



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

Dan Ryan, Commissioner
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portland.gov/bds

Date: March 18, 2022
To: Interested Person
From: David Besley, Land Use Services
503-865-6715 / David.Besley@portlandoregon.gov

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 21-093632 AD

GENERAL INFORMATION

Owner/Applicant: Eldon Lampson and Debbie Smith-Lampson
7906 SE 141st Ave
Portland, OR 97236-5450
Phone: 503-250-4971
Email: elampson1960@gmail.com

Site Address: 7906 SE 141ST AVE

Legal Description: BLOCK 1 LOT 14, EASTRIDGE PARK
Tax Account No.: R233150480
State ID No.: 1S2E23DA 01700
Quarter Section: 3844

Neighborhood: Pleasant Valley, contact Steve Montgomery at foxtrotlove@hotmail.com.
Business District: None
District Coalition: East Portland Community Office, contact at info@eastportland.org

Plan District: Johnson Creek Basin - South
Zoning: R10p (Single Dwelling Residential 10,000 with Environmental Protection "p" overlay)

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

Proposal:

The applicant is proposing to construct a 12-foot by 10-foot detached shed with a 4-foot by 10-foot covered area near the east corner of the lot. The Portland Zoning Code requires that structures in this zone be set back a minimum of 10 feet from rear lot lines (Section 33.110.220). The structure is proposed to be located 2 feet from the rear (southeast) lot line. An

Adjustments is therefore requested to reduce the minimum rear (southeast) building setback from 10 feet to 2 feet for a 120 square foot shed.

Note: While the standard minimum side yard building setbacks in this zone are 10 feet, a variance 1979 (CU 64-79) approved a setback variance to reduce the required north side yard from 10 feet to 3 feet. See the “Land Use History” section below for additional information.

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 site is located on the east side of SE 141st Avenue, about 450 feet north of the intersection of SE 141st Avenue and SE 140th Avenue. The site and area slopes significantly downward from south to north. This area is developed primarily with 2-to-2.5-story single dwelling residences.

Zoning: The R10 base 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. The “p” overlay zone (Environmental Protection) is not impacted by the Adjustment proposal.

Land Use History:

CU 64-79: Approval to amend the Report and Decision of the Hearings Officer dated 10/19/1979 to reflect the following changes:

1. Increase the number of housing units from 275 to 281;
2. Include Conditional Use approval for a .43 acre site within the PUD;
3. Include Variances to R10 setback requirements to take advantage of topographical constraints and to provide improved solar access (including):
 - a. Approval of setback Variances for Phase I lots reducing the required front yard from 30’ to 10’ with the condition that all garages be at least 20’ from the front property line; reduce the required north side yard from 10’ to 3’; and reducing the required south side yard from 10’ to 5’, subject to the condition that no buildings on separate lots may be closer than 10’ to each other.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **January 14, 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 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 building permit requirements that will apply to structures closer than 3 feet to the property line (Exhibit E.2).

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

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

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on January 14, 2022. Three responses were submitted from neighbors (Exhibits F.1 – F.3). One of the responses, from the Eastridge Park HOA, was written in support of the proposal (Exhibit F.2). Two of the responses were written in opposition to the proposal (Exhibits F.1 and F.3). Concerns are summarized as follows:

- Privacy to neighbors will be impacted;
- The structure will detract from the overall appearance of the area
- The structure is built in an environmental preservation area;
- The minimum 10' side yard building yard setback should also require an Adjustment; and
- There are concerns the foundation and retaining wall are not properly installed and show signs of cracking;

A fourth comment letter in support of the proposal was received after the deadline for comment so is not addressed here (Exhibit F.4)

Applicant Response: The applicant submitted a response (Exhibit A.2) which describes the retaining wall construction method.

Staff Response: As noted above in the Land Use History section, per CU 64-79, the structure is allowed to be as close as 3 feet to the north property line; therefore, a second Adjustment to reduce the minimum side building setback is not required. While a portion of the site is within the Environmental Preservation overlay zone ("p"), the development proposed is within the 25-foot Transition Area (Section 33.430.050, Figure 430-1) and not subject to the resource area regulations. Relevant concerns are addressed in the Zoning Code Approval Criteria section below.

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
- 1. Findings:** An Adjustments is requested to reduce the minimum rear building setback from 10 feet to 2 feet for a 120 square foot shed. 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.*

The proposed shed is relatively small and has a height of only 10.5 feet. The area to the southeast of the structure is undeveloped land, which is protected by the Environmental Protection overlay zone; therefore, reducing the rear (southeast) building setback will not result in the shed being located closer to a residential neighbor than would otherwise be allowed. As such, privacy to neighboring properties will not be impacted. Furthermore, the structure is proposed to be located over 20 feet away from

the nearest neighboring house (to the north). Light and air will thus be maintained, and the development will promote a reasonable physical relationship between the structure and the neighboring residences.

While the northeastern façade of the shed meets the minimum required three-foot (north) side building setback, there is a window on this façade that is within 10 feet of the rear (southeast) property line. In order to promote privacy for the neighbor to the north, a condition of approval will require that this northeast-facing window be removed and replaced by a solid building wall.

The structure itself fits the topography of the site (which is relatively flat in the area proposed) and meets the minimum outdoor area requirement.

The Fire Bureau has reviewed the request for reduced building setbacks and offered no concerns with regards to separation for fire protection, or access for fire fighting.

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 R10 zone, a residential zone, and is in a neighborhood with primarily 2-to-2.5-story single dwelling residences. Because the shed is proposed behind the house and over 90 feet from the street (SE 141st Ave.), it will not be visible to most of the surrounding residential area; however, it will be visible from adjacent neighbors. In order to improve the appearance of the structure, a condition of approval will require that the exterior walls of the shed be painted a medium to dark earth tone color (such as brown or olive green) to better blend in with the undeveloped natural area to the east of the structure. With this condition, granting the adjustment to reduce the rear setback will not significantly detract from the livability or appearance of this 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: 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, a condition of approval will require the northeast-facing window be removed and replaced by a solid building wall to promote privacy for the neighbor to the north. A second condition of approval will require that the exterior walls of the shed be painted a medium to dark earth tone color to improve the appearance of the structure.

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). While the shed is within the Environmental Protection overlay zone, it is proposed within the westernmost 20 feet of the overlay and therefore in the transition area, which is a buffer for the resource area in which development is permitted without a discretionary Environmental Review (Section 33.430.050).

This criterion is 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 is requesting an Adjustments to reduce the minimum rear building setback from 10 feet to 2 feet for a 120 square foot shed with a 4-foot by 10-foot covered area.

The proposed shed is relatively small and has a height of only 10.5 feet. The area to the southeast of the structure is undeveloped land; therefore, reducing the rear building setback will not result in the shed being located closer to a residential neighbor than would otherwise be allowed. As such, privacy to neighboring properties will not be impacted. Light and air will be maintained, and the development will promote a reasonable physical relationship between the structure and the neighboring residences.

While the northeastern façade of the shed meets the minimum required three-foot side building setback, there is a window on this façade that is within 10 feet of the rear property line. In order to promote privacy for the neighbor to the north, a condition of approval will require that this northeast-facing window be removed and replaced by a solid building wall.

Because the shed is proposed behind the house and over 90 feet from SE 141st Avenue, it will not be visible to most of the surrounding residential area; however, it will be visible from adjacent neighbors. In order to improve the appearance of the structure, a condition of approval will require that the exterior walls of the shed be painted a medium to dark earth tone color (such as brown or olive green) to better blend in with the undeveloped natural area to the east of the structure. With this condition, granting the adjustment to reduce the rear setback will not significantly detract from the livability or appearance of this residential area.

As conditioned, the proposal meets the applicable approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustments to reduce the minimum rear (southeast) building setback from 10 feet to 2 feet (Section 33.110.220) for a 120 square foot shed, per the approved site plan and elevation drawings, Exhibits C.1-C.2, signed and dated March 7, 2022, 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 21-093632 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. The window on northeast façade must be removed and replaced with a solid wall.
- C. The exterior walls of the shed must be painted a medium to dark earth tone color (ie. brown or olive green).

Staff Planner: David Besley



Decision rendered by: _____ **on March 7, 2022.**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 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 October 6, 2021, and was determined to be complete on January 7, 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 October 6, 2021.

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: May 7, 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 April 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 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 **April 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 Submittal
 - 1. Applicant Narrative
 - 2. Response to Neighbor Concerns
- 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 and Fire Bureau)
- F. Correspondence:
 - 1. Susan Desart, January 24, 2022, Comment Letter
 - 2. Sharon Goldsworthy on behalf of Eastridge Park HOA, January 24, 2022, Comment Letter
 - 3. Jason and Marina Allen, January 25, 2022, Comment Letter
 - 4. Megan Mario, February 6, 2022, Comment Letter
- G. Other:
 - 1. Original LU Application and Receipt
 - 2. Incompleteness determination letter, dated October 29, 2021

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).