



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

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Date: May 25, 2021
To: Interested Person
From: Andrew Gulizia, 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 with conditions** 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 21-032451 AD

GENERAL INFORMATION

Applicant: Patrick Donaldson
Harka Architecture
107 NE Washington St. #740
Portland, OR 97214

Property Owner: Young Glad LLC
11 Devoe St., Apt 4b
Brooklyn, NY 11211

Site Address: 5903 SE Gladstone St.

Legal Description: BLOCK 3 LOT 16, MYRTLE
Tax Account No.: R595500930
State ID No.: 1S2E07DD 19500
Quarter Section: 3436
Neighborhood: Foster-Powell, contact Joseph Liu at land.use@fosterpowell.com
Business District: Foster Area, contact at <https://fosterarea.com/>
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010 x313
Zoning: CE – Commercial Employment
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: The applicant proposes to use the existing house on this site for short-term rentals for families and groups. Since no permanent, long-term resident is proposed, this is classified as a Retail Sales and Service use under the Zoning Code. Retail Sales and Service uses are allowed outright in the CE zone. Although no physical changes to the house are proposed, the proposed use triggers Zoning Code requirements applicable to commercial uses. In order to retain the existing driveway and off-street parking, the applicant requests an Adjustment to waive the requirement in Zoning Code Section 33.266.130.G.2 that the driveway be set back at least 5 feet from the east lot line, that a 5-foot-wide L3 (high screen) landscaping buffer abuts

the east and north sides of the driveway, and that a 5-foot-wide L2 (low screen) landscaping buffer abuts the west side of the driveway.

Relevant Approval Criteria: To be approved, this proposal must comply with the Adjustment Review approval criteria in Zoning Code Section 33.805.040.A-F.

ANALYSIS

Site and Vicinity: The subject site is 4,000 square feet in area and located in Southeast Portland on the north side of SE Gladstone Street, between SE Foster Road and SE 60th Avenue. The property is developed with a 1½-story house that was built in 1906. The property has no garage, but there is an existing, paved driveway on the east side of the house providing off-street parking. The surrounding properties are also developed with detached houses, and commercial buildings along SE Foster Road are about a half block to the west.

Zoning: The Commercial Employment (CE) zone is a medium-scale commercial/mixed use zone intended for sites along corridors with a Neighborhood Collector or higher traffic classification, especially along Civic Corridors that are also Major Truck Streets or Priority Truck Streets. The zone allows a mix of commercial uses, including auto-accommodating development and drive-through facilities, as well as some light manufacturing and distribution uses that have few off-site impacts.

Land Use Review History: There are no prior land use reviews for this site.

Agency Review: A “Notice of Proposal” was sent April 28, 2021. The following Bureaus responded with no concerns about the proposed Adjustment:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2);
- Water Bureau (Exhibit E-3);
- Fire Bureau (Exhibit E-4);
- Site Development Section of the Bureau of Development Services (BDS) (Exhibit E-5); and
- Life Safety Review Section of BDS (Exhibit E-6).

Neighborhood Review: One neighbor submitted a written response to the mailed “Notice of Proposal.” The neighbor stated that short-term rentals without an on-site resident or manager are damaging to the character of a residential neighborhood (Exhibit F-1). The neighbor suggested large street trees as mitigation if the short-term rental use is approved.

Staff response: Since the site is zoned CE (Commercial Employment), a commercial lodging use is allowed outright, and the Zoning Code does not require an on-site resident or manager. The proposal for this review is only to waive the setback and landscaping requirements for a commercial driveway. Conditions of approval for new trees, including a tree in the front yard, are included in this decision, as discussed in the approval criteria findings below.

ZONING CODE APPROVAL CRITERIA

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 Adjustment request is to waive the requirement in Zoning Code Section 33.266.130.G.2 for landscaping buffers around a commercial driveway and parking area. The purpose of this requirement is stated in Zoning Code Section 33.266.130.A:

The setback and landscaping standards:

- *Improve and soften the appearance of parking areas;*
- *Reduce the visual impact of parking areas from sidewalks, streets, and especially from adjacent residential zones;*
- *Provide flexibility to reduce the visual impacts of small residential parking lots;*
- *Direct traffic in parking areas;*
- *Shade and cool parking areas;*
- *Reduce the amount and rate of stormwater runoff from vehicle areas;*
- *Reduce pollution and temperature of stormwater runoff from vehicle areas; and*
- *Decrease airborne and waterborne pollution.*

The setback and landscaping standards in Zoning Code Section 33.266.130.G.2 are intended for driveways and parking lots that serve commercial uses such as stores and offices. The building on this site will be converted to a commercial lodging use, which triggers these standards, but the building will retain the appearance of a house and the parking area will retain the appearance of a residential driveway. Since the surrounding properties are also developed with houses, staff finds that limiting the exterior changes associated with the allowed commercial use supports neighborhood compatibility. At about 10 feet wide and 50 feet long, the on-site driveway and parking area will be relatively small and unimposing (Exhibit C-1) and will look like neighboring residential driveways that are not surrounded by trees and shrubs. Staff does not find that landscaping buffers with dense rows of trees and shrubs around the driveway, as would be required without this Adjustment, are necessary to support the purposes stated above for improving aesthetics, directing traffic, and mitigating pollution.

The 3-foot-tall, solid wood fence proposed by the applicant on the east side of the driveway will provide visual separation from the residentially-zoned property to the east, and the Zoning Code permits outright a 3-foot-tall fence in lieu of a landscaping buffer for some multi-dwelling residential developments (Zoning Code Section 33.266.130.G.2.b.2). This fence also will help shield headlight glare from vehicles using the driveway during evening hours. The applicant also proposes two new trees: one in a cut-out area at the north end of the driveway and another in the front yard (Exhibit C-1). Staff finds the new tree canopy will improve the appearance of the site and soften views toward the parking area, as intended by the standard. As they mature, the new trees will also provide shading and cooling, absorb some of the stormwater runoff from the pavement, and help to mitigate air and water pollution. The Bureau of Environmental Services reviewed the proposal and raised no objections to the Adjustment (Exhibit E-1). To maximize benefits from the new trees, a condition of approval will require the new tree in the front yard, where the available planting area is larger, to be a medium-sized variety rather than a small-sized variety as determined by Zoning Code Section 33.248.030.C.2.c.

For these reasons, and with conditions of approval for the new fence and new trees, staff finds the Adjustment request is consistent with the purpose of the standard to be modified. With the conditions of approval, staff finds approval criterion A 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: Since the site is zoned CE, the Adjustment Review proposal must be consistent with the classifications of the adjacent street and the desired character of the area.

Street classifications

The site abuts a section of SE Gladstone Street that is classified by the City's Transportation System Plan as a local service street for all transportation modes. The

proposed Adjustment to landscape buffering requirements has no effect on the functions or capacity of this street, and the Portland Bureau of Transportation reviewed the proposal and raised no concerns about the Adjustment (Exhibit E-2). Therefore, the proposed Adjustment is consistent with the local service classifications.

Desired character of area

“Desired character” is defined in Zoning Code Chapter 33.910. Pursuant to this definition, the desired character for this site is determined by:

- the character statement for the CE zone;
- the Foster-Powell Neighborhood Plan; and
- the Outer Southeast Community Plan.

CE zone

The character statement for the CE zone is in Zoning Code Section 33.130.030.E:

The Commercial Employment (CE) zone is a medium-scale zone intended for sites along corridors with a Neighborhood Collector or higher traffic classification, especially along civic corridors that are also Major Truck Streets or Priority Truck Streets. This zone is generally not appropriate in designated centers, except on a site that is currently developed in an auto-oriented manner and where more urban development is not yet economically feasible. The zone allows a mix of commercial uses, including auto-accommodating development and drive-through facilities, as well as some light manufacturing and distribution uses that have few off-site impacts. The emphasis of this zone is on commercial and employment uses, but residential uses are also allowed. Buildings in this zone will generally be up to four stories tall. This zone is intended to allow for development with auto-accommodating configurations, while also including pedestrian-oriented design features that support transit and pedestrian access.

The applicant intends to convert the house on this site to a commercial lodging use, which is permitted outright in the CE zone. Retaining the existing driveway for off-street parking supports an auto-accommodating configuration, as intended for the CE zone, while the new trees discussed in the findings for approval criterion A will create shade and a more pleasant view for pedestrians on the adjacent sidewalk (and for the residential neighbor to the east). Therefore, with conditions of approval for new trees, staff finds the proposal is consistent with the character statement for the CE zone.

Foster-Powell Neighborhood Plan and Outer Southeast Community Plan

The following statements from the Foster-Powell Neighborhood Plan are found to be relevant to this review:

Policy 1 (Parks and Open Space), Objective 6: Plant more street trees in the neighborhood.

Policy 2 (Neighborhood Livability), Objective 2: Discourage the establishment of businesses in Foster-Powell that have an adverse effect on neighborhood livability.

The following statements from the Outer Southeast Community Plan are found to be relevant to this review:

Housing Policy, Objective 6: Encourage property owners to maintain and improve their homes so that established neighborhoods remain stable and attractive.

Housing Policy, Objective 7: Preserve and increase the supply of housing affordable to households below the median income.

Open Space and Environment Policy, Objective 9: Improve the appearance and livability of outer southeast neighborhoods.

The proposal does not preserve or increase the neighborhood's housing supply, and a neighbor expressed concern that short-term rentals without an on-site resident or manager will detract from neighborhood livability (Exhibit F-1). However, since this site is zoned CE, conversion of the house to a commercial lodging use without an on-site resident or manager is allowed outright, and the scope of this review is limited to the requirement for landscaping buffers around commercial driveways. Since the building on this site will retain the appearance of a house, and surrounding properties are also developed with houses, staff finds that limiting exterior changes associated with the change of use will protect neighborhood stability. Retaining the existing driveway for off-street parking also supports neighborhood livability by maintaining the supply of street parking, even though no off-street parking is required at this location (Zoning Code Section 33.266.110.B.1).

The new wooden fence along the east side of the driveway will provide visual separation between the driveway and the abutting residential property, as well as shield the adjacent neighbor to the east from the glare of car headlights. The two new trees (one at the north end of the driveway and one near the street) will improve the appearance of the site and neighborhood.

For these reasons, and with conditions of approval for the new fence and trees, staff finds that on balance, the proposed Adjustment is consistent with the Foster-Powell Neighborhood Plan and the Outer Southeast Community Plan.

Summary

With conditions of approval for the new fence and trees, staff finds the Adjustment is consistent with the classifications of the adjacent street and the desired character of the area. With the conditions of approval, staff finds approval criterion B 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: Since only one Adjustment is 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. As there are no scenic resources or historic resources 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: Staff finds a new 3-foot-tall, solid wood fence along the east side of the driveway, a new tree immediately behind the driveway, and another new tree in the front yard will adequately mitigate impacts from waiving the landscaping buffer requirement around the driveway. The new fence will provide visual separation from the residential lot to the east and shield the glare of headlights, and the new tree canopy will shade parts of the driveway, improve the appearance of the property, and absorb some of the stormwater runoff from the pavement. With conditions of approval for the new fence and trees, staff finds approval criterion E 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). As there are no environmental overlay zones mapped on the 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

Staff finds that with a new wooden fence along the east side of the driveway and two new trees planted on the site, the proposed Adjustment is consistent with the purpose of the requirement to be modified and with the character intended for the area. With conditions of approval for the fence and trees, staff finds the approval criteria for the Adjustment are met. Since the approval criteria are met, the Adjustment request must be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to waive the requirement in Zoning Code Section 33.266.130.G.2 that the driveway be set back at least 5 feet from the east lot line, that a 5-foot-wide L3 (high screen) landscaping buffer abuts the east and north sides of the driveway, and that a 5-foot-wide L2 (low screen) landscaping buffer abuts the west side of the driveway, per the approved site plan, Exhibit C-1, signed and dated May 20, 2021, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 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 21-032451 AD."
- B. One new tree is required within a minimum 5' x 5' planter area on the north side of the on-site parking space illustrated in Exhibit C-1. The building permit plans must label the proposed tree variety and must specify that at the time of planting, the new tree will be at least 1.5 caliper inches for a deciduous variety or at least 5 feet in height for a conifer variety. The new tree must be planted prior to approval of the final inspection for the building permit to convert the house to a commercial lodging use.
- C. One new tree is required within the front yard (the area between the front building line and the front lot line). The building permit plans must label the proposed tree variety and must specify that at the time of planting, the new tree will be at least 1.5 caliper inches for a deciduous variety or at least 5 feet in height for a conifer variety. The new tree in the front yard must be a medium-size variety as specified in Zoning Code Section 33.248.030.C.2.c. The new tree must be planted prior to approval of the final inspection for the building permit to convert the house to a commercial lodging use.
- D. A 3-foot-tall, solid, good-neighbor wood fence is required along the portion of the east lot line which abuts the driveway and on-site parking space illustrated in Exhibit C-1. The new fence must be constructed prior to approval of the final inspection for the building permit to convert the house to a commercial lodging use.

Staff Planner: Andrew Gulizia

Decision rendered by:  **on May 20, 2021**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 25, 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 April 1, 2021 and was determined to be complete on April 22, 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 April 1, 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 August 20, 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 June 8, 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 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 e-mail 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 June 8, 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 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. Original narrative
 - 2. Original site plan
 - 3. Revised narrative
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Approved site plan (attached)
- D. Notification Information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Review Section of BDS
- F. Correspondence:
 - 1. Letter from Morgan Maiolie, received May 11, 2021
- G. Other:
 - 1. Land use application form
 - 2. Incompleteness determination letter, dated April 15, 2021

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).