



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

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Date: September 7, 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 <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 21-026376 AD

GENERAL INFORMATION

Party of Interest: Dayna Tracy | Dayna@theremodelgroup.com
T.H.E. Remodel Group
20400 SW Avery Court
Tualatin OR 97062

Owner/Applicant: Celia Throop
1715 NE Buffalo St
Portland, OR 97211

Site Address: 1715 NE BUFFALO ST

Legal Description: TL 3300 0.32 ACRES, SECTION 14 1N 1E
Tax Account No.: R941141190
State ID No.: 1N1E14AB 03300
Quarter Section: 2332

Neighborhood: Woodlawn, contact Anjala Ehelebe at aehlebe@gmail.com
Business District: Soul District Business Association, contact at Info@nnebaportland.org
District Coalition: Northeast Coalition of Neighborhoods, contact Jessica Rojas at jessica@necoalition.org

Plan District: None
Zoning: R5, RM1h - Split zoned with Single-Dwelling Residential, 5,000 and Multi-Dwelling Residential 1 with an Aircraft Landing Zone (h') Overlay Zone.

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

Proposal:

The applicant is proposing to convert an existing detached garage on the subject site into an Accessory Dwelling Unit (ADU). With the conversion of the garage into an ADU, the applicant is also proposing to remove the existing parking space in the garage. The existing garage measures 36-feet long by 12-feet 8-inches wide and sits at a slight angle to the side property line such that it is 5-feet or more from the side property line for the rear approximately 16-feet but then begins to encroach into the minimum 5-foot setback with the front southwest corner being 3-feet 6-inches from the side property line. Lastly, the existing garage is 6.5-feet from the front property line.

Three Adjustments are necessary for the proposed project:

1. Reduce the number of required on-site parking spaces from one to zero (33.266.110.B.2 and Table 266-2);
2. Reduce the minimum side building setback from 5-feet down to 3-feet 6-inches (33.110.220 and Table 110-3); and
3. Reduce the minimum ADU setback from 40-feet to 6.5-feet (33.205.040.C.4).

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 split zoned property with the majority of the site being zoned R5 and an approximately 40-ft by 154-foot rectangle along the north zoned RM1, a multi-dwelling zone. The site was not part of a subdivision and has a legal description using a metes and bounds description rather than a subdivision plat. The proposed project is on the R5 zoned area to the west of the existing home. The site is developed with an existing home built in 1921 and a detached accessory garage that appears to be built around the same time period. The back yard contains eight large trees with diameters of at least 12-inches and ranging up to 28-inches. There are also two 8-inch Dogwood trees in the back yard. The existing garage proposed to be converted to an ADU is just outside the root protection zone of a 26-in Cedar tree.

Zoning: The site is split zoned between the R5 one and RM1h:

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.

The RM1 zone is a low-scale multi-dwelling zone that is generally applied in locations intended to provide a transition in scale to single-dwelling residential areas, such as the edges of mixed-use centers and civic corridors, and along or near neighborhood corridors. Allowed housing is characterized by one to three story buildings that relate to the patterns of residential neighborhoods, but at a somewhat larger scale and building coverage than allowed in the single-dwelling zones. The major types of new development will be duplexes, triplexes, rowhouses, courtyard housing, small apartment buildings, and other relatively small-scale multi-dwelling and small-lot housing types that are compatible with the characteristics of Portland's residential neighborhoods.

The Aircraft Landing (h) overlay zone provides for safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures, vegetation, and construction equipment. In Residential zones, structures are regulated by the base zone height limits rather than the height limits of the overlay zone, which in this location is over 300 feet

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 **July 7, 2021**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1); and
- Site Development, Water Bureau and Fire Bureau Response (Exhibit E.2).

The Life Safety division of BDS provided a response (Exhibit E.3) indicating they have no concerns as well as providing guidance on building permit requirements.

The Portland Bureau of Transportation provided a response (Exhibit E.4) documenting nearby bus stops and noting they have no objection to the proposal. They also noted that the curb cut will need to be closed as a condition of approval.

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

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

Finding: The site is split-zoned R5 and RM1. Both are residential zones. The proposal includes three Adjustments related to the location of an existing garage being converted to an ADU. Those Adjustments are:

1. Reduce the number of required on-site parking spaces from one to zero (33.266.110.B.2 and Table 266-2);
2. Reduce the minimum side building setback from 5-feet down to 3-feet 6-inches (33.110.220 and Table 110-3); and
3. Reduce the minimum ADU setback from the front lot line from 40-feet to 6.5-feet (33.205.040.C.4).

The first Adjustment to reduce parking on site from one space to zero has a purpose statement located in 33.266.110.A, which states:

“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.”

A response from PBOT (Exhibit E.4) found that there is ample on-street parking in the immediate vicinity and the site is within ¼ mile of two Tri-met bus stops that provide alternative transportation options. Additionally, PBOT notes that closure of the curb cut will add to the on-street parking supply. Closure of the curb cut and removal of the replacement of the driveway with landscaping will be condition of approval. Air photos of the site also reveal that vehicles park on NE Buffalo but take up less than ¼ of the street frontage, meaning there is ample street parking available. Given these facts, this purpose statement is satisfied.

The second Adjustment is to reduce the side building setback from 5-feet down to 3-ft 6-in. Because the existing structure is more than 24-feet in length along a portion of the building, it does not qualify for the general setback exemptions given to detached accessory structures in 33.110.245.C.2. As a result, the building is subject to the base zone setbacks in 33.110.220 and Table 110-4. The identified purpose(s) of the base zone setbacks are found in 33.110.220.A as follows:

“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 residences in the city's single-dwelling neighborhoods;*
- *They foster 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.*

*(Relevant purpose statements in **bold**)*

The garage being converted to an ADU is an existing building constructed in approximately the same time period as the house. It is not perpendicular to the front property line but slightly angled. And as a result, the rear approximately 16-feet of the garage does in fact meet the 5-foot setback requirement while the front approximately 20-foot range in distance from 5-feet down to 3.5-feet from the property line. For simplicity, this review is adjusting the setback down to 3.5-feet, but the review is considering conversion of the existing structure only.

The existing garage is approximately 9 or 10-feet from the adjacent house to the west. From Google Street View and air photos, it appears the house to the west has a larger setback than the 5-foot minimum in the zoning code. With a distance of 9 or 10-feet between the adjacent house and garage being converted to an ADU, there is approximately the same distance as would be if both buildings were right on the 5-foot setback line. The approximately 10-feet between them allows for light, air, separation for fire protection and enough distance to allow fire-fighting staff to move between them. It should be noted that the Portland Fire Bureau provided a response that they have no concerns over the proposal (Exhibit E.2).

With the adjacent house to the west and the garage being converted to an ADU having approximately 10-feet between them, they have the distance between homes in the single-dwelling zones determined necessary by implementation of the base zone setback standards which will not impact privacy. Additionally, the new ADU will not have any windows or doors in the west wall that would open to the property to the west, ensuring no views into the neighboring yard and protecting privacy.

The subject site is a larger than usual residential property at 13,939 square feet in the R5 zone. It is also an unusually shaped property with a large segment off the rear of the site that goes into the RM1 zone, a multi-dwelling zone. The RM1 portion of the subject property wraps around the north end of the property to the west, like the letter L or a flag. While that area is large enough to site an ADU measuring 12-ft 8-in by 36-feet 10-in like the proposed ADU and would provide greater privacy between the ADU and house on the subject site, such a location would have a more detrimental impact on the privacy of the property to the west because it would place the ADU near the back yard, which tends to be more sensitive for outdoor living. As such, converting the existing garage to an ADU offers greater protection of privacy for the adjacent lot by not having an active residential use near the back yard of the adjacent home to the west. It also better utilizes the space of the subject lot and creates a larger back yard for both the house and ADU to enjoy. Based on these facts, staff finds the relevant purpose statements for the side setback are satisfied.

The third Adjustment being requested is to reduce the ADU's front building setback from 40-feet down to 6.5-feet in order to utilize the existing garage building since the garage is not behind the existing home's rear wall. The purpose statement is found in 33.205.040.A as follows:

"Purpose. Standards for creating accessory dwelling units address the following purposes:

- **Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;**
- **Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;**
- *Ensure that accessory dwelling units are smaller in size than primary dwelling units; and*
- **Provide adequate flexibility to site buildings so that they fit the topography of sites.**

*(Relevant purpose statements in **bold**)*

Livability is not a defined term but generally included the concepts of privacy and safety. The existing garage that is proposed to be converted into an ADU is an existing structure built approximately in the early 20th century. The ADU will not have doors or windows along the western wall that encroaches into the side building setback, ensuring that the building will not have views into the adjacent property's yard. The house on the adjacent lot to the west is approximately 7 or 8-feet from the common property line and therefore has a separation of approximately 10-feet from the proposed ADU, which is the same if both buildings were built right at the 5-foot setback line on the respective sites. Given these circumstances, the proposed ADU is compatible with the livability of the residential zone.

Desired Character is defined in 33.910.030 as:

"The preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area."

The site where the ADU is proposed is within the R5 zone with an 'h' overlay. The 'h' overlay doesn't have a character statement but the R5 does, which is:

"The Single-Dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households... 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 proposed ADU is compatible with the R5 character because it increases the opportunity for an additional dwelling unit that is smaller than the primary house but fits

into the building pattern of the immediate area. The ADU is being placed in the existing garage building which has been present in the neighborhood for decades and as such will not break the existing development pattern. As noted earlier, the proposed ADU will not have doors or windows on the wall facing the western property, ensuring privacy will not be impacted for either lot. The conversion of the garage to an ADU allows the status quo in terms of building pattern and impact to be maintained.

Lastly, as noted previously, the subject site is an abnormally large lot for the R5 zone. The placement of the ADU in the existing garage will allow both the primary home and the ADU to have large outdoor space dedicated to each dwelling unit. The existing development pattern will remain.

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 a residential zone. As discussed in finding A above, the proposal will not detract from the livability or appearance of the residential area.

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: Three Adjustments are requested as part of this application. However, the three Adjustments are all directed at unrelated standards (waiving a parking space, reducing the base zone side setback, and reducing the ADU front setback) from three different zoning chapters. The standards do not work together to control overall bulk or size, etc., and therefore do not have a cumulative impact that could be construed as a de facto zone change or allowing a structure the zone intentionally prohibits.

Criterion met.

- 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. As such, this criterion is not applicable.

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

Finding: As determined in Findings A and B above, the proposal equally meets the purpose of the standards being adjusted and will not adversely impact the livability or appearance of the residential area. As such, no adverse impacts are anticipated as a result of approving the Adjustments.

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 applicant has demonstrated that waiving the parking space requirement, reducing the side building setback from 5-feet down to 3.5-feet and reducing the ADU front setback from 40-feet down to 6.5-feet equally meets the purposes of the standards being adjusted; will not impact the livability or appearance of the residential area; will not have a cumulative impact on the zone or area due to requesting multiple adjustments; and will not adversely impact historical, scenic or environmental resources. As the proposal meets the approval criteria, the Adjustments must be approved.

ADMINISTRATIVE DECISION

Approval of three Adjustments to allow the existing garage to be converted to an Accessory Dwelling Unit:

1. Reduce the number of required on-site parking spaces from one to zero (33.266.110.B.2 and Table 266-2);
2. Reduce the minimum side building setback from 5-feet down to 3-feet 6-inches (33.110.220 and Table 110-3); and
3. Reduce the minimum ADU setback from 40-feet to 6.5-feet (33.205.040.C.4).

per the approved plans, Exhibits C.1 through C.2, subject to the following conditions:

- A. As part of the building permit application submittal, the required site plan and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 21-026376 AD. No field changes allowed."
- B. The driveway curb cut to the garage shall be closed and removed and the driveway replaced with landscaping prior to finalization of the ADU conversion building permit.

Staff Planner: Don Kienholz

Decision rendered by: Don Kienholz **on August 31, 2021**

By authority of the Director of the Bureau of Development Services

Decision mailed: September 6, 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 March 17, 2021, and was determined to be complete on July 1, 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 March 17, 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: October 29, 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 September 21, 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 **September 21, 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.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

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. Original Narrative
 - 2. Applicant's Examples of Reduced Setback in Local Area
 - 3. Original Site Plan
 - 4. Floor Plan
 - 5. June 24, 2021 Updated Site Plan
 - 6. June 24, 2021 Updated Narrative
 - 7. July 1, 2021 Updated Narrative
- B. Zoning Map (Attached)
- C. Plans/Drawings:
 - 1. Site Plan (Attached)
 - 2. Elevation Plans (Attached)
- D. Notification information:
 - 1. Mailing List
 - 2. Mailed Notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Site Development, Fire Bureau and Water Bureau
 - 3. Life Safety Section of BDS
 - 4. Bureau of Transportation Engineering and Development Review
- F. Correspondence: None
- G. Other:
 - 1. Original LU Application
 - 2. Copy of Fees Paid Receipt
 - 3. April 14, 2021 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).