



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

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Date: July 13, 2022
To: Interested Person
From: Matt Wickstrom, 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 22-115717 AD

GENERAL INFORMATION

Applicant: David John Jenkins | Divo
22550 Bald Peak Rd | Hillsboro, OR 97123
Email: divodesign@earthlink.net | Phone: 503-538-7173

Owner: Elizabeth Bliss Warren Trust
2111 SW 21st Ave | Portland, OR 97201

Site Address: 2111 SW 21ST AVE

Legal Description: BLOCK 74 LOT 1&2&8, CARTERS ADD TO P
Tax Account No.: R140405010
State ID No.: 1S1E04CB 00600
Quarter Section: 3227

Neighborhood: Southwest Hills Residential League, contact at landuse@swhrl.org
Business District: None
District Coalition: Neighbors West/Northwest, contact at Darlene Urban Garrett at darlene@nwnw.org

Zoning: R10 (Residential 10,000)

Case Type: AD (Adjustment Review – 3 Adjustments)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant proposes to demolish a detached garage accessed from SW Montgomery Dr. and construct a 1,222 square foot accessory dwelling unit (ADU) in its place. The ADU will be located:

- 10 feet from the SW Montgomery Dr. property line (front property line) with a bay window protruding to 8 feet from that property line, 7 feet to the roof; and

- 16 feet from the SW Clifton St. property line (side property line) with a covered porch extending to 7 feet from that property line, 6 feet to the roof.

The Portland Zoning Code limits the size of ADUs to 75% of the living area of the house, which is 8,900 square feet in size, or 800 square feet, whichever is less. In the R10 zone, the Portland Zoning Code requires buildings to be constructed 20 feet from front property lines and 10 feet from side property lines. The applicant requests three Adjustments for the proposed ADU:

- 1) Increase the maximum allowed size from 800 square feet to 1,222 square feet (33.205.040.C.2);
- 2) Decrease the front setback along the SW Montgomery Dr. property line from 20 feet to 8 feet for the bay window, 7 feet for the roof (33.110.220.B and Table 110-4); and
- 3) Decrease the side setback along the SW Clifton St. property line from 10 feet to 7 feet for the covered porch, 6 feet for the roof (33.110.220.B and Table 110-4).

Staff note: The Notice of Proposal mailed on May 25, 2022 stated that the size of the proposed ADU was 1,386 square feet; however, this square footage included the covered porch which is not considered living area; therefore, the proposed size of the ADU in this decision now is reflected as 1,222 square feet or the amount of proposed living area not including the covered porch.

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 15,000 square foot site is developed with an 8,908 square foot home, according to County records. The home is listed on a 1984 local historic resource inventory and does not have historic landmark designation. The site has frontage on SW 21st Avenue, where the home faces, SW Clifton Street and SW Montgomery Drive, where the two-car detached garage is accessed. The entrance to the garage is approximately 1-foot from the SW Montgomery Drive property line.

The surrounding vicinity is defined as the area approximately 400 feet from the site and is built with large stately homes, some on large lots, some on smaller lots, and many with accessory structures such as garages and tall fences and other accessory structures located within setbacks. Many of the homes in the area are historic landmarks.

Zoning: The site is zoned R10 (Residential 10,000). The R10 zone is intended to preserve land for housing and to provide housing opportunities for individual households. The residential area is not designated as a historic district and is not located in a plan district. The Portland Zoning Code classifies this lot as a “through lot”, a lot with front property lines on two parallel streets – SW 21st Avenue and SW Montgomery Drive. SW Clifton Street is classified as a side street lot line. 20-foot building setback requirements apply along SW 21st Avenue and SW Montgomery Drive. 10-foot building setback requirements apply along SW Clifton Street.

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 25, 2022**. The following Bureaus have responded:

- The Fire Bureau responded that all applicable Fire codes must be met at time of building permit review (Exhibit E.1);
- The Life Safety Section of the Bureau of Development Services (BDS) responded that a separate building permit will be required and all applicable codes and ordinances will need to be met. Information about demolition delay was also included (Exhibit E.2);

- The Site Development Section of BDS, the Development Review Section of the Portland Bureau of Transportation and the Water Bureau responded with no concerns (Exhibit E.3);
- The Bureau of Environmental Services responded with no objections and noted that a detailed stormwater management plan will be required at time of building permit.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 25, 2022. One written response has been received:

- One neighbor wrote with a request that the location of the proposed ADU be staked so neighbors can view the location and better envision the square footage. The request also asked about potential privacy impacts, and impacts on the SW Montgomery bike route (Exhibit F.1).

Staff response: The applicant staked the location of the proposed ADU and invited neighbors to view the proposed location. No further communication was received from neighbors.

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 setback along SW Montgomery Drive to be no more than 20 feet and for the setback along SW Clifton Street to be no closer to than 10 feet to the street 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.*

The purpose of the requirement for the ADU to be 800 square feet or less is stated in Zoning Code Section 33.205.040:

33.205.040 Setbacks

Standards for creating accessory dwelling units address the following purposes:

- *Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;*
- *Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;*
- *Ensure that accessory dwelling units are smaller in size than primary dwelling units; and*
- *Provide adequate flexibility to site buildings so that they fit the topography of sites.*

Staff finds the proposal to decrease the front setback of the proposed ADU along SW Montgomery Drive from 20 feet to 10 feet (7 feet to the eave of the bay window), to decrease the side setback along SW Clifton Street from 10 feet to 7 feet (6 feet to the eave) for the covered porch and to increase the maximum allowed size of the ADU from 800 square feet to 1,222 square feet is equally consistent with the purpose statement above for the following reasons:

- The current detached garage is located 1-foot from the SW Montgomery Drive property line. The proposed location of the ADU at 10 feet from the property line (7 feet to the roof of the bay window) better maintains light, air and protection and access for fire fighting.
- The location of the covered porch at 7 feet from the side property line along SW Clifton Street also maintains the availability of light and air as well as access for fire-fighting due to its visual permeability. The enclosed portion of the ADU is located outside of the side setback.
- Despite the reduced setbacks, the location of the ADU still reflects the general building scale and placement of homes in the residential area which is dominated by large homes, some on large lots, but others on smaller lots and in close proximity to neighboring homes.
- The ADU will be located 15 feet from the nearest house and is separated from the house by a landscape strip with a hedge and a paved walkway, this provides a reasonable physical relationship between residences.
- The site is classified as a “through lot” which means it has two front lot lines, one along SW Montgomery Drive and one along SW 21st Avenue; however, the yard in between the primary dwelling and SW 21st Avenue functions as the front yard and the proposal has no impact on that yard area.
- The ADU is well-designed to fit within the topography of the lot as the basement portion of the ADU is partially sunken into the grade of the site. The proposed location as it is separated from other residences and replacing a detached garage is compatible with the residential area. The ADU also preserves adequate yard area for the primary dwelling as well as the ADU. The design of the ADU reflects the historic nature of the homes in the neighborhood and will provide an attractive additional residence.
- While the ADU is replacing an existing detached garage, ample on-street parking is still preserved. In fact, the location of the existing detached garage does not meet Portland Zoning Code requirements because it does not provide an 18-foot deep driveway to park a vehicle in front of the garage. The applicant will also be required to close the curb cut along SW Montgomery Drive which will provide additional on-street parking.
- The ADU is consistent with the desired character of the R10 zone which is to provide housing for individual households. As the primary dwelling is not a historic landmark, although it is listed on a 1984 Portland historic resource inventory, the proposed ADU is not subject to Historic Resource Review; however the ADU is attractively designed and will complement the residential area which contains some historic landmarks.
- The ADU is located 15 feet from the nearest residence and will be separated from that residence by a landscape strip planted with a hedge as well as a pedestrian pathway. The separation as well as the new hedge promotes privacy for the adjacent residence.
- The design and location of the ADU respects the general building scale and placement of structures in the neighborhood which is dominated by large homes, some located on large lots and some located on smaller lots at the minimum setbacks. Adequate yard space is maintained by the ADU and allows for the sharing of yard space while it also provides private outdoor area with the covered porch.
- Although the ADU is proposed to be 422 square feet larger than the 800 foot size limit (or 75 percent of the living area of the house) allowed for ADUs, the ADU will be less than 14 percent of the living area of the house which makes it clearly accessory to the large home.
- The ADU fits the topography of the site and because the basement portion is partially located below grade, this also conceals some of the additional living area. In fact, the Portland Zoning Code specifically excludes ADUs from the 800-foot size limitation when

the ADU is located in the basement of a primary dwelling. Using this logic, the basement area of the ADU is considered to not have the same perception of size as portions of ADUs that are built at or above grade.

The proposal equally or better meets the purpose of the setback and ADU development standards because it is adequately separated from adjacent residences, is attractively designed and fits into the topography of the site, is clearly accessory to the large primary dwelling and maintains the general building scale and placement of residences in the neighborhood.

Since the proposal is found to equally meet the purpose of the standards to be modified, 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 proposal will not detract from the livability or appearance of the residential area. It is located 15 feet from the nearest residence and will be separated from that residence by a planting strip with a hedge and a pedestrian privacy; therefore, adequately maintaining privacy and the availability of light and air. The proposed front setback along SW Montgomery Drive is larger than the current 1-foot setback of the detached garage while the reduced setback along SW Clifton Street will contain a covered porch which maintains visual permeability because the enclosed portion of the ADU will be located outside the side setback. The ADU will replace an existing detached garage and therefore will not add an additional structure in the residential area. The ADU is attractively designed to fit the historic nature of the neighborhood as well as the topography of the site. Because the existing house on the site is so large, the proposed living area of the ADU will be less than 14 percent of that of the primary dwelling and therefore will clearly appear as accessory.

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: A total of three Adjustments are being requested; however, the cumulative effect of the Adjustments is still consistent with the overall purpose of the zone which is to provide housing options for individual households. Furthermore, the setback Adjustments and the Adjustment to the allowed amount of living area in the ADU will not result in development that is out of scale with the residential area because a portion of the living area of the ADU is located below grade and the allowed 20-foot height limit for accessory structures is met. The ADU is attractively designed and will complement the historic nature of the residential areas. 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 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. (The site is listed on the City's Historic Resources Inventory of potentially significant resources, but this listing is not defined as a City-designated historic resource.)

- 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. Since no negative impacts are identified which require mitigation, this criterion is not applicable.

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

Findings: The site is not located in an environmental zone, 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 applicant proposes to reduce the front setback for the ADU from 20 feet to 10 feet (7 feet to the eave of the bay window), reduce the side setback from 10 feet to 7 feet for a covered porch (6 feet to the eave) and to increase the maximum allowed size of the ADU from 800 square feet to 1,222 square feet. The ADU is attractively designed, is properly separated from adjacent residences, fits the topography of the site and replaces an existing detached garage which is located closer to the SW Montgomery Drive property line than the proposed ADU. Based on the information provided, this proposal meets the approval criteria and is approved.

ADMINISTRATIVE DECISION

Approval of two Adjustments to 33.110.220.B and Table 110-4 to reduce the front setback along SW Montgomery Drive from 20 feet to 10 feet (7 feet to the eave of the bay window) and reduce the side setback along SW Clifton Drive from 10 feet to 6 feet to the eave of a covered porch, and approval of one Adjustment to 33.205.040.C.2 to increase the maximum allowed size of the ADU from 800 square feet to 1,222 square feet, per the approved site plans, Exhibits C-1 through C-2, signed and dated July 8, 2022, subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 22-115717 AD. No field changes allowed."

Staff Planner: Matt Wickstrom

Decision rendered by:  **on July 8, 2022**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 13, 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 February 18, 2022, and was determined to be complete on May 18, 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 February 18, 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: September 15, 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 27, 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 27, 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. Incomplete letter dated 3/14/22
 - 2. Applicant submittal dated 5/18/22
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Partial Site Plan and Site Plan (attached)
 - 2. Building Elevation Drawings (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Fire Bureau
 - 2. Life Safety Section of BDS
 - 3. Site Development Review Section of BDS, Development Review Section of Portland Bureau of Transportation, Water Bureau
 - 4. Bureau of Environmental Services
- F. Correspondence:
 - 1. Libby Gast, 6/15/22, request for staking of proposed ADU location and questions about impacts on bike route visibility
- 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).