



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

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Date: September 21, 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 22-166632 AD

GENERAL INFORMATION

Applicant: Colin Jensen | Thesis Studio Architecture
6741 SE Kelly St | Portland, OR 97206
Phone: 503-701-7027 | Email: colin@thesisstudio.com

Representative: Kathleen Boland and Brett Ailin
1821 SE 47th Ave | Portland, OR 97215

Site Address: 1821 SE 47TH AVE

Legal Description: BLOCK 1 LOT 1, FAILING ADD
Tax Account No.: R264100010
State ID No.: 1S2E06CA 21500
Quarter Section: 3235

Neighborhood: Richmond, contact Heather Flint Chatto at richmond.pdx.lutc@gmail.com
Business District: Hawthorne Blvd. Bus. Assoc., contact at explore@hawthornepdx.com
District Coalition: Southeast Uplift, contact Matchu Williams at matchu@seuplift.org

Zoning: R5 (Residential 5,000)

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

Proposal:

The applicant proposes to remove the roof on the existing house and replace it with a more steeply pitched roof. The house is located within the south side setback at approximately 2 feet 5 inches from the property line and the steeper roof will add a small amount of new building area within the setback; therefore, approval of the reduced setback through an Adjustment Review is required. The applicant requests an Adjustment to Section 33.110.220.B and Table

110-4 to reduce the south setback from 5 feet to 2 feet 5 inches (0 feet to the eave and gutters) for the additional building area associated with the roof replacement and second floor renovations.

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 5,700 square foot site is developed with a 2-story single-dwelling home. The south side of the home is located within the 5-foot side setback at about 2.5 feet (.5 feet to the eaves, 0 feet to the gutters) from the property line according to information provided by the applicant. The surrounding vicinity is defined as an area approximately 400 feet from the site and is developed primarily with single-dwelling homes primarily built in early 1900s decades. Due to the time period when the homes were built many do not meet the current 5-foot side setback requirements.

Zoning: The site is zoned R5 (Residential 5,000). The R5 zone is a single-dwelling zone that is intended to preserve land for housing and to provide housing opportunities for individual households.

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 **August 17, 2022**.

The following Bureaus have responded:

- The Life Safety Section of the Bureau of Development Services responded with no objections and provided building code and information and information about fire rated exterior walls, roofs and eaves (Exhibit E.1)
- The Site Development Section of the Bureau of Development Services, Fire Bureau, Bureau of Environmental Services, Portland Bureau of Transportation and Water Bureau responded with no concerns (Exhibit E.2)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on August 17, 2022. One written response has been received:

- The neighbor to the south of the site wrote that they have no objections to the overall project and asked for clarification that the property line shown in the proposal is only an estimate and is not intended for legal effect. The neighbor note that their comments are not intended to delay the project and provided a correction to one sentence just after the comment deadline had passed.

Staff response: The information for this land use review was provided by the applicant. No survey is required for this review; therefore, this land use review and approval is not an official verification of the location of the property line.

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 side setback to be 5 feet or greater 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 side setback from 5 feet to 2.5 feet (.5 feet to the eave and 0 feet to the gutter) is equally consistent with the purpose statement above for the following reasons:

- The proposal is to remove the second story of the house and to replace it with a new second story that has a roof with a steeper pitch. This results in a slight increase to the amount of building area within the side setback but does not move the walls of the first floor closer to the property line; therefore light and air is maintained.
- The Fire Bureau and Life Safety Section of the Bureau of Development Services responded with no concerns and noted that the proposal will be required to meet applicable codes; therefore separation for fire protection and access for fire fighting is maintained and will be addressed through the permit review process.
- The neighborhood was developed primarily in the early decades of the 1900s and many homes are located closer than 5 feet to the side property lines; therefore the proposal is reflects a reasonable physical relationship between residences, is compatible with the neighborhood and allows for architectural diversity.
- The proposal adds roof area within the side setback but does not increase window area within the side setback and will not reduce privacy.
- The proposal does not reduce the front setback, it is confined to the side setback and therefore will not impact the front yard, nor does it relate to a driveway or garage door location.

Since the proposal is found to equally meet the purpose of the standard 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 subject site is in a residential zone, so the proposed Adjustment must not significantly detract from the livability or appearance of the residential area. The proposal to remove the second story of the house and replace it with a new second story and roof with a steeper pitch will not detract from the appearance of the area because the house will maintain a similar appearance to what was proposed. As noted above under Criterion A, the proposal also will not detract from the livability of the residential area because no new windows are proposed within the setback and therefore privacy will not be compromised. 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: Since only one Adjustment is requested, this criterion is not applicable.

D. City-designated scenic resources and historic resources are preserved; and

Findings: City-designated scenic resources are identified on the official zoning maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic resources or historic resources mapped on the subject site, this criterion is not applicable.

E. Any impacts resulting from the Adjustment are mitigated to the extent practical; and

Findings: Staff has not identified any negative impacts on neighbors or on the neighborhood specifically resulting from this Adjustment request. 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 applicants propose to remove the second floor and roof from a home that encroaches into the side setback and to replace the second floor and roof with a steeper pitch thus slightly increasing the building area within the setback. The walls of the first floor of the home will not move any closer to the property line and the portion of the second floor within the setback does not have any windows which means privacy will not be compromised. The Fire Bureau and Life Safety Section of the Bureau of Development Services responded to the proposal with no concerns other than code standards will need to be met. Based on the information provided above, the proposal meets the applicable approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.220.B and Table 110-4 to reduce the south side setback from 5 feet to 2.5 feet (0.5 feet for the eave and 0 feet for the gutter) for the second story addition/replacement on the existing house, per the approved site plans, Exhibits C.1 and C.2, signed and dated September 13, 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.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 22-166632 AD. No field changes allowed."

Staff Planner: Matt Wickstrom

Decision rendered by: M Wickstrom on September 13, 2022
By authority of the Director of the Bureau of Development Services

Decision mailed: September 21, 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 July 26, 2022, and was determined to be complete on July 27, 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 July 26, 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 24, 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 October 5, 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 **October 5, 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
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation Drawings (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Life Safety Section of the Bureau of Development Services
 - 2. Site Development Section of the Bureau of Development Services, Fire Bureau, Bureau of Environmental Services, Portland Bureau of Transportation and Water Bureau
- F. Correspondence:
 - 1. Jim Oleske, September 7, 2022, support for Adjustment and request for clarification about whether the land use review verifies property line location
- 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).