



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

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**Memorandum**

**Date:** February 5, 2021  
**To:** Adjustment Committee  
**From:** Andy Gulizia, City Planner, Land Use Services, BDS  
**Re:** LU 20-134213 AD appeal

BDS staff adds the following to the record for the Adjustment Committee's consideration:

1. Building height above the street. At the February 2, 2021 public hearing, the Adjustment Committee heard testimony that the December 17, 2020 staff decision over-emphasized the street appearance of the new house.

Staff reiterates that in the R5 zone, the maximum building height for steeply down-sloping lots is determined by this sentence from Zoning Code Section 33.110.215.D.1:

*On lots that slope downhill from the street with an average slope of 20 percent or greater, the height limit is the higher of either 23 feet above the average grade of the street, or the normal height limit calculated as stated in Chapter 33.930, Measurements.*

The subject site slopes downward from the street at an average slope of 42% (measured per Zoning Code Section 33.930.060) and the applicable building height limit for the property is "23 feet above the average grade of the street" as specified above.

Since the Zoning Code only limits the building height in relation to the street, with no limits on building height above lower ground elevations further from the street, the Zoning Code does prioritize the street appearance when regulating building height on steeply down-sloping lots, and recognizes that houses on these steeply sloping lots will be taller than 23 feet (the equivalent of approximately two stories) as viewed from the side or rear. Depending on the slope of the lot, the height of such houses as viewed from the side or rear could be substantially taller than the equivalent of two stories.

In approving the revised plans in Exhibits C-1 through C-4, staff relied partly on this interpretation in pages 6-7 from the staff decision:

*With a plain reading of the text above from Zoning Code Section 33.110.215.D.1, it seems likely the code writers intended for a maximum 23-foot building height to be exposed to public view above an elevation commonly perceived as the "street," such as the paved roadway or sidewalk. While BDS has been consistent with past practice by measuring building height on this site from the average elevation of the two front lot corners (i.e. the average elevation of the front lot line), this site is unusual in that the front lot line is set back approximately 40 feet horizontally from the SW Upper Hall Street roadway that serves the site, and the average elevation of the two front lot corners is approximately 15.5 feet below the corresponding elevation of the SW Upper Hall Street roadway. If the 23-foot maximum building height standard was met outright, the top of the new house would extend only 7.5 feet above the SW Upper Hall Street pavement.*

. . .

*Neighbors also pointed out that existing homes on steeply down-sloping lots in this area typically have a single story exposed above the street, rather than two stories as proposed by the applicant. Staff visited the neighborhood and agrees with this assertion. Staff finds the typical building scale for comparably situated lots in the neighborhood is relevant to this approval criterion, since the purpose of the height standard cited above refers to a “reasonable building scale” and the “general building scale” in the neighborhood.*

*However, staff also finds the code writers intended to allow a two-story building scale to be exposed above the street on steeply down-sloping lots. If the code writers anticipated no more than one story exposed above the street, the maximum building height above the street grade would have been set significantly lower than 23 feet.*

*Balancing these factors, staff finds that for approval criterion A to be met, the proposed building height on this site must be consistent with both of these considerations:*

- *no taller than 23 feet above the SW Upper Hall Street roadway; and*
- *as low as reasonably possible for a modest, two-story building scale above SW Upper Hall Street, in order to allow the two-story scale intended by the standard while minimizing the scale difference with comparably situated homes in the area that extend only a single story above the street.*

While the street presence of the proposed house was emphasized, staff found the non-street-facing elevations were also relevant to the Adjustment Review approval criteria. Staff imposed conditions of approval for privacy windows on the top two stories facing the appellant’s home and for landscape screening in the rear yard to reduce the visual bulk and soften views of the tallest wall from neighboring homes.

2. Relationship between the proposed home and the appellant’s home. The Adjustment Committee heard testimony about how the scale of the new home would appear from the appellant’s home to the south. To evaluate the scale relationship, staff encourages the Adjustment Committee to review two exhibits:

- Exhibit C-4. This is the proposed south building elevation and shows the side of the new house that would face the appellant’s property.
- Exhibit A-5. This exhibit includes a site plan showing the proposed home and the appellant’s home, the north elevation of the appellant’s home (the elevation facing the subject site), and a drawing with the elevation of the proposed home overlaid onto the north elevation of the appellant’s home. Exhibit A-5 was submitted by the applicant to demonstrate compliance with a condition of approval from the land division which created this lot. This prior condition of approval is discussed on pages 3-4 of the staff decision, but staff does not consider the condition of approval itself to be relevant to the Adjustment Committee’s decision. The purpose for referencing Exhibit A-5 herein is to assist the Commission in visualizing the relationship between the proposed home and the appellant’s home and their respective heights.

All exhibits listed on the last page of the staff decision, including Exhibits C-4 and A-5, are available on-line here: <https://hcpaw.portlandoregon.gov/u/mW2jq43to66LbaOq/LU%2020-134213%20AD%20exhibits?l>.