



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

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Date: October 21, 2021
To: Interested Person
From: Sean Williams, 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 21-077005 AD

GENERAL INFORMATION

Applicant/Owner: Guy Bryant
GPD Development LLC & Bryant, Guy P
17764 Kelok Road
Lake Oswego, OR 97034
(503) 309-3461 | guybbrant@comcast.net

Site Address: 705 SE 78th Avenue

Legal Description: BLOCK 3 LOT 1&2, KINZEL PK
Tax Account No.: R453300390
State ID No.: 1S2E05AA 17200
Quarter Section: 3138
Neighborhood: Montavilla, contact Adam Wilson at adam@montavillapdx.org
Business District: Montavilla-East Tabor, contact at montavilla.biz@gmail.com
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010 x313
Plan District: None
Zoning: Residential Multi-Dwelling 2 (RM2)
Case Type: Adjustment (AD)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant is proposing a side building setback (33.120.220) adjustment from 5 to approximately 0.5-feet for an existing detached garage in relation to an adjusted property line to be created via an associated Lot Confirmation and Property Line Adjustment (21-066049 PR). The garage has dimensions of 20-feet by 25.7-feet so it doesn't meet an exception to be allowed in the required building setback, which, in part, is allowed if a structures footprint has dimensions that do not exceed 24-feet by 24-feet, excluding eaves. The existing overhead garage door, which faces the proposed property line, will be removed, and replaced by a firewall and siding. The Lot Confirmation and Property Line Adjustment is not a part of this review.

Relevant Approval Criteria:

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

ANALYSIS

Site and Vicinity: The site is located on the southwest corner of SE Alder Street and SE 78th Avenue. Existing development consists of a one-story single-family home with attached tuck under garage and a detached garage to the west of this structure. The surrounding vicinity is developed with a mix of single-family homes and multi-dwelling structures. Commercial and employment zoning and development is close in proximity to the north along SE Stark Street and to the east along SE 82nd Avenue. Mt. Tabor Park is approximately 1/3 of a mile southwest of the site.

Zoning: The site is zoned RM2 (Multi-Dwelling Residential 2). The RM2 zone is a medium-scale multi-dwelling zone that allows multi-dwelling residential development up to a maximum floor area ratio (FAR) of 1.5 to 1.

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

Agency Review: A “Notice of Proposal” was sent September 14, 2021. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1)
- Portland Bureau of Transportation (Exhibit E.2)
- Water Bureau (Exhibit E.3)
- Fire Bureau (Exhibit E.3)
- Site Development Section of BDS (Exhibit E.3)
- Life Safety Plans Examiner (Exhibit E.4)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on September 14, 2021. 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 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 applicant is proposing a side building setback adjustment from 5 to approximately 0.5-feet for an existing detached garage in relation to an adjusted property line to be created via an associated Lot Confirmation and Property Line Adjustment. The setback regulations serve several purposes (33.120.220.A):

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of multi-dwelling development in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for building residents and neighboring properties;*
- *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;*

- *Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users; 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.*

Staff finds the proposal equally meets the intent of the minimum building setback requirement for the following reasons:

- The existing structure is located 27.8-feet from the SE Alder Street property line, has a footprint of approximately 20-feet by 25.7-feet, and has an overall height of 12-feet with the walls of the structure being 7.5-feet in height. If the footprint of the structure did not exceed 24-feet in one dimension, it would be allowed within the setback per 33.120.280.C.2.b.
- The Life Safety Plans Examiner has indicated that, prior to approval of the associated property line adjustment (21-066049 PR), a building permit is required to meet current fire protection requirements in the residential building code. To accomplish this, the existing overhead garage door, which faces the proposed property line, will be removed, and replaced by a firewall and siding.
- Since the south elevation of the structure will be converted to a firewall, there won't be any windows that could negatively affect privacy for future development on the adjacent tract.
- The garage was built at the same time as the house with similar materials and design promoting compatibility within the neighborhood.
- The existing outdoor area on the site that will retain the garage well exceeds minimum requirements of the Zoning Code and will not be impacted because of this proposal.
- Neither SE Alder Street nor SE 78th Avenue are classified as transit streets.
- The structure is currently a garage but will be converted to another type of accessory structure such as an art studio. Another attached garage associated with the primary structure will provide parking needs for the site.

Since the proposal is found to equally meet the purpose of the minimum building setback requirement, 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 proposed addition is in the RM2 residential zone, the proposal must not significantly detract from the livability or appearance of the residential area. As mentioned above, the existing garage matches the house in scale and style. Therefore, it will not detract from the livability or appearance of the residential area because of the relocation of a new property line adjacent to this structure. In addition, the modest height and length of building wall adjacent to the new property line is less impactful than what could be allowed by right. For these reasons, staff finds the proposal will not detract from the livability or appearance of the residential area. 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: As 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: As discussed in the findings for approval criteria A and B, the proposed addition will equally meet the intent of the building setback requirement and will not impose negative impacts on neighbors. Since staff does not anticipate any negative impacts from this Adjustment that require mitigation, this criterion is not applicable.

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

The proposed Adjustment is found to be consistent with the purpose of the building setback requirement and will not detract from the livability or appearance of the residential area. The reduced building setback from the proposed adjusted property line is not expected to negatively impact neighbors. Staff finds each of the applicable approval criteria for the Adjustment is met. Since the approval criteria are met, the Adjustment must be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the minimum required building setback (33.120.220.B.1) for an existing detached accessory structure from 5 to approximately 0.5-feet in relation to an adjusted property line to be created via an associated Lot Confirmation and Property Line Adjustment, per the approved plans, Exhibits C.1 and C.2, subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1 and C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 21-077005 AD. No field changes allowed."

Staff Planner: Sean Williams

Decision rendered by:  **on October 19, 2021**

By authority of the Director of the Bureau of Development Services

Decision mailed: October 21, 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 August 12, 2021 and was determined to be complete on September 8, 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 August 12, 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: January 6, 2022.**

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 November 4, 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 **November 4, 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.

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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

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

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Narrative
 - 2. Photos
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Supplemental Plan (attached)
 - 2. Building Elevations (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau; Fire Bureau; Site Development Review Section of BDS
 - 4. Life Safety Plans Examiner
- F. Correspondence: NONE
- G. Other:
 - 1. Original LU Application
 - 2. 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).