



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: April 1, 2022
To: Interested Person
From: Marguerite Feuersanger, Land Use Services
503-823-7619 / Marguerite.Feuersanger@portlandoregon.gov

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 22-102658 AD

GENERAL INFORMATION

Applicant: Ken Dyreson
Dyreson Design Studio
3239 NE 66th Ave
Portland, OR 97213
kdyreson@gmail.com (503)477-0673

Owner: George Laird
2512 SE 25th Ave #205
Portland, OR 97202

Site Address: 371 NE 52nd Avenue

Legal Description: None
Tax Account No.: R145801250, R649930060
State ID No.: 1N2E31CA 01900, 1N2E31CA 01902
Quarter Section: 3035

Neighborhood: North Tabor, contact Lisa Maddocks or Kars Kasch at landuse@northtabor.org

Business District: NONE
District Coalition: Southeast Uplift, contact Matchu Williams at matchu@seuplift.org

Zoning: R2.5, Residential 2,500 Zone

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

Proposal: A new house and attached accessory dwelling unit (ADU) is currently under construction on this site (permit #20-159344 RS). The applicant proposes a change to the house plans which adds a roof/stormwater feature on the second story south wall of the house.

The new feature is intended to provide ventilation for the roof, shade for second-floor windows, and direct water away from the foundation.

The new roof/stormwater feature extends 7.5 inches into the minimum required 5-foot side building setback for the entire 35-foot-long south wall and increases the building coverage by 22 square feet. The interior floor area will not expand as a result of this requested change.

To accommodate this feature, the applicant is requesting two Adjustments as follows:

- reduce the side (south) building setback from 5 feet to 4 feet-4.5 inches (Section 33.110.220, Setbacks); and
- increase the maximum building coverage for the site, from 1,056 square feet to 1,072 square feet (Section 33.110.225, Building Coverage).

Note about building coverage: The site is 2,112 square feet in area, which allows up to 1,056 square feet of building coverage (50 percent of the site area). The building coverage for the approved house footprint plan is 1,050 square feet. With the proposed 22-square-foot roof/stormwater feature, the proposed building coverage is 1,072 square feet, which exceeds the maximum building coverage by 16 square feet.

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 through F.

ANALYSIS

Site and Vicinity: The site is small in size at 2,112 square feet and is located at the west side of NE 52nd Avenue between NE Flanders and Everett Streets. A two-story house and attached accessory dwelling unit is currently under construction. The site is part of an established low density residential neighborhood; development is primarily houses, duplexes, and triplexes, one- to two stories in height. Streets are improved with curbs, sidewalks, and landscape strips. Providence Portland Medical Center is located 400 feet north of the site, along NE Glisan Street. At this location, NE 52nd Avenue is designated a Local Service street and NE Glisan Street is designated a Neighborhood Collector and Transit Access street.

Zoning: The site is located in the Single-Dwelling Residential 2,500 (R2.5) 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. 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.

Land Use History: City records indicate the following prior land use reviews for this site:

19-231018 LDP: Approval of a two-parcel land division, with conditions.
Staff comment: The subject site is Parcel 2 of this approved land division.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **February 28, 2022**. The following Bureaus responded with no issues or concerns about the proposed Adjustments:

- Bureau of Environmental Services (notes that the proposed feature is not a stormwater feature to meet BES requirements, but rather serves to direct the flow of stormwater, Exhibit E-1)

- Bureau of Transportation (Exhibit E-2);
- Water Bureau (Exhibit E-3);
- Fire Bureau (Exhibit E-4);
- Site Development Section of BDS (Exhibit E-5); and
- Residential Life Safety Section of BDS (notes that a revision to the existing building permit is required, Exhibit E-6).

Neighborhood Review: One written response was received from a nearby property owner in response to the Notice of Proposal. The neighbor wrote in opposition to the proposal and recommends that the five-foot setback be adhered to on the site, otherwise an approval would encourage similar requests (Exhibit F-1).

Staff response: 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. Adjustment reviews provide flexibility for unusual situations. Adjustments also allow for alternative ways to meet the purposes of the code, while allowing the Zoning Code to continue to provide certainty and rapid processing for land use applications.

Each Adjustment request is reviewed based on the aspects of the proposal, site conditions and potential impacts on nearby properties and development. Thus, it is not the case that a setback reduction would be approved on one site solely because it was approved on another site nearby.

Regarding the approvability of an Adjustment request, the applicant has the burden of proof to demonstrate that the approval criteria are met. If the approval criteria are shown to be met, the proposal should be approved. The proposal and the applicant's statement are reviewed under the findings section of this report.

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 statements and associated findings for the setback and building coverage 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.*

33.110.225 Building Coverage

The building coverage standards limit the footprint of buildings and work together with the height, setback, and floor area ratio standards to control the overall bulk of structures. They are intended to ensure that taller buildings will not have such a large footprint that

their total bulk will overwhelm adjacent houses. Additionally, the standards help define the character of the different zones by limiting the amount of buildings allowed on a site.

The proposal meets these purpose statements for the following reasons:

- The proposed 7.5-inch-deep encroachment into the south side setback extends across the second story wall only, measuring 10 feet by 35 feet (Exhibit C-2). The ground level wall is set back 5 feet from the side property line and meets the minimum setback. This condition reduces the mass of the house, provides access for fire-fighting, and reduces impacts on light and air for neighboring properties.
- Although the second story wall is proposed partially within the south side setback, the glazing in the second story wall is set back 5 feet from the side property line, resulting in minimal impacts on privacy.
- The house is lower than the height allowed by the R2.5 zone: The house measures 26.5 feet in height, while the R2.5 zone allows houses to be up to 35 feet in height.
- A shed-style roof form is proposed for the house with the shorter wall at the south side property line, effectively reducing the bulk of the structure at the location of the reduced setback.
- The Fire Bureau reviewed the proposal and expressed no concerns about access for firefighting (Exhibit E-4).
- The location of the residential structure on the property south of the site is more than 10 feet away from the south property line of the subject site, which results in a reasonable separation and distance between residences.
- The house meets the maximum floor area, the minimum outdoor area requirement and other minimum setbacks of the R2.5 zone.
- There are no detached structures proposed on the site, which limits the overall bulk of the house and site.

In consideration of the above, the proposal meets the purpose of the building setbacks and building coverage. 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 proposed Adjustments are minimal in size and impact, and therefore will not significantly detract from the livability or appearance of the surrounding residential area due to the following:

- Building permit plans for a new house have been approved, and the new house is under construction. The building coverage for the approved house footprint plan is 1,050 square feet. With the proposed 22-square-foot roof/stormwater feature, the proposed building coverage is increased to 1,072 square feet, which exceeds the maximum building coverage by only 16 square feet.
- The proposed stormwater feature at the south wall of the house encroaches only 7.5 inches into the 5-foot side building setback and affects only the second story wall. The ground floor wall meets the minimum 5-foot setback.

- The neighborhood contains both one-story and two-story residential buildings. The proposed house is two stories in height but is lower in height than what is allowed by the R2.5 zone.

In consideration of the above, 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: Two Adjustment reviews are requested. The relevant statements of the overall purpose of the site's R2.5 zone, a Single-Dwelling zone, are as follows:

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 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 proposal is consistent with the above purpose statements because a house and an attached ADU are proposed. Both Adjustments are for the same roof feature at the house's south-facing second story wall. Findings for Criteria A conclude that the purposes of the building coverage and setback regulations, such as maintaining privacy for nearby residents and an adequate outdoor area for residents of the site, are met. Findings for Criterion B conclude that the proposal will not impact neighborhood livability or appearance. Therefore, this criterion is met.

- 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 set back 5 feet from the south property line, resulting in minimal impacts on privacy for neighboring properties. Also, the new roof 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 Adjustments seek to reduce the minimum south side setback and increase maximum building coverage for this small 2,112 square foot lot. Both Adjustments are requested to accommodate a stormwater feature located on the second story of the south side wall of the house. This feature is intended to provide ventilation for the roof, shade for second-floor windows, and direct water away from the foundation. It extends only 7.5 inches into the side setback and will not have significant impacts on neighboring properties or neighborhood livability. Staff finds that the proposal meets the Adjustment approval criteria and therefore, the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of the following two Adjustments for a stormwater feature on the second story of the south wall of the new house and attached ADU on the site:

1. Reduce the side (south) building setback from 5 feet to 4 feet-4.5 inches (Section 33.110.220, Setbacks); and
2. Increase the maximum building coverage for the site, from 1,056 square feet to 1,072 square feet (Section 33.110.225, Building Coverage).

Adjustment approvals are per the approved plans, Exhibits C-1 and C-2, signed and dated March 30, 2022, subject to the following condition:

- A. As part of the building permit application revision submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in 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 22-102658 AD. No field changes allowed."

Staff Planner: Marguerite Feuersanger

Decision rendered by:  **on March 30, 2022.**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 1, 2022

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 January 11, 2022 and was determined to be complete on February 23, 2022.

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 11, 2022.

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 June 23, 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 April 15, 2022. 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 **April 15, 2022**, 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
 2. Resubmittal, February 23, 2022
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. 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 Plan Review of BDS
- F. Correspondence:
 1. Gene Lim, March 5, 2022, writing in opposition to the proposal
- G. Other:
 1. Incomplete application letter to applicant

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).