of written comments before the decision is issued.*

Finding: The written public notice contained all the information required in LCMC 17.76.040.E.2.a through f. The required affidavit of mailing was prepared, pursuant to LCMC 17.76.040.E.3. The written public notice included the written comment period of 14 days.

F. Review Authority. The review authority for Type II applications shall be the director.

Finding: The Director reviewed the submitted Type II application.

G. Decision.

1. *Based on the criteria and facts contained within the record, the director shall approve, approve with conditions, or deny the request. The decision shall address all relevant approval criteria and consider written comments submitted before the close of the comment period.*

Finding: The relevant approval criteria are addressed in detail throughout this staff report. Consideration of the written comments received, if any, is given at the beginning of this report.

2. *The decision is considered final for purposes of appeal on the date the notice of the decision is mailed. Within seven days after the director has issued the decision, a notice of the decision shall be sent by mail to the following:*
 - a. *The applicant and applicant's representative;*
 - b. *The owners of record of the subject property;*
 - c. *Any person, group, agency, association, or organization who submitted written comments during the comment period; and*
 - d. *Any person, group, agency, association, or organization who submitted a written request to receive notice of the decision.*

Finding: Within seven days after the Director has issued the decision, the notice of that decision shall be mailed by the Planning and Community Development Department, pursuant to LCMC 17.76.040.G.2.

3. *The notice of the decision shall include the following:*
 - a. *A brief description of the request;*

- b. A statement of the decision and the applicable approval criteria used in making the decision;
- c. The street address or other easily understood geographical reference to the subject property;
- d. A statement that the decision is final, unless appealed as provided in LCMC 17.76.180;
- e. The requirements for filing an appeal of the decision, including a statement of the date and time by which an appeal must be filed;
- f. A statement that the complete file is available for review; and
- g. The name of a department staff member to contact and the telephone number where additional information may be obtained.

Finding: The Planning and Community Development Department will issue the notice of decision that shall contain all the information noted in subsection 17.76.040.G.3.a through g.

Chapter 17.77 Applications

17.77.070 Development review

- A. The purpose of development review is to establish a coordinated process to ensure that new development is in compliance with the requirements of this title prior to the submittal of structural permit applications, or in instances where structural permit application are not necessary prior to the commencement of any development. The development review application shall demonstrate that the proposed development will comply with all of the applicable requirements of this title, and that...
- B. Applicability. Except as exempted in subsection (C) of this section, development review approval is required before any structural permit is issued authorizing development and before any outdoor storage area or parking lot development commences in the R-M, PC, RC, GC, PI, M-W, P, OS, TVC, NP, and OP zones, and before any nonresidential structural permit is issued authorizing development and before any nonresidential outdoor storage area or parking lot development commences in any other zone.

Finding: The site is in the OP-MSH zone. A nonresidential structural permit is required for the project. Accordingly, development review approval is required prior to such issuance.

- C. Exemptions. The activities, development and construction projects listed below are exempt from development review:

Finding: New construction for replacement of a damaged and dangerous building is not exempted from development review.

- D. Procedure. Development review applications are subject to the Type II procedure as described in...

Finding: The application is being processed as a Type II procedure.

- E. Submittal Requirements. Type II application submittal requirements are set forth in LCMC 17.76.040 and more specific submittal requirements are provided on application forms and checklists as authorized in LCMC 17.76.110.

Finding: The required documents were submitted.

- F. Concurrent Applications for Adjustments. Requests for adjustments to standards required in Chapter 17.74 LCMC shall be processed concurrently with the development review application.

Finding: Adjustments to LCMC Chapter 17.74 were requested as part of the development review application to maintain the historic character of the building, even though the design standards are not applicable to nonconformances. Pursuant to 17.64.010.D, a nonconforming building may be restored to its former height

and footprint. Pursuant to 17.64.040.E, the owner of a damaged lawful, nonconforming use or structure shall apply for a building structural permit for restoration or replacement no later than 24 months from the date of the damage, destruction, or demolition (whichever is the latest). Structural permit applications submitted for restoration or replacement of a damaged or destroyed (including demolition of dangerous buildings) within 24 months of the date of damage, destruction, or demolition do not have to comply with design standards of Chapter 17.74. After 24 months following the date of damage, destruction, or demolition, (whichever is the latest) the use or structure building will be subject to all current zoning regulations for the district zone in which the land and buildings structures are located.

G. Approval Criteria. To approve an application for development review, the review authority must find that the development, as described in the submitted application, either complies with all of the requirements of this title or will comply with all of the requirements of this title subject to conditions that shall ensure compliance with all of the requirements of this title.

Finding: Based on an analysis of the submitted application and accompanying materials against the requirements of this title and as detailed throughout this staff report, the project as submitted either complies with all of the requirements of this title or will comply with all of the requirements of this title subject to the conditions of approval that ensure compliance with all requirements of this title.

H. Conditions of Approval. Pursuant to LCMC 17.76.120, the review authority may impose...

Finding: Conditions of approval have been imposed to ensure compliance with applicable criteria.

17. 77.116 Nonconforming - Restoration of Lawful Nonconformity

A. Procedure. Applications to restore a lawful nonconforming structure or use are subject to the Type II procedure as described in LCMC 17.76.040.

Finding: The application was processed as a Type II procedure pursuant to LCMC 17.76.040.

B. Submittal Requirements. Type II application submittal requirements are set forth in LCMC 17.76.040 and more specific submittal requirements are provided on application forms and checklists as authorized in LCMC 17.76.110.

Finding: The required forms were completed and submitted.

C. Approval Criteria. To approve a request to restore a lawful nonconforming structure or use the director shall make findings of fact based on evidence provided that all of the following circumstances exist:

1. The damage was not intentionally caused by the current property owner;

Finding: The building has been vacant and in disrepair for years, long before the current property owner acquired the property in 2021.

2. The restoration does not increase the degree of nonconformity or add new nonconformity;

Finding: The building is going to be restored like for like to the original footprint and style as the original 1800 construction, but in compliance with current building and fire codes.

3. The restoration is according to plans approved by the fire marshal, building official, and floodplain manager, and if required, in conformance with a geotechnical report;

Finding: The structural permit application will be reviewed by the fire marshal and the building official. The site is not in the flood zone, so the floodplain manager does not need to review the application. The site is not in a bluff hazard erosion zone, so a geotechnical report is not required by the zoning code.

4. *The restored structure or use does not encroach unlawfully on adjacent properties;*

Finding: As part of the structural permit application, a site plan shall be submitted showing the property lines and showing the location of the building as being contained within the property lines and not encroaching into right-of-way areas or over property lines.

5. *The restoration complies with reasonable conditions imposed by the city on a structural permit to mitigate any new or increased adverse impact on adjacent property; and*

Finding: The restored building shall comply with all applicable codes.

6. *In the case of a multi-unit dwelling, mixed-use structure, commercial structure, the reconstructed use or structure would not interfere with the intent and purpose of the zone in which it is located.*

Finding: The building was previously used as a mixed-use structure. The reconstructed building will also be used as a mixed-use structure, which is an allowed use in the OP-MSH zone.

DECISION

Based upon an analysis of the submitted application and accompanying materials against applicable criteria, the Director concludes that all criteria have been or will be met, and thus **APPROVES WITH CONDITIONS** the development review and nonconforming determination for replacement of a demolished, nonconforming, damaged, and dangerous building, subject to the following conditions:

General

1. This approval notwithstanding, the applicant/property owner/developer shall be responsible for knowledge of and full compliance with all applicable city, state, and federal codes, rules, regulations, codes, rules, standards, and policies, including but not limited to Lincoln City Municipal Code.
2. Structural permits shall not be issued until compliance with applicable codes, rules, regulations, standards, and policies is shown in the materials that accompany the structural permit applications.

Planning

1. The new building shall be built at the same height and in the same footprint as the demolished building, excepting that no portion of the building shall encroach into right-of-way areas or over property lines.
2. A site plan shall be submitted with the structure permit application showing the property boundaries and the footprint of the building such that there are no encroachments into right-of-way areas or over property lines.
3. Elevations shall be submitted with the structural permit application showing the existing grade and the height of each elevation at the center of the wall to the roof such that the height matches the height of the demolished building.
4. A listing of the exterior building materials and colors shall be included with the structural permit application.
5. Pursuant to 17.52.120, all electrical, telephone and cable television utility service installations or connections made as part of new construction of a building or structure shall be placed underground in accordance with city standards.
6. The installation of any exterior lighting shall comply with 17.52.150.
7. Pursuant to 17.52.170, all solid waste, garbage, trash, recycling, and composting receptacles shall be located within a building or within an enclosure that screens the receptacle from the view of adjacent

property and from right-of-way. Plans submitted with the structural permit application shall clearly and readily identify all solid waste, garbage, trash, recycling, and composting areas on the site, along with the required screening.

8. Pursuant to 17.52.180, any heating, air conditioning, or other mechanical equipment installed on or near a building to be used to serve the building or a function performed therein, and any propane tanks, shall be screened from the ground level view from adjacent property and from right-of-way; rooftop mechanical units shall not exceed the allowable building height; ground-mounted mechanical units shall be limited to the sides or rears of buildings and screened from view from adjacent property and from right-of-way; and standpipes, meters, vaults, and similar equipment shall not be placed on a front elevation unless there is no other option. An exterior mechanical equipment plan shall be submitted with the structural permit application showing compliance with all portions of 17.52.180 and shall clearly and readily identify the type and location of all exterior mechanical equipment such that no equipment is on the front of the building or between the front of the building and the front property line and that all equipment is screened from view as per 17.52.180.
9. Permit applications shall be submitted and permits shall be issued prior to installation of any permanent signs in compliance with the building code and Chapter 17.72.

Fire

1. The project shall meet the current Oregon Fire Code requirements for access and water supply, as reviewed by North Lincoln Fire & Rescue District #1 through the structural permitting process, and structural permits shall not be issued until compliance with the current Oregon Fire Code requirements is shown in the submitted plans.

Public Works

1. The project shall meet the current Lincoln City Public Works Design Standards, as reviewed by Lincoln City Public Works through the structural permitting process, and structural permits shall not be issued until compliance with the current Lincoln City Public Works Design Standards is demonstrated, as applicable.

Approved by:



Anne Marie Skinner, Director
Planning and Community Development

July 22, 2022
Date