



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

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Date: August 26, 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 22-151934 AD

GENERAL INFORMATION

Applicant: Emily Sandy | Strata Land Use Planning
PO Box 90833 | Portland, OR 97290
Phone: 503-317-3548 | emily@stratalanduse.com

Owners: Jan & Barbara Caplener
6523 SE Scott Dr
Portland, OR 97215

Site Address: 350 SE 65TH AVE

Legal Description: LOT 1, CREST AT ASBAHR HEIGHTS
Tax Account No.: R184000050
State ID No.: 1N2E32CC 01401
Quarter Section: 3037

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

Zoning: R7 (Residential 7,000)

Case Type: AD (Adjustment Review - 2 Adjustments)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant proposes to construct a single-dwelling home on this site. For this corner lot, the Portland Zoning Code (PZC) classifies SE Pine St. as the front property line and SE 65th Avenue as the side street property line. In the R7 zone, homes must be set back 15 feet from the front property line and 5 feet from the side property line. Decks and other similar structures such as stormwater planters may extend 20 percent into the setbacks. Eaves may

extend 2 feet into a required setback. Due to the slope of the site and in order to preserve a large tree, the applicant proposes to reduce the setbacks for certain elements of the home. The applicant proposes to reduce the front building setback from 15 feet to 8 feet for a portion of the house, reduce the front building setback from 15 feet to 7 feet for an uncovered deck and to reduce the side street setback from 5 feet to 0 feet for a stormwater planter that is over 2.5 feet in height (PZC 33.110.220.B and Table 110-4).

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 8,654 square foot lot is one of four contiguous undeveloped lots located along SE Pine Street. The lot slopes from east to west with the west portion being lower than the east. A large Douglas fir tree is located in roughly the center of the lot. For the purposes of this review, the surrounding vicinity is defined as the residential area within 400 feet of the home. The vicinity is developed with single-dwelling homes which are generally one to two stories in height and due to the slope of the area are often built with daylight basements.

Zoning: The site is zoned R7 (Residential 7,000). The R7 zone is 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 and provide options for infill housing that is compatible with the scale of the single-dwelling neighborhood.

Land Use History: City records indicate one prior land use review for this site:

- 03-127635 LDS AD – A 2004 approval of a 15-lot subdivision and approval of an Adjustment to standards unrelated to this lot.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **July 8, 2022**. The following Bureaus have responded:

- The Development Review Section of the Portland Bureau of Transportation responded with no objections (Exhibit E.1);
- The Life Safety Section of the Bureau of Development Services responded with no objections and provided general Life Safety information regarding the overall proposal (Exhibit E-2);
- The Bureau of Environmental Services responded with information about stormwater management stating no objections to the proposal (Exhibit E.3); and
- The Site Development Section of BDS, the Fire Bureau and the Water Bureau responded with no concerns (Exhibit E.4).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on July 8, 2022. One written response from a neighbor has been received:

- The response states no objections to the proposal provided the Douglas fir tree is preserved (Exhibit F.1).

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 front setback to be 15 feet or more from the SE Pine Street property line and the side setback to be 5 feet or more from the SE 65th Avenue 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 front setback from 15 feet to 8 feet for a portion of the house and to 7 feet for an uncovered deck as well as to reduce the side setback from 5 feet to 0 feet for a stormwater planter that is over 2.5 feet in height equally or better meets the purpose statement above for the following reasons:

- The site is a corner lot and the reduced setbacks will be along a street and not adjacent to a next door home; therefore, light and air for adjacent residences will be maintained.
- The Fire Bureau responded with no concerns indicating the reduced setbacks will still provide adequate separation for fire protection as well as access for fire fighting.
- The proposed house reflects the general building scale and placement of houses in the vicinity through its single-story with a daylight basement design. The reduced setbacks will not compromise this consistency, especially since the reduction to side setback is due to a stormwater planter and not the home.
- Options for neighboring properties is maintained because the reduced setbacks are both adjacent to street property lines. Plus the rationale for reducing the setbacks is to preserve an existing large Douglas fir tree which will help provide greater privacy between the proposed home and future development on the lot to the east. In order to ensure the Douglas fir tree is preserved a condition of approval is included with this land use review stating that the tree must be preserved.
- The proposed "L" shape design of the house locates the main entrance along SE 65th Avenue which in effect presents the front yard along that street rather than along SE Pine Street and therefore maintains an open and visually pleasing front yard, just along what is technically the side street property line.
- The proposal sites the home in such a way as to preserve a large Douglas fir tree which warrants flexibility. The daylight basement design of the home fits the topography of the site as well as the topography of the vicinity. A generous outdoor area is provided behind the home and the Douglas fir tree will be an attractive component of the outdoor area.
- The proposed Adjustments are not related to a driveway and therefore that portion of the purpose statement is not applicable.

Based on the information above and with the condition of approval requiring the Douglas fir tree to be preserved, 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 reduced setbacks are adjacent to streets and therefore will not impact the availability of light and air for adjacent properties and will not compromise privacy. Furthermore, the requested Adjustment to the side street setback along SE 65th Avenue relates to a stormwater planter, a more minor feature, and not the home. The home is well designed and by preserving the large Douglas fir tree, it will serve as a thoughtful addition to the surrounding residential vicinity. 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: Two Adjustments are proposed but to separate setbacks – the front street setback and the side street setback. The front street setback Adjustment relates to the design of the house and deck which are closer to the street than would otherwise be allowed, while the side street setback Adjustment relates to a stormwater planter. Based on this information, the two Adjustments will not result in a cumulative effect of a home that is inconsistent with the purpose of the zone especially considering the purpose of the zone is to provide housing opportunities for individual households. 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.

- 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 the two Adjustments especially considering a condition of approval is included with requires the large Douglas fir tree to be preserved. 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

As part of the development of a new home on this site and to preserve an existing Douglas fir tree, the applicant proposes to reduce the front building setback from 15 feet to 8 feet for a portion of the house, reduce the front building setback from 15 feet to 7 feet for an uncovered deck and to reduce the side street setback from 5 feet to 0 feet for a stormwater planter that is over 2.5 feet in height. A condition of approval requires preservation of the Douglas fir tree

ADMINISTRATIVE DECISION

Approval of two Adjustments, the first to reduce the front building setback from 15 feet to 8 feet (7 feet for an uncovered deck) and the second to reduce the side street setback from 5 feet to 0 feet for a stormwater planter that is over 2.5 feet in height, per the approved site plan, Exhibits C.1 through C.2, signed and dated August 22, 2022, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (B) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 22-151934 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The 50-inch Douglas fir located behind the proposed home as illustrated in Exhibit C.1 must be preserved. The tree must be protected during the construction of the house as described in the applicant's arborist report (Exhibit A.1) and as required by Title 11. However, the tree may be removed in the future without the need for another land use review if found by a certified arborist to be dead, dying, or hazardous.

Staff Planner: Matt Wickstrom



Decision rendered by: _____ **on August 22, 2022**
By authority of the Director of the Bureau of Development Services

Decision mailed: August 26, 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 June 10, 2022, and was determined to be complete on July 5, 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 June 10, 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: November 2, 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 9, 2022. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIx decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **September 9, 2022** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Full application submitted June 10, 2022
 2. Supplemental submittal received July 3, 2022
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Elevation Drawing (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Development Review Section of the Portland Bureau of Transportation
 2. Life Safety Section of the Bureau of Development Services
 3. Bureau of Environmental Services
 4. Site Development Section of the Bureau of Development Services, Fire Bureau, Water Bureau
- F. Correspondence:
 1. John Michael Beasley, July 13, 2022, support for proposal provided the Douglas fir tree is preserved
- 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).