



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: June 22, 2022
To: Interested Person
From: Matt Wickstrom, Land Use Services
503-865-6513 / Matt.Wickstrom@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 22-124905 AD

GENERAL INFORMATION

Owner/Applicant: Jennifer Kinsey
6946 NE Siskiyou St | Portland, OR 97213
Email: kinseyplusplus@gmail.com | Phone: 386-334-0333

Site Address: 6946 NE SISKIYOU ST

Legal Description: N 75' OF LOT 11, BONNIE CREST VIEW
Tax Account No.: R089800120
State ID No.: 1N2E29BA 19500
Quarter Section: 2737

Neighborhood: Roseway, contact Ted Carlson at tedcarlston2@yahoo.com
Business District: None
District Coalition: Central Northeast Neighbors, contact Alison Stoll at alisons@cnncoalition.org

Zoning: R5h (Residential 5,000 with an Aircraft Landing Zone overlay)

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

Proposal:

The applicant constructed a shed 4 feet from the rear property line and approximately 8 feet from the side property line on this corner lot. While the Portland Zoning Code allows certain detached structures like sheds to be located in rear and side setbacks, the location of this shed does not meet the exceptions and therefore the shed is required to meet the 5-foot side and rear setbacks for buildings. The applicant requests an Adjustment to Section 33.110.220.B and Table 110-4 to reduce the rear setback requirement from 5 feet to 4 feet for the shed.

Relevant Approval Criteria:

To be approved, this proposal must comply with the Adjustment Review approval criteria in Zoning Code Section 33.805.040.A-F.

ANALYSIS

Site and Vicinity: The 4,225 square foot site is developed with a single-story house and two detached sheds. The lot is at the southwest corner of NE Siskiyou Street and NE 70th Avenue. A new fence screens the backyard from the street as well as the new shed. The surrounding vicinity, approximately a 400-foot radius from the site, is developed with one and two-story homes built in a variety of decades. Many homes have detached accessory structures such as sheds and garages located in the side and rear setbacks.

Zoning: The site is zoned R5h (Residential 5,000 with an Aircraft Land Zone overlay). Design Overlay and a Constrained Sites Overlay zones). The R5 zone is intended to preserve land for housing and to provide housing opportunities for individual households. The “h” overlay limits building height based on proximity to Portland International Airport. Smaller detached accessory structures including sheds are allowed in side and rear setbacks in single-dwelling zones; however, on corner lots those structures must be set back 20 feet from the side street property line (33.110.245.D.2.d) in order to be located in the setback. Detached accessory structures that aren’t set back 20 feet from the side street property line must meet the setback requirements for buildings in the base zone.

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 **May 2, 2022**. The following Bureaus have responded:

- The Life Safety Section of BDS responded with no objections and stated that there appears to be no conflicts between the proposal and applicable building codes (Exhibit E.1).
- The Site Development Section of BDS, Portland Bureau of Transportation and Fire Bureau responded with no concerns (Exhibit E.2).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 2, 2022. A total of two written responses have been received from notified neighbors in response to the proposal.

- The first response came from a neighbor who lives at the northeast corner of NE Siskiyou and NE 70th Avenue and states support for the proposed Adjustment (Exhibit F.1).
- The second response came from the neighbor to the south of the site and lists concerns. The first concern is based on the neighbor’s contention that the shed is closer to the rear property line than 4 feet. The next concern was that the shed impedes a sight line to the street and the third concern is the potential fire risk since the shed has electricity.

Staff response: The City is not a party to private property line disputes and does not require a survey for construction of a shed, although the applicant has stated that the setback was verified through the electrical permit. Regarding the potential risk of fire, the applicant obtained a permit to add electricity to the shed (21-097046 ET) and the Fire Bureau responded to the Adjustment proposal with no concerns.

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 purpose of the requirement for the rear setback to be 5 feet or more from the property line is stated in Zoning Code Section 33.110.220.B:

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 fire fighting;*
- *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.*

Staff finds the proposal to reduce the setback requirement from 5 feet to 4 feet equally or better meets the purpose statement above for the following reasons:

- The single-story height of the shed maintains light and air for surrounding properties especially considering it is only set back 1-foot less than the minimum requirement. The shed also maintains separation for fire protection and access for fire fighting as evidenced by the responses from the Life Safety Section of BDS and the Fire Bureau.
- The shed does not interfere with or change the existing general building scale and placement of houses in the neighborhood. The neighborhood has many examples of detached accessory structures that were built in setbacks.
- The shed also does not change the physical relationship between residences as it is not built for sleeping; however, it may be used for working in which case the new fence provides adequate screening between the shed and the property to the south.
- The new fence screens the south facing window in the shed from the neighbor's property and therefore it won't negatively impact privacy.
- The shed is not built in the front setback and maintains the front yard as it currently exists.
- The placement of the shed reflects a flexibility to site a building that is compatible with the neighborhood, fits the topography of the site and due to its location, maintains a large outdoor space for the home while also almost meeting current zoning code requirements aside from the one-foot reduction to the minimum rear setback.

Based on the information above and because the shed is screened by an attractive fence which obscures views from the rear window of the shed to the adjacent property as well as views of the shed from the side street property line, 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 proposed Adjustment will not significantly detract from the livability or appearance of the residential area. As mentioned above the shed is screened from the street and adjacent properties by an attractive fence. The fence also obscures views from the rear window of the shed to the property to the south thus minimizing impacts to privacy. In addition, the shed is single-story in height and not much taller than the fence which meets zoning code standards. Furthermore, the residential area has many detached accessory

structures located in setbacks and because the setback for the shed is only one-foot less than the minimum required, it will not negatively impact the appearance of the area.

Based on this information 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, therefore 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: Staff has not identified any negative impacts on neighbors or on the neighborhood specifically resulting from this Adjustment request especially considering the fence obscures views from the rear window of the shed as well as views of the shed from the sidewalk and surrounding sites. Since no negative impacts are identified which require mitigation, 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: The site is not located in an environmental zone, therefore this criterion is not applicable.

DEVELOPMENT STANDARDS

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

CONCLUSIONS

The applicant constructed a backyard shed that encroaches 1 ft into the rear setback. The shed is screened from the sidewalk and from neighboring properties by an attractive fence. The fence also obscures views from a rear window in the shed to the property to the south. Many detached accessory structures are located in the setbacks in the neighborhood and the location of the shed will not appear as an anomaly. Based on the findings above, the proposal meets the applicable Adjustment Review criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.220.B and Table 110-4 to reduce the south side setback from 5 feet to 4 feet for the shed, per the approved site plan, Exhibit C-1, signed and dated June 15, 2022.

Staff Planner: Matt Wickstrom

Decision rendered by: M Wikstrom on June 15, 2022
By authority of the Director of the Bureau of Development Services

Decision mailed: June 22, 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 21, 2022, and was determined to be complete on April 25, 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 March 21, 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: August 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 July 6, 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 **July 6, 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 and Original Application
 - 1. Applicant email and photo received 4/1/22
 - 2. Applicant email and photos received 4/21/22
 - 3. Applicant email and photos received 4/27/22
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Life Safety Section of BDS
 - 2. Site Development Section of BDS, Fire Bureau, and Portland Bureau of Transportation
- F. Correspondence:
 - 1. Michael Whitesel, 5/4/22, support for Adjustment request
 - 2. Allison Holt, 5/23/22, concern about location, sight lines and fire risk
- G. Other:
 - 1. Original LU Application

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).



ZONING



For Zoning Code in effect Post August 1, 2021

File No.	LU 22 - 124905 AD
1/4 Section	2737
Scale	1 inch = 200 feet
State ID	1N2E29BA 19500
Exhibit	B Mar 22, 2022

