



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

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Date: November 9, 2021
To: Interested Person
From: David Besley, Land Use Services
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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 21-062600 AD

GENERAL INFORMATION

Applicant: Phil Sydnor
Integrate Architecture & Planning Inc
1715 N Terry St
Portland, OR 97217

Owner: Ernest Spada, III
8448 NE 33rd Dr
Portland, OR 97211

Party of Interest: Eduard Valik
Ibuildpdx Company Llc
8835 SW Canyon Ln, Ste #408
Portland, OR 97225

Site Address: 1333 S PALATINE HILL RD

Legal Description: BLOCK 110 INC PT VAC ST-S 1/2 OF LOT 9 INC PT VAC ST LOT 10&11, PALATINE HILL 3

Tax Account No.: R639004360
State ID No.: 1S1E34AA 02200
Quarter Section: 4130

Neighborhood: None
Business District: None
District Coalition: None

Zoning: R20 (Single Dwelling Residential 20,000)

Case Type: AD (Adjustment Review)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant is proposing to deconstruct an existing 3,368 square foot 2.5-story residence and construct a new 6,152 square foot, 2-story residence. The Portland Zoning Code requires that the maximum building coverage for a site of this size (19,700 square feet) be limited to a maximum 4,455 square feet (Section 33.110.225; Table 110-5). The building coverage for the proposed development would be 5,134 square feet, an increase of 679 square feet over the maximum. An Adjustment is therefore required to increase the maximum building coverage from 4,455 square feet (22.6% building coverage) To 5,134 square feet (26.1%).*

*Note: Originally, the Adjustment request was to increase the maximum building coverage from 4,455 square feet to 5,434 square feet (27.5%). Based on comments from neighbors (Exhibit F.1), the applicant revised the proposal to have less building coverage, reduce the building height, and increase the setback from the side lot lines.

Relevant Approval Criteria:

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The 19,700 square foot site is located on the east side of S Palatine Hill Road, between S Tryon Avenue to the west and S Aventine Avenue to the south. The area is in unincorporated Multnomah County but under the City of Portland zoning authority under an intergovernmental agreement. The relatively flat site is developed with a 3,368 square foot 2.5-story residence and a 504 square foot garage. The surrounding vicinity is developed with primarily 1 to 2.5-story single-dwelling mid-century residences on large lots. While the subject site is relatively flat, this residential area in Southwest Portland has significant slopes and significant tree canopy.

Zoning: The R20 zone is a single-dwelling zone that is intended to preserve land for housing, and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing and provide options for infill housing that is compatible with the scale of the single-dwelling neighborhood. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

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 **August 25, 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, and noted that a separate building permit is required for the work proposed (Exhibit E.2);
- The Bureau of Environmental Services (BES) responded with no concerns regarding the Adjustment review and noted that building plans for this project must include a detailed site utility plan which shows proposed and existing sanitary connections, as well as stormwater management (Exhibit E.3); and
- The Lake Oswego Fire Department noted that fire flow for fire protection is not adequate. Either fire flow volume needs to be increased or an alternate method could be proposed like fire sprinklers throughout (Exhibit E.4).

The following Bureaus have responded with no concerns (Exhibit E.5):

- The Site Development Review Section of BDS; and
- The Water Bureau.

Neighborhood Review: One written response was received from four adjacent neighbors (Exhibit F.1). A summary of concerns about the proposal are as follows:

1. The subject lot is smaller than most in the area so the scale of the house is a concern;
2. The “volume” of the house is large compared to other homes in the area in part because of the height and the 11.5 foot proximity between the house and the north and south lot lines;
3. Drainage and stormwater management concerns stemming from impervious surfaces;
4. No “hardship” has been demonstrated; and
5. Approval may set a precedent for future development.

Applicant Response: The applicant redesigned their proposal in consideration of the neighbor concerns as follows:

1. The building coverage proposed is reduced from 5,434 square feet to 5,134 square feet.
2. The overall proposed height is reduced from 29'-6" to 27'-4" and reduced the roof pitch at the 2nd floor and garage roofs from 9:12 to 7:12.
3. Garage roof heights have been reduced in height by 3'-3" from the original proposal.
4. Side setbacks are increased from around 11' to 13'-3" at both the north and south sides
5. Additional landscaping (large evergreen trees) are proposed at the front (west), and both sides (north and south).

“It is my thought that increasing the side setbacks from 10' to 13'-3", or an increase of 32% of the required setback distance, along with the decreased roof height (more than 2'-6" below the max height allowed) will offset the 679 sq. ft. (3.4% of the site area) increase in building coverage and ultimately meet the intent of the code.” (Exhibit A)

Staff Response: Regarding the concern about drainage and water runoff, as noted in the BES comments above, a stormwater management plan must be submitted and approved (Exhibit E.3). Regarding a lack of hardship being demonstrated, hardship does not need to be demonstrated to request an Adjustment when using the approval criteria of A-F below. Regarding the concern that an Adjustment approval would set a precedent, Adjustment reviews are discretionary and context specific to a unique circumstance on a unique property. Relevant concerns are addressed in the Zoning Code Approval Criteria section below.

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 2-story house, which requires an Adjustment to increase the maximum building coverage from 4,455 square feet (22.6%) To 5,134 square feet (26.1%). The relevant purpose statements and associated findings are as follows.

33.110.225 Building Coverage

The building coverage standards, together with the height and setback standards control the overall bulk of structures. They are intended to assure that taller buildings will not have such a large footprint that their total bulk will overwhelm adjacent houses. Additionally, the standards help define the character of the different zones by limiting the amount of buildings allowed on a site.

The proposed house includes a 3,032 square foot first floor, 3,120 square foot 2nd floor, 1,383 square feet of garage area, and a 650 square foot covered outdoor area which

results in a building coverage of 5,134 square feet. While the building coverage is proposed to exceed the maximum by 679 square feet, this is only 3.4 percent of the overall site area. The bulk of the house is offset via reductions to the height and increased side setbacks. The maximum building height in this zone is 30 feet and the proposed maximum height for this 2-story structure is 27 feet – 4 inches. Additionally, the garage and covered terrace portions of the structure, which make up approximately 1,489 square feet of building coverage (approximately 29 percent of the total proposed building coverage), are one story and have a height of less than 16 feet.

The minimum side setbacks in this zone are 10 feet. The house is proposed to be a minimum of 13 feet – 3 inches from both the north and south property lines, a 32.5 percent setback increase, which allows for greater space between the proposed house and the neighboring houses to the north and south. The height reductions and setback increase help reduce the bulk of the structure and offset the proposed building coverage Adjustment.

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 R20 zone, a single-dwelling residential zone, and is in a neighborhood with a mix of primarily 1 to 2.5-story single-dwelling residences. The 2-story house will therefore be consistent with development pattern in the area; however, most of the houses in the area are screened from the right-of-way (S Palatine Road) with dense vegetation, including mature trees, although such screening is not a requirement. In order to address written comments on the proposal and improve the livability and appearance of the house, the applicant proposes to maintain the existing evergreen hedge at the front yard and provide landscaping to the high screen landscaping standard (L3 Standard, per Section 33.248), which requires:

enough high shrubs to form a screen 6 feet high. The shrubs must be evergreen. In addition, one large tree is required per 30 linear feet of landscaped area, one medium tree per 22 linear feet of landscaped area, or one small tree per 15 linear feet of landscaped area. Trees of different sizes may be combined to meet the standard. Ground cover plants must fully cover the remainder of the landscaped area.

As a condition of approval, at least 4 of these trees must be large evergreen trees (per the Portland Tree and Landscaping Manual) to provide year-round screening and to help break up the visual bulk of the new home.

Additionally, the applicant is proposing to plant two new medium sized evergreen trees (per the Portland Tree and Landscaping Manual) along the north façade and the south façade (4 trees total) to provide year-round screening between the proposed house and the neighbors who will be closest in proximity. A condition of approval will ensure these trees are planted and maintained.

As conditioned, 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: Only one Adjustment is requested; therefore, 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 Map with a lower case “s” and historic resources are designated by a large dot or as being within the boundaries of a Historic or Conservation district. There are no such resources present on the site; therefore, this criterion is not applicable.

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

Findings: As noted above, the applicant is proposing to mitigate for perceived impacts from the building coverage increase via a maximum height of 27 feet – 4 inches (2 feet – 8 inches lower than the height maximum), increasing the side setbacks to a minimum 13 feet – 3 inches (3 feet – 3 inches greater than the minimum side setbacks), landscaping the front yard to meet the high screen landscaping standard, and planting a minimum of two new medium sized evergreen along the north façade and the south façade (4 trees total) to provide year-round screening. A condition of approval will ensure these trees are planted and maintained.

As conditioned, 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 is proposing to construct a new 2-story, 6,152 square foot house, which, as designed, requires an Adjustment to increase the maximum building coverage from 4,455 square feet to 5,134 square feet. The bulk of the house is offset via reductions to the height and increased side setbacks. The maximum building height in this zone is 30 feet and the proposed maximum height for this 2-story structure is 27 feet – 4 inches. Additionally, the garage and covered terrace portions of the structure are one story and have a height of less than 16 feet. The minimum side setbacks in this zone are 10 feet. The house is proposed to be a minimum of 13 feet – 3 inches from both the north and south property lines, which allows for greater space between the proposed house and the neighboring houses to the north and south.

Most of the houses in the area are screened from the road with dense vegetation, including mature trees. In order to improve the livability and appearance of the house, and to mitigate for perceived impacts from the increase in building coverage, the applicant proposes to maintain the existing evergreen hedge at the front yard and provide landscaping to the high screen landscaping standard, including a minimum of 4 large evergreen trees to provide year-round screening. Additionally, the applicant is proposing to plant two new medium sized evergreen trees along the north façade and the south façade to provide year-round screening between the proposed house and the neighbors who will be closest in proximity. As conditioned, the proposal meets the applicable approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to increase the maximum building coverage from 4,455 square feet (22.6% building coverage) To 5,134 square feet (26.1%) to construct a new 2-story, 6,152 square foot house, per the approved site plans, Exhibits C-1 through C-2, signed and dated October 21, 2021, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through C) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 21-062600 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. A 10-foot-wide minimum landscaping area to the L3 standard must be planted and maintained along the front (west) lot line, minus the driveway/access area. This landscaping must include at least 4 large evergreen trees (per the Portland Tree and Landscaping Manual) as shown in Exhibit C.1.
- C. A minimum of two new medium sized evergreen trees (per the Portland Tree and Landscaping Manual) must be planted and maintained along the north façade and the south façade (4 trees total), as shown in Exhibit C.1.

Staff Planner: David Besley



Decision rendered by: _____ **on October 21, 2021.**

By authority of the Director of the Bureau of Development Services

Decision mailed: November 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 July 1, 2021, and was determined to be complete on August 20, 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 July 1, 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: December 18, 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 November 23, 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 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 Office of Community and Civic Life 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 **November 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.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

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 Materials
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation Drawings (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. Lake Oswego Fire Department
 - 5. Bureaus responding with no concerns (Site Development and Water Bureaus)
- F. Correspondence:
 - 1. Robert and Barre Stoll, Ron and Nancy Sakaguchi/Pilgrim, Steve and Penelope Fain, and Jeff and Carrie Gentry, September 14, 2021, Comment letter
- G. Other:
 - 1. Original LU Application and Receipt
 - 2. Incompleteness determination letter, dated July 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).