



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: October 22, 2021
To: Interested Person
From: Andrew Gulizia, Land Use Services
503-865-6714 / Andrew.Gulizia@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 21-056913 AD NU

GENERAL INFORMATION

Applicant: Allison Elliott
5445 SE 47th Ave.
Portland OR 97206
(971) 222-4853
elliott.allison@gmail.com

Property Owners: Alfred Zangara and Renee Zangara
9539 N Decatur St.
Portland, OR 97203-2821

Site Address: 9539 N Decatur St.

Legal Description: BLOCK 8 LOT 21, ST JAMES PK ADD
Tax Account No.: R738800010
State ID No.: 1N1W01CC 17500
Quarter Section: 2021
Neighborhood: Cathedral Park, contact Steve Capoccia at cpna.landuse@gmail.com
Business District: Columbia Corridor Association, contact at info@columbiacorridor.org,
St. Johns Boosters Business Association, contact at info@stjohnsboosters.org

District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-8877

Zoning: EG2 – General Employment 2

Case Type: AD NU – Adjustment Review and Nonconforming Situation Review
Procedure: Type II, an administrative decision with appeal to the Hearings Officer

Proposal: The subject site is developed with a single-dwelling house, though the property is zoned EG2 (General Employment 2). The applicant proposes to construct an approximately 43' x 20' addition to the rear of the house for a painting studio for the homeowner. In the EG2

zone, the minimum building setback from lot lines which abut residential zones is 15 feet (Zoning Code Section 33.140.215.B.2). The east (rear) lot line abuts a residential zone, and the addition is proposed to be set back only 7 feet from the east lot line. Therefore, the applicant requests an Adjustment to reduce the minimum building setback from the east lot line from 15 feet to 7 feet and to reduce the minimum width of the required L3 (high screen) landscaping within the building setback from 10 feet to 7 feet.

Also, new residential uses are not allowed in the EG2 zone, so the existing residential use on this site is considered nonconforming. Since the proposal expands the existing, nonconforming residential use by more than 500 square feet, the applicant also requests approval of a Nonconforming Situation Review as required by Zoning Code Section 33.258.050.D.2.b.1.

NOTE: The “Notice of Proposal” mailed to neighbors on July 20, 2021 (Exhibit D-2) described a 43’ x 22’ addition that would be set back 5 feet from the east lot line. The applicant subsequently revised the proposed addition to be smaller and further from the lot line in order to comply with Bureau of Environmental Services (BES) requirements for stormwater management.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

- Zoning Code Section 33.805.040.A-F (Adjustment Review); and
- Zoning Code Section 33.258.080.B (Nonconforming Situation Review).

ANALYSIS

Site and Vicinity: The subject site is a 5,000-square-foot residential lot located on a dead-end section of N Decatur Street. The site is developed with a two-story house and a shed in the back yard. The shed will be demolished for the new addition. The City-owned Baltimore Woods Natural Area abuts the site to the north and across N Decatur Street to the west. The property to the south is developed with a warehouse building and the property to the east is developed with a house. Cathedral Park and downtown St. John’s are about a half-mile to the south.

Zoning: The EG2 (General Employment 2) zone is one of two zones that implement the Mixed Employment designation in the City’s Comprehensive Plan. The EG2 zone allows a wide range of employment uses without potential conflicts from interspersed residential uses. The emphasis of the zone is on industrial and industrially related uses.

Land Use Review History: There are no prior land use reviews for this site.

Agency Review: A “Notice of Proposal” was sent July 20, 2021. The following Bureaus responded with no objections to the proposal:

- Portland Bureau of Transportation (Exhibit E-2);
- Water Bureau (Exhibit E-3);
- Fire Bureau (Exhibit E-4);
- Site Development Section of the Bureau of Development Services (BDS) (Exhibit E-5); and
- Life Safety Review Section of BDS (Exhibit E-6).

The Bureau of Environmental Services initially opposed approval of the Adjustment (Exhibit E-1a), but later withdrew the objection after the applicant revised the proposal to provide more space for stormwater management (Exhibit E-1b).

Neighborhood Review: No written responses to the mailed “Notice of Proposal” were received from either the Neighborhood Association or notified neighbors.

ZONING CODE APPROVAL CRITERIA

Adjustment Review

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated 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 requests to reduce the minimum building setback and the associated landscaping buffer width required by Zoning Code Section 33.140.215.B.2. The purposes of the setback requirements in the employment and industrial zones are stated in Zoning Code Section 33.140.215.A:

The setback standards promote different streetscapes. The EG2 and IG2 zone setbacks promote a spacious style of development. The EG1, IG1, and EX zone setbacks reflect the generally built-up character of these areas. The IH zone requires only a minimal setback to separate uses from the street. The setback standards are also intended to ensure that development will preserve light, air, and privacy for abutting residential zones. In the EG1 and EX zones, the setback requirements along transit streets and in Pedestrian Districts create an environment that is inviting to pedestrians and transit users.

The subject site is in the EG2 zone and abuts a residential zone to the east. The aspects of the purpose statement above which are relevant to this site are to “promote a spacious style of development” and “preserve light, air, and privacy for abutting residential zones.”

The neighboring house to the east is set back approximately 40 feet from the subject site’s east lot line, so the 7-foot building setback for the new addition will leave 47 feet of separation between the two homes. Therefore, the neighboring home will retain access to light and air and the addition will not create a crowded appearance. Also, the neighboring lot to the east is higher in elevation than the subject site, supported by an existing, 8-foot-tall retaining wall along the shared lot line. Only the top half of the new east wall will be seen from the neighboring lot, and the new east wall will have no windows (Exhibit C-2). The grade difference, the lack of east-facing-windows, and the new trees required along the east lot line by the L3 landscaping standard in Zoning Code Section 33.248.020.C (Exhibit C-1) will preserve the neighboring lot’s privacy. Staff also notes that while the subject site is designated with the EG2 employment zone, the use of the property is residential. Only a 5-foot building setback from the east lot line would be required if the subject site were designated with the same R5 residential zone as the abutting lot to the east.

For these reasons, staff finds the proposal equally meets the purpose of the requirement to be modified. Approval criterion A 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: Since the site is zoned EG2, the Adjustment Review proposal must be consistent with the classifications of the adjacent street and the desired character of the area.

Street classifications

The site abuts N Decatur Avenue, which is classified as a local service street for all transportation modes. The new addition will be used by the existing household on the site, so the proposal will not create additional motor vehicle, bike, or pedestrian traffic on N Decatur Avenue. The Portland Bureau of Transportation (PBOT) reviewed the proposal and responded with no objections (Exhibit E-2). Therefore, staff finds the proposal is consistent with the adjacent street classifications.

Desired character of area

Pursuant to the definition of “desired character” in Zoning Code Chapter 33.910, the desired character for this site is determined by the character statement for the EG2 zone. The character statement for the EG2 zone is in Zoning Code Section 33.140.030.A:

The General Employment zones implement the Mixed Employment map designation of the Comprehensive Plan. The zones allow a wide range of employment opportunities without potential conflicts from interspersed residential uses. The emphasis of the zones is on industrial, industrially-related, and office uses, typically in a low-rise, flex-space development pattern. Retail uses are allowed but limited in intensity to maintain adequate employment development opportunities. The development standards for each zone are intended to allow new development which is similar in character to existing development. The intent is to promote viable and attractive industrial/commercial areas.

...

2. *General Employment 2. EG2 areas have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverages and buildings which are usually set back from the street. EG2 zoned lands will generally be on larger areas than those zoned EG1.*

Though the use of the subject site is residential, the new addition will have an industrial appearance, with simple massing and metal siding (Exhibit C-2). The new addition will appear compatible with the existing warehouse building to the south, even though the subject site as a whole will retain a residential appearance. The addition will be set back far (73 feet) from the street, and the proposal will not inhibit future development in the EG2-zoned area with employment or industrial uses. For these reasons, staff finds the proposal is consistent with the desired character for the EG2 zone.

Summary

Since the proposal is consistent with the classifications of the adjacent street and the desired character of the area, approval criterion B 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: Since only one Adjustment is requested, 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 maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic resources or historic resources mapped on the subject site, this criterion is not applicable.

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

Findings: Staff finds potential impacts from the reduced building setback from the east lot line will be adequately mitigated by the lack of east facing windows, the existing grade difference between the subject site and the lot to the east, and the new trees required by

the L3 landscaping requirement in Zoning Code Section 33.248.020.C (Exhibit C-1). Approval criterion E 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 maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on the site, this criterion is not applicable.

Nonconforming Situation Review

33.258.080 Nonconforming Situation Review

- B. Approval criteria.** The request will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:

1. With mitigation measures, there will be no net increase in overall detrimental impacts (over the impacts of the last legal use or development) on the surrounding area taking into account factors such as:
 - a. The hours of operation;
 - b. Vehicle trips to the site and impact on surrounding on-street parking;
 - c. Noise, vibration, dust, odor, fumes, glare, and smoke;
 - d. Potential for increased litter; and
 - e. The amount, location, and nature of any outside displays, storage, or activities; and

Findings: The Nonconforming Situation Review is to expand an existing, nonconforming residential use, and the proposed addition will be a painting studio used by the homeowner rather than a commercial or industrial operation with employees or customers coming to the site. The painting activity and associated storage will occur entirely inside the enclosed addition, and the proposal does not include any new outdoor lighting or activity areas or any industrial equipment. PBOT reviewed the proposal for impacts on the transportation system and responded with no objections (Exhibit E-2). For these reasons, staff finds the proposal will not increase detrimental impacts on the surrounding area related to any of the factors listed above. Approval criterion B.1 is met.

2. If the nonconforming use is in an OS, R, or IR zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the OS, R, or IR zoned area. This is based on taking into account factors such as:
 - a. Building scale, placement, and facade;
 - b. Parking area placement;
 - c. Buffering and the potential loss of privacy to abutting residential uses; and
 - d. Lighting and signs; and

Findings: Since the site is not in an OS, R, or IR zone, approval criterion B.2 is not applicable.

3. If the nonconforming use is in a C, E, I, or CI zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.

Findings: The desired function and character of the EG2 zone is described in Zoning Code Section 33.140.030.A:

The General Employment zones implement the Mixed Employment map designation of the Comprehensive Plan. The zones allow a wide range of employment opportunities without potential conflicts from interspersed residential uses. The emphasis of the zones is on industrial, industrially-related, and office uses, typically in a low-rise, flex-space development pattern. Retail uses are allowed but limited in intensity to maintain adequate employment development opportunities. The development standards for each zone are intended to allow new development which is similar in character to existing development. The intent is to promote viable and attractive industrial/commercial areas.

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2. *General Employment 2. EG2 areas have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverages and buildings which are usually set back from the street. EG2 zoned lands will generally be on larger areas than those zoned EG1.*

Though the use of the subject site is residential, the new addition will have an industrial appearance, with simple massing and metal siding (Exhibit C-2). The new addition will appear compatible with the existing warehouse building to the south, even though the subject site as a whole will retain a residential appearance. The addition will be set back far (73 feet) from the street, and the proposal will not inhibit future development in the EG2-zoned area with outright-permitted employment or industrial uses. For these reasons, staff finds the proposal will not detract from the desired function and character for the EG2 zone. Approval criterion B.3 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 proposed Adjustment to the rear (east) building setback requirement is found to be consistent with the purpose of the requirement and with the desired character of the area. Potential impacts from the reduced setback will be mitigated by the existing retaining wall at the east lot line, new trees, and the lack of east-facing windows. The expansion of the existing, nonconforming residential use on the site will not adversely impact the surrounding area and will not detract from the character anticipated for the EG2 zone. The approval criteria for the Adjustment Review and Nonconforming Situation Review are found to be met. Since the approval criteria are met, the proposal must be approved.

ADMINISTRATIVE DECISION

Approval of:

- An Adjustment to reduce the minimum building setback from the east lot line from 15 feet to 7 feet and to reduce the minimum width of the required L3 (high screen) landscaping within the building setback from 10 feet to 7 feet (Zoning Code Section 33.140.215.B.2); and

- A Nonconforming Situation Review to expand the existing, nonconforming Household Living use on the site (Zoning Code Section 33.258.050.D.2.b.1)

per the approved plans, Exhibits C-1 and C-2, signed and dated October 19, 2021, subject to the following condition:

- A. As part of the building permit application submittal, each of the 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 and C-2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 21-056913 AD NU."

Staff Planner: Andrew Gulizia

Decision rendered by:  **on October 19, 2021**
By authority of the Director of the Bureau of Development Services

Decision mailed: October 22, 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 June 14, 2021 and was determined to be complete on July 14, 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 June 14, 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 requested to extend the 120-day review period by 245 days (Exhibit A-6). **The extended 120-day period will expire on July 14, 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 Hearings Officer, 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 November 5, 2021. 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 email, 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 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 this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

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 Hearings Officer 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 Hearings Officer 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 **November 5, 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.

Applying for 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:
 - 1. Original narrative
 - 2. Revised narrative, submitted July 14, 2021
 - 3. Photographs
 - 4. Original plan set
 - 5. Revised plan set, submitted July 14, 2021
 - 6. Request to extend 120-day review period
 - 7. Revised plan set, submitted October 14, 2021
 - 8. Stormwater management plan, submitted October 14, 2021
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Approved site plan (attached)
 - 2. Approved building elevations (attached)
- D. Notification Information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - a. Memo dated August 6, 2021
 - b. Addendum dated October 19, 2021
 - 2. Portland Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Review Section of BDS
- F. Correspondence – none received
- G. Other:
 - 1. Land use application form
 - 2. Incompleteness determination letter, dated June 28, 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).



ZONING

For Zoning Code in effect
August 1, 2020 - July 31, 2021



Site



Recreational Trails

File No.	LU 21 - 056913 AD NU
1/4 Section	2021
Scale	1 inch = 200 feet
State ID	1N1W01CC 17500
Exhibit	B Jun 28, 2021

Zangara Residence Addition
 9539 N Decatur Street
 Portland, Oregon 97203

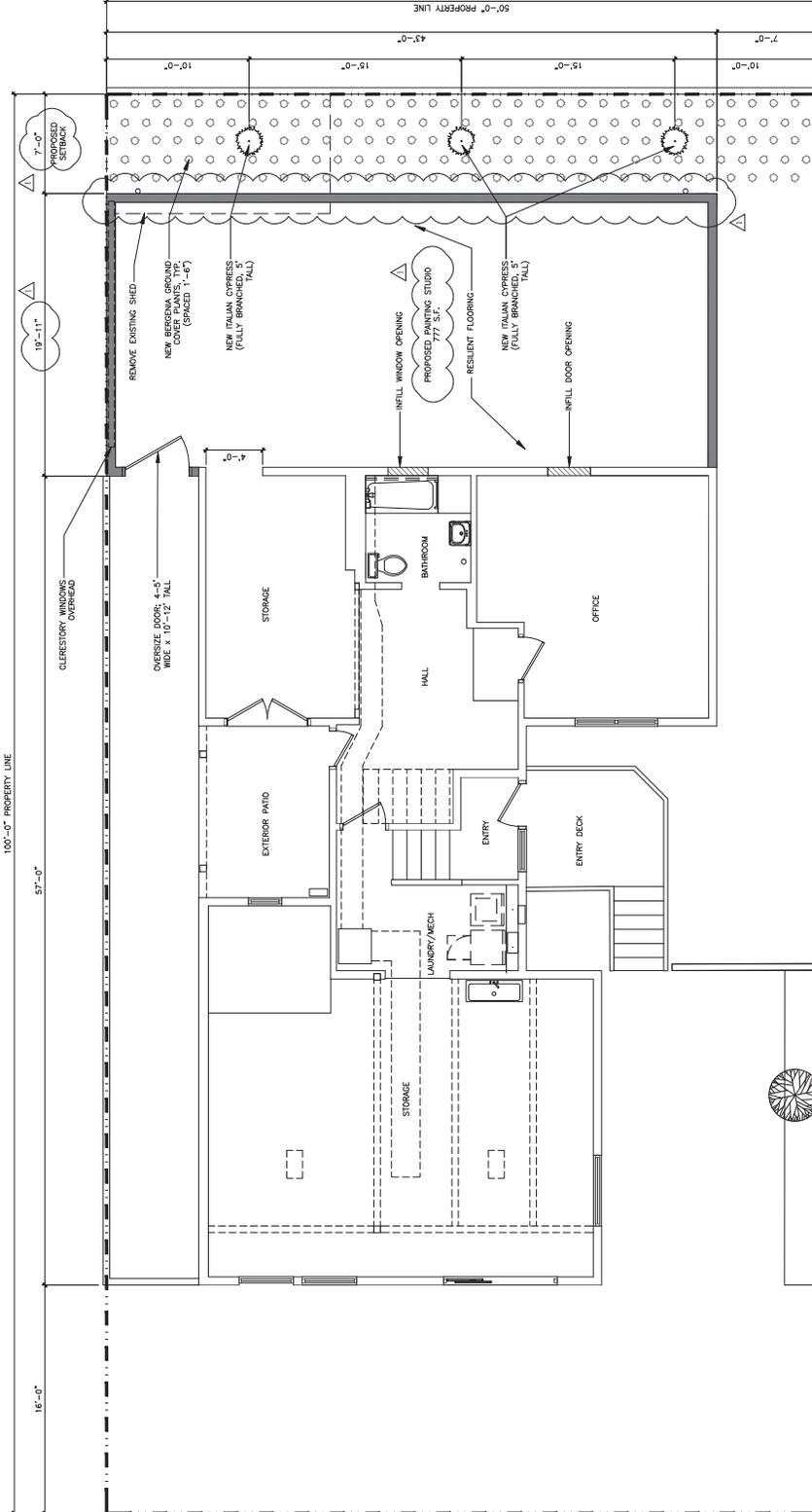
Project Number: 121
 Drawn By: AE
 Date: 7/8/2021

Proposed
 Site Plan

Revision: 
 Date: 10/13/21

Sheet: A1.2

Approved
 City of Portland
 Bureau of Development Services
 Planner A. Gulizia
 Date 10/19/2021
 *This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



01 Proposed Site Plan
 Scale: 1/4" = 1'-0"

Allison Elliott
 Architect
 5445 SE 47th Avenue
 971-222-4853
 elliotc.allison@gmail.com

Zangara Residence Addition
 9539 N Decatur Street
 Portland, Oregon 97203

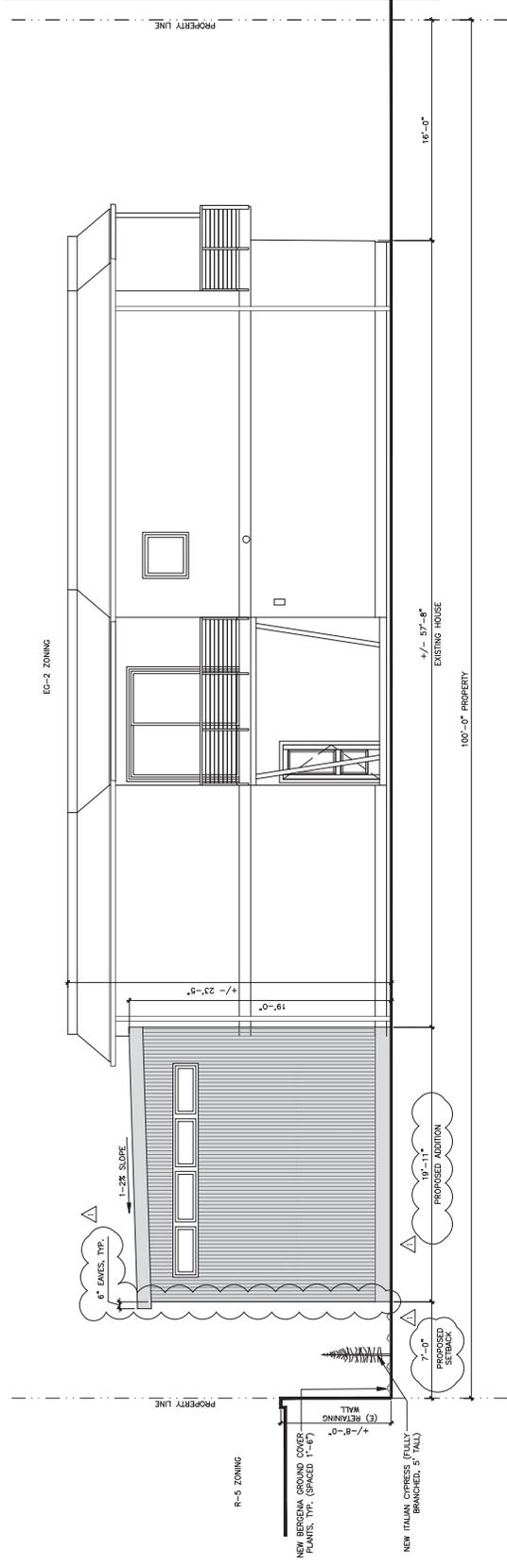
Project Number: 121
 Drawn By: AE
 Date: 7/8/2021

Proposed
 Exterior
 Elevations

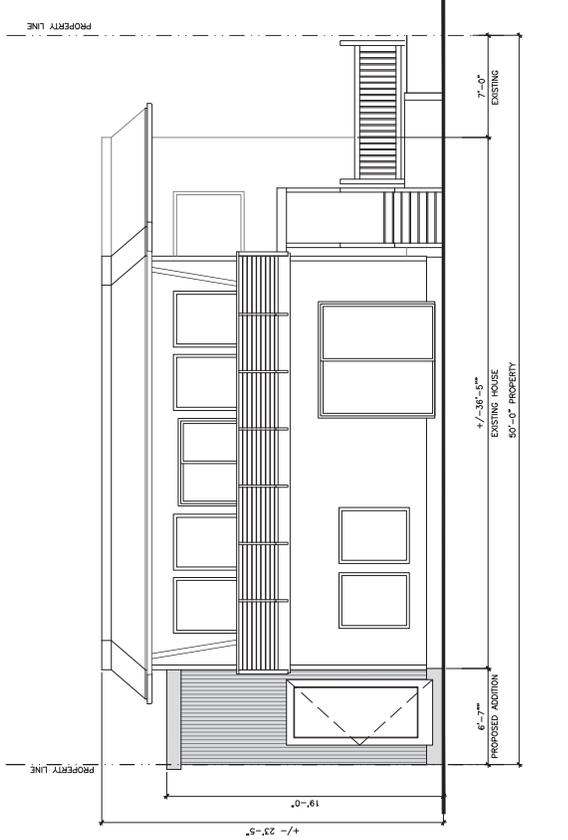
Revision
 Date
 10/13/21

Sheet: A1.3

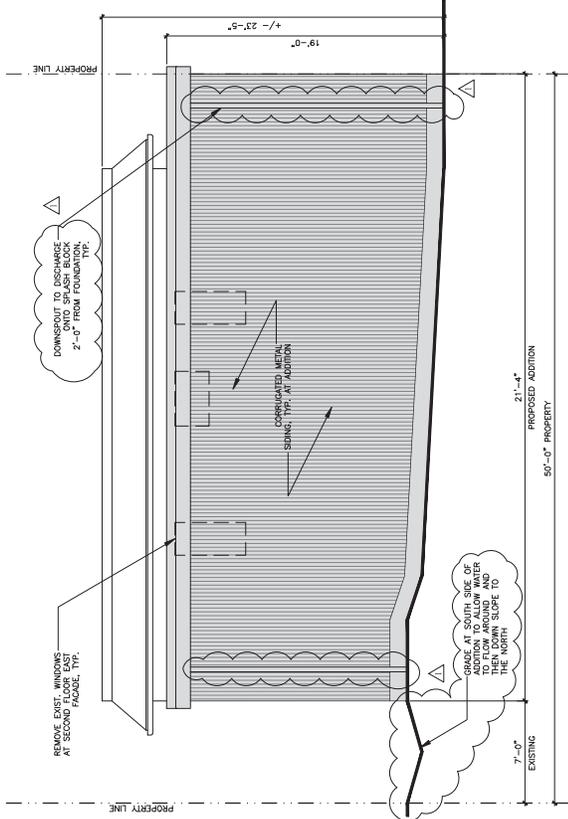
Approved
 City of Portland
 Bureau of Development Services
 Planner: A. Gulizia
 Date: 10/19/2021
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



01 Proposed North Elevation
 Scale: 1/4" = 1'-0"



03 Proposed West Elevation
 Scale: 1/4" = 1'-0"



02 Proposed East Elevation
 Scale: 1/4" = 1'-0"