



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

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Date: July 19, 2022
To: Interested Person
From: Don Kienholz, 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 22-115446 AD

GENERAL INFORMATION

Applicant: Michael Boone
7315 SE 17th Ave
Portland, OR 97202

Owners: Felice Fraser and Michael Boone
7315 SE 17th Ave
Portland, OR 97202

Site Address: 7315 SE 17th

Legal Description: BLOCK 5 LOT 23, WESTMORELAND
Tax Account No.: R899001370
State ID No.: 1S1E23AC 04600
Quarter Section: 3732

Neighborhood: Sellwood-Moreland, contact David Schoellhamer at chair.landuse.smile@gmail.com

Business District: Sellwood-Westmoreland, contact at info@sellwoodwestmoreland.com.
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: The applicant proposes to remove an existing, detached garage associated with the house on the subject 5,000-sf site. A new one-and-one-half story accessory dwelling unit (ADU) is proposed to be constructed in place of the garage. The main floor of the ADU includes living area (kitchen, living, bathroom) for the ADU, and an attached, unheated storage space to be used by the main household. The second floor contains the bedroom for the ADU. The

proposed building measures 24 x 24-ft in footprint and is nearly 16-ft in height. The existing driveway will remain.

The R2.5 zone generally requires that buildings be set back at least 5 feet from side and rear property lines. The proposed ADU is set back 5-ft from the side (north) property line, but no setback is proposed from the rear (west) property line.

Because the ADU is more than 15-ft in height, it must meet additional standards relating window form, roof pitch, trim, exterior materials, and eaves (Section 33.110.245.C). The ADU meets these standards except for the required 1-ft eave at the rear (west) elevation. (Because the ADU is proposed at the property line without a setback, no eave overhang is proposed).

Two Adjustments are requested for the proposed ADU:

1. To reduce the minimum rear (west) building setback from 5 feet to zero feet (Section 33.110.220.B); and
2. To waive the requirement for an eave overhang at the west elevation only (Section 33.110.245.C.4).

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are found in Portland Zoning Code Section 33.805.040.A through F.

ANALYSIS

Site and Vicinity: The site is a 5,000 square-foot lot developed with an early 20th-century house, with a prominent front entry and covered porch. There is an existing curb cut on the north side of the lot that originally served a single-car driveway leading to a single-car garage at the rear, which is proposed to be replaced. The surrounding residential area is characterized by similar early to mid-century dwellings; many of the properties have driveways which typically lead to a rear single-car garage. Some driveways and garages are paired with abutting properties; others are single driveways. One half-block to the west is SE Milwaukie Ave., the main commercial spine of Westmoreland and Sellwood.

Zoning: The site is zoned R2.5, a single-dwelling zone. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. 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 there are no prior land use reviews for this site.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **May 6, 2022**. The following Bureaus have responded with no issues or concerns:

- Life Safety Section of BDS;
- Bureau of Environmental Services; and
- Site Development, Fire Bureau, Portland Bureau of Transportation, and the Water Bureau.

Neighborhood Review: Two written responses were received in response to the proposal. The first, Exhibit F.1, was a letter in support by a nearby neighbor. The second, Exhibit F.2, was from Verizon notifying the city that no underground facilities were on site.

ZONING CODE APPROVAL CRITERIA

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

Finding: The site is R2.5, a residential zone. The proposal includes two Adjustments related to the location of the proposed ADU. Those Adjustments are:

1. To reduce the minimum rear (west) building setback from 5 feet to zero feet (Section 33.110.220.B); and
2. To waive the requirement for an eave overhang at the west elevation only (Section 33.110.245.C.4).

The first Adjustment is to reduce the minimum 5-ft rear building setback down to zero. Because the existing structure has a building height of more than 15-ft, it does not qualify for the general setback exemptions given to detached accessory structures in 33.110.245.C.2. As a result, the building is subject to the base zone setbacks in 33.110.220 and Table 110-4. The identified purpose(s) of the base zone setbacks are found in 33.110.220.A as follows:

“Purpose. 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 residences in the city's single-dwelling neighborhoods;*
- *They foster 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.*

*(Relevant purpose statements in **bold**)*

Rear Building Setback

The proposed ADU will occupy the same footprint of the existing garage that will be removed, but shifted 5-ft south to meet the side yard setback. The ADU will have an approximately 20-ft setback to the south property line and approximately 75-ft setback to the eastern front property line. The available distance to the north, south and east provide more than adequate distance for fire-fighting access and fire-fighting purposes. Additionally, the Portland Fire Bureau provided a response that they have no concerns over the proposal (Exhibit E.3). Air and light access are increased by moving the ADU 5-ft south from the existing garage's footprint.

The proposed ADU is located in the back yard of the subject site, where there is adequate room for a large accessory building. The ADU will be 5-ft from the north side property line and approximately 20-ft from the south side property line, providing the necessary side building setbacks. The 0-ft west setback to the rear of the property abuts the CM2 commercial mixed-use zoning along SE Milwaukie Ave, which has a 0-ft setback to most

property lines. The proposed location allows the ADU to meet the most important setbacks - those to low-density residential structures - while maintaining the general mixed-use zone setback from the commercial district. This positioning uses the flexibility of the base zone and is compatible with the residential neighborhood.

Based on these facts, staff finds the relevant purpose statements for the rear setback are satisfied.

Zero-ft Eave for Accessory Structure

The second Adjustment is to waive the required 1-ft eave on accessory structures greater than 15-ft in building height. The relevant purpose statement is found in 33.110.245.A:

“Purpose. This section regulates detached and connected structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site. The standards limit the height and bulk of these structures, promote compatibility of design for larger structures, provide for necessary access around larger structures, help maintain privacy between abutting lots, and maintain open front setbacks.”

With the ADU proposed at 24x24-ft and approximately 75-ft into the property, it will not be a predominant element or feature on the site. Having a 0-ft setback on the detached accessory structure located along the rear property line will not draw attention to the structure. The reduced eave length from 1-ft to 0-ft will not increase the height or bulk of the ADU. Because the 0-ft eave is on the rear of the ADU along the rear lot line, it will not be seen from the public ROW, thus not impacting the compatibility of the ADU to the existing house or residential neighborhood. The eave is not living space and therefore will not impact privacy. Based on these facts, staff finds the purpose statement is equally met.

Criterion met.

- 3. 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**

Finding: The site is in a residential zone. Livability is not defined but generally includes privacy and safety. Placing the ADU along the rear property line with a 0-ft setback to the CM2 zone will not impact privacy as the adjacent zoning is a medium density mixed-use zone that allows dense residential development and commercial uses with setbacks down to 0-ft. It is common in Portland’s neighborhoods to have accessory structures along the rear or side property lines and the public will not be able to see the rear of the building to observe the reduced setback or 0-ft eave length. As such, the Adjustments will not detract from the appearance of the residential area.

Criterion met.

- 4. 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**

Finding: Two Adjustments are requested as part of this application. However, the two Adjustments are for unrelated standards and do not address standards that affect bulk (height, setbacks, floor area ratio or building coverage) and therefore the consistency of the structure with the character of the R2.5 zone.

Criterion met.

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

Finding: City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s,” while historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. The subject property is not within a City-designated ‘s’ overlay zone nor within proximity to an Historic Resource. As such, this criterion is not applicable.

6. Any impacts resulting from the adjustment are mitigated to the extent practical; and

Finding: As determined in Findings A and B above, the proposal equally meets the purpose of the standards being adjusted and will not adversely impact the livability or appearance of the residential area. As such, no adverse impacts are anticipated as a result of approving the Adjustments.

Criterion met.

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

Finding: 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). Because no environmental overlay zone is mapped on the subject site, 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 has demonstrated that reducing the rear building setback from 5-ft to 0-ft for a detached ADU with a building height greater than 15-ft and waiving the 1-ft eave along the rear of the building equally meets the purposes of the standards being adjusted; will not impact the livability or appearance of the residential area; will not have a cumulative impact on the zone or area due to requesting multiple adjustments; and will not adversely impact historical, scenic or environmental resources. As the proposal meets the approval criteria, the Adjustments must be approved.

ADMINISTRATIVE DECISION

Approval of two Adjustments:

1. To reduce the minimum rear (west) building setback from 5 feet to zero feet (Section 33.110.220.B); and
2. To waive the requirement for an eave overhang at the west elevation only (Section 33.110.245.C.4).

For a new, detached Accessory Dwelling Unit, per the approved plans, Exhibits C.1 through C.3, signed and dated July 14, 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.3. The sheets on which this information appears must be

labeled, "Proposal and design as approved in Case File # LU 22-115446 AD. No field changes allowed."

Staff Planner: Don Kienholz

Decision rendered by:  **on July 13, 2022**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 19, 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 22, 2022, and was determined to be complete on May 4, 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 22, 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 1, 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 August 2, 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 **August 2, 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 Materials
 - 1. Original Narrative
 - 2. Original plan set
 - 3. Site photos
 - 4. Zoning Checksheet
 - 5. April 22, 2022 narrative
 - 6. April 22, 2022 photos
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. South and East Elevation Plan (attached)
 - 3. West Elevation Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Life Safety Section of BDS
 - 2. Bureau of Environmental Services
 - 3. Site Development, Fire, Portland Bureau of Transportation and Water Bureau responses
- F. Correspondence:
 - 1. JP Perry Email in support of project
 - 2. Verizon letter noting no facilities in vicinity
- G. Other:
 - 1. Original LU Application
 - 2. March 24, 2022 Incomplete letter
 - 3. Fee Summary Report

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 - 115446 AD
1/4 Section	3732
Scale	1 inch = 200 feet
State ID	1S1E23AC 4600
Exhibit	B Feb 22, 2022



7315 SE 17th Ave
Portland, OR, 97202

BOONE ADU

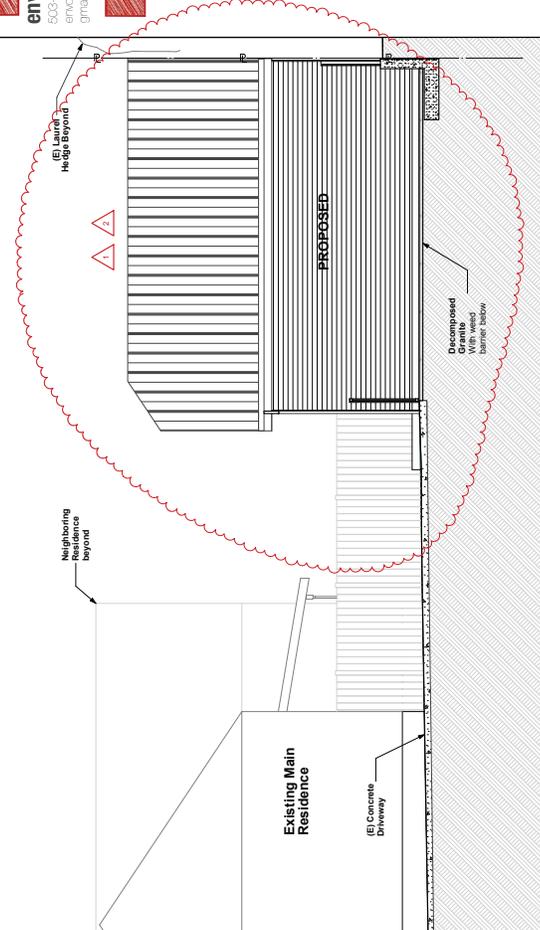
DATE 2/23/22

BUILDING ELEVATIONS

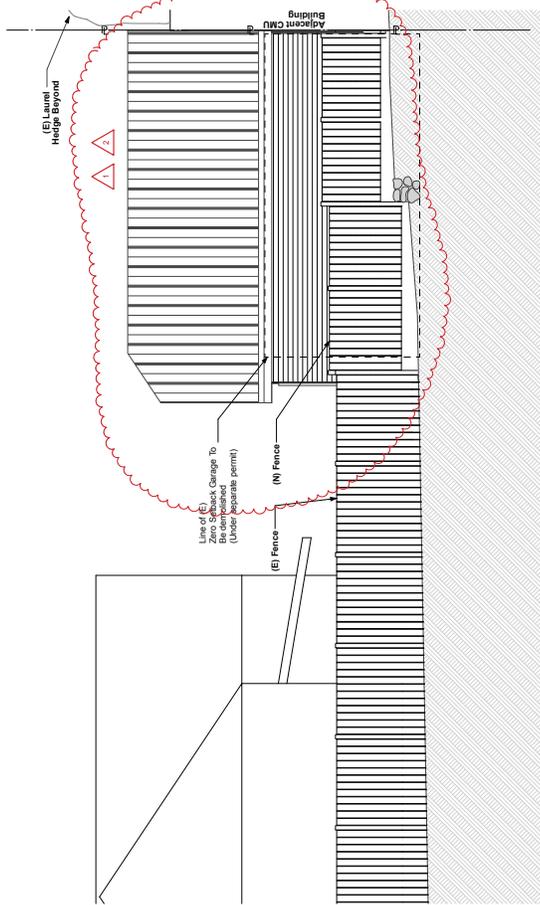
A4.01

Exhibit C.3
LU 22-115446 AD

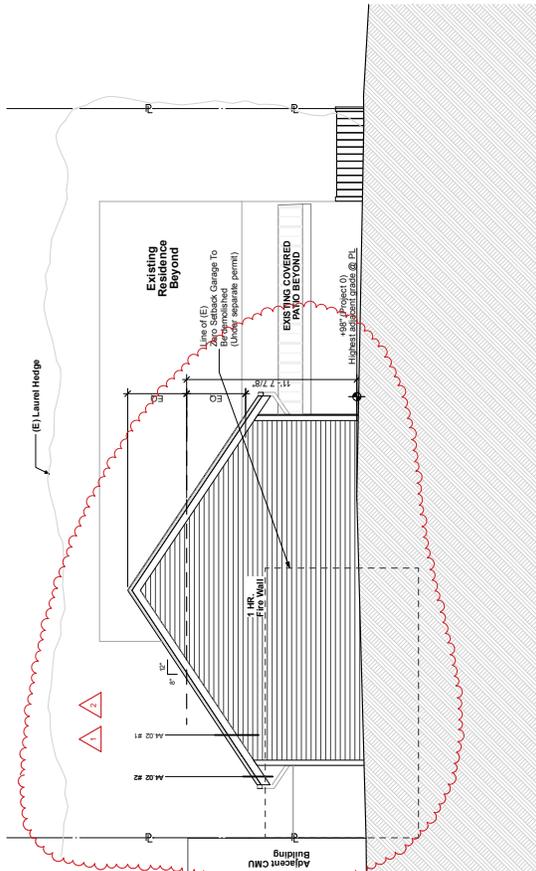
Submitted Date 2-21-22



NORTH ELEVATION 2



NORTH ELEVATION 1 (Cut line adjacent property)



WEST ELEVATION

