



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

Dan Ryan, Commissioner
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portland.gov/bds

Date: June 24, 2021
To: Interested Person
From: Amanda Rhoads, City Planner
503-865-6514 / Amanda.Rhoads@portlandoregon.gov

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 (Northeast Coalition of Neighborhoods) then scroll to the relevant Neighborhood (Sullivan's Gulch), 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 21-008199 AD

GENERAL INFORMATION

Applicant: Mildred White | BAMA Architecture and Design
7350 SE Milwaukie Ave | Portland, OR 97202

Owner/Agent: Westlake Holdings LLC
Attn: Lucas Eastwood
2425 Melendy Drive | San Carlos, CA 94070

Site Address: 2317-2319 NE CLACKAMAS STREET

Legal Description: BLOCK 14 W 1/2 OF LOT 2 E 43' OF LOT 3, HOLLADAY PK & 1ST ADD

Tax Account No.: R395502840
State ID No.: 1N1E35AA 02400
Quarter Section: 2932

Neighborhood: Sullivans Gulch, contact DJ Heffernan at djheff1@gmail.com.
Business District: NONE.
District Coalition: Northeast Coalition of Neighborhoods, contact Jessica Rojas at jessica@necoalition.org

Zoning: **R2.5** (Single-Dwelling Residential 2,500 base zone)
Case Type: **AD** (Adjustment Review)
Procedure: **Type II**, an administrative decision with appeal rights to the City of Portland Adjustment Committee.

PROPOSAL: The applicant is in the process of working with the property owners to convert an existing detached garage with storage loft behind the duplex at 2317-2319 NE Clackamas Street into habitable living space. Current regulations limit the maximum density in the R2.5 base zone to a duplex, so at this time the existing detached garage/storage could only be

approved as accessory living area to one or both units of the duplex, and not a stand-alone Accessory Dwelling Unit (ADU). However, regulations going into effect August 1, 2021, do allow an ADU at the property (see <https://www.portland.gov/bps/rip> for details). This review only considers the conversion of the garage to living space; when new code goes into effect in August, the living space could be configured as an ADU if desired by the applicant.

When the existing garage was constructed in 2005, garages were allowed to be located in required side and rear building setbacks if certain criteria were met. In this case, the building wall exceeded the 10-foot limit due to the dormer wall on the south façade being in the same plane as the wall below, and therefore, the wall height was calculated at 15 feet. Because of this, the proposal required Adjustments to both the side and rear setbacks. The same garage with the same 24'-0" by 24'-0" building footprint but with no dormer, or with a dormer wall set back from the wall below, would have been allowed in the setbacks by right.

Through case file LU 05-111335 AD, Adjustments were approved to reduce the side setback to 1'-0" on the north or rear setback, and to zero (eaves) and 0'-6" (wall) on the west or side setback. In both 2005 and today, the normal side and rear minimum setback in the R2.5 zone is 5'-0" for the wall (33.110.220.B/Table 110-3) and 4'-0" for eaves (33.110.220.C.1.(a)).

Although no changes to the exterior massing, placement or size of the garage are proposed at this time, the applicant proposes to convert the garage to living space. In 2005, as the note following the decision language in the 2005 decision indicated, garages were only allowed to be located in the setbacks if the structure did not contain space for living, sleeping, eating, cooking or sanitation. The 2005 approval was per the approved site plan and elevation drawings (Exhibit G.3), which identified the structure as a garage. While accessory structures with living space are currently allowed by right in required building setbacks if certain standards are met, the building constructed in 2005 would still be subject to Adjustment Review today if it were new because it still does not meet all of the provisions of the exception to be allowed in the setbacks.. Therefore, this review is looking at the change in use from the garage that was approved in 2005 to living area, and verifying the Adjustment approval criteria for the reduced setbacks can still be met with the new use.

Staff note: The notice of proposal for this case identified an Adjustment to wall setback from 5 feet to 4 inches, and a reduction in the eave depth from 4 feet to 4 inches, presumably reflecting as-built conditions that differed from the 2005 land use decision and subsequent permit drawings. However, after the notice was sent out, the applicant commissioned a survey to document the actual location of the structure, which confirmed the placement of the building from the west property line as 6 inches, and the eave depth similarly as 6 inches (Exhibit C.2) as proposed and approved in 2005. Therefore, the changes to the location of the building requested in the initial proposal are no longer required. The only issues addressed in this review are the setback reductions in light of the change of use from garage to living space.

RELEVANT APPROVAL CRITERIA: In order to be approved, this proposal must comply with the approval criteria of City of Portland Title 33, Planning and Zoning. The relevant criteria are found at **33.805.040.A-F, Adjustment Approval Criteria.**

ANALYSIS

Site and Vicinity: The site is a 6,800 square-foot lot on NE Clackamas Street in a close-in neighborhood. It is developed with a side-by-side duplex and detached garage with storage loft at the rear. The rest of the street is developed with single dwellings that are one and one half to two and one half stories built in the early 20th century. A few of the properties include single detached garages at the rear of the lots.

The block on which the site is located is between Clackamas and Halsey Streets. The Halsey Street side of the block is developed with small apartment buildings. The applicant's property abuts two such lots. The rear of the existing garage and storage structure abuts the rear of the apartment building on the abutting lot to the north. The lot directly to the west includes a

single-story detached accessory structure in the setbacks abutting the existing garage/storage structure on the subject site. There are some trees and shrubs along this shared rear lot line, and the existing structure does not include openings or windows on the north and west facades that face the abutting properties. A fully sight-obscuring fence approximately 6 feet tall also separates the properties.

Surrounding streets are improved to city standards with paved roadways, on-street parking, curbing, and concrete public sidewalks with street trees in the planting strips. Northeast Clackamas Street abutting the site is a Local Service Street for transit, traffic and bicycle modes in the City of Portland Transportation System Plan (TSP), but is identified as Neighborhood Walkway for the pedestrian mode of the TSP.

Zoning: The site is zoned Single-Dwelling Residential 2,500 (R2.5). This is a high-density single-dwelling zone, allowing attached houses on lots that average 2,500 square feet and detached houses on 5,000 square-foot lots. Duplexes are allowed at a maximum density of one unit per 2,500 square feet of site area. As a duplex, this site is developed at the maximum density under current regulations. As noted in the "Proposal" section above, state-mandated regulations which take effect later in 2021 will allow up to four dwelling units in this zone under certain circumstances.

Land Use History: There is one prior land use case at the site, involving the same structure under consideration in the present application. Case File # LU 05-111335 AD included a decision which read as follows:

Approval of adjustments to reduce the side (west) setback from five feet to zero for the eave and 6 inches for the building wall, and to reduce the rear (north) setback from five feet to one foot (code section 33.110.220 and Table 110-3) per the approved site plan (Exhibit C-1) and elevation drawings (Exhibits C-2 through C5), signed and dated April 5, 2005, subject to the following conditions:

- A. *As part of the building permit application submittal, the following development-related condition must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 05-111335 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."*
- B. *The west side of the garage must have an eave that matches the design on the east side of the structure, a minimum of six inches long.*

NOTE: This approval is for use of the structure as a garage only, as requested in this application. The structure may not contain space for living, sleeping, eating, cooking or sanitation.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed March 1, 2021. The following agencies have responded:

The *Bureau of Transportation* (PBOT) reviewed the proposal and responded with comments, but with no objections or concerns regarding the requested Adjustment. With adequate on-site parking remaining on the site in the relatively long driveway, there are no anticipated impacts to the public transportation system or nearby streets. Because the existing right-of-way elements already meet or exceed city standards, no public improvements will be required. If any damage occurs to the sidewalk corridor during construction, a Minor Improvement Permit may be required to repair the damage. Exhibit E.2 contains staff contact and additional information.

The *Water Bureau* has reviewed the proposal and offered comments but no concerns or objections related to the requested Adjustment. The existing water line and meter service to the property will be evaluated during the building permit process for any new habitable space that includes plumbing fixtures. Exhibit E.3 contains staff contact and additional information.

The *Life Safety Section of the Bureau of Development Services* has reviewed the proposal and provided standard comments, but no objections or concerns regarding the requested

Adjustment. A separate building permit is required for any future internal conversion of the structure in question, and the proposal must be designed to meet all applicable building codes and ordinances. Exterior walls and eaves less than 3'-0" from a property line must be designed to meet a 1-hour fire-rating standard and include no openings, as well as fire protection on the underside of the eaves. Exhibit E.4 contains staff contact and additional information.

The following three agencies reviewed the proposal and responded with "no concerns" comments but no formal memo or document (Exhibit E.1):

- The *Bureau of Environmental Services*;
- The *Site Development Section of the Bureau of Development Services*; and
- The *Fire Bureau*.

Neighborhood Review: A total of five written responses were received from community members in response to the mailed public notice (dated March 1, 2021) for this Adjustment Review. The first comment received expressed support for the proposal (Exhibit F.1). The latter four responses received were all in opposition to the request, and recommended denial of the proposal.

The second letter (Exhibit F.2) received came from the neighbors living directly west of the subject site, who have lived in the adjacent home since 1993. These neighbors did not object to the prior Adjustment in 2005 expressly because the proposal did not include living space or another dwelling unit. The taller-than-allowed height of the structure was also a concern as it did reduce their morning light somewhat, but of greater concern today is how the building was constructed with a lesser westerly wall setback (0'-4" versus 0'-6") than was permitted in the prior Adjustment. This letter objects to the proposal based on these and safety, fire-fighting access, and maintenance-related concerns, requesting that the structure be moved, ideally to a location outside of the required setbacks prior to conversion into living space.

Staff response: *The accessory structure did not exceed the height allowed in the setback as, in 2005, there was no height limit to garages in setbacks. The structure was required to go through the setback Adjustments because the dormer wall was in the same plane as the wall below, meaning the wall height exceeded the 10-foot maximum specified in the setback exception of 2005 Zoning Code Section 33.110.250.E.3. The survey in Exhibit C.2 demonstrates the structure was constructed as approved in the 2005 land use review (LU 05-111335 AD) and subsequent permits (05-107605 and 107608 RS).*

The third letter (Exhibit F.3) was submitted by a representative from, and on behalf of, the Sullivan's Gulch Neighborhood Association (SGNA). The over-arching concern in this letter is "with fire, life, and safety for potential residents of the structure and with the precedent this action could set for approving accessory dwellings in structures that do not meet codified setback requirements for other accessory structures in the R 2.5 zone". The letter suggests that the applicant has not adequately argued that the approval criteria are met, and that the applicant should be required to meet the approval criteria that were in place in 2005. The letter objects to the lack of maintenance access around the building, in part because of the purpose statement for all accessory structures at 33.110.250.A, and to potential impacts on privacy for abutting residences. Specific maintenance concerns raised include the ability to do painting, gutter-cleaning and eave repairs on the north or west sides of the building. The letter claims that the structure does not meet current zoning code height limits for accessory structures, nor for the additional height limits imposed on accessory structures located in a setback. The letter expresses concern about fire and life safety access to the building, and suggests that both side and rear setbacks should be revisited in their entirety with the changed use of the structure. The SGNA claims that the city does not have the authority to even review this proposal at the current time, since adding an ADU to a site with a duplex in R2.5 is currently prohibited. Overall, the SGNA objects to the proposal and related life, safety and maintenance impacts associated with allowing living space or an ADU in the building, and is concerned that this impacts the livability and appearance of the area in a manner that cannot be successfully mitigated. Like the second letter, the SGNA recommends that the proposal be denied unless the structure can be re-located to meet the required building setbacks.

Staff response: *Regarding the statement, “with fire, life, and safety for potential residents of the structure and with the precedent this action could set for approving accessory dwellings in structures that do not meet codified setback requirements for other accessory structures in the R 2.5 zone,” it should be noted that under today’s code, accessory structure containing living area are allowed outright in required side and rear setbacks if certain requirements are met, such as the structure being located at least 40 feet back from the front lot line, the footprint of the structure being no more than 24’ by 24’, and the structure being no more than 15 feet in height with walls no taller than 10 feet (excluding the portion of the wall within a gable). For the subject accessory structure, all of the requirements to be in a side and rear setback are met with the exception of the walls being taller than 10 feet and the overall height exceeding 15 feet.*

Maintenance of the building is not relevant to the approval criteria. Since the setback is the standard that was modified, the setbacks purpose statement applies, not the overall accessory structures purpose of 33.110.250.A. Any change of occupancy will need to meet all relevant building code requirements. The applicant has already received building code appeal approval to maintain the 6-inch eave with additional fire-rated materials, as discussed in the findings for criterion A below. The structure was built with reinforced concrete block firewalls in 2005 on the east and north walls. The Fire Bureau has responded with “no concerns” with the proposal. As described in the notice of proposal, this review is not intending to approve an Accessory Dwelling Unit (ADU), but rather additional living space. The fact that ADUs will be allowed in the R2.5 zone accessory to a duplex in August is not relevant to the review, which is focused on the change of use from a garage to living space. Finally, while there is an exception for accessory structures to be located in setbacks by right which includes an overall 15-foot height limit, this regulation was not part of the setback exception for garages in 2005 when the garage was built; and nothing prevents an applicant from requesting an Adjustment to setbacks if they propose an accessory structure taller than the 15-foot limit of the exception. The building does not exceed the current height limit of 20 feet in effect for all new accessory structures. Livability and privacy concerns are addressed in the findings below.

The fourth letter (Exhibit F.4) expresses many of the same concerns noted above, but emphasizes that the building should be held to the restrictions on living area and original setbacks as originally approved (i.e. 6” versus 4” west wall setback), otherwise the city is encouraging people to ignore the regulations altogether and displaying a “clear lack of integrity in the system”. This concern about “manipulating the code and past agreements” as not being good for the neighborhood as a city as a whole is the primary focus of this fourth letter.

Staff response: *As indicated above, a survey of the site shows the building was built as approved in the 2005 land use review and related building permits.*

The fifth letter (Exhibit F.5) expresses concerns about the building height, and that the structure does not meet the exceptions (wall height limits) for buildings which are allowed to be in the setbacks. This letter argues that the height, size and placement of the structure was only previously approved because it would not contain living space, and that to revisit that requirement at this time is unfair. In addition to expressing concern that the west wall was built closer than allowed in the prior Adjustment (4 inches versus 6 inches), this letter notes that new ADU’s would not be allowed in a setback and that “this imposing structure is not appropriate for an ADU and should not be granted approval”.

Staff response: *As described in detail in the findings for criterion A below, there was no maximum height for accessory structures when the building was built, even for garages located in the setbacks; the only height limit was for the wall height. As stated above, if the dormer wall had been set back or if there had been no dormer, the garage structure would have been allowed by right. The size, 24 feet by 24 feet, was allowed in the setbacks in 2005 if all other requirements were met, and that size, as noted above, is still allowed in the setbacks today in the same manner.*

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 review body finds that the applicant has shown 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: In 2005, when the original setback Adjustment was granted, garages in certain single-dwelling zones were allowed to locate in the required building setbacks if they met four standards listed in Zoning Code Section 33.110.250.E.3:

- *The garage entrance is 40 feet from a front lot line, and if on a corner lot, 25 feet from a side street lot line;*
- *The garage has dimensions that do not exceed 24 feet by 24 feet;*
- *The garage walls are no more than 10 feet high, excluding the portion of the wall within a gable; and*
- *The structure in which the garage is located contains no space for living, sleeping, eating, cooking, or sanitation. (January 2005 Zoning Code, available in City Archives at: <https://efiles.portlandoregon.gov/Record/13232502/File/Document>).*

The proposal for the garage in 2005 exceeded the 10-foot wall height because the dormer wall that was located out of the setback was in the same plane as the wall below, meaning wall height was measured to the top of the dormer wall (see Exhibit C.3). Otherwise, the building was in conformance with the regulations in place at the time (the walls on the east and west side of the structure within the side and rear setbacks met the 10-foot limit because much of that wall area was within the gable end of the building). While the findings of the 2005 case focused on building design solely, and the word “garage” was not included in the decision language, the regulations at the time only allowed a garage to be located within the required building setbacks, not other types of accessory structures. Current code treats all accessory structures the same, and living space is allowed by right in required side and rear setbacks if the structure meets a longer list of requirements (located in Zoning Code Section 33.110.250.C.2).

Because the use of the structure is changing from garage to living space, the setback Adjustments previously approved in 2005 are being revisited through this review. The purpose of the setback regulations is stated in Zoning Code Section 33.110.220.A:

A. Purpose. The setback regulations for buildings and garage entrances serve several purposes:

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of houses in the city's neighborhoods;*

- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*
- *They maintain light, air, separation for fire protection, and access for fire fighting;*

The exterior of the building is not being altered in any way other than changes to doors and windows on the south (street-facing) and east (yard-facing) façades. The original building was constructed with reinforced concrete block walls on the west and north to meet building code requirements for fire separation, with no window or door openings. While the building code does allow garages closer than 2 feet to a property line to have a minimal eave, the rules are different for habitable space (no eave if building is closer than 2 feet). Therefore, the applicant recently applied for and received a building code appeal to reinforce the eaves, thus ensuring fire protection (Exhibit A.6). The Fire Bureau reviewed the proposal and had no concerns (Exhibit E.1). Nothing about the request to change the use of the structure has any impact on light and airflow for the subject site or adjacent neighbors. As state above, if the dormer on the south façade had not been included, the structure would have been allowed in its current location by right. For these reasons, the proposal maintains adequate light, air, separation for fire protection, and access for fire fighting.

- *They reflect the general building scale and placement of houses in the city's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*

The structure under review in this Adjustment Review is an accessory building, and not a house, but the building is placed generally in the same area as other accessory buildings on similar lots. The pattern in the neighborhood for garages is placement less than five feet from side and rear property lines. This is a common pattern throughout the close-in neighborhoods of Portland. In this circumstance, the accessory structure is in the back corner of the property and adjacent to an accessory structure on the neighboring property to the west of roughly the same length south to north as shown on the site plan (Exhibit C.1). The site plan shows that building as beginning at the same southern point, which is consistent with the 2005 plans. Aerials show it to be set back more than the accessory structure on the subject site, but regardless, the placement on the site is similar. To the north is a multi-story, multi-dwelling structure.

The conversion of a garage to living space in the setbacks normally does not require an Adjustment Review and is allowed by right, even if the existing building is nonconforming in some regard, as long as it was constructed legally when created. This building was constructed legally with setback Adjustments due to the increased wall height caused by the dormer wall. However, the overall bulk and massing of the garage was allowed to be constructed in the setbacks by right; now, another similarly-scaled building without the dormer could be converted by right to living space with no review. Many ADUs created in recent years have been made from converted garages in setbacks.

Regardless of the use, the Zoning Code now treats all accessory structures the same, with only limited additional regulations for ADUs (which are not relevant now but would be if the applicant applied later for an ADU in this building when allowed by

code). However, both ADUs and accessory living space (such as a detached bedroom, home office, artist studio, etc.) can be located by right in the setbacks. The proximity of living space to the property line is neither unusual in neighborhoods anymore, nor unreasonable.

The neighbors mentioned privacy concerns with the conversion to living area. We usually think about privacy in terms of views into neighboring properties. There are no openings on the west or north walls that are located in the setbacks. The dormer, which caused the necessity to get the setback Adjustments initially, is located on the south-facing facade of the structure. It is 5 feet back from the west side property line, so its windows are not located in the setbacks. The new main entrance to the building is likewise set back 5 feet, out of the required building setbacks. The entire structure could be rebuilt outside of the setbacks and still have the entrance and windows the same distance away from the property line as they are now, with the addition of unlimited windows to the west and north. Further, there is a 6-foot-tall wood fence separating the subject site from the neighbors to the west, and those neighbors currently maintain a tree and taller foliage which provide additional separation. The conversion to living space does not have greater privacy impacts over what could be built by right.

- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

The front setback is not affected by the proposal. The architecture of the accessory structure matches the primary house, down to the front-facing dormer; it is this dormer that required the original building to go through Adjustment Review for reduced setbacks. Architectural compatibility was a strong argument for the reduced setbacks in 2005, which was “appropriate to this neighborhood filled with many fine examples of early Portland houses” (Exhibit G.3). At that time architectural integrity was ensured by requiring a 6-inch eave on the west side of the structure. This eave is proposed to be retained and fire-rated as described in the approved building code appeal (Exhibit A.6). A condition of approval will require the eave to be retained to ensure architectural compatibility as the structure converts to living space. Otherwise, required outdoor area is retained. The site will still retain multiple parking spaces on a paved area behind the house and in the driveway, and the change to living area within the structure will not affect driver visibility when backing onto the street.

For the reasons described above, and with the condition that the western 6-inch eave is retained, 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 appearance of the structure will change very little from the street or from neighboring properties; the two garage doors will be replaced with a door and windows. No changes are proposed on the west or north walls other than fire-rating the underside of the eave as described in Exhibit A.6. New windows will replace existing doors on the east side facing the yard. The number of exterior lights (two on the south façade and two on the east) is remaining the same. The accessory building was designed to be architecturally compatible with the primary structure on the site.

The retention of the eave through condition of approval will ensure the structure remains as compatible as it was when constructed.

As described in the findings from A above, the change of use to the structure will not result in additional privacy impacts to neighboring residents since no new views are created within the building setback and sufficient visual separation already exists between the subject site and the property to the west. The local neighborhood association states “[t]he proposed adjustments do not worsen the appearance and livability of the residential area” (Exhibit F.3), though they raise concern with routine maintenance and life safety threats. The change of use to livable space will require a building permit which will ensure all building code requirements are met for living space. An appeal has already been granted to allow the retention of the eave with appropriate fire rating. With these standards included, and with no concerns identified by the Fire Bureau regarding fire access, the claim by the Sullivan’s Gulch Neighborhood Association that the location of the building could pose a fire or life safety threat to other residential structures is unfounded.

For these reasons, and with the condition of approval requiring the western eave to be retained, 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: This review is revisiting the setback Adjustments to the side and rear setbacks for an existing structure in light of its proposed conversion from a garage to additional living space. As detailed above, conversion of existing structures located in required setbacks is allowed by right in many cases, whether the structure would meet today’s Zoning Code standards or not, as long as the structure was allowed when constructed and met all standards. The height of the building itself was not in question when constructed, nor its footprint. The setback Adjustments were required because the front shed dormer, which was itself out of the required setback, was in the same plane as the wall below. This increased the wall height above the maximum 10-foot height allowed for structures in setbacks.

The overall purpose of the single-dwelling zones is as follows:

33.110.010 Purpose

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.

Specific purpose statements for use regulations and development standards follow:

A. Use regulations. *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.*

B. Development standards. *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. The site development standards allow for flexibility of development while maintaining compatibility within the City’s various neighborhoods. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed. The development*

standards are generally written for houses on flat, regularly shaped lots. Other situations are addressed through special regulations or exceptions.

The proposal to convert the garage to living area does not change the site's use for housing; the space will be accessory to the Household Living use on the property. No non-Household Living uses are proposed. Duplexes are an allowed development type in the R2.5 zone, and after the garage is converted to living space, the site will still be developed with a duplex. Therefore, the project as currently proposed is still consistent with the overall purpose of the zone and the use regulations.

The findings above demonstrate how the proposal will not compromise aesthetics of the area; privacy; or recreational opportunities on the site. No safety impacts are expected to result from additional living space on the property; in contrast, more transparency between the building into the rear yard and driveway of the site with additional windows might allow for better oversight of the property when occupied. The structure is already constructed, but conversion to living space will require the applicant to meet all applicable requirements for energy conservation including adequate window ventilation without allowing excessive heat to escape from those openings. Finally, the proposal to convert the accessory building to living area is consistent with what has been allowed in the Zoning Code for years. For these reasons, this criterion is met.

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

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

Findings: There are no discernible impacts that would result from granting the requested adjustment. The condition of approval to retain the western eave ensures architectural compatibility and no loss of compatibility with the change to livable space. With that condition, 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). As the site is not within an environmental zone, 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 applicants intend to convert the existing garage that mimics the design of the house to living space. The only exterior changes will be to replace existing garage doors and people doors on the south and east sides with a person door and multiple windows, and to fire-rate the existing west eave. With a condition that this eave is retained for appearance and architectural

compatibility reasons, the proposal satisfies all of the relevant approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of Adjustments to Zoning Code Section 33.110.220.B and Table 110-3 to reduce the required building setback from 5 feet to 6 inches on the west property line and 1 foot on the north property line, and to reduce the setback for the eave on the west side from 4 feet to 0 feet for the existing structure to be converted from a garage to living space, per the approved plans, Exhibits C.1 through C.3, signed and dated June 22, 2021, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition B must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 21-008199 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The 6-inch eave on the west side of the structure must be retained.

Staff Planner: Amanda Rhoads



Decision rendered by: _____ **on June 22, 2021**

By authority of the Director of the Bureau of Development Services

Decision mailed: June 24, 2021

About this Decision. This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. 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 26, 2021, and was determined to be complete on February 25, 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 26, 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 extend the 120-day review period for 30 days, in order to provide a survey of and verify the west setback (Exhibit A.4). Unless further extended by the applicant, **the 120 days will expire on: August 24, 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 July 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 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 by the Bureau of Development Services staff.

- *Unless appealed*, the final decision will be recorded on or after **July 9, 2021 (the day following the last day to appeal).**
- A building or zoning permit will be issued only after the final decision is recorded.

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, or

- In situations involving only the creation of lots, the land division has been recorded.

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 Statements
 1. Original Applicant Narrative
 2. Original Plan Set (superseded by C Exhibits)
 3. First 120-day extension, 30 days, received 3/31/21
 4. Existing Elevations, submitted 4/21/21
 5. Second 120-day extension, 30 days, received 4/27/21
 6. Building Code Appeal Decision, received 6/21/21
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Survey (attached)
 3. Proposed Elevations (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services, Site Development Section of the Bureau of Development Services and Fire Bureau
 2. Bureau of Transportation
 3. Water Bureau
 4. Life Safety Section of the Bureau of Development Services
- F. Correspondence:
 1. E-mail in support from Kent Matthews, received 3/2/21
 2. E-mail in opposition from Harrison Pettit and Lisa Pearlstein, received 3/15/21
 3. E-mail in opposition from DJ Heffernan for the Sullivan's Gulch Neighborhood Association, received 3/19/21
 4. E-mail in opposition from Matt Eiben, received 3/21/21
 5. E-mail in opposition from Max Heckscher, received 3/22/21
- G. Other:
 1. Original Land Use Application
 2. E-mail string between applicant and staff regarding completeness, inability to construct ADU under current regulations, etc., latest message dated 2/24/21
 3. Copy of prior Adjustment decision with findings, LU 05-111335 AD

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).