



# Administrative Adjustment Staff Report, Decision, and Conditions of Approval Case File AA 2023-01

**Date:** March 15, 2023

**Case File:** AA 2023-01 Belhaven

**Project Contact:** Belhaven LLC

**Property Owners:** Belhaven LLC

**Site Address:** 3234 NE Union Ave.

**Location:** 180 feet east of NE Union Rd, 100 feet south of NE Holmes Rd

**Tax Map and Lot:** 07-11-02-CD-02300-00

**Comprehensive Plan Designation:** Medium-Density Residential District (R-7.5)

**Zoning District:** Single-Unit Residential (R-1-7.5) Zone

**Site Size:** 0.18 Acres

**Proposal:** Request for administrative adjustment for setback encroachment

**Surrounding Land Uses and Zones:**  
North: Single-Unit Dwelling; R-1-7.5  
South: Empty lot with an access easement; R-1-7.5  
East: Single-Unit Dwelling; R-1-7.5  
West: Single-Unit Dwelling; R-1-7.5

**Authority:** Table 17.76.020-1 of Lincoln City Municipal Code (LCMC) 17.76.020 lists an administrative adjustment application as a Type II procedure with the Planning and Community Development Director (Director) listed as the review authority. LCMC 17.76.040(A) states that Type II procedures apply to administrative permits and applications and that decisions on administrative applications are made by the Director, based on reasonably objective approval criteria that require only limited discretion.

**Procedure:** The application was received on February 21, 2023. The application was deemed complete on February 24, 2023. On February 27, 2023, pursuant to LCMC 17.76.040(E), the Planning and Community Development Department mailed a notice of application to property owners within 250 feet of the subject property.

<b>Applicable</b>	LCMC Chapter 17.16 Single-Unit Residential (R-1-7.5) Zone
<b>Substantive</b>	LCMC Section 17.76.040 Type II Procedure
<b>Criteria:</b>	LCMC Section 17.77.005 Administrative Adjustment

### **BACKGROUND**

The subject property (site) is addressed as 3234 NE Union Loop. The tax lot number is 07-11-02-CD-02300-00, and the assessed site size is 0.18 acres. The site is developed as a lot for a single-unit dwelling. The site's south boundary is an empty lot with an easement for access to the property being developed and its west boundary is 3222 NE Union Ave. 2824 NE Holmes Rd. is the property to the north and 3244 NE Union Loop is the property being developed to the east. The site is in the R-1-7.5 zone, surrounded by properties in the R-1-7.5 zone, all of which are developed or being developed as a single-unit dwelling except for the property south.

Lincoln City's GIS mapping shows the site does not contain bluff erosion hazards, trails, aesthetic resource, floodway, flood hazard areas, or natural resource overlays.

A new dwelling was recently constructed on the site. The southwest corner of the foundation encroaches into the 5-foot setback area by 4 inches.

### **COMMENTS**

Comments were received from Betty Wilson on March 10, 2023, via hand delivery. Betty Wilson states that she disagrees with the request for an administrative adjustment for the encroachment "or any other additional relief granted by the applicable code or items that are noted in this requested administrative adjustment application." Ms. Wilson questions what is the means of settling the matter of the setback "being wrong" and wonders what this would do to her property line. Ms. Wilson wants to protect and preserve her property line and requests that to be in writing and legally documented and noted. "I want to be ensured of this request to protect my property line." Ms. Wilson wonders "why the city inspector did not catch this 4-inches when they came in inspected the forming of the slab?" Ms. Wilson also asks how many times the setback law has been changed after the home was built and finally, how many times was it approved.

Ms. Wilson's specific questions are listed below, with the staff response following.

- Question – What is your means of settling this matter of this setback being wrong and Belhaven LLC building a home in this setback? **Answer – Lincoln City Municipal Code (LCMC) 17.77.005 permits a minor encroachment into a required setback, not to exceed six inches.**
- Question – If Belhaven LLC are granted this request of changing the setback law, what would that do to my property line? **Answer – This request does not change the setback law. This request does not change anyone's property line.**
- Question – I would like to know why the city inspector did not catch this 4-inches when they came in inspected the forming of the slab? **Answer – At the time the setback inspection occurred, there was no encroachment.**
- Question – How many times has the setback law been changed after the home was built in Lincoln City? **Answer – None.**
- How many times was it approved? **Answer – This is not applicable because the setback law has not been changed.**

### **ANALYSIS**

*Chapter 17.16 Single-Unit Residential (R-1) Zone  
17.16.020 Uses permitted*

**Finding:** The site is located in the R-1-7.5 zone. A single-family dwelling is listed as a permitted use (LCMC 17.16.020.A.1) in the R-1-7.5 zone.

*17.16.070 Lot requirements*

**Finding:** The minimum setback requirements for the front, side, street side, and rear setbacks in the R-1-7.5 zone are 5 feet for one-story structures and 7 ½ feet for structures more than one story. The structure is a one-story structure, so the minimum setback requirement is 5 feet for the front, side, street side, and rear. The garage entrance setback is 20 feet. The site plan that was submitted with the building permit application showed a front setback of 5.55 feet, side yard setbacks of 7.10 and 5.02 feet, a rear setback of 45.90 feet, and a garage entrance setback of 20.49 feet. The setback inspection for permit 521-21-000515-STR took place on August 10, 2022, and the footings met the minimum setback requirements at the time of the inspection.

*Chapter 17.76 Procedures*

*17.76.040 Type II procedure*

- A. *General Description. Type II procedures apply to administrative permits and applications. Decisions on administrative applications are made by the director, based on reasonably objective approval criteria that require only limited discretion. Type II procedures require public notice and an opportunity for appeal, but do not require a public hearing or a public meeting.*
- B. *When Applicable. Table 17.76.020-1 identifies Type II applications. Applications not listed in Table 17.76.020-1 may be identified as Type II by the director based on the general description in this section.*
- C. *Pre-Application Conference. A pre-application conference is not required for Type II procedures.*

**Finding:** A pre-application conference is not required.

- D. *Application Requirements. Type II applications shall:*
  - 1. *Be submitted on application forms provided by the department and shall include all information, exhibits, plans, reports, and signatures requested on the application forms.*
  - 2. *Be accompanied by the required fee as adopted by city council resolution.*
  - 3. *Be subject to the completeness review procedure set forth in LCMC 17.76.110(D) and (E).*

**Finding:** The required application forms and materials were submitted, along with the required fee. The application was deemed complete in accordance with LCMC 17.76.110(D) and (E).

- E. *Public Notice of Application and Comment Period. Type II applications require public notice of receipt of a complete application with an opportunity for area property owners and other interested parties to provide written comment prior to issuance of the decision.*
  - 1. *After a Type II application has been accepted as completed under LCMC 17.76.110(E), the department shall mail a written public notice to the following:*
    - a. *The applicant and applicant's representative;*
    - b. *The owners of record of the subject property;*
    - c. *Property owners of record within 250 feet of the perimeter property line of the property or properties subject to the application, using the most recently provided property tax assessment roll of the Lincoln County assessor's office as provided to the city to determine property owners of record; and*
    - d. *Any neighborhood or community organization or association recognized by the governing body and whose boundaries include the site.*

**Finding:** The Planning and Community Development Department mailed the public notice of a complete application to the parties noted in LCMC 17.76.040(E)(1)(a) through (d).

2. *The written public notice shall include the following:*
  - a. *A brief description of the request;*
  - b. *The applicable criteria from the ordinance and the comprehensive plan that apply to the application at issue;*
  - c. *The street address or other easily understood geographical reference to the subject property;*
  - d. *Statement that failure of an issue to be raised in writing prior to the expiration of the public comment period, or failure to provide statements or evidence sufficient to afford the review authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA);*
  - e. *The name of a department staff member to contact and the telephone number where additional information may be obtained; and*
  - f. *Statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.*
3. *The failure of a property owner to receive notice does not invalidate the land use action if the notice was sent.*
4. *Public notices for receipt of complete Type II applications shall include a written comment period of 14 days from the date the notice was mailed for the submission of written comments before the decision is issued.*

**Finding:** The written public notice contained all the information required in LCMC 17.76.040(E)(2)(a) through (f). The written public notice included the written comment period of 14 days.

*F. Review Authority. The review authority for Type II applications shall be the director.*

**Finding:** The Director reviewed the submitted Type II application.

*G. Decision.*

1. *Based on the criteria and facts contained within the record, the director shall approve, approve with conditions, or deny the request. The decision shall address all relevant approval criteria and consider written comments submitted before the close of the comment period.*

**Finding:** The relevant approval criteria are addressed in detail throughout this staff report. Consideration of the written comments received, if any, is given at the beginning of this report.

2. *The decision is considered final for purposes of appeal on the date the notice of the decision is mailed. Within seven days after the director has issued the decision, a notice of the decision shall be sent by mail to the following:*
  - a. *The applicant and applicant's representative;*
  - b. *The owners of record of the subject property;*
  - c. *Any person, group, agency, association, or organization who submitted written comments during the comment period; and*
  - d. *Any person, group, agency, association, or organization who submitted a written request to receive notice of the decision.*

**Finding:** Within seven days after the Director has issued the decision, the notice of that decision shall be mailed by the Planning and Community Development Department, pursuant to LCMC 17.76.040(G)(2).

3. *The notice of the decision shall include the following:*
  - a. *A brief description of the request;*
  - b. *A statement of the decision and the applicable approval criteria used in making the decision;*
  - c. *The street address or other easily understood geographical reference to the subject property;*

- d. *A statement that the decision is final, unless appealed as provided in LCMC 17.76.180;*
- e. *The requirements for filing an appeal of the decision, including a statement of the date and time by which an appeal must be filed;*
- f. *A statement that the complete file is available for review; and*
- g. *The name of a department staff member to contact and the telephone number where additional information may be obtained.*

**Finding:** The Planning and Community Development Department will issue the notice of decision that shall contain all the information noted in subsection 17.76.040(G) (3) (a) through (g).

#### *Chapter 17.77 Applications*

##### *17.77.005 Administrative adjustment*

- A. *Scope and Authority. Requests for administrative adjustments are applicable only to required setbacks and building height in all zoning districts. An administrative adjustment permits a minor encroachment into a required yard, or maximum height, not to exceed six inches, in addition to any other relief granted by the applicable code. Adjustments may not be requested for any other portion of the code other than the items noted above as being eligible for adjustment.*

**Finding:** The site is in the R-1-7.5 zone. The structure is a one-story dwelling. The front, side, street side, and rear minimum setback requirement is 5 feet, with a 20-foot minimum setback requirement for the garage entrance. The site plan submitted for the building permit 521-21-000515-STR showed a front setback of 5.55 feet, side setbacks of 7.10 and 5.02 feet, a rear setback of 45.90 feet, and a garage entrance setback of 20.49 feet. The footing setback inspection on August 10, 2022 was approved, which means the footings met the minimum setback requirements at the time of the inspection. At some point after the setback inspection and the completion of the structure, one corner shifted to create a 4-inch encroachment. LCMC 17.77.005 permits a minor setback encroachment, not to exceed six inches.

- B. *Procedure. An administrative adjustment is a Type 2 decision of the director. The director may elect to refer a request for an adjustment to the planning commission for a public hearing.*

**Finding:** The director is reviewing the administrative adjustment request and making the decision.

- C. *Submittal Requirements. A property owner may initiate a request for an adjustment by filing an application with the planning department with the required application fee. Requests for administrative adjustments shall include a narrative clearly identifying each applicable standard from which an adjustment is requested, citing the reasons for the request, and addressing compliance with the approval criteria in subsection (D) of this section.*

**Finding:** The application form was completed and submitted to the planning department, along with the required fee. The applicant also provided the adjustment request, an explanation of the reasons for the request, and statements addressing compliance with the approval criteria.

- D. *Approval Criteria. To approve an administrative adjustment, the review authority shall make findings of fact, based on evidence provided by the applicant, that all of the following criteria are satisfied:*
  - 1. *The adjustment is minor in nature, not to exceed six inches;*

**Finding:** The application states that the requested adjustment is four inches. Four inches does not exceed six inches, so this criterion is satisfied.

- 2. *The adjustment will correct or avoid a noncompliance;*

**Finding:** The minimum required setback in the R-1-7.5 zone for a single-story dwelling is 5 feet. The southwest corner of the dwelling's foundation is shown by the survey to be 5' – 4" from the property line, thus being noncompliant with the 5-foot minimum setback requirement. The adjustment, then, will correct or avoid noncompliance with the required 5-foot minimum setback.

3. *All reasonable efforts to rectify the noncompliance have been exhausted; and*

**Finding:** The applicant states the following: "We hired and trusted a prominent local builder to ensure the foundations were built in the correct location. This issue was identified by our surveyor when the home was almost complete. Ways to address the issue would involve major structural changes to the home." Staff concurs that a major structural change is the only way to rectify the noncompliance and a major structural change is not considered to be reasonable for a 4-inch encroachment. Staff concludes this requirement is met.

4. *The adjustment will not be materially detrimental to the purposes of the zone; and*

**Finding:** The purpose of the R-1-7.5 zone is "to promote and encourage a suitable environment for family living and to protect and stabilize the residential characteristics of the zone. The R-1 zone is intended to provide primarily for single-family dwellings." The applicant states the following: "The adjustment will not be detrimental to the zone due to the minor nature of the issue. Only one corner encroaches the setback and it's only 4". The neighboring home is at a significant distance from the encroachment." Staff feels a 4-inch encroachment into a 5-foot setback is not detrimental to promoting and encouraging a suitable environment for family living or protecting and stabilizing the residential characteristics and concludes that this requirement is met.

5. *An administrative adjustment shall only be granted if it is necessary due to an inadvertent error or unintentional situation (such as a surveyor's error) discovered after the start of construction and the relief cannot be due to the owner's intentional acts.*

**Finding:** The applicant states the following: "Existing survey pins on the site were not correct and due to the size and shape of the home the setbacks were pretty tight. The builder measured off this slightly incorrect pin and set the foundation. This was identified by the Land Surveyor we hired to check the foundations and the results were released to us in October. This was 3 months after the start of construction, whereby we notified the builder of the error. There is no value in intentionally encroaching the setback line. This was due to an incorrect survey pin found on the SW corner of the property. The builder we hired measured off an old survey pin that had either been incorrectly placed or moved and therefore the foundation corner was set incorrectly." The builder used the existing property corner pins to set the foundation, not knowing that the pins were slightly incorrect. This was done unknowingly and unintentionally. The error was discovered when the applicant retained the services of a surveyor for the final planning inspection after the house was totally completed. Staff feels this requirement is met.

*E. Conditions of Approval. Pursuant to LCMC 17.76.120, the review authority may impose conditions on the approval of the primary application to ensure compliance with the adjustment approval criteria.*

**Finding:** Any conditions necessary are found in the conditions of approval at the end this staff report.

## **DECISION**

Based upon an analysis of the submitted application and accompanying materials against applicable criteria, the Director concludes that all criteria have been or will be met, and thus **APPROVES WITH CONDITIONS** the administrative adjustment request for a setback, subject to the following conditions:

### **General**

1. This approval notwithstanding, the applicant/property owner/developer shall be responsible for knowledge of and full compliance with all applicable city, state, and federal codes, rules, regulations, codes, rules, standards, and policies, including but not limited to Lincoln City Municipal Code.



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Date: 2023.03.31 17:21:13-07'00'

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Anne Marie Skinner, Director  
Planning and Community Development

Date

*Please be advised: Pursuant to case law, Lincoln City Planners are not your planners and owe you no special or heightened duty. It is recommended that you hire your own land use professional to advise you. Ultimately, the burden is on you and your consultant to ascertain from the municipal code what is required. Reliance on erroneous information from a local government employee does not relieve a party from complying with statutory or local code requirements.*