



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

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Date: November 12, 2021
To: Interested Person
From: Marguerite Feuersanger, 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 with conditions 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 21-056279 AD UNINCORPORATED MULTNOMAH COUNTY

GENERAL INFORMATION

Applicant: Gregor Mitchell
The Works
1303 SE 6th Ave
Portland, OR 97214
503-331-0103 gregor@theworkspdx.com

Owner: Acra LLC
3834 N Longview Ave
Portland, OR 97227

Site Address: 3621 SW 48th Place

Legal Description: BLOCK 8 LOT 8&9 TL 5600, WILCOX ESTATES
Tax Account No.: R909704030
State ID No.: 1S1E07DA 05600
Quarter Section: 3424

Neighborhood: Bridlemile, contact at board@bridlemilepdx.org
Business District: NONE
District Coalition: Office of Community & Civic Life, contact Shuk Arifdjanov at shuk.arifdjanov@portlandoregon.gov

Zoning: R10, Residential 10,000 Zone

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

Proposal: The applicant proposes to construct a one-story detached accessory home office/pool house at the rear (northwest corner) of the property. The enclosed portion is 312 square feet in area and the attached covered patio is 126 square feet in area. In the R10 zone, detached accessory structures must be located at least 10 feet from side and rear property lines (Section 33.110.220.B and Table 110-4). The applicant is proposing a 5-foot setback from the north (side) and west (rear) property lines and is therefore requesting an Adjustment to reduce the north and west building setbacks from 10 feet to 5 feet, with one-foot eave overhangs.

Existing trees will be preserved. Two trees -- a western red cedar (37" diameter) and an Austrian black pine (30" diameter) -- are located near the proposed structure at the west property line. The applicant provided an arborist's report detailing methods needed to protect the trees during the construction process (Exhibit A-4). Two 4-inch diameter pine trees will be removed.

While the proposed structure is nearly 39 feet in length at the north elevation, there are no windows or doors along this elevation. The walls of the structure are 8 feet in height and the overall building height is 9.5 feet.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Section 33.805.040.A through F, Adjustments.

ANALYSIS

Site and Vicinity: The subject site is 12,700 square feet in area and located outside Portland city limits within an unincorporated area of Multnomah County, at the intersection of SW 48th Drive and SW Downs View Court. A low-level single-dwelling house, constructed in 1958 with nearly 3,500 square feet of building area, is located near the site's street frontage. Topography generally slopes to the south, but the central portion of the site is fairly flat and developed with an in-ground pool. The lot contains a significant amount of landscaped area; mature trees are located in the front and rear yards.

The surrounding residential area is similarly developed with one- to two-story single dwelling houses; lot sizes generally exceed 10,000 square feet in area and contain a significant percentage of landscaping. Mature evergreen trees and shrubs contribute to the neighborhood character. Streets in the area, including the site's frontage along SW 48th Avenue, are paved roadways with curbs but without sidewalks and landscape strips.

Zoning: The R10 single-dwelling residential zone is intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

Land Use Review History: City records indicate that there are no prior land use reviews for the site.

Agency Review: A "Notice of Proposal" was sent October 11, 2021. The following Bureaus responded with no concerns about the proposed Adjustment:

- Portland Bureau of Transportation (Exhibit E-2);
- 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 (BES) does not have concerns about the proposal as the footprint is under the threshold for stormwater requirements. (Exhibit E-1).

The Portland Water Bureau does not serve the site. The site is served by the Valley View Water district (Exhibit E-3) and has an active service and account with this district. The applicant states there will be no plumbing in the proposed accessory structure; therefore, water service availability is not an issue for the proposal.

Neighborhood Review: One written response to the mailed “Notice of Proposal” was received from the neighbors within the notification area (Exhibit F-1). The neighbors do not object to the proposal but cite drainage issues in the area and are concerned about stormwater runoff from the development which may affect their property. As noted above, BES staff reviewed the proposal for stormwater issues. Because the proposal is limited in footprint (less than 500 square feet), there are no city-imposed requirements for stormwater systems. BES states, however, that a safe stormwater disposal location that does not impact adjacent properties and/or structures must be shown at the time of building permit review.

ZONING CODE APPROVAL CRITERIA

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 an Adjustment to reduce the minimum setback from the south side lot line from 10 feet to 3 inches for a covered outdoor kitchen on an existing patio. The purposes of the building setback requirements in the R10 zone are stated in Zoning Code Section 33.110.220.A:

Purpose. The setback regulations for buildings and garage entrances serve several purposes:

- *They maintain light, air, separation for fire protection, and access for firefighting;*
- *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.*

The proposal meets the above purpose statements for the following reasons:

- The applicant states that the new accessory structure “. . . will be of modest height and scale, with the top of its roof only 1-3 feet higher than the existing fence on the West property line, and approximately 2 feet lower than the existing fence on the North Property line, with no windows on either of those sides to promote privacy. The structure is designed for, and meets all, standards for detached covered accessory structures per 33.110.250.” (Exhibit A-1). Staff agrees with this assessment.
- As measured from the adjacent grade, the walls of the proposed accessory structure are limited to 8 feet in height, and the overall building height is only 9.5 feet. The enclosed portion is 312 square feet in area and the attached covered patio is 126 square feet in area.

- The shed roof slopes upward, away from the north property line, limiting light and air impacts on the adjacent property to the north.
- Both the Fire Bureau and the Life Safety Review Section of BDS reviewed the proposal for potential safety issues and responded with no objections (Exhibits E-4 and E-6, respectively).
- There are no other detached accessory structures along the west or north property lines on the site.
- The structure is in the rear yard and will have no impact on the front yard or the view from the sidewalk.
- Both the maximum building coverage and the minimum outdoor area requirement for the lot are met.
- There is no effect on the site's vehicle access or parking.

For these reasons, 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: Since the site is in the R10 residential zone, the proposal must not significantly detract from the livability or appearance of the residential area. The Adjustment will allow the new structure to be much closer to the side and rear lot lines than allowed otherwise. However, as detailed above in Criterion A, the structure will not significantly detract from residential livability or appearance due to its small footprint and low height.

The applicant commissioned an arborist to provide guidance and requirements to protect two mature trees during construction (Exhibit A-4). The proposed structure is within the root protection zone and close to the trunks of a 37-inch diameter western red cedar and a 30-inch Austrian black pine. The trees are near the west property line and are identified on the site plan, Exhibit C-1. Trees contribute significantly to the livability and appearance of the site and surrounding residential properties. For these reasons, and with a condition of approval requiring the preservation of the two trees, staff finds that proposal will not significantly detract from the livability or appearance of the residential area. With this condition of 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: Two Adjustments are proposed to minimum building setbacks, which are development standards of the R10, Single-Dwelling zone. The overall purpose of the R10 zone development standards is found in Section 33.110.010.B:

“The development standards preserve the character of neighborhoods by providing six different zones with different densities and development standards. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed. The development standards are generally written for houses on flat, regularly shaped lots. Other situations are addressed through special regulations or exceptions.”

The proposal is consistent with the above purpose statement for the following reasons:

- Two existing mature trees will be protected. The trees contribute to the appearance of the site and the residential area;
- Adequate area remains on the site for outdoor/recreational opportunities;
- The proposed structure will not be visible from the street due to its location in the rear yard, the site's varying topography and landscaping; and
- No windows are proposed along the elevations facing the reduced setbacks, preserving privacy of neighboring properties.

D. City-designated scenic resources and historic resources are preserved;

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 does not apply.

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

Findings: As noted in the findings above, impacts resulting from the Adjustments are mitigated with the placement and design features of the addition and the preservation of two existing trees on the site that are located close to the proposed structure. With the condition for tree preservation, 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 does not apply.

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

With the revised plans, the proposed Adjustment is found to be consistent with the purpose of the building setback requirement and will not significantly detract from the livability or appearance of the residential area. With the conditions of approval including tree preservation, staff finds each of the applicable approval criteria for the Adjustment is met. Since the approval criteria are found to be met, the Adjustment can be approved.

ADMINISTRATIVE DECISION

Approval of **Adjustments** to reduce the minimum side (north) and rear (west) building setbacks from 10 feet to 5 feet, with one-foot eave overhangs (Section 33.110.220.B and Table 110-4) for a new detached accessory structure, per the approved plans, Exhibits C-1 through C-3, signed and dated November 9, 2021, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition B must be noted on the required site plan 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 21-056279 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The 37-inch western red cedar and the 30-inch Austrian black pine must be preserved. Building permit plans for the detached accessory structure must include all recommendations and requirements of the Arborist's report, Exhibit A-4.

Staff Planner: Marguerite Feuersanger

Decision rendered by:  **on November 9, 2021.**
By authority of the Director of the Bureau of Development Services

Decision mailed: November 12, 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 10, 2021 and was determined to be complete on October 6, 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 10, 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: February 3, 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 29, 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.

Appeal fee waivers. Multnomah County may cover the appeal fees for their recognized associations. An appeal filed by a recognized association must be submitted to the City with either the appropriate fee or the attached form signed by the County. Contact Multnomah County at 503-988-3043, 1600 SE 190th, Portland, OR 97233.

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 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 29, 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
 1. Original Submittal
 2. Resubmittal, July 8, 2021
 3. Resubmittal, September 23, 2021
 4. Arborist Report, Teragan & Associates, August 16, 2021
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. West, South and East Elevations
 3. North Elevation
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Bureau of Transportation Engineering and Development Review
 3. Water Bureau
 4. Fire Bureau
 5. Site Development Review Section of BDS
 6. Life Safety Plans Examiner of BDS
- F. Correspondence:
 1. Rex Dunn & Nancy Zipkin-Dunn, October 22, 2021, writing with concerns about stormwater
- G. Other:
 1. Incomplete application letter to applicant, June 29, 2021
 2. Second letter to applicant, July 13, 2021
 3. Third letter to applicant, July 27, 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).