



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

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Date: September 28, 2022
To: Interested Person
From: David Besley, 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 22-162910 AD

GENERAL INFORMATION

Applicant: Kevin Partain
Urban Visions
223 NE 56th Ave
Portland, OR 97213
Email: kevinp@gorge.net
Phone: 503-421-2967

Owner: Dany Suon
13943 SE Lincoln St
Portland, OR 97233

Site Address: 13943 SE Lincoln St

Legal Description: LOT 2, PARTITION PLAT 1997-10
Tax Account No.: R239450
State ID No.: 1S2E02DA 07802
Quarter Section: 3244

Neighborhood: Hazelwood, contact Arlene Kimura at arlene.kimura@gmail.com
Business District: Midway, contact info@midwaybusiness.org
District Coalition: East Portland Community Office, contact at info@eastportland.org

Plan District: NONE
Zoning: R7 (Single Dwelling Residential 7,000)
Case Type: AD (Adjustment Review)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:
The applicant is proposing to convert an existing 480 square foot detached garage into an Accessory Dwelling Unit (ADU). The Portland Zoning Code requires that detached ADUs be set

back at least 40 feet from the front lot line or located behind the rear building wall of the primary dwelling (Section 33.205.040.C.3). The existing garage is only 26 feet – 7 inches from the front (south) lot line and is not behind the rear building wall of the primary dwelling. An Adjustment is therefore requested to reduce the minimum required ADU front setback from 40 feet to 26 feet – 7 inches for a detached garage-to-ADU conversion.

Relevant Approval Criteria:

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The 7,383 square foot site is located on the north side of SE Lincoln Street, about 250 feet east of the intersection of SE Lincoln Street and SE 139th Ave. The site also abuts SE Harrison Court to the north, for an approximately 22-foot length at the northwesternmost corner of the site, though it is accessed via SE Lincoln Street. The relatively flat site is developed with a 767 square foot single-story house with a 445 square foot attached garage on the west side of the lot and a 480 square foot detached garage located 5 feet to the east of the primary dwelling and garage. The surrounding vicinity is developed primarily with one and two-story single-dwelling residences.

Zoning: The R7 zone is a single-dwelling zone that is intended to preserve land for housing, and to provide housing opportunities for individual households. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City’s various neighborhoods.

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 19, 2022**. The following Bureaus have responded as follows:

- The Portland Bureau of Transportation responded with no concerns regarding the Adjustment review and included information about street classification and Title 17 (Transportation Plan) requirements (Exhibit E.1); and
- The Life Safety Review Section of the Bureau of Development Services (BDS) responded with no concerns regarding the Adjustment review, and included information about building permit and fire rating requirements (Exhibit E.2).

The following Bureaus have responded with no concerns (Exhibit E.3):

- The Site Development Review Section of BDS;
- The Bureau of Environmental Services (BES);
- The Water Bureau; and
- The Fire Bureau.

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.040 Adjustment 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

Findings: The applicant is proposing to reduce the ADU front setback from 40 feet to 26 feet – 7 inches for a detached garage-to-ADU conversion.

The relevant purpose statement and associated findings are found below:

33.205.010 Accessory Dwelling Units – Development Standards

Standards for creating accessory dwelling units address the following purposes:

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

Ensure that accessory dwelling units are compatible with the desired character and livability of Portland’s residential zones;

Desired Character is a defined term in Section 33.910.030:

“Desired Character: The preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.”

The site is in the R7 zone and in the boundary of the Hazelwood Neighborhood Plan.

The purpose statement of the single-dwelling zones is as follows:

“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.”

The proposal is for a new ADU that provides an additional infill housing opportunity in the R7 zone. With the proposed ADU being a single-story, and smaller in footprint and living area than the primary house, the proposed ADU is compatible with the scale of the surrounding neighborhood.

A review of the Hazelwood Neighborhood Plan policies found one applicable policy:

- *Policy 5.1: Promote the development of a variety of housing types.*

The ADU is, by definition, an accessory dwelling unit which is detached from the primary dwelling and will provide additional housing. The proposal is consistent with the identified and applicable policy of the Hazelwood Neighborhood Plan.

Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;

The development standards of Accessory Dwelling Units limit ADUs to a maximum of 800 square feet or 75% of the living area of the primary house, whichever is less. In this case, the ADU will have less than 65% of the living area of the primary house.

The ADU is in its proposed location 26 feet – 7 inches from the south/front lot line because this is where an existing detached garage is located that will be converted. The ADU will be no closer to the front than the longest wall of the primary dwelling and will be located about 4 feet back from the main entrance of the primary dwelling. Therefore, it will not be prominent. This is a unique site in that, because it abuts streets to the north and the south, this is considered a through lot, which means it has two front

setbacks on the north and south. Given the 75-foot depth of the property, it would be impossible to meet the minimum required 40-foot ADU setback requirement from both front lot lines (north and south). Additionally, this lot is located at the end of a cul-de-sac and will have little pedestrian traffic.

By removing a portion of the existing asphalt driveway to the south of the proposed ADU and replacing it with grass, this will provide additional yard area over what is there currently, expanding the shared common yard space on the lot while still providing shared parking to the south of the attached garage.

As proposed, the ADU meets these standards.

Ensure that accessory dwelling units are smaller in size than primary dwelling units: The proposed primary dwelling has 767 square feet of building coverage (and the attached garage adds an additional 445 square feet of building coverage) while the ADU will have only 480 square feet of building coverage. As such, the proposed ADU is smaller in size than the primary dwelling unit.

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 the R7 zone, a single-dwelling zone. Staff found the proposed ADU is consistent with the scale and placement of accessory buildings in the single-dwelling zones under Finding A and will not create any additional visual impact as the ADU will be a converted structure rather than a new structure. As such, the proposed ADU will not impact the appearance of the residential area. As noted above, the proposal includes removing a portion of the existing asphalt driveway to the south of the proposed ADU and replacing it with grass, which will improve the appearance of the area. Livability is not a defined term but generally addresses privacy. As the ADU is not within the required setbacks, is a single-story, and only 480 square feet, it will not detract from the livability of adjacent properties.

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: Only one Adjustment is being requested, therefore 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 Map with a lower case "s" and historic resources are designated by a large dot or as being within the boundaries of a Historic or Conservation district. There are no such resources present on the site; therefore, this criterion is not applicable.

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

Findings: As noted above, the proposal includes removing a portion of the existing asphalt driveway to the south of the proposed ADU and replacing it with grass, which will improve the appearance of the neighborhood. No adverse impacts have been identified for which mitigation would be required.

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: Environmental overlay zones are designated on the Official Zoning Map with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). No environmental zoning is applied to the site; 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

The applicant is proposing to reduce the minimum required ADU front setback from 40 feet to 26 feet – 7 inches for a 480 square foot detached garage-to-ADU conversion. The ADU will have less than 65% of the living area of the primary house, meeting the standard that the dwelling units be smaller in size than primary dwelling unit. Given the 75-foot depth of the property, it would be impossible to meet the minimum required 40-foot ADU setback requirement from the (north and south) front lot lines. Additionally, this lot is located at the end of a cul-de-sac and will therefore have less pedestrian traffic. By removing a portion of the existing asphalt driveway to the south of the proposed ADU and replacing it with grass, this will provide additional yard area over what is there currently, expanding the shared common yard space on the lot while still providing shared parking to the south of the attached garage. The proposal will therefore respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards.

The ADU will not create any additional visual impact as this will be a converted garage rather than a new structure. As such, the proposed ADU will not impact the appearance of the residential area. The partial replacement of driveway with grass will improve the appearance of the area. As the ADU is not within the required setbacks, is a single-story, and only 480 square feet in size, it will not detract from the livability of adjacent properties. No adverse impacts have been identified for which mitigation would be required. The proposal meets the applicable approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the minimum required ADU front setback from 40' to 26 feet – 7 inches for a detached garage-to-ADU conversion (Section 33.205.040.C.3), per the approved site plans, Exhibits C.1 through C.2, signed and dated September 20, 2022, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 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 22-162910 AD. No field changes allowed."

Staff Planner: David Besley



Decision rendered by: _____ **on September 20, 2022.**
By authority of the Director of the Bureau of Development Services

Decision mailed: September 28, 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 14, 2022, and was determined to be complete on August 17, 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 14, 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: December 15, 2022.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on October 12, 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 the file, please contact the planner listed on the front of this decision. The planner can provide some information over the phone. Please note that only digital copies of material in the file are available for viewing. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <https://www.portlandoregon.gov/citycode/28197>.

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 12, 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. Bureau of Transportation Engineering and Development Review
 - 2. Life Safety Section of BDS
 - 3. Bureaus responding with no concerns (Site Development, Water Bureau, BES, and Fire Bureaus)
- F. Correspondence: none
- G. Other:
 - 1. Original LU Application and Receipt
 - 2. Incompleteness determination letter, August 5, 2022

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).