



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

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Date: November 10, 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 21-079488 AD

GENERAL INFORMATION

Applicant: Sarah Radelet
Strata Land Use Planning
Po Box 90833
Portland, OR 97290

Owner/Agents: Sean Heyworth and Mike Mitchoff
Urban Cottage Llc
5901 S Macadam Ave #108
Portland, OR 97239-3622

Site Address: 5618 SE RHONE ST

Legal Description: E 1/2 OF N 97.19' OF BLOCK 6, MISTLETOE
Tax Account No.: R574200590
State ID No.: 1S2E07DB 03700
Quarter Section: 3436

Neighborhood: Foster-Powell, contact Joseph Liu at land.use@fosterpowell.com
Business District: None
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010 x313

Plan District: None

Zoning: R5 (Single Dwelling Residential 5,000)

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

Proposal:

The applicant is proposing to build a new detached Accessory Dwelling Unit (ADU) with 761 square feet of living area to the south of the existing primary dwelling, which has 821 square feet of living area. The Portland Zoning Code requires that the living area of the accessory dwelling unit may be no more than 75 percent of the living area of the primary dwelling unit or 800 square feet of living area, whichever is less (Section 33.205.040.C.2). Because 75 percent of the living area of the primary dwelling unit is 616 square feet, the applicant is requesting an Adjustment to increase the maximum ADU living area from 616 square feet (75% of the living area of the primary dwelling) to 761 square feet (92.7% of the living area of the primary dwelling).

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 5,613 square foot site is located on the south side of SE Rhone Street, about 75 feet east of the intersection of SE Rhone Street and SE 56th. The relatively flat site is developed with a 848 square foot two single-story house. The surrounding vicinity is developed primarily with one and two-story single-dwelling residences to the north, east, and south, multi-dwelling development to the west, and a church across the street to the north.

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.

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 **September 28, 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 street classification and 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 included information about building permit requirements (Exhibit E.2);
- The Bureau of Environmental Services (BES) responded with no concerns regarding the Adjustment review and noted a stormwater management plan for this project will be required at the time of building permit submittal (Exhibit E.3);
- Urban Forestry responded with no concerns regarding the Adjustment review and noted a tree plan must be submitted with each phase of the review (Exhibit E.4); and
- The Water Bureau responded with no concerns regarding the Adjustment review and included information regarding water service (Exhibit E.5).

The following Bureaus have responded with no concerns (Exhibit E.6):

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

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

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 ADU with 761 square feet of living area which requires an Adjustment to increase the maximum ADU living area from 616 square feet (75% of the living area of the primary dwelling) to 761 square feet (92.7% of the living area of the primary dwelling).

The relevant purpose statement and associated findings are found below:

33.205.010 Accessory Dwelling Units – Development Standards

Standards for creating accessory dwelling units address the following purposes:

- **Ensure that accessory dwelling units are compatible with the desired character and livability of Portland’s residential zones;**
- **Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;**
- **Ensure that accessory dwelling units are smaller in size than primary dwelling units; and**
- *Provide adequate flexibility to site buildings so that they fit the topography of sites.”*
(applicable purposes in bold)

Ensure that accessory dwelling units are compatible with the desired character and livability of Portland’s residential zones;

Desired Character is a defined term in 33.910.030:

“Desired Character. The preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.”

The site is in the R5 zone and in the boundary of the Foster-Powell Neighborhood Plan. The purpose statement of the single-dwelling zones is as follows:

“The single-dwelling zones are 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.”

The proposal is for a new ADU that provides an additional infill housing opportunity in the R5 zone. With the proposed ADU being a single-story and smaller in footprint and living area than the primary house, the proposed ADU is compatible with the scale of the surrounding neighborhood.

A review of the Foster-Powell Neighborhood Plan policies found one applicable policy:

“Policy 4.3: Encourage the construction of new infill housing that is compatible with the neighborhood. Require design review or conformance to compatibility guidelines for development not currently allowed in existing residential zones.”

The ADU is an additional infill unit and as designed is compatible with the surrounding neighborhood. The proposal is consistent with the identified and applicable policy of the Foster-Powell Neighborhood Plan.

Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;

The development standards of Accessory Dwelling Units generally require them to be smaller in footprint than the primary house and in the back yard in order to be compatible with the building scale and placement of accessory structures in single-dwelling zones. As proposed, the ADU meets these standards.

The ADU development standards also have a requirement that ADUs may only be a maximum of 800 square feet or 75% of the living area of the primary house. The standard is to ensure that ADU's are smaller both visually and physically than primary homes; to ensure ADU's are truly ancillary and not a second primary home on the site; and to ensure the ADU is consistent with the general building scale of accessory structures in relation to primary dwellings. In this case, the primary house on the subject site is much smaller than a typical Portland home at 848 square feet in building coverage and 821 square feet in living area. A typical early 20th century home is approximately 1000 sf to 2000 square feet. The ADU is proposed at 761 square feet in living area, below the 800-sf maximum. However, an 821 square foot primary home is only allowed a maximum ADU of 616 square feet based on the 75% limitation. The proposed 761 square foot ADU represents an ADU with a living area of 92.7% of the primary home. While the ADU would exceed the maximum size ration of 75%, it still represents less than what an ADU accessory to a typical 1000 to 2000 sf home would be, which would be around 800 square feet unless they also received an Adjustment approval. Additionally, the proposed ADU is located behind the primary dwelling and will be minimally visible when viewed from the street. As such, the proposal respects the building scale and placement of ADUs.

Ensure that accessory dwelling units are smaller in size than primary dwelling units;

The proposed ADU has 840 square feet of building coverage while the primary house has 848 square feet of building coverage. As such, the proposed ADU is smaller in size than the primary dwelling unit.

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 site is in the R5, a single-dwelling zone. Staff found the proposed ADU is consistent with the scale and placement of accessory buildings in the single-dwelling zones under Finding A. As such, the proposed ADU will not impact the appearance of the residential area. Livability is not a defined term but generally addresses privacy. As the ADU is not within the required setbacks, is a single-story, and only 761-square feet in size, it will not detract from the livability of adjacent properties.

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 being 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: No adverse impacts have been identified for which mitigation would be required.

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 an Adjustment to increase the maximum ADU living area from 616 square feet (75% of the living area of the primary dwelling) to 761 square feet (92.7% of the living area of the primary dwelling). While the proposed ADU exceeds the allowed ADU size, it equally meets the purpose of the ADU size limitation because it is smaller than the primary dwelling; is consistent with the general scale and placement of ADUs; is smaller in size than ADUs accessory to typical early 20th century homes of 1000 to 2000 square feet; is located behind the primary dwelling unit; will not adversely impact the appearance or livability of the residential area; and will not adversely impact historic, scenic or environmental resources. The proposal meets the applicable approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to increase the maximum ADU living area from 616 square feet (75% of the living area of the primary dwelling) to 761 square feet (92.7% of the living area of the primary dwelling) (Section 33.205.040), per the approved site plans, Exhibits C-1 through C-2, signed and dated November 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.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 21-079488 AD. No field changes allowed."

Staff Planner: David Besley



Decision rendered by: _____ **on November 3, 2021.**

By authority of the Director of the Bureau of Development Services

Decision mailed: November 10, 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 August 20, 2021, and was determined to be complete on September 23, 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 August 20, 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: January 21, 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 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 24, 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 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 **November 24, 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 Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation Drawings (attached)
 - 3. Floor Plan
 - 4. Elevation Drawings comparing existing house and proposed ADU
- 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. Urban Forestry
 - 5. The Water Bureau
 - 6. Bureaus responding with no concerns (Site Development and Fire Bureaus)
- F. Correspondence: none
- G. Other:
 - 1. Original LU Application and Receipt
 - 2. Incompleteness determination letter, dated September 16, 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).