



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

Carmen Rubio, Commissioner
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Date: May 23, 2023
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 23-010211 AD

GENERAL INFORMATION

Applicant: Gabriel Whitlatch
Liminal Shift LLC
938 SE Linn St
Portland OR 97202

Owner: Pamela Birkel
3496 NW Thurman St
Portland, OR 97210

Site Address: 3496 NW THURMAN ST

Legal Description: LOT 4 TL 4700, BLYTHSWOOD; LOT 1&4 TL 4800, BLYTHSWOOD
Tax Account No.: R084300160, R084300250
State ID No.: 1N1E29CB 04700, 1N1E29CB 04800
Quarter Section: 2825
Neighborhood: Northwest District, contact Greg Theisen at planningchair@northwestdistrictassociation.org

Business District: None
District Coalition: Neighbors West/Northwest, contact Darlene Urban Garrett at darlene@nwnw.org

Plan District: Northwest Hills - Forest Park
Zoning: R5z (Single-Dwelling Residential 5,000 with Constrained Sites "z" overlay zone)

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

Proposal:

The applicant is proposing to demolish an existing 260 sq.ft. detached garage and construct a new approximately 815 sq.ft. 2-car attached garage (including an elevator shaft connection to the house) in the same approximate location. The Portland Zoning Code requires that

structures be set back a minimum of 10 feet from the front lot lines and that garage entrances be set back a minimum of 18 feet from the front lot lines in this zone (Section 33.110.220; Table 110-3). The existing garage is about 0 feet from the front (northeast) lot line. The new garage is proposed to range from 0 feet to 5 feet from the front lot line due to its staggered design. Two Adjustments are therefore requested to:

1. reduce the minimum front building setback from 10' to a range of 0' to 5'; and
2. reduce the minimum garage entrance setback from 18' to a range of 0' to 5'.

Relevant Approval Criteria:

To be approved, this proposal must comply with the approval criteria of Title 33, the Portland Zoning Code. Adjustment requests will be approved if the applicant has shown that approval criteria A through F of Zoning Code Section 33.805.040 have been met.

ANALYSIS

Site and Vicinity: The 11,600 square foot site is located on the south side of NW Thurman Street, about 150 feet southeast of the intersection of NW Gordon Street and NW Thurman Street. The site has a steep slope upward from NW Thurman Street to the rear of the site (from south to north) and is currently developed with a 3,480 square house (including a main level, a basement, and an attic) and a 260 square foot detached garage. The surrounding vicinity is developed with primarily two-to-three-story single-dwelling residences and a mix of garage types (attached, detached, single car, and 2-car).

Zoning: The R5 zone is a single-dwelling zone that is 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. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

The Constrained Sites "z" overlay zone reduces development potential to comply with protective measures adopted and acknowledged pursuant to statewide land use planning goals. This overlay zone reduces risk to life or property from certain natural hazards. This overlay zone limits residential infill and accessory dwelling unit options, which are unrelated to the Adjustment request.

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 **March 17, 2023**. The following Bureaus have responded as follows:

- The Portland Bureau of Transportation (PBOT) was initially unable to support the requested adjustments and required one of the following two options:
 - Modify the design to allow vehicles to enter and exit the site in a forward motion; or
 - Obtain approval of a driveway design exception to waive the forward motion requirement of TRN 10.40.D.4.The applicant applied for and received approval of a driveway design exception and PBOT revised their review, noting no concerns regarding the Adjustment review (Exhibit E.1);
- The Life Safety Review Section of the Bureau of Development Services (BDS) responded with no concerns regarding the Adjustment review, and provided information about building permit and demolition permit requirements (Exhibit E.2); and
- The Bureau of Environmental Services (BES) responded with no concerns regarding the Adjustment review and provided information about stormwater management plan requirements (Exhibit E.3)

The following Bureaus have responded with no concerns (Exhibit E.4):

- The Site Development Review Section of BDS;
- The Fire Bureau; and
- The Water Bureau.

Neighborhood Review: One letter of support was received from a notified neighbor in response to the proposal (Exhibit F.1).

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 demolish an existing 260 sq.ft. detached garage and construct a new approximately 815 sq.ft. 2-car attached garage in the same approximate location. Two Adjustments are therefore requested to:

1. reduce the minimum front building setback from 10' to a range of 0' to 5'; and
2. reduce the minimum garage entrance setback from 18' to a range of 0' to 5'.

The relevant purpose statement and associated findings are found below:

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.***

As noted in the Proposal section above, the existing garage is about 0 feet from the front (northeast) lot line. The new garage is proposed to range from 0 feet to 5 feet from the front lot line due to its staggered design. The replacement garage would therefore not be closer to the front lot line than the existing garage, but it would expand the width of the structure (from approximately 14 feet to 27 feet). The frontage of the subject site is significantly longer than most of the other sites in this neighborhood; given the overall lot frontage length of the site (approximately 135 feet), the proposed setback encroachments would be a relatively minor and would continue to promote an open, visually pleasing front yard.

Because of the steep topography of the site, most of the garage would be below grade and does not contain windows or doors to the sides (east and west); the proposed development will therefore maintain light and air, promote privacy for the neighboring properties, and promote a reasonable physical relationship between residences. While there is a roof deck proposed on top of the garage it will be over 35 feet from the eastern

neighbor's lot and over 70 feet from the western neighbor's lot. Mature trees and landscaping provide additional privacy measures for the abutting neighbors.

The neighbors most impacted by the Adjustment requests to the front and garage entrance setbacks are across the 60-foot width of NW Thurman Street to the north and pedestrians using the sidewalk. To improve privacy for these neighbors and pedestrians, a condition of approval will require that the roof deck railing on the proposed garage be set back at least 5 feet from the front lot line (as shown in Exhibits C.1 and C.2). Planters with landscaping are also proposed along the northern edge of the garage, which will further improve privacy to neighboring residences and pedestrians. A condition of approval will require that the landscaping be continuously maintained in a healthy manner. Plants that die must be replaced in kind.

Garages (including 2-car garages) built within front and garage entrance setbacks are common in this area, including multiple neighbors directly across the street (NW Thurman Street) and the neighborhood in general; therefore, this proposal is reflective of the general building scale and placement of houses in this neighborhood.

PBOT has reviewed the proposal and has no objections to the proposed setback Adjustments after the applicant received approval of a driveway design exception (Exhibit E.1). The Fire Bureau offered no concerns with regards to separation for fire protection, or access for fire-fighting (Exhibit E.4).

As conditioned, 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 lot is in the R5 zone, a residential zone, and is in a neighborhood with a mix of two-to-three-story houses. To improve the appearance of the development as viewed from the street/sidewalk, a condition of approval will require that the roof deck railing on the proposed garage be set back at least 5 feet from the front lot line as noted above and that planters with landscaping be provided along the northern edge of the garage, which will help break up the mass of the terraced design of the renovation. A condition of approval will require that the landscaping be continuously maintained in a healthy manner.

As noted above, garages built within front and garage entrance setbacks are common in this area, and the new garage will primarily be below grade; the proposal will therefore be consistent with the appearance of the residential area.

As conditioned, 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: The overall purpose of the R5 zone is to preserve land for housing, and to provide housing opportunities for individual households. Development standards in single-dwelling zones work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. Garages are accessory to residential development and off-street parking is prominent in this neighborhood. As noted above, the proposed garage placement is consistent with the development pattern in this area. Based on the findings included in response to approval criteria A and B above, the project is consistent with the overall purpose of the zone.

As conditioned, 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 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, in order to mitigate for impacts resulting from the front and garage entrance setback requests (primarily relating to privacy and appearance) a condition of approval will require that the roof deck railing on the proposed garage be set back at least 5 feet from the front lot line and a second condition of approval will require that planters with landscaping be provided along the northern edge of the garage and that the landscaping be continuously maintained in a healthy manner.

As conditioned, 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 proposes to demolish an existing 260 sq.ft. detached garage and construct a new approximately 815 sq.ft. 2-car attached garage in the same approximate location. Two Adjustments are therefore requested to:

1. reduce the minimum front building setback from 10' to a range of 0' to 5'; and
2. reduce the minimum garage entrance setback from 18' to a range of 0' to 5'.

The replacement garage would therefore not be closer to the front lot line than the existing garage, but it would expand the width of the structure from approximately 14 feet to 27 feet. The frontage of the subject site is significantly longer than most of the other sites in this neighborhood; given the overall lot frontage length of the site, the proposed setback encroachments would be a relatively minor and would continue to promote an open, visually pleasing front yard.

Because of the steep topography of the site, most of the garage would be below grade and does not contain windows or doors to the sides; the proposed development will therefore maintain light and air, promote privacy for the neighboring properties, and promote a reasonable physical relationship between residences. While there is a roof deck proposed on top of the garage it is a significant distance away from abutting neighbors and mature trees and landscaping provide additional privacy measures.

Garages built within front and garage entrance setbacks are common in this area; therefore, this proposal is reflective of the general building scale and placement of houses in this neighborhood. Garages are accessory to residential development and off-street parking is prominent in this neighborhood; the project is consistent with the overall purpose of the zone. In order to mitigate for impacts resulting from the front and garage entrance setback requests (primarily relating to privacy and appearance) a condition of approval will require that the roof deck railing on the proposed garage be set back at least 5 feet from the front lot line and a second condition of approval will require that planters with landscaping be provided along the northern edge of the garage and that the landscaping be continuously maintained in a healthy manner. The proposal meets the applicable approval criteria and should therefore be approved.

ADMINISTRATIVE DECISION

Approval of two Adjustments to demolish an existing 260 sq.ft. detached garage and construct a new approximately 815 sq.ft. 2-car attached garage in the same approximate location:

1. reduce the minimum front building setback from 10' to a range of 0' to 5' (Section 33.110.220; Table 110-3); and
2. reduce the minimum garage entrance setback from 18' to a range of 0' to 5' (Section 33.110.220; Table 110-3)

per the approved site plans, Exhibits C.1 through C.2, signed and dated May 16, 2023, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through C) 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 23-010211 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The roof deck railing on the proposed garage must be set back at least 5 feet from the front lot line, as shown in Exhibits C.1 and C.2.
- C. Landscape planters along the northern edge of the site must be provided (as shown on Exhibits C.1 and C.2) and the landscaping within must be continuously maintained in a healthy manner. Plants that die must be replaced in kind. A fine may be levied if the landscaping has not been maintained, and new plants required to be planted (to be consistent with Zoning Code Section 33.248.040 Landscaping and Screening Maintenance).

Staff Planner: David Besley



Decision rendered by: _____ **on May 16, 2023.**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 23, 2023

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on February 3, 2023, and was determined to be complete on March 14, 2023.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the

application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on February 3, 2023.

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: July 12, 2023.**

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 June 6, 2023. 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 **June 6, 2023** 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)
 - 3. 3D Rendering (reference only)
 - 4. Section Drawing (reference only)
- 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. Bureau of Environmental Services
 - 4. Bureaus responding with no concerns (Site Development Review Section of BDS, Fire and Water Bureaus)
- F. Correspondence:
 - 1. Koré Pickard, 4/3/2023, Letter of support
- G. Other:
 - 1. Original LU Application and Receipt
 - 2. Incompleteness determination letter, dated February 23, 2023

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).