



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

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Date: May 13, 2021
To: Interested Person
From: Don Kienholz, Land Use Services
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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 at <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 21-001455 AD

GENERAL INFORMATION

Applicant: Zac Horton
Faster Permits
2000 SW 1st Ave Suite 420
Portland, OR 97201

Owner: Thomas Gilkey
3823 SE Lexington St
Portland, OR 97202

Site Address: 3823 SE LEXINGTON ST

Legal Description: BLOCK 29 LOT 29&30, BERKELEY
Tax Account No.: R070908110
State ID No.: 1S1E24DA 13000
Quarter Section: 3834

Neighborhood: Eastmoreland, contact Rod Merrick at president@eastmorelandpdx.org
Business District: None
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010 x313
Plan District: None

Zoning: R5 – Single-Dwelling Residential, 5,000.

Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant is proposing to convert an existing garage attached to a house into additional living space for the house. Because the garage is being converted, the proposal includes removing the parking space from the site rather than relocating it. The site is far from frequent transit service and therefore is required to have one on-site parking space under Portland

Zoning Code Section 33.266.110 and Table 266-2. The applicant is therefore requesting an Adjustment to waive the one required on-site parking space.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are found in Portland Zoning Code Section 33.805.040.A through F.

ANALYSIS

Site and Vicinity: The subject site is a 5,000-square foot lot zoned R5 in the Eastmoreland neighborhood with a detached single-family dwelling and attached garage built in 1951. The area is made up exclusively of the R5 zone and early to mid-century homes. Southeast Cesar E. Chavez Boulevard is less than 100-feet to the east and forms the neighborhood boundary between Eastmoreland and Woodstock. The Springwater Corridor and the City's boundary with the City of Milwaukie is just over 1000-feet to the south, along with Johnson Creek and the associated natural areas.

Zoning: The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. The use regulations are intended to create, maintain and promote single-dwelling neighborhoods. They allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood. The development standards preserve the character of neighborhoods by providing six different zones with different densities and development standards. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

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 February 23, 2021. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering and Development Review (Exhibit E.1);
- Life Safety (Exhibit E.2);
- Water Bureau (Exhibit E.3);
- Bureau of Environmental Services (Exhibit E.4); and
- Fire Bureau and Site Development Review Section of the Bureau of Development Services (Exhibit E.5).

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.040 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**

Finding: The applicant is converting the attached garage into living space. As a result, the applicant is proposing an Adjustment to waive the one required on-site parking space

(Portland Zoning Code Section 33.266.110.B.1). The applicable purpose statement for minimum required parking is found in Zoning Code Section 33.266.110.A:

“Purpose. The purpose of required parking spaces is to provide enough on-site parking to accommodate the majority of traffic generated by the range of uses which might locate at the site over time. Sites that are located in close proximity to transit, have good street connectivity, and good pedestrian facilities may need little or no off-street parking. Parking requirements should be balanced with an active pedestrian network to minimize pedestrian, bicycle and vehicle conflicts as much as possible. Transit-supportive plazas and bicycle parking may be substituted for some required parking on a site to encourage transit use and bicycling by employees and visitors to the site. The required parking numbers correspond to broad use categories, not specific uses, in response to this long-term emphasis. Provision of carpool parking, and locating it close to the building entrance, will encourage carpool use.”

The relevant portion of the purpose statement above to the proposal is: “...to provide enough on-site parking to accommodate the majority of traffic generated by the range of uses which might locate at the site over time.”

The use of the subject site is Household Living. The subject site is zoned R5, so no retail or office uses are allowed and none are proposed. The parking standards require one on-site vehicle parking space per Household Living unit based on expected demand (33.266.110 and Table 266-1) unless a site is close to frequent service transit. In this case, the site is not within the required proximity to frequent service, so one parking space is required since there is a single-family dwelling on site.

Generally, removing the on-site parking space from a site and closing the driveway access creates one on-street parking space where the driveway and apron once were. This one-for-one exchange generally satisfies the expected parking demand of the site. As such, the conversion of the garage space to living area will not impact the parking demand for the subject site. The Portland Bureau of Transportation (PBOT) reviews projects for potential impacts to the transportation system, including the amount of on-street parking for a given area. In this case, PBOT evaluated the impact of removing an on-site parking space to the parking availability and found there was an abundance of on-street parking available and had no objection to the request (Exhibit E.1).

Based on the above, staff finds the purpose of the vehicle parking requirement is equally met.

Criterion 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

Finding: The site is in the R5 zone, a residential zone. 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 in the findings for Approval Criterion A, PBOT evaluated the proposal and found the area had an abundance of available on-street parking and the removal of a parking space on the subject site would not adversely impact the on-street parking supply. The availability of on-street parking and a complete pedestrian network ensure the proposal will not adversely impact the livability of the residential area with the removal of the single on-site parking space.

The request to waive the required on-site parking space does not directly impact the appearance of the residential area. The site is in an older, close-in neighborhood where street parking is common and part of the neighborhood fabric. Because of the commonality of the on-street parking, removal of the on-site parking space and potential of an additional vehicle parking on the street will still maintain the residential appearance of the subject site.

While the garage is proposed to be converted to living space, the garage is currently accessed by a paved driveway. The remaining driveway is not long enough to accommodate a parked vehicle that would be located at least 10 feet from the front lot (a standard that is required in single-dwelling residential zones). This would result essentially in a vehicle parking within the required front setback. To prevent this from happening, a condition of approval will require that the curbcut leading to the driveway be closed, and the driveway entirely removed and replaced with living groundcover OR the first four feet of the paved driveway extending northward from the front lot line be removed and replaced with three evergreen shrubs and living groundcover. This condition not only precludes vehicles from parking within the front setback area, but also enhances and helps maintain an open front yard area.

Based on the above, staff finds that with the condition of approval the proposal will not significantly detract from the livability and appearance of the surrounding residential area. With the condition of approval, this criterion is met.

Criterion 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

Finding: Since only one Adjustment is requested, this criterion is not applicable.

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

Finding: City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s,” while historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. The subject property is not within a City-designated ‘s’ overlay zone nor within proximity to an Historic Resource.

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

Finding: The only anticipated impact from the removal of the on-site parking space is the remaining driveway that, unless addressed, will result in a vehicle parked in the front setback. With the condition of approval requiring the removal of the curbcut and removing the driveway in its entirety or at minimum replacing a portion of the driveway with landscaping, this impact will be avoided.

With this condition, this criterion 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;

Finding: 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 the 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

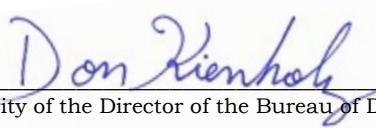
The proposal to reduce the one required on-site parking space down to zero equally meets the intent of the parking regulations and does not have any adverse impacts on the livability or appearance of the surrounding residential neighborhood. The applicant has demonstrated that the approval criteria have been met. Because the approval criteria have been met, the proposal must be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the required on-site vehicle parking space from one to zero (Zoning Code Section 33.266.110, Table 266-2), per the approved site plan (Exhibit C.1), and subject to the following conditions:

- 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 Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File #LU 21-001455 AD. No field changes allowed."
- B. The curbcut leading to the existing paved driveway is required to be closed, and either the driveway being entirely removed and replaced with living groundcover OR the first four feet of the driveway extending northward from the front lot line being removed and replaced with living groundcover and three evergreen shrubs growing to a mature height of at least three feet.

Staff Planner: Don Kienholz

Decision rendered by:  **on May 10, 2021**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 13, 2021

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 January 6, 2021, and was determined to be complete on February 16, 2021.

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 January 6, 2021.

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: June 16, 2021.**

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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on May 27, 2021. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIX decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

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 **May 27, 2021** 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.

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 materials
 - 1. Applicant Request
 - 2. Narrative
 - 3. Original Site Plan
 - 4. Updated Narrative
- B. Zoning Map (Attached)
- C. Plans/Drawings:
 - 1. Site Plan (Attached)
- D. Notification information:
 - 1. Mailing List
 - 2. Mailed Notice
- E. Agency Responses:
 - 1. Bureau of Transportation Engineering and Development Review
 - 2. Life Safety
 - 3. Water Bureau
 - 4. Bureau of Environmental Services
 - 5. Fire Bureau and Site Development Review Section of BDS
- F. Correspondence: None
- G. Other:
 - 1. Original LU Application
 - 2. Receipt of Fees Paid
 - 3. Incomplete Letter

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).