



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

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**Date:** June 9, 2021  
**To:** Interested Person  
**From:** David Besley, Land Use Services  
503-865-6715 / [David.Besley@portlandoregon.gov](mailto: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 21-021140 AD**

#### **GENERAL INFORMATION**

**Applicant:** Mark R. Bello  
Mark R. Bello Consulting, Inc.  
2146 NE 9<sup>th</sup> Ave.  
Portland, OR 97212

**Property Owners:** Mary Remuzzi and Daniel Uthman  
4301 NE Couch St.  
Portland, OR 97213-1671

**Site Address:** 4301 NE COUCH ST

**Legal Description:** BLOCK 109 LOT 9, LAURELHURST  
**Tax Account No.:** R479127010  
**State ID No.:** 1N2E31CB 10300  
**Quarter Section:** 3035

**Neighborhood:** Laurelhurst, contact Peter Meijer or Amy Smith at [info@pmapdx.com](mailto:info@pmapdx.com)  
**Business District:** None  
**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010 x313

**Plan District:** Laurelhurst-Eastmoreland  
**Other:** Laurelhurst Historic District

**Zoning:** R5 – Single-Dwelling Residential 5,000  
**Case Type:** AD – Adjustment Review (2 Concurrent Adjustments)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee

**Proposal:**

The applicant proposes to construct a 326 square foot single-story, detached accessory structure on this property for use as a home office. The applicant requests approval of two Adjustments for this structure:

- To reduce the minimum building setback requirement from the north (rear) lot line from 5 feet to a range of 1 foot – 6 inches to 4 feet (Zoning Code Section 33.110.220.B, Table 110-3); and
- To reduce the minimum building setback requirement from the west side lot line abutting NE 43rd Avenue from 15 feet to a range of 11 feet – 5 inches to 15 feet (Zoning Code Sections 33.540.030).

**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 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 8,200 square foot site is located on the northeast corner of the NE Couch Street and NE 43<sup>rd</sup> Avenue intersection. The site slopes downward from northwest to southeast and is bordered to the west by a 10-foot wide alley easement. It is currently developed with a 3,126 square foot two-story house with a basement and a 288 square foot attached garage. The surrounding vicinity is developed with primarily one and two-story single-dwelling residences.

**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. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

The regulations of the Laurelhurst plan district enforce the special setback requirements of Ordinances 70343 and 70341. This plan district maintains the established character of the Laurelhurst areas, characterized by homes with larger than normal building setbacks from the street.

While the site is located in the Laurelhurst historic district, this is not a locally designated district at this time, and as such no Historic Resource review is required.

**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 **April 15, 2021**. 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);
- The Life Safety Review Section of the Bureau of Development Services (BDS) responded with no concerns regarding the Adjustment review, included information about building permit submittal requirements, and noted that exterior walls less than three feet from a property line must be one-hour fire-rated with no openings allowed (Exhibit E-2); and
- The Bureau of Environmental Services (BES) responded with no concerns regarding the Adjustment review and noted that a safe stormwater disposal location that does not impact adjacent properties and/or structures must be shown at the time of building permit submittal (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:** Six written responses have been received from notified property owners and the Neighborhood Association in response to the proposal. Three of the responses, including two neighbors and the Laurelhurst Neighborhood Association, were written in support of the proposal (Exhibits F.1-F.3). Three written responses from neighbors were written in opposition to the proposal (Exhibits F.4-F.6). Concerns are summarized as follows:

1. The location and height of the proposed building will block views from the neighbor's yard and thus have a negative impact on livability;
2. Privacy will be impacted by a structure so close to the side lot line; and
3. Building so close to the side setback seems to not allow reasonable access to light, air and safety.

**Applicant Response:** The applicant met with concerned neighbors and revised the proposed building elevations accordingly via lowering the peak of the roof by 2 feet and lowering the foundation of the structure by an additional 1.5 feet, resulting in a significantly lower profile. The three neighbors who originally wrote letters of opposition subsequently wrote letters of support for the revised proposal (Exhibits F.7-F.9).

## 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 construct a new 326 square foot single-story, detached home office. The applicant requests approval of two Adjustments for this structure:

1. To reduce the minimum building setback requirement from the north (rear) lot line from 5 feet to a range of 1 foot – 6 inches to 4 feet; and
2. To reduce the minimum building setback requirement from the west side lot line abutting NE 43rd Avenue from 15 feet to a range of 11 feet – 5 inches to 15 feet;

The relevant purpose statements 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.*

While the proposed reduction in the minimum rear building setback from 5 feet to 1 foot – 6 inches is substantial, the closest structure to the proposed home office will be a neighboring detached garage to the northwest, rather than a neighboring household. The nearest neighboring house is over 35 feet away (to the north). No windows or doors are proposed on the north façade of the home office and an existing 5-foot tall fence along the north property line is proposed to be replaced with a new 7-foot tall fence. Granting this Adjustment will therefore promote options of privacy for neighboring properties and a reasonable physical relationship between houses. It will also maintain light, air, and separation.

Detached structures built within rear lot line setbacks are common in this area, including the neighboring site to the northwest. This proposal will therefore be reflective of the building scale and placement of houses in this neighborhood.

PBOT has no objections to the proposed Adjustment to the Adjustment requests. The Fire Bureau has reviewed the request for reduced wall and eave setbacks and offered no concerns with regards to separation for fire protection, or access for fire fighting.

### **33.540.010 Laurelhurst Plan District**

*The regulations of the Laurelhurst plan district enforce the special setback requirements of Ordinances 70343 and 70341. This plan district maintains the established character of the Laurelhurst areas, characterized by homes with larger than normal building setbacks from the street.*

While the 15-foot Laurelhurst special setback is proposed to be reduced to 11'-5" from the west side lot line (facing NE 43<sup>rd</sup> Avenue), most of the new structure is proposed to meet the setback requirement. Only the southwestern-most corner of the structure is proposed to be 3'-7" into the setback. Similarly, the southwest corner of the existing house is located as close as 11'-5" from the west side lot line, so the proposed accessory structure will encroach no closer into the required 15' street setback than the existing house. Furthermore, this is a relatively minor setback reduction in an area where setback reductions for houses and accessory structures are common, including not only the existing house on the subject site but also structures on the adjacent neighbors to the northwest and the east. Mature street trees along NE 43<sup>rd</sup> Avenue will not be impacted by the proposed development.

*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 one and two-story houses. As noted above, the detached accessory home office will not be any closer to the street lot line along NE 43<sup>rd</sup> Avenue than the existing house, and will therefore be consistent with the established development pattern on this site. Minor reductions in the minimum required plan district street setback and rear lot line setback for houses and accessory structures are common in this area, including the house on the subject site as well as structures on the adjacent neighbors to the northwest and east. This proposal will therefore be reflective of the building scale and placement of houses in this neighborhood.

As noted in the "Applicant Response" section above, the foundation was lowered by about 1.5 feet and the roof peak was lowered by two feet resulting in an approximately 10-foot tall structure. The low-profile home office and its limited footprint will therefore not detract from the livability or appearance of the residential area.

*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. Detached structures that are accessory to residential development are allowed in this zone. As noted above, the proposed home office placement is consistent with the development pattern in this area and is limited in scale. 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.

*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 (signifying a designated individual landmark) or as being within the boundaries of a Historic or Conservation district. While the site is located in the Laurelhurst historic district, this is not a locally designated district at this time, and as such no Historic Resource review is required. Additionally, the site is not an individually designated historic landmark, and is not included in an area mapped with the “s” overlay zone.

- E.** Any impacts resulting from the Adjustment are mitigated to the extent practical; and

**Findings:** As noted in the “Neighborhood Review” section, the applicant has mitigated impacts to appearance and privacy by lowering the peak of the roof 2 feet and lowering the foundation 1.5 feet, resulting in a low-profile structure. There are no other adverse impacts identified for which mitigation would be required.

*As such, 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 construct a new 326 square foot single-story, detached home office, which requires 2 Adjustments:

- To reduce the minimum building setback requirement from the north (rear) lot line from 5 feet to a range of 1 foot – 6 inches to 4 feet; and
- To reduce the minimum building setback requirement from the west side lot line abutting NE 43rd Avenue from 15 feet to a range of 11 feet – 5 inches to 15 feet.

Because the nearest neighboring house is over 35 feet away, no windows or doors are proposed on the north façade, and a new 7-foot tall fence is proposed along the northern property line, granting these Adjustments will promote options of privacy for neighboring properties and a reasonable physical relationship between houses. It will also maintain light, air, and separation.

Most of the new structure is proposed to meet the Laurelhurst plan district minimum street setback requirement and the detached accessory home office will not be any closer to the street lot line than the existing house. Furthermore, this is a relatively minor setback reduction in an area where limited street setback reductions for houses and accessory structures are common,

Detached structures built within minimum required rear lot line and street setbacks are common in this area, including adjacent neighbors. This proposal will therefore be reflective of the building scale and placement of houses in this neighborhood. The proposal meets the applicable approval criteria and should be approved.

## ADMINISTRATIVE DECISION

Approval of two Adjustments:

1. To reduce the minimum required building setback requirement from the north (rear) lot line from 5 feet to a range of 1 foot – 6 inches to 4 feet (Zoning Code Section 33.110.220.B, Table 110-3); and
2. To reduce the minimum building setback requirement from the west side lot line abutting NE 43rd Avenue from 15 feet to a range of 11 feet – 5 inches to 15 feet (Zoning Code Section 33.540.030);

for a new 326 square foot single-story, detached accessory structure per the approved site plans, Exhibits C-1 through C-3, signed and dated June 3, 2021, subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 21-021140 AD. No field changes allowed."

**Staff Planner: David Besley**



**Decision rendered by:** \_\_\_\_\_ **on June 3, 2021.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: June 9, 2021**

**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 March 3, 2021, and was determined to be complete on April 9, 2021.

*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 March 3, 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: August 7, 2021.**

**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 23, 2021. The completed appeal application form must be emailed to [LandUseIntake@portlandoregon.gov](mailto: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 ONI 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 23, 2021**, 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.

**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. East, South, and West Elevation Drawings (attached)
  3. North Elevation Drawing and 3D Renderings (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. Bureau of Environmental Services
  4. Bureaus responding with no concerns (Site Development, Fire, and Water Bureaus)
- F. Correspondence:
  1. Mary Oberst and Ted Kulongoski, April 17, 2021, Letter of Support
  2. John Parker, April 19, 2021, Letter of Support
  3. Amy Smith, Laurelhurst Neighborhood Association, April 20, 2021, Letter of Support (pending neighbor support)
  4. Eric Cain and Ann Williamson, April 30, 2021, Letter of Opposition
  5. David Machado, April 30, 2021, Letter of Opposition



6. Barbara Cabot, May 6, 2021, Letter of Opposition
  7. Barbara Cabot, May 19, 2021, Letter of Support for Revised Design
  8. David Machado, May 16, 2021, Letter of Support for Revised Design
  9. Eric Cain, May 18, 2021, Letter of Support for Revised Design
- G. Other:
1. Original LU Application and Receipt
  2. Incompleteness determination letter, dated March 17, 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).**