



**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](http://www.portland.gov/bds)

**Date:** April 20, 2022  
**To:** Interested Person  
**From:** Matt Wickstrom, Land Use Services  
503-865-6513 / [Matt.Wickstrom@portlandoregon.gov](mailto:Matt.Wickstrom@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 21-100961 AD**

#### **GENERAL INFORMATION**

**Owner/Applicant:** Simone Goldfeder and Brent Hinrichs  
Constructive Form Architecture & Design  
5744 E Burnside St., Studio 102  
Portland, OR 97215

**Site Address:** 2975 SW UPPER DR

**Legal Description:** BLOCK B LOT 6 TL 700, SMITHS ADD  
**Tax Account No.:** R775801020  
**State ID No.:** 1S1E05DC 00700  
**Quarter Section:** 3226

**Neighborhood:** Southwest Hills Residential League, contact at [landuse@swhrl.org](mailto:landuse@swhrl.org)  
**Business District:** None  
**District Coalition:** Neighbors West/Northwest, contact at [admin@nwnw.org](mailto:admin@nwnw.org)

**Zoning:** R10cp (Residential 10,000 with an Environmental Conservation and Environmental Protection Overlay zones)

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

#### **Proposal:**

The applicant proposes to construct a 158 square foot detached accessory structure to the north side of the existing house. The detached structure will be located 2 inches from the north side property line. The wall and roof will be constructed of fire-resistive material. The Portland Zoning Code requires a 10-foot side building setback in the R10 zone. The applicant requests an Adjustment to Section 33.110.220.B and Table 110-4 to reduce the north side setback from 10 feet to 2 inches for the detached accessory structure.

**Relevant Approval Criteria:**

To be approved, this proposal must comply with the Adjustment Review approval criteria in Zoning Code Section 33.805.040.A-F.

**ANALYSIS**

**Site and Vicinity:** The steeply sloping site is 4,300 square feet and developed with a single-story house. The house measures 898 square feet and contains an addition permitted in 2009 which is located 5 feet from the south property line. The home has a large rear facing deck as well as service steps along the north side of the house which lead to a door that accesses an unfinished area below the house. Many large trees are located behind the house including Douglas firs and maples. The entire site is designated with environmental overlay zoning.

**Zoning:** The site is zoned R10cp (Residential 10,000 with Environmental Conservation and Protection overlay zones). The R10 zone is intended to preserve land for housing and to provide housing opportunities for individual households. The majority of the site is also located in the “c” overlay zone. This overlay zone is applied in areas determined to possess significant environmental resources and where functional values are present. A rear portion of the site is located in the “p” overlay zone. This overlay zone is applied in areas determined to possess highly significant environmental resources and functional values are. Development is only proposed in the transition area (described below); no development is proposed within the “p” overlay zone.

**Land Use History:** One prior land use record exists (07-105484 AD) for the site, an Adjustment. The Adjustment Review approved an addition on the south side of the existing house and reduced the setback for the addition from 10 feet to 5 feet with the eave projecting an additional 1 foot 4 inches into the setback.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **February 22, 2022**. The following Bureaus have responded with no issues or concerns:

- The Portland Bureau of Transportation responded with no objections (Exhibit E.1);
- The BDS Life Safety Division responded that a separate building permit is required for the work proposed (Exhibit E.2);
- The Fire Bureau responded that a separate building permit is required and all applicable Fire Code requirements shall apply at time of permit review and development (Exhibit E.3);
- The Bureau of Development Services responded with no objections and stated that pollution reduction and flow control requirements of the Stormwater Management Manual are not triggered (Exhibit E.4); and
- The BDS Site Development Section and the Water Bureau responded with no concerns (Exhibit E.5).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on February 22, 2022. No responses were received.

**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 purpose of the requirement for the side setback and the detached accessory structure to be no closer than 10 feet is stated in Zoning Code Section 33.110.220.B:

**33.110.220 Setbacks**

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

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of houses in the city's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

Staff finds the proposal to locate the detached accessory structure 2 inches to the north property line rather than the required 10 feet is equally consistent with the purpose statement above for the following reasons:

- The proposed detached accessory structure is relatively small, measuring 158 square feet. The proposed building's length along the common property line will be approximately 25-feet and will be 5 feet from the addition proposed on the adjacent lot to the north as part of Land Use Review Case File #21-100945 AD. The detached accessory structure is also proposed to be located between 4 feet 8 inches and 9 feet from the house on the subject site. Both the separation between the detached accessory structure and the house on the lot to the north (including the addition approved under U 21-100945 AD) as well as the detached accessory structure and the house on the subject site allow for adequate light, air and separation. The applicants propose to use fire-resistant construction materials for the detached accessory structure and note that fire-resistant materials are used for the house and exterior stair and deck. The Fire Bureau responded with no concerns to the proposal to construct the detached accessory structure and stated that applicable codes will apply at time of permit review and development.
- Development in this area is generally located closer to the street than in other parts of Portland that possess less slope and environmental resources. Regulations in the zoning code reflect this and allow homes and accessory structures to be closer to the street property line than would be otherwise. The proposed detached accessory structure will be sited in a manner compatible with these allowances.
- The detached accessory structure is not proposed to contain living area and therefore a reasonable physical relationship between residences will be maintained. In fact, the accessory structure will provide separation between the home on this site and the home on the lot to the north. This will also serve to promote privacy.
- Typically, detached accessory structures are located behind homes rather than next to them; however, development in environmental overlay zones is often located close to the street as to better protect resources behind the homes. This not only deprioritizes the intent for homes and development to maintain larger front setbacks and visually pleasing front yards, it also can result in the location of detached accessory structures located next to homes rather than behind them.
- The proposed detached accessory structure continues the general building pattern of the area and recognizes the steep topography of the site. Outdoor area is maintained behind the house and proposed accessory structure which encroaches to the rear of the property at about the same distance as the house.

Since the proposal is found to equally meet the purpose of the standard to be modified, 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 a residential zone, so the proposed Adjustment must not significantly detract from the livability or appearance of the residential area. The proposed detached accessory structure is thoughtfully designed. The design includes a storage area located in front of the main portion of the structure containing bike parking storage and a garden workshop. This provides visual interest and the appearance of an intentional structure more so than that of a typical storage shed hauled to and placed on a site. Furthermore, the location of the proposed detached accessory structure takes into account the topography of the site with the steep drop-off behind the home while also allowing trees located behind the house to be preserved. This also maintains the appearance of this heavily treed area of Portland and helps promote privacy which is a large component of livability. Tree protection will be addressed with permit review as required by Title 11.

- 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 has not identified any negative impacts on neighbors or on the neighborhood specifically resulting from this Adjustment request. Since no negative impacts are identified which require mitigation, this criterion is not applicable.

- 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:** The majority of the site is located within the Environmental Conservation (“c”) overlay zone with a small portion of the rear of the site located within the Environmental Protection (“p”) overlay zone. Environmental overlay zones contain resource areas and transition areas. Resource areas contain significant resources and functional values. Transition areas surround the resource areas. Resources and functional values within transition areas are not significant, but they provide a buffer for the significant resources and functional values within the resource area. The transition area is measured as the first 25 feet inward from an environmental zone boundary. The remaining area is the resource area.

The proposed detached accessory structure is located entirely within the transition area; therefore, its location is not considered environmentally significant and has as few significant detrimental impacts on the environmental resource and resource values as practicable. Tree protection will be addressed through permit review and will serve to protect the native trees located behind the house and in turn the resource area from construction activities.

Based on the proposed location of the detached accessory structure, this criterion 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 applicants propose to construct a 158 square foot detached accessory structure to the north of the existing house. The detached structure will be located 2 inches from the north side property line. The wall and roof will be constructed of fire-resistive material. This proposal requires approval to reduce the north side setback from 10 feet to 2 inches. The detached accessory structure is small and thoughtfully designed. In addition, the proposed location maintains light and air while also avoiding a location closer to environmental resources of the site. Based on this information, the proposal meets the applicable approval criteria and is approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.220.B and Table 110-4 to reduce the north side setback from 10 feet to 2 inches for the detached accessory structure, per the approved plans, Exhibits C.1-C.2, signed and dated April 11, 2022, subject to the following conditions:

- 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-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 21-100961."
- B. , At the time of inspection for the building permit, you will be required to expose your existing property corner pins to demonstrate the addition will not encroach over the common property line. The pins need to be readily viewable from front to back of the property with a string line set between the corner pins for reference. If you are unable to expose the existing property corner pins or have string lines set, you are required to provide a Hub and Tack Survey to document the distance from the closest point of the foundation forms prior to pouring the concrete to the property line(s) for the inspector to review.

**Staff Planner: Matt Wickstrom**

**Decision rendered by:**  **on April 11, 2022**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: April 20, 2022**

**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 October 27, 2021, and was determined to be complete on February 17, 2022.

*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 October 27, 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: June 17, 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 May 4, 2022. The completed appeal application form must be emailed to [LandUseIntake@portlandoregon.gov](mailto:LandUseIntake@portlandoregon.gov) and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for 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.

**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 190<sup>th</sup>, 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 must be recorded with the Multnomah County Recorder. *Unless appealed*, the final decision will be recorded after **May 4, 2022** 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 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. Exterior Elevations (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Portland Bureau of Transportation
  - 2. BDS Life Safety Division
  - 3. Fire Bureau
  - 4. Bureau of Environmental Services
  - 5. BDS Site Development Section and Water Bureau
- F. Correspondence: None
- G. Other:
  - 1. Original LU Application
  - 2. 2-7-22 Submittal

**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).**