



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

Ted Wheeler, Mayor  
Rebecca Esau, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** July 12, 2019  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
503-823-7612 / [Sean.Williams@portlandoregon.gov](mailto:Sean.Williams@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 19-161866 AD**

#### **GENERAL INFORMATION**

**Applicant:** Kenneth Brown  
6236 SW 36<sup>th</sup> Avenue | Portland, OR 97221-3307

**Owners:** William & Roxanne Heath  
6301 SW 35<sup>th</sup> Ave | Portland, OR 97221-3382  
  
Kenneth Brown & Elizabeth Sazie  
6236 SW 36<sup>th</sup> Avenue | Portland, OR 97221-3307

**Site Address:** 6301 SW 35<sup>th</sup> Avenue & 6236 SW 36<sup>th</sup> Avenue

**Legal Description:** TL 900 0.66 ACRES, SECTION 17 1S 1E; TL 1600 0.22 ACRES, SECTION 17 1S 1E

**Tax Account No.:** R991171090, R991174210

**State ID No.:** 1S1E17CD 00900, 1S1E17CD 01600

**Quarter Section:** 3625

**Neighborhood:** Hayhurst, contact at [contact-hayhurst@swni.org](mailto:contact-hayhurst@swni.org)

**Business District:** None

**District Coalition:** Southwest Neighborhoods Inc., contact Sylvia Bogert at 503-823-4592.

**Plan District:** None

**Zoning:** Residential 7,000 (R7)

**Case Type:** Adjustment (AD)

**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant is requesting an Adjustment to the maximum lot area standard (33.610.200 & Table 610-2) of the R7 zone for 6236 SW 36<sup>th</sup> Avenue from 12,000 to 22,333 square feet as a result of a property line adjustment (19-161853 PR) with 6301 SW 35<sup>th</sup> Avenue. The property line adjustment is not a part to this review.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of *Title 33*. The relevant criteria are found in **Section 33.805.040.A-F, Approval Criteria for Adjustments**.

**ANALYSIS**

**Site and Vicinity:** The properties involved in this proposal are located within the Hayhurst neighborhood of SW Portland. 6236 SW 36<sup>th</sup> Avenue is developed with a single family home at the end of a cul-de-sac and shares a rear property line with 6301 SW 35<sup>th</sup> Avenue, which is also developed with a single family home located at the eastern portion of the site. This lot is approximately  $\frac{3}{4}$  of an acre in size and heavily forested. Gabriel Park is approximately 1,000-feet southwest of the proposal.

**Zoning:** The R7 zone designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **June 4, 2019**. The following Bureaus have responded with no issues or concerns: Site Development section of BDS; Life Safety Plans Examiner; Fire Bureau; Bureau of Environmental Services; Portland Bureau of Transportation; and the Water Bureau (Exhibits E.1-5).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on June 4, 2019. No written responses have been received from either the Neighborhood Association or notified property owners regarding the proposal.

**ZONING CODE APPROVAL CRITERIA****APPROVAL CRITERIA FOR ADJUSTMENTS****33.805.010 Purpose**

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. They also allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

**33.805.040 Adjustment Approval Criteria**

The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., 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 the maximum lot area of the R7 zone for 6236 SW 36<sup>th</sup> Avenue from 12,000 to 22,333 square feet as a result of a property line adjustment (19-161853 PR) with 6301 SW 35<sup>th</sup> Avenue. The purpose of Lot Dimension Regulations (33.610.200.A) for Lots in RF through R5 zones ensure that:

- *Each lot has enough room for a reasonably-sized house and garage;*
- *Lots are of a size and shape that development on each lot can meet the development standards of the zoning code;*
- *Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;*
- *Each lot has room for at least a small, private outdoor area;*
- *Lots are compatible with existing lots;*
- *Lots are wide enough to allow development to orient toward the street;*
- *Lots don't narrow to an unbuildable width close to the street*
- *Each lot has adequate access from the street;*
- *Each lot has access for utilities and services;*
- *Lots are not landlocked; and*
- *Lots are regularly shaped.*

The proposed Property Line Adjustment (PLA) involves adjusting the common property line between Tract 1 (6236 SW 36<sup>th</sup> Avenue) and Tract 2 (6301 SW 35<sup>th</sup> Avenue) approximately 100-feet to the east. Tract 1 is currently 9,486 square feet in size and Tract 2 is currently 28,854 square feet. The proposed PLA will result in an exchange of 12,847 square feet so that the resulting lot sizes will be 22,333 square feet for Tract 1 and 16,007 for Tract 2. Tract 2 is coming closer to conformance with the maximum lot area standard of 12,000 square feet for the R7 zone but Tract 1 will be exceeding this standard. Therefore, an Adjustment is required to facilitate the proposed PLA.

Proposed Tract 1 is currently developed with a single family home and will have more than enough room for a reasonably sized house and garage after the PLA. This tract will maintain a fairly regular shape, particularly for SW Portland, that will not preclude compliance with the development standards of the zoning code. The combined maximum density for both Tracts 1 and 2 is 5 lots. After the PLA, Tract 1 will have a maximum density of 3 lots and tract 2 will have a maximum density of 2 lots. One unit of density is essentially being transferred from Tract 2 to Tract 1 so while this tract is large it will not have the appearance of being further dividable to exceed the maximum allowed density of the overall site in the future.

More than enough room for a private outdoor area will be available within Tract 1. Because the PLA involves adjusting the common rear property line between these tracts, the width and street frontage of tract 1 will remain unchanged and will continue to allow adequate access for vehicles, utilities, and services from SW 36<sup>th</sup> Avenue.

Tract 1 will not become landlocked and a regular shape will be maintained as a result of the PLA. SW Portland is typically characterized as having larger lots with lower density zoning. This PLA will be shifting the balance of one larger lot to another and will therefore not compromise compatibility with existing lots in the vicinity.

Based on the preceding findings, the proposed maximum lot area adjustment for Tract 1 will equally or better meet the purpose of the Lot Dimension Regulations for Lots in RF through R5 zones. Therefore, this criterion is met.

**B. If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and**

**Findings:** The site is in a residential zone (R7) and is located within the Hayhurst neighborhood. The residential area considered is defined as shown on the Zone Map (Exhibit B). The appearance of Tract 1 will remain unchanged as viewed from SW 36<sup>th</sup> Avenue as the proposal simply involves increasing the backyard of this tract. As a result, there will be no impact to the livability of the residential area. Therefore, 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:** Only one Adjustment is requested with this application. Therefore, this criterion is not applicable.

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

**Findings:** The site is not located within a scenic or historic overlay zone. Therefore, this criterion is not applicable.

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

**Findings:** As addressed in the preceding findings, there are no discernible impacts that will result from the proposed adjustment that warrant mitigation. Therefore, 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 an environmental zone. Therefore 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 requirements of Title 11 can be met, and 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 applicant is requesting an Adjustment to the maximum lot area (33.610.200 & Table 610-2) of the R7 zone for 6236 SW 36<sup>th</sup> Avenue from 12,000 to 22,333 square feet as a result of a property line adjustment (19-161853 PR) with 6301 SW 35<sup>th</sup> Avenue. As noted in this report, the project is able to meet the Adjustment approval criteria as it will be in substantial conformance with the lot dimension regulations. With approval requiring that the associated property line adjustment substantially conform to Exhibit C.1, the request should be approved.

## ADMINISTRATIVE DECISION

**Approval** of an Adjustment to the maximum lot area of the R7 zone for Tract 1 (6236 SW 36<sup>th</sup> Avenue) of PLA 19-161853 PR from 12,000 to 22,333 square feet, as illustrated with Exhibit C.1.

**Staff Planner: Sean Williams**

**Decision rendered by:**  **on July 10, 2019**

By authority of the Director of the Bureau of Development Services

**Decision mailed: July 12, 2019**

**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 May 8, 2019, and was determined to be complete on May 31, 2019.

*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 May 8, 2019.

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 28, 2019.**

**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 July 26, 2019** 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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **July 26, 2019** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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:

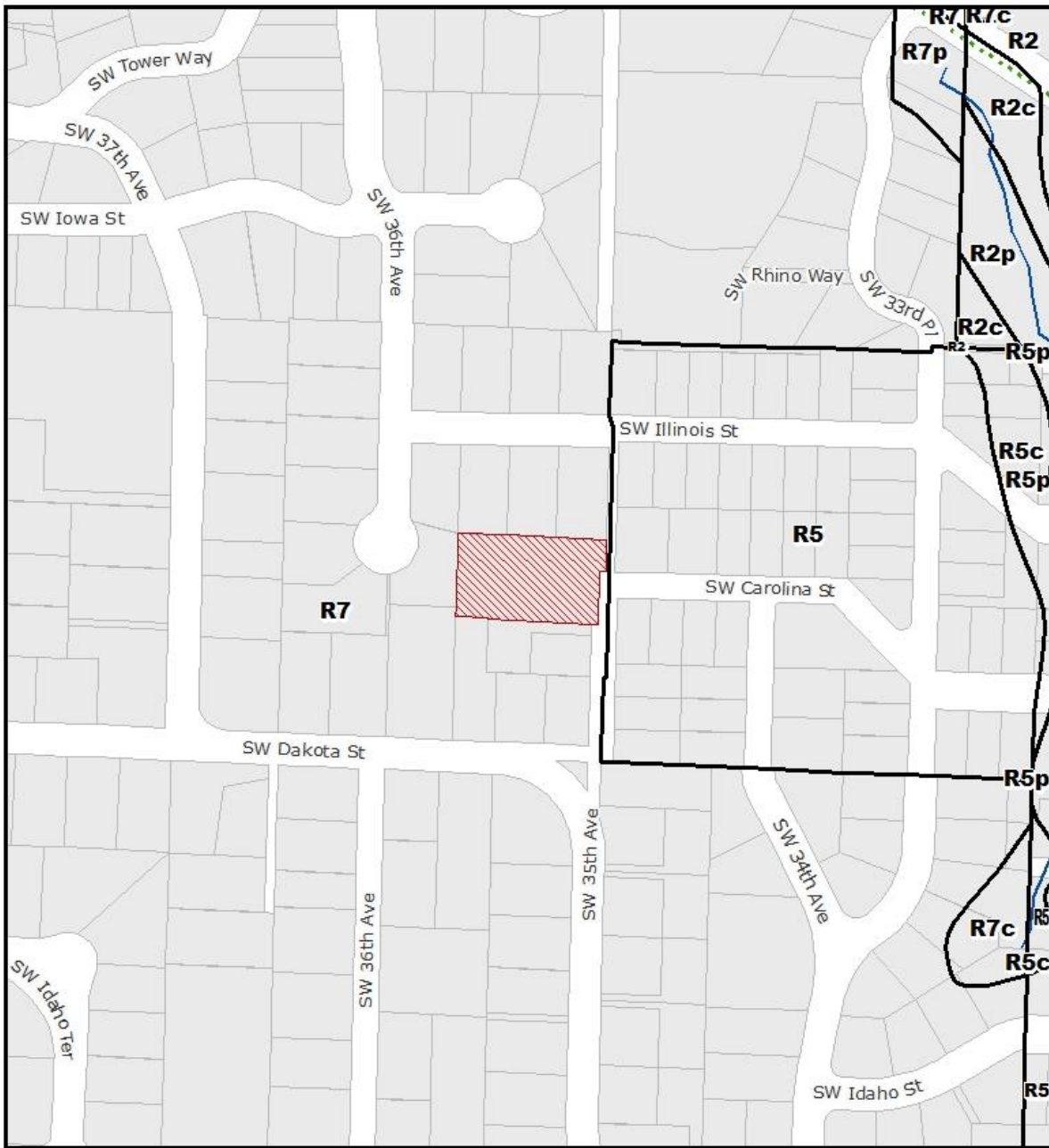
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Property line adjustment survey (attached)
  - 2. Existing conditions survey (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. Life Safety Plans Examiner
  - 5. Fire Bureau; Site Development Review Section of BDS; Bureau of Parks, Forestry Division
- F. Correspondence: None
- G. Other:
  - 1. Original LU Application

**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).**



# ZONING



-  Site
-  Stream
-  Recreational Trails

File No.	LU 19-161866 AD
1/4 Section	3625
Scale	1 inch = 200 feet
State ID	1S1E17CD 900
Exhibit	B May 13, 2019





