



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

Chloe Eudaly, Commissioner  
Rebecca Esau, Interim Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** June 8, 2017  
**To:** Interested Person  
**From:** Lauren Russell, Land Use Services  
503-823-7817 / [Lauren.Russell@portlandoregon.gov](mailto:Lauren.Russell@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 mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. 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 17-155611 AD**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Terry Carney  
Terry P Carney, Inc  
3010 SW Bennington Dr  
Portland, OR 97205

**Site Address:** 4792 SW FAIRVIEW BLVD

**Legal Description:** BLOCK A LOT 14, WEST HIGHLANDS & EXTD  
**Tax Account No.:** R893102190  
**State ID No.:** 1S1E06AD 01100  
**Quarter Section:** 3124  
**Neighborhood:** Sylvan-Highlands, contact Dave Malcolm at 503-805-9587 & Southwest Hills Residential League, contact Nancy Seton at 503-224-3840.

**Business District:** None  
**District Coalition:** Neighbors West/Northwest, contact Mark Sieber at 503-823-4212 & Southwest Neighborhoods Inc., contact Sylvia Bogert at 503-823-4592.

**Plan District:** Northwest Hills - Skyline  
**Zoning:** R7 – Single-Dwelling Residential 7,000  
**Case Type:** AD – Adjustment Review  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant proposes to construct a new single-dwelling residence with an attached accessory dwelling unit (ADU) on a steeply sloping, vacant 13,596 square foot lot. The house would include an attached three-car garage, three decks, and a driveway bridge to connect the garage to SW Fairview Boulevard. Per Zoning Code Section 33.110.225.B and Table 110-4, the maximum combined building coverage allowed on the site is 3,539 square feet, or 26%. The Zoning Code defines building coverage as the area that is covered by buildings or other roofed structures, including uncovered horizontal structures such as decks, stairways, and entry bridges that are more than 6 feet above grade (Zoning Code Section 33.910). The three decks

and driveway bridge are all more than 6 feet above grade so they count toward building coverage. All components of the new house would total 3,909 square feet, or 29%. Because the proposed house would exceed the site's maximum allowed building coverage, the applicant requests an Adjustment to increase the maximum allowed building coverage from 3,539 square feet to 3,909 square feet.

**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 subject site is a 13,596 square foot lot located on the southeast side of SW Fairview Boulevard between SW Skyline Boulevard and SW Fairview Circus. The steeply-sloping site is currently undeveloped. The property located to the southwest is developed with a three-story single-dwelling residence that reads as a two-story structure from the street. The property located to the northeast of the subject site is developed with a two-story single-dwelling residence that reads as a one-story structure from the street. The two properties that abut the subject site to the southeast are developed with two-story single-dwelling residences. The property located to the northwest of the subject site across SW Fairview Boulevard is developed with a two-story single-dwelling residence.

**Zoning:** The R7 designation is one of the City's single-dwelling residential zones, which are intended to preserve land for housing and provide housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The Northwest Hills Plan District protects sites with sensitive and highly valued resources and functional values. The plan district also promotes the orderly development of the Skyline subdistrict while assuring that adequate services are available to support development. These regulations provide the higher level of protection necessary for the plan district area.

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

- VZ 076-070: Variance from 1970 to reduce the northwest front yard from the required 30'-0" to 15'-0" in order to construct a single family dwelling.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed May 11, 2017. The following Bureaus have responded with no issues or concerns regarding the requested Adjustment:

- Bureau of Environmental Services (BES) responded that the proposed building and stormwater management plan were reviewed under building permit RS 16-142902, which was approved by BES Development Review on 4/19/17 (Exhibit E-1);
- Bureau of Transportation Engineering (PBOT) responded that the Adjustment of this regulation as proposed will not impact the abutting right-of-way or the transportation system in the area so PBOT has no objection to the request (Exhibit E-2);
- Water Bureau responded with no concerns (Exhibit E-3);
- Fire Bureau responded that all applicable Fire Code requirements shall be applicable at the time of permit review and development (Exhibit E-4);
- Site Development Section of BDS responded with no concerns (Exhibit E-5); and
- Life Safety Review Section of BDS responded that a building permit has been applied for and is currently under review (Exhibit E-6).

**Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the "Notice of Proposal."

## ZONING CODE APPROVAL CRITERIA

### 33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

### 33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated 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 applicant is requesting an Adjustment to increase the maximum allowed building coverage from 3,539 square feet to 3,909 square feet. The purpose of the building coverage standards is stated in Zoning Code Section 33.110.225.A:

**Purpose.** *The building coverage standards, together with the height and setback standards control the overall bulk of structures. They are intended to assure that taller buildings will not have such a large footprint that their total bulk will overwhelm adjacent houses. Additionally, the standards help define the character of the different zones by limiting the amount of buildings allowed on a site.*

The requested 370 square foot increase in building coverage represents a 10.5-percent increase over the allowed building coverage, a relatively small amount that would not be readily apparent. The subject site would be developed with a two-story single-dwelling residence with attached ADU, though because of the steeply-sloping lot, the structure would read as one-story from the street. The R7 zone has a 5-foot building side and rear setback requirement. Because the lot is steeply-sloped, the front setback for the dwelling may be reduced to 10 feet from the required 15 feet and the height limit is 23 feet above the average grade of the street. The proposed development would have a 5.34-foot side setback to the left property line and a 6.33-foot side setback to the right property line. The rear deck would be located over 96 feet and the rear wall of the house would be located over 110 feet from the rear property line. The proposed front setback of the development would be 10 feet and the height would be 18.26 feet as measured to the midpoint of the highest gable, which is more than 4 feet below the allowed maximum height. The bulk and mass of the structure would be further decreased by the one-story low-profile front façade that reads as a ranch house. With the proposed development being within the required setback and height development standards and reading as a one-story ranch from the street, the proposal limits the overall bulk of the structure and ensures that it will not overwhelm adjacent homes.

Based on these reasons, the proposed Adjustment equally meets the intent of the regulation and this criterion is met.

#### **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:** Because the subject site is located in a single-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area. As discussed above, approval of the Adjustment would not increase the perceived bulk of the structure on the site because the structure would meet the side and rear setbacks the R7 zone requires, the height of the structure is less than the maximum height allowed, and it would read as a one-story ranch from the street. Furthermore, portions of the development that bring it over the maximum building coverage can be attributed to such elements as the 388 square foot driveway bridge and 58 square foot uncovered porch area. These uncovered structures, while calculated as building coverage, would not add significant bulk to the development. For these reasons the proposal has no negative impacts to neighborhood livability or appearance. This criterion is 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 being requested, this criterion is not applicable.

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

**Findings:** City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. Because no scenic or historic resource designations are mapped on the subject site, this criterion is not applicable.

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

**Findings:** As discussed in the findings for approval criterion B, the proposal has no adverse impacts on the livability or appearance of the surrounding residential area for which mitigation would be required. Therefore, this criterion is met.

**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:** Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). Because no environmental overlay zone is mapped on subject site, 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**


The proposal to increase the maximum allowed building coverage equally meets the intent of the regulations and does not have any adverse impacts on the livability and appearance of the surrounding residential neighborhood. The applicant has demonstrated that the applicable approval criteria have been met. Because the approval criteria are met, this proposal should be approved.

## **ADMINISTRATIVE DECISION**

Approval of an Adjustment to increase the maximum allowed building coverage from 3,539 square feet to 3,909 square feet (Zoning Code Section 33.110.225.B), per the approved site plans, Exhibits C-1 through C-3, signed and dated June 5, 2017, subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 – C-3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 17-155611 AD. No field changes allowed."

**Staff Planner: Lauren Russell**

**Decision rendered by:**  **on June 5, 2017.**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: June 8, 2017**

**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 April 18, 2017, and was determined to be complete on May 5, 2017.

*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 April 18, 2017.

*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. Unless further extended by the applicant, **the 120 days will expire on: September 2, 2017.**

**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 June 22, 2017** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue Monday through Friday between 8:00 am and 4:30 pm. **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](http://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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 **June 23, 2017**.
- 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
  1. Narrative, Site Plans, and Photographs received 4/18/17
  2. Revised Narrative received 5/4/17
  3. Revised Site Plan received 5/5/17
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. Front and Rear Elevations (attached)
  3. Side Elevations (attached)
- D. Notification Information:
  1. Mailing List
  2. Mailed Notice
- E. Agency Responses:
  1. Bureau of Environmental Services
  2. Bureau of Transportation Engineering and Development Review
  3. Water Bureau
  4. Fire Bureau
  5. Site Development Review Section of BDS
  6. Life Safety Section of BDS
- F. Correspondence: None received
- G. Other:
  1. Original LU Application
  2. Incomplete Letter mailed 5/2/17

**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).**