



# Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services  
Building Codes Division  
1535 Edgewater Street NW

PO Box 14470  
Salem, OR 97309-0404  
(503) 378-4133  
FAX (503) 378-2322  
TTY (503) 373-1358  
<http://bcd.oregon.gov>

**Agenda  
Item  
IV.**

March 30, 2009

Jeff Johnston & Pam Berrian  
3405 Videra Drive  
Eugene, OR 97405

RE: Appeal re: Requirement for Permit to Construct a Deck

This is regarding the above referenced appeal you filed with the Structural Program Chief of the Oregon Building Codes Division (BCD) under the provisions of ORS 455.475. The decision reached by the Structural Program Chief in this appeal is based on the information provided by you, the City of Eugene and review of the applicable statutes and rules.

Please be advised that *BCD is overturning the decision of the City of Eugene Building Official* as detailed below.

#### **APPEAL:**

In your appeal, prepared in part by Oregon attorney William H. Sherlock, you are requesting that BCD over-rule the City of Eugene Building Department's decision that a permit is required for a deck located at 3405 Videra Drive, Eugene, Oregon.

#### **APPLICABLE CODE AND STATUTE REQUIREMENTS:**

- The 2008 edition of the Oregon Residential Specialty Code (ORSC) is the applicable building code for the design and construction of works related to detached single-family dwellings, two-family dwellings and their accessory structures.
- ORSC Section R105.2(15) exempts from the permit requirements "*Porches and decks, where the floor or deck is not more than 30 inches (762 mm) above adjacent grade at any point and where in the case of a covered porch, the covered portion of the porch does not come closer than 3 feet (914 mm) to property lines.*"
- ORSC Section R201.4 addresses terms which are not defined in the code and states, "*Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies. Words of common usage are given their plain, natural and ordinary meanings. Words that have well-defined legal meanings are given those meanings.*"
- Oregon Revised Statute (ORS) 455.475 is the applicable statute for appeals filed with BCD's Structural Program Chief.

## **DISCUSSION:**

The specific issues under consideration in this appeal are whether or not a permit is required for the deck in question based on the application of ORSC Section R105.2(15) and the definition of “adjacent” as used in this section.

Based upon the submitted statements and photos of the site, the walking surface of the deck in question appears to have been originally constructed more than 30 inches above the adjacent grade measured vertically. The subsequent installation of a concrete block wall along the perimeter of the deck appears to have reduced the vertical measurement to the adjacent grade to less than 30 inches.

The City of Eugene contends that the term “adjacent” applied in this context means “*not distant or far off : nearby but not touching.*” Based on the same, the City determined that the measurement in R105.2(15) should be applied to any grade located within a distance of 36 inches measured horizontally from the deck. Per this interpretation, a permit would be required as established in R105.2.

In applying the term adjacent, the attorneys for the applicant have asserted that; “... *the language in ORSC R105.2(15) is unmistakable: there is no ambiguity – an permit exception applies to ‘Porches and decks, where the floor or deck is not more than 30 inches above adjacent grade at any point ...’ In other sections of the code the term ‘adjacent’ is clearly synonymous with ‘adjoining,’ ‘sharing a common border’ and in ‘immediate proximity,’ consistent with the dictionary definitions that were not cited in staff’s interpretation. For example, under R602.10.5.1 for ‘Two horizontally attached units...Each dwelling unit in the structure shall be structurally independent with respect to the gravity loads, including the wall separating adjacent dwelling units.’ Likewise, Figure R403.3(4) illustrates ‘Insulation placement for frost-protected footing adjacent to heated structure.’ The diagram indicates the heated structure is adjoining the insulated foundation, not ‘nearby.’”*

Webster’s “Third New International Unabridged Dictionary” defines “adjacent” as: “*1a : not distant or far off : nearby but not touching b: relatively near and having nothing of the same kind intervening : having a common border*”

Where terms are not defined, the guidance in ORSC R201.4 is that *such terms shall have ordinarily accepted meanings such as the context implies.* In applying “ordinarily accepted meanings” in the “context” of this application, staff believes that neither the ORSC nor dictionary definitions provide clear direction as to where the vertical measurement of the deck must be taken.

## **FINDINGS:**

- ORS 455.475 requires that “*a person aggrieved by a decision made by a building official under authority established pursuant to ORS 455.148, 455.150 or 455.467 may appeal the decision.*” The requirements are: 1) the decision being appealed must be a decision of the building official of the building department having jurisdiction and 2) the person filing an appeal must be aggrieved by that decision.
- BCD has established that this appeal request was filed with BCD Structural Program Chief within 30 days of the decision of the City of Eugene building official and that Jeff Johnston and Pam Berrian are aggrieved by the building official’s decision.

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- The term “adjacent,” as used in R105.2(15), *is not defined in the ORSC*.
- The ORSC does not develop a context in R105.2(15) or elsewhere, sufficient to imply where the vertical measurement should taken.

**DECISION:**

Based on the foregoing findings, *BCD overturns the City of Eugene Building Officials decision and rules that the deck located at 3405 Videra Drive, Eugene, Oregon is not subject to the permit requirements of the ORSC as provided for in ORSC Section R105.2(15).*

*Note: Any person aggrieved by this decision may within 15 days after the date of the decision, appeal to the appropriate advisory board. OAR 918-001-0130.*

Sincerely,

Richard S. Rogers  
Structural Program Chief  
Oregon Building Codes Division  
(503) 378-4472  
[richard.rogers@state.or.us](mailto:richard.rogers@state.or.us)

Cc: Mark Whitmill, Assistant Building Official, City of Eugene Building Department  
Stuart Ramsing, Building Official, City of Eugene Building Department  
Chris Huntington, Manager, Policy & Technical Services, Building Codes Division