



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

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Date: August 18, 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 22-131177 AD

GENERAL INFORMATION

Applicant: Kevin Partain
Urban Visions
6180 Trout Creek Ridge Rd
Mt Hood/Parkdale, OR 97041

Owner: Ernie Jette
Ernie Jette Construction
6676 SE 252nd Ave
Gresham OR 97080

Site Address: 7310 SE MARKET ST

Legal Description: BLOCK H LOT 4, CLINTON
Tax Account No.: R164900580
State ID No.: 1S2E05DB 13500
Quarter Section: 3238

Neighborhood: Mt. Tabor, contact Stephanie Stewart at contact.MTNA@gmail.com
Business District: None
District Coalition: Southeast Uplift, contact Matchu Williams at matchu@seuplift.org
Plan District: None

Zoning: R5 - Single-Dwelling Residential, 5,000

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

Proposal:

The property owner requests to build a detached single-dwelling home with a detached accessory dwelling unit on the subject 25-foot by 100-foot site. In the single-dwelling zones, the

Portland Zoning Code requires that attached houses be constructed on lots that are less than 26 feet in width. An Attached House is a type of a dwelling unit, located on its own lot, that shares one or more common or abutting walls with one or more dwelling units on their own lots. However, while the subject lot is less than 26-ft in width and requires a new dwelling unit to be an Attached House, the site to the west is already developed with a detached dwelling unit in the middle of the lot and the property owner does not own the vacant 25-foot by 100-foot lot immediately to the east. Therefore, the owner of the subject lot cannot develop the subject site with an attached house as defined and required. As such, the applicant requests an Adjustment to Section 33.110.260.C.1 to allow construction of a detached dwelling unit on the subject site.

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, or G through I. The applicant has addressed Criteria G through I, addressed in the findings below.

ANALYSIS

Site and Vicinity: The subject site is located on a dead-end section of SE Market just west of SE 74th and at the base of Mt. Tabor. The site is a vacant 25x100-ft lot from the original Clinton Subdivision, platted in 1891. The subject site and the 25x100-ft site immediately to the east are the only two undeveloped lots in the vicinity. While there are some large trees with significant canopy in the area, the subject site contains no significant trees. In the area of the site, SE Market is a substandard street. The right-of-way is only 40-ft wide and there are no sidewalks or planting strips although the travel lanes are paved. SE Market narrows even more on the other side of SE 74th and SE 74th is entirely unimproved north of SE Market. The site is a significant distance from any of the main arterials in SE Portland: SE Division is approximately 1900-ft to the south; SE 82nd Ave is approximately 2,200 ft to the east; and SE Washington and the Montavilla commercial hub is approximately 3,000-st to the north.

Zoning: The site is zoned R5, 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 **June 7, 2022**. The following Bureaus have responded with no issues or concerns:

- Life Safety Section of BDS (Exhibit E.1);
- Portland Bureau of Transportation (Exhibit E.2); and
- Site Development, Fire Bureau, BES and Water Bureau (Exhibit E.3).

Neighborhood Review: One written response has been received from a notified property owner in response to the proposal. The letter (Exhibit F.1) was received from the owner of the other vacant 25x100-ft property to the east and is in opposition. While the opposition includes four points, the primary concern is the inclusion of a detached Accessory Dwelling Unit on the subject lot with the other points related to the same ADU.

The letter notes the surrounding area is developed with detached single-family homes on larger lots (made up of at least two underlying 25x100-ft lots from the original 1891 subdivision) and that because the zoning code requires attached homes for lots that are 26-ft or less in width, then there was an intentional focus to prevent detached homes on 'infill lots' and that such infill lots are unsuitable for a second dwelling unit (ADU) in addition to any primary dwelling due to their size. The letter goes on to say that approving this adjustment would then necessitate an Adjustment for the vacant adjacent 25x100-ft lot to the east to be developed because if approved, the lots on either side of the writer's lot would have detached dwellings and it would be impossible to building an attached house on their lot.

Additionally, the letter raised the concern that the setback from the ADU to the adjacent lot to the east does not allow suitable access into the property for the ADU while also maintaining privacy to the lot to the east. The letter wants any approval to require a privacy barrier between the subject lot and their lot of the type and materials of their choice.

Next, the letter raised the concern that the segment of SE Market Street in front of the subject lot is narrower than typical streets and has little to no ability to have on-street parking. Additionally, the plans for the detached home and ADU do not include a garage so there is a concern about where vehicles will park. The letter requests that a no parking zone is established for "for anyone other than cars with our approval."

Lastly, the letter expresses concerns about the impact of noise and traffic emanating from the house and ADU on the community if they are used for rentals.

Staff response: The Adjustment is to allow a detached primary dwelling unit rather than an attached primary dwelling unit. Staff acknowledges that the concerns about parking, noise, privacy and other impacts from a new primary and accessory dwelling unit are real and in fact common whenever a vacant lot is developed in an established neighborhood. However, those concerns are not relevant to the approval criteria in 33.805.040.G through I.

First, the R5 zone allows a primary dwelling unit by right, without mitigation, and without special review or conditions. Second, the zoning code allows one Accessory Dwelling Unit on any single-dwelling zoned lot if the lot is at least 2,500-sf in size, which the subject lot meets. Because the Adjustment is for the type of primary house and ADU's are allowed by right, any issues with the ADU cannot be considered when evaluating the proposal for approval or denial.

Additionally, with the zone allowing dwelling units by right, issues that are directly related to having an allowed use on a site cannot be considered for approval or denial. The single-dwelling zone has development standards that address the externalities of a use, such as privacy, fire prevention, etc and there ~~are~~ are separate City codes that address parking as well as noise.

For the development standards in the single-dwelling zones, the code requires a 0-ft side setback for an attached house and a 5-ft side setback for a detached house. In this case, the applicant is requesting to build a detached house and has provided a 5-ft side building setback, thus meeting the development standard that is intended to address privacy, firefighting, sunlight access and other concerns. Fences and other privacy barriers are not required for development that is allowed by right. The neighbor may build a privacy fence if they so choose and the owner of the subject lot may also build a privacy fence along the common lot line if they choose, but it is not a zoning code requirement. And, since the approval criteria do not evaluate privacy, a fence cannot be required as a condition of approval since there is no nexus to the code.

Staff acknowledges it is true that if the subject lot is approved for a detached dwelling unit, the adjacent site must also be developed with a detached dwelling unit since a detached dwelling unit is necessarily exclusive of an attached dwelling unit and the adjacent lot is less than 2,600-sf in size. The only way for either the subject lot or the adjacent lot (the letter writer's lot) to be developed without an Adjustment is for them both to be developed at the same time with

a common and agreed upon design and timeframe. With the two properties in different ownerships and the owner of the subject lot wanting to develop contemporaneously and the letter writer not wanting to develop, the two parties are not in agreement on development and the lots cannot be developed in compliance with the code. Thus, there is a need for an Adjustment on the subject property.

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met.

Staff note: The applicant has chosen to address criteria G through I.

G. Application of the regulation in question would preclude all reasonable economic use of the site; and

Finding: The applicant is requesting an Adjustment for the requirement to construct an attached house on a lot less than 26-ft in width. An attached house is required to be directly connected and integrated to an attached house on an adjacent lot. In other words, without one house, the other cannot be built. They must be built concurrently and utilize a 0-ft setback along the common property line and share an internal wall built to a particular fire rating. Building an attached house on the subject site without the participation of the adjacent property owner is physically impossible because unless the other attached house is built, by definition what would be constructed on the subject lot would be a detached house. The adjacent property has a different owner and has not submitted for a building permit to construct an attached house. This necessarily precludes the subject site from meeting the development standard requested to be adjusted.

The single-dwelling zones have an extremely limited number of primary uses allowed. Table 110-1 outlines what uses are permitted outright, conditionally, or prohibited. The only use allowed by right on its own is household living. Uses allowed under limited circumstances and to be reviewed through a Conditional Use review include Group Living (a type of residential use but defined as a residential structing having more than eight bedrooms), retail plant nurseries, basic utilities, community services, parks and open space, daycare, Market Gardens, wireless facilities, and railroad lines and utility corridors. All uses other than a residential use either require a house (daycare) present in order to operate, or are of such high intensity that they require a significantly more amount of land than available on the subject site to be established.

Based on the above, without an adjustment to the requirement the house be attached to a house on the adjacent property, the property could not have a primary use, and thus lose all reasonable economic use of the site for the owner. Because of this, the Adjustment must be approved.

Criterion met.

H. Granting the adjustment is the minimum necessary to allow the use of the site; and

Finding: The standard requested to be adjusted is a binary choice - either the house is attached, or it is detached. Therefore, any deviation from the standard must necessarily be the minimum necessary as it is the only other option. As such, the request to adjust the standard so the proposed house is 'detached' is the minimum necessary to allow the residential use of the site.

Criterion met.

I. Any impacts resulting from the adjustment are mitigated to the extent practical

Finding: In the case where an Adjustment is requested to a binary development standard, such as in this case where a house is attached or is detached, there is not a continuum of potential impacts as may be seen in adjustments for the reduction in setback distance, an increase in building height, or in a change to a landscaping requirement. For example, a reduction in a front building setback could reduce the amount of front yard and place a large structure along the sidewalk, creating an intimidating and fortress-like wall that negatively impacts the pedestrian experience and reduces the use of the front yard which allows greater opportunity for ‘eyes on the streets’ and community connection. For a request for a reduced side setback for a raised deck may have a negative impact on privacy since the close the raised deck is to an adjacent yard, the more occupants can look into the private space of a neighbor.

The purpose of the standard being Adjusted in this case is found in 33.110.260.A:

“Purpose. These standards increase the compatibility of residential structures on narrow lots by:

- *Ensuring a reasonably proportional relationship between the width and height of structures on narrow lots;*
- *Promoting wider front facades by requiring two attached houses on very narrow lots;*
- *Promoting open landscaped front yards.”*

The idea behind the standard is that two narrow 25-ft x 100-ft wide lots together is similar to one standard 50x100-ft lot. A house on a standard lot would typically be built towards the middle on the lot with a minimum 5-ft side setback to each side, thus the physical bulk is in the middle and away from the exterior side lot lines. By requiring two narrow lots to have attached houses, the physical bulk of the two attached homes would be in the middle of the two lots as taken together, would be away from the exterior lot lines and would resemble the appearance of a single dwelling on a standard lot. This similarity would be not just in placement but also in the proportion of the bulk’s width and height.

In this case, the Adjustment is to allow a detached house when an attached house is required. The proposal has the detached house in the middle of the subject lot. The site plan demonstrates that even with a detached house, the site can be developed with a standard 10-ft front building setback with open front yard; standard 5-ft side building setbacks; and a building height below the R5’s standard 30-ft maximum. Narrow lots have an additional limitation on building height found in 33.110.260.C.2 which limits height to 1.5 times the width of a proposed home. Given 5-ft standard side building setbacks, height would be limited to 22.5-ft well below the maximum allowed.

As proposed, the detached home meets the purpose of the standard being adjusted and does not produce any adverse impacts that need to be mitigated against. The proposed home meets all other development standards and provides a larger side setback to the adjacent narrow lot than would be provided with an attached house.

Criterion met.

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 the request to Adjust the requirement to require an attached home on a narrow lot and instead allow a detached home satisfies the hardship approval criteria of 33.805.040.G through I. Because the subject lot and adjacent narrow lot are not in the same ownership and the adjacent owner does not wish to develop their lot, it would be impossible for the owner of the subject lot to develop their property without the adjustment as there would be no other use allowed. Thus, not allowing the detached house would preclude all reasonable economic use of the site. Approval of the Adjustment is the minimum necessary as it is a binary standard (attached or detached) and deviating from the standard has only one alternative. No impacts will result from approval of the Adjustment as the proposed development can still meet all other single-dwelling zone development standards.

ADMINISTRATIVE DECISION

Approval of an Adjustment to 33.110.260.C.1 to allow a detached house on a narrow lot, per the approved site plans, Exhibits C.1 and C.2, 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 and C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 22-131177 AD. No field changes allowed."

Staff Planner: Don Kienholz

Decision rendered by:  **on August 15, 2022**
By authority of the Director of the Bureau of Development Services

Decision mailed: August 18, 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 April 8, 2022, and was determined to be complete on May 24, 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 April 8, 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 requested that the 120-day review period be extended 10-days (Exhibit A.8). Unless further extended by the applicant, **the 120 days will expire on: October 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 September 1, 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 **September 1, 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. Applicant's narrative
 2. Original Plan Set
 3. Deed History Lot 3
 4. Deed History Lot 4
 5. ADU Elevation Plans
 6. May 6, 2022 Updated Narrative
 7. May 24, 2022 Applicant Summary Update
 8. 10-day extension to statutory 120-day clock
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Close up Site Plan (attached)
 2. Full Size Site Plan and Landscaping Plan (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Life Safety Section of BDS
 2. Bureau of Transportation Engineering and Development Review
 3. Site Development, Fire Bureau, BES, and Water Bureau
- F. Correspondence:
 1. Moore June 27, 2022 Letter objecting to proposal due to addition of an ADU to project; lack of fence or buffering on side property line; lack of on-site parking.
- G. Other:
 1. Original LU Application
 2. Fee Payment Summary
 3. Incomplete Letter

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).