



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

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**Date:** December 27, 2021  
**To:** Interested Person  
**From:** Marguerite Feuersanger, Land Use Services  
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## **NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services **has approved with conditions** a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 21-046672 AD**

#### **GENERAL INFORMATION**

**Owner/Applicant:** Ellen Crivella and Daniel Jaynes  
2411 NE 48th Ave.  
Portland, OR 97213-1921  
(503) 505-2336 [dan.jaynes@gmail.com](mailto:dan.jaynes@gmail.com)

**Site Address:** 2411 NE 48TH AVE

**Legal Description:** BLOCK 26 LOT 5, ROSE CITY PK  
**Tax Account No.:** R723101160  
**State ID No.:** 1N2E30CA 06300  
**Quarter Section:** 2835

**Neighborhood:** Rose City Park, contact Tamara DeRidder at 503-249-6977.  
**Business District:** Hollywood Boosters, contact [hollywoodboosters@gmail.com](mailto:hollywoodboosters@gmail.com).  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-2778.

**Zoning:** R2.5, Residential 2,500 Zone

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

**Proposal:** The applicant proposes to add a second story to the existing house on the subject 5,000 square-foot lot. The north wall of the existing house is 3 feet-8 inches from the side (north) property line, with an existing eave measuring 2 feet-9 inches. In the R2.5 zone, buildings must be located at least 5 feet from side and rear property lines and eaves can be no closer than 3 feet (Section 33.110.220.B and Table 110-4). Because the new second story wall is proposed at the same distance to the side property line as the existing house wall, the applicant is requesting an Adjustment to reduce the side (north) setback from 5 feet to 3 feet-8 inches, with a new 1-foot eave (located 2 feet-8 inches from the side property line).

**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 Section 33.805.040.A through F.

**ANALYSIS**

**Site and Vicinity:** The subject site is 5,000 square feet in area with frontage along the west side of NE 48<sup>th</sup> Avenue. A one-and-one-half-story bungalow-style house is set back nearly 17 feet from the front property line and a detached garage is located at the southwest corner of the lot. The house is straddled by two driveways: the subject site's driveway is located south of the house, and the neighboring property's driveway is located north of the house near the common property line.

Residential properties on the subject block and opposite the site along the east side of NE 48<sup>th</sup> Avenue are developed similarly to the subject site, although examples of two-story houses can be found within a block of the site.

Northeast 48<sup>th</sup> Avenue is classified as a Local Service street. The commercial main street of NE Sandy Boulevard is located approximately 400 feet south of the site.

**Zoning:** The site is within the Residential 2,500 Zone, a single-dwelling zone. 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 and provide options for infill housing that is compatible with the scale of the single-dwelling neighborhood.

**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 **November 8, 2021**. The following Bureaus have responded with no issues or concerns:

- Water Bureau (Exhibit E-3);
- Fire Bureau (Exhibit E-4); and
- Site Development Section of BDS (Exhibit E-5).

The following Bureaus have no issues or concerns but note that requirements that will apply to the building permit review:

- Bureau of Environmental Services (Exhibit E-1);
- Bureau of Transportation (Exhibit E-2); and
- Residential Life Safety Plan Review Section of BDS (Exhibit E-6).

**Neighborhood Review:** Five written responses were received from notified property owners in response to the proposal. All received comments expressed support for the proposal (Exhibits F-1, F-2, F-3, F-4, and F-5).

**ZONING CODE APPROVAL CRITERIA****33.805.040 Adjustment 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

- 1. Findings:** The relevant purpose statement and associated findings for the setback standards are found below:

**33.110.220 Setbacks**

*The setback regulations for buildings and garage entrances serve several purposes:*

- *They maintain light, air, separation for fire protection, and access for firefighting;*
- *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.*

The proposed second story addition meets these purpose statements for the following reasons:

- The proposed second story, as viewed from the north side property line, is set back from the front and rear walls of the house (Exhibit C-2, North Elevation), reducing the overall length of the addition in relation to the overall length of the house within the side setback. This aspect of the proposal minimizes the impacts on light and air and privacy, and also reflects the general building scale of houses in the nearby.
- An existing driveway is located on the property to the north, along the shared side property line with the subject site. While the new second story wall of the subject house will have a 3-foot 8-inch setback to this shared (north) property line, the wall will be 18 feet from the house on the adjacent property (Exhibit C-1, Site Plan). That distance includes the reduced setback, the width of the existing driveway and additional side yard on the adjacent property to the north. Typical side setbacks of the R2.5 zone result in a minimum of 10 feet of separation between houses (providing at least 5 feet of setback on each property). Given the 18 feet of separation between homes, the proposal maintains light, air and separation for firefighting, and also promotes a reasonable physical relationship between residences.
- The Fire Bureau reviewed the proposal and has no concerns about access for firefighting (Exhibit E-4).
- To address privacy impacts, the applicant proposes to install frosted windows to prevent views from the second story to the adjacent property to the north of the site (Exhibit A-3). Staff concurs that special treatment of the glass, such as frosting or patterning, will effectively limit views to the outside and therefore will reduce impacts on privacy of adjacent lots.
- The existing roof eaves of the house are 2-feet 9-inches in depth while the proposed second story eaves are 1-foot in depth. This reduces the bulk of the structure near the north property line, which will help maintain light and air.

In consideration of the above and with a condition that frosted or patterned glass be installed in the new second-story windows on the north elevation, the proposal meets the purpose of setbacks. With this condition, 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 subject lot is in the R2.5 zone, a residential zone. The existing house is low in height (one and one half-story) and footprint (approximately 1,250 square feet). The second story on the subject house will be consistent with the appearance of homes in the area for the following reasons:

- The proposed second story is set back from the porch at the front of the house and is also set back from the rear wall of the house, which effectively limits the mass or bulk of the second story, as viewed from the street and adjacent properties.
- The highest point of the new second story shed roofs do not exceed the height of the existing roof peak (Exhibit C-2). This is an important aspect of the proposed design as it ensures that the second story will not be a dominant feature as viewed from the street and is consistent with the general building pattern of the area. A condition is needed that ensures this design feature is implemented on building permit plans and construction.
- The neighborhood contains both one-story and two-story houses. To address livability impacts of privacy, a condition is needed that requires frosted or patterned glass in the new second story windows.

In consideration of the above and with conditions requiring special treatment of the glazing in the north-facing second story windows to obscure views to the outside and limiting the height of the new second story roof, the proposal meets this criterion in full as it will not significantly detract from the livability or appearance of the residential area.

- 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:** One Adjustment review is requested. Therefore, this criterion does not apply.

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

**Findings:** City designated scenic resources are identified on the Official Zoning Map with a lower case “s” and historic resources are designated by a large dot or as being within the boundaries of a Historic or Conservation district. There are no such resources present on the site; therefore, this criterion does not apply.

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

**Findings:** As noted in Criteria A and B, glazing in the second story windows will be patterned or frosted glass to promote privacy for the neighboring property to the north. Also, the new roofs will not exceed the height of the existing roof peak to limit the overall mass and bulk of the new second story. The impacts of the reduced side setback are mitigated through these two conditions, to the extent practical. 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 Map with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). No environmental zoning is applied to the site; therefore, this criterion does not apply.

## 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, with conditions, to reduce the side setback for a second story addition on the existing house is consistent with the purpose of the building setback

requirement and will not significantly detract from the livability or appearance of the residential area. To mitigate for potential privacy impacts on the adjacent property to the north, frosted or patterned glass is required to be installed in the second story windows facing the north side property line. To ensure the proposal is consistent with the appearance of the neighborhood area, the new second story roofs must not exceed the height of the existing roof peak.

With these conditions, staff finds all applicable approval criteria for the Adjustment to be met and therefore, the Adjustment can be approved.

### ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the side (north) setback from 5 feet to 3 feet-8 inches, with a new 1-foot eave (located 2 feet-8 inches from the side property line), for a second-story addition on the existing house, per the approved site plans, Exhibits C-1 and C-2, signed and dated December 22, 2021, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through C) 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 21-046672 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Frosted or patterned glass that fully obscures views to the outside must be installed in all second-story windows on the north elevation. Building permit plans must document this requirement.
- C. The highest point of the new second story roofs must not exceed the height of the existing roof peak of the house.

**Staff Planner: Marguerite Feuersanger**

**Decision rendered by:**  **on December 22, 2021.**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: December 27, 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 May 12, 2021 and was determined to be complete on November 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 May 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 March 1, 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 January 10, 2022. The completed appeal application form must be emailed to [LandUseIntake@portlandoregon.gov](mailto: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 **January 10, 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.

**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. Original Submittal, May 21, 2021
  2. Updated Submittal, October 8, 2021
  3. Updated Submittal, November 1, 2021
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. North and East 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
  4. Fire Bureau
  5. Site Development Review Section of BDS
  6. Residential Life Safety Plans Examiner of BDS
- F. Correspondence:
  1. Jeff Capen, writing in support of the proposal, November 13, 2021
  2. Bill Zuelke, writing in support of the proposal, November 15, 2021
  3. Greg Kowalski, writing in support of the proposal, November 15, 2021
  4. Valerie Liptak, writing in support of the proposal, November 15, 2021
  5. Dave Pearson, writing in support of the proposal, November 24, 2021
- G. Other:
  1. Incomplete application letter to applicant, May 21, 2021
  2. Second incomplete letter to applicant, October 19, 2021

**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**