



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

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Date: April 25, 2022
To: Interested Person
From: Amanda Rhoads, 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 21-029541 AD

GENERAL INFORMATION

Applicant: Nathaniel Rosemeyer and Eric Rystadt | Main Street Development
5331 SW Macadam Ave #258 PMB 208 | Portland, OR 97239
503-206-9214 | nathaniel@msdpdx.com

Owner: Oak & Park Development LLC
4035 S Kelly Ave | Portland, OR 97239-4316

Site Address: 1512 SW 58TH AVE

Legal Description: TL 2500 0.50 ACRES, SECTION 06 1S 1E; TL 2600 0.50 ACRES, SECTION 06 1S 1E

Tax Account No.: R991060650, R991060660

State ID No.: 1S1E06CA 02500, 1S1E06CA 02600

Quarter Section: 3223

Neighborhood: Sylvan-Highlands, contact Dave Malcolm at djm.shna@gmail.com or Rick Kneuve at rkneuve@netscape.net

Business District: NONE

District Coalition: Neighbors West/Northwest, contact at admin@nwnw.org

Plan District: Northwest Hills – Skyline Subdistrict

Zoning: RM1 – Residential Multi-Dwelling 1

Case Type: AD – Adjustment Review

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

Proposal:

The applicant is under building permit review to develop 14 townhomes in a multi-dwelling development made up of 5 separate buildings (20-173266 RS and other associated permits). The applicant is requesting an Adjustment to Zoning Code Section 33.120.215.B.1 and Table 120-3 to increase the maximum height limit of the RM1 zone for Building 5 from 35 feet to 44 feet, 6.5 inches.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The site is located on the east side of SW 58th Avenue approximately 575 feet north of the intersection with SW Montgomery Street and consists of two lots that are both approximately 21,665 square feet in area. Each lot is currently developed with a single-dwelling residence that is located close to the street.

Commercial and employment zoning is located southeast of the site adjacent to Highway 26 and SW Skyline Boulevard. Other than the small pocket of low-density multi-dwelling zoning the site is located within, the surrounding vicinity is comprised of lower density single-dwelling zoning.

Zoning: 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 Northwest Hills Plan District protects sites with sensitive and highly valued resources and functional values. The plan district promotes the orderly development of the Skyline subdistrict while assuring that adequate services are available to support development.

Land Use History: City records indicate that prior land use reviews include the following:

- **LU 20-209790 AD:** Adjustment Review approval to the Regular Lot Lines standard of Zoning Code Section 33.667.300.B associated with a Property Line Adjustment (20-154255 PR) between 1434 & 1512 SW 58th Avenue. The approved adjusted property line is not straight and is more than 20 percent shorter than the existing lot line.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **March 10, 2022**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1);
- Bureau of Transportation (Exhibit E.2);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4); and
- Site Development Section of BDS (Exhibit E.5).

The Life Safety Plans Examiner noted that associated building permits are under review, and that Life Safety Plan Review does not object to the approval of this proposal (Exhibit E.6).

Neighborhood Review: Two written responses were received in response to the proposal notice. The first was from the Land Use Chair of the Sylvan Highlands Neighborhood Association. He had questions about the approval criteria and process, to which staff responded (Exhibit F.1). The second was from a neighbor three lots to the north of the subject site who expressed concerns about the development as a whole due to transportation infrastructure issues. She also had concerns regarding the loss of privacy into her yard from the development (Exhibit F.2).

Staff note: PBOT reviewed the proposal and did not raise concerns about right-of-way issues (Exhibit E.2). The request to increase the height of Building 5 is the subject of the review. Right-of-way improvements will be addressed through the building permit process. Privacy is addressed below in the findings for Criteria A and B.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

- A.** Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The purpose for the height regulation in the multi-dwelling zones is in Zoning Code Section 33.120.215.A:

- A. Purpose. The height standards serve several purposes:*
- *They promote a reasonable building scale and relationship of one residence to another;*
 - *They promote options for privacy for neighboring properties; and*
 - *They reflect the general building scale of multi-dwelling development in the City's neighborhoods.*

On a steeply sloping site, building height is measured from a point 10 feet above the lowest grade exactly 5 feet from the building (Zoning Code Section 33.930.050.A.1.b). On this site, a building height Adjustment is requested because the lowest grade on the southeast corner of the new Building 5 is 25 feet lower than the northwest corner. Only the second and third stories of Building 5 will be visible from the street grade, and the 35-foot building height allowance would be met outright if it was measured from the SW 58th Ave grade. In fact, from this street the other four buildings on the site will all appear taller, but all of them meet the base zone height limit. Building 5 is highlighted in yellow in the rendering of the street view below.



Building 5 is proposed just over 6 feet from the south property line; the property to the south was recently redeveloped with multi-dwelling development and the minimum required setback is 5 feet. To the north, the closest house (not on the original subject site) is approximately 150 feet away from the northwest corner of Building 5. The additional height is not experienced for the entire building; the units are stepped in response to the change in grade. As seen on Exhibit C.3, the building is tallest where the grade drops off at the southeast corner. The impact, such as it is, would be felt in the other multi-dwelling lot to the south, rather than single-dwelling development nearby. However, because of the stepping of the building, the full difference in height between what is allowed and what is proposed is not experienced at any one spot.

Regardless, the number and size of windows on the south façade are limited to reduce potential privacy impacts to the south. Since the rest of the building is internal to the site, and Building 5 is on the lowest part of the developable site, there are no expected privacy impacts to other properties. Existing trees will remain on the site east of the proposed buildings, providing a vegetated buffer to the backyards of the R20 properties to the east.

When viewed from the street, the multi-dwelling buildings appear to be typical for the zone, which expects one- to three-story buildings that on smaller lots might be duplexes or triplexes, but on larger lots could look like courtyard housing or small apartment buildings. The neighboring multi-dwelling properties to the south that have been recently developed are characterized by three-story structures built up to the street with additional units within the site; further to the south, older apartments might be 2-3 stories with parking between the buildings and the street. The proposed development will continue this general scale of building, while internalizing the parking on the site and not at the street. The height Adjustment will not result in a development that is different from the general scale of development in multi-dwelling zones, or in the immediate area.

For the reasons stated above, 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: Since the site is in the RM1 residential zone, the proposal must not significantly detract from the livability or appearance of the residential area.

As mentioned in the findings for approval criterion A, Building 5 will be viewed as only 2 stories tall above SW 58th Ave, a building scale that is below the maximum the Zoning Code anticipates for the RM1 zone. The building height Adjustment is

requested because the lot slopes very steeply downward from SW 58th Ave at the south end of the site.

With ample horizontal separation between Building 5 and the abutting homes to the north and south, staff finds the proposal will not appear incompatible or out of scale with nearby development. The increased building height on the rear, downslope side of the buildings will be obscured from SW 57th Ave to the east by mature trees that are being retained on the subject site at the east end of the lots. No privacy or other impacts are expected on adjacent properties. However, the applicant has proposed only limited windows on the south façade facing the multi-dwelling development to the south on Building 5.

For the reasons stated above, this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one adjustment is requested. This criterion is not applicable.

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

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

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

Findings: There are no discernible impacts that would result from granting the requested adjustment. This criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As the site is not within an environmental zone, this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

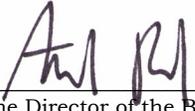
The site is steeply sloping, with an approximately 45-foot drop from the northwest property corner to the southeast. An Adjustment is requested to the building height standard (which is measured from the lower grade on the east corner of the new Building 5). The Adjustment requested is found to be consistent with the purpose of the requirement to be modified and with the purpose of the RM1 multi-dwelling residential zone. The proposed Adjustment will not significantly detract from the livability or appearance of the residential area. The applicable Adjustment Review approval criteria are found to be met.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.120.215.B.1 and Table 120-3 to increase the maximum height limit of the RM1 zone for Building 5 from 35 feet to 44 feet, 6.5 inches, per the approved plans, Exhibits C.1 through C.4, signed and dated April 21, 2022, subject to the following conditions:

- 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-C.4. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 21-029541 AD."

Staff Planner: Amanda Rhoads

Decision rendered by:  **on April 21, 2022**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 25, 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 March 25, 2021, and was determined to be complete on September 14, 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 25, 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 waived the 120-day review period, as stated with Exhibit A.4. Unless further extended by the applicant, **the 120 days will expire on: September 14, 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 May 9, 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 **May 9, 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 Narrative (superseded by A.5)
 2. Zoning Analysis
 3. Original Plans
 4. 245-Day Extension
 5. Revised Narrative
 6. Incomplete Response
 7. Updated Plans, January 12, 2022
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. North and East Elevations (attached)
 3. West and South Elevations (attached)
 4. Street View Rendering
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Bureau of Transportation
 3. Water Bureau
 4. Fire Bureau
 5. Site Development Review Section of BDS
 6. Life Safety Plans Examiner
- F. Correspondence:
 1. Rick Kneuve, Land Use Chair of Sylvan Highlands Neighborhood Association, March 21, 2022, with questions
 2. Ginger Skinner, March 21, 2022, in opposition
- G. Other:
 1. Original Land Use Application
 2. Incomplete Letter, April 15, 2021
 3. End of Completeness Period Letter, September 1, 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).