



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

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Date: June 10, 2022
To: Interested Person
From: Matt Wickstrom, 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 22-104373 AD

GENERAL INFORMATION

Applicant: Yianni Doulis | Yianni Doulis Architecture Studio
112 SW 1st Ave | Portland OR 97204-3501
Email: yianni@ydarchitecture.com | Phone: 503-568-5262

Owners: Renee Intlekofer and Christopher Ward
514 Rialto Ave
Venice, Ca 90291

Site Address: 3640 SW DOSCH RD

Legal Description: TL 5400 1.04 ACRES, SECTION 08 1S 1E
Tax Account No.: R991083140
State ID No.: 1S1E08DB 05400
Quarter Section: 3426

Neighborhood: Southwest Hills Residential League, contact at landuse@swhrl.org
Business District: None
District Coalition: Neighbors West/Northwest, contact Darlene Urban Garrett at darlene@nwnw.org

Zoning: R10s (Residential 10,000 with a Scenic Overlay zone)

Case Type: AD (Adjustment Review – 1 Adjustment)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal: The applicant is proposing to add an art studio and a deck to an existing detached garage. The art studio will have two sinks, one in a room outside of the bathroom. The existing garage is set into the hillside due to the steep topography and is angled to the property line with the corner of the garage in the 10-ft required setback and set back 1-ft 8-in from the property line. The rooftop deck is also proposed to extend to approximately 1-ft 8-in from the

southwest property line. The proposed art studio would be a second story on the garage, but shifted north and wholly outside of the 10-ft side building setback. Because the art studio and rooftop deck will be attached to the existing garage that is already within the required setback, the addition expands the existing garage, extends a rooftop deck into the setback and does not bring it closer to conformance. Therefore, an Adjustment is required for the art studio and rooftop deck addition to the existing accessory structure (the detached garage) in the 10-foot setback required by 33.110.220 and Table 110-4.

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 existing house and detached garage are located on an over 30,000 square foot flag lot connecting to SW Dosch Rd. They are located on a shared driveway which provides access to this site as well as two other houses. One of these homes contains a detached garage with second story living area, similar to the proposal, as well as an in-ground pool. The detached garage is angled and a front corner is located close to the south property line. The surrounding vicinity within 400 feet of the site is developed with large single-dwelling homes on large lots. Council Crest Park is located to the east of the site.

Zoning: The site is zoned R10s (Residential 10,000 with a Scenic Resource Zone overlay). The R10 zone is a Single-Dwelling zone. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The Scenic Resource Zone overlay is intended to protect Portland's significant scenic resources and enhance the appearance of Portland to make it a better place to live and work.

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 **April 1, 2022**. The following Bureaus responded:

- The Portland Bureau of Transportation (PBOT) responded with no objections (Exhibit E.1).
- The Life Safety Section of BDS responded that a separate building permit is required for the work proposed and it must be designed to meet all applicable building codes and ordinances (Exhibit E.2).
- The Fire Bureau responded with no concerns and that all applicable Fire Code requirements will apply to the building permit (Exhibit E.3).
- The Site Development Section of BDS, the Bureau of Environmental Services (BES) and the Water Bureau all responded with no concerns (Exhibit E.4).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 1, 2022. A total of two written responses have been received:

- The first response stated concern with the accessory dwelling unit (ADU) being used as a short-term rental and asked if such rentals are evaluated as part of this land use review (Exhibit F.1).
- The second response provided a list of concerns including large trucks, vehicles and excavation blocking access to their home, concerns about a family member's access to their home, pet safety, water run off, old growth timber, privacy, potential excavation damage to a swimming pool located 50 feet way, disruption, impacts of an ADU, noise, and that an ADU could be used as a short-term rental (Exhibit F.2).

Staff comment: The Notice of Proposal sent on April 1, 2022 described the addition to the detached garage as an ADU which is consistent with materials in the application; however, the addition is proposed as an art studio and although an additional sink is located outside of the bathroom, no full kitchen is proposed. In situations when a second

sink is proposed outside of a bathroom in an accessory structure, the development is reviewed as if it could easily be converted to an ADU. In response, the applicant has proposed a condition of approval to restrict the art studio from being used as a dwelling unit (an ADU) or used as a short-term rental, unless either proposed use is reviewed and approved through another land use 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 purpose of the requirement for the side setback and the rooftop deck portion of the art studio building constructed partially above the existing detached garage 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 art studio addition (the art studio building and the rooftop deck) on top of the detached garage with a portion located 1-foot 8 inches from the side property line rather than the required 10 feet is equally consistent with the purpose statement above for the following reasons:

- The slope of the site and location of the existing detached garage results in the addition of the art studio building as single-story development. In addition, the art studio building is located entirely outside of the required 10-foot setback and will equally maintain light and air. It will also equally maintain separation for fire protection and access for fire-fighting as shown in the Fire Bureau response (Exhibit E.3).
- The rooftop deck is located within the setback but will replace the pitched roof of the garage and therefore equally or better maintain light and air because it is proposed with a railing that allows views. As noted above, the Fire Bureau response indicates no concerns with the proposed setback reduction.
- The proposal does not involve the general building scale and placement of houses in the city's neighborhoods. It also does not involve promoting a reasonable physical relationship between residences. The art studio has two sinks, one outside of the bathroom, which would allow easy conversion of the space to an accessory dwelling unit. However, because the applicant does not currently desire an accessory dwelling unit or accessory short-term rental, and based on neighbor concerns, a condition of approval has been proposed by the applicant. The condition states, "the accessory structure may not be converted to an accessory dwelling unit (ADU) or used as an

accessory short-term rental”. Removing this condition of approval requires approval through another Adjustment Review.

- The art studio and rooftop deck are located adjacent to the driveway serving the homes on SW Dosch Rd. It will not impact options for privacy any more than development that would be allowed by right.
- The art studio addition will maintain almost the entirety of a large landscaped “front yard”. It is necessary to point out, the site is a flag lot and doesn’t have a front setback; therefore, the portion of this purpose statement about front setbacks doesn’t apply.
- The overall proposal sites the building in a way that it is compatible with the neighborhood because it is attached to an existing detached garage which is separated and well screened from other homes nearby. The chosen location is also appropriate considering the slope of the site. The addition also will maintain almost the entirety of the outdoor area at this site. The addition is also well-designed to look like a small and permanently constructed work space.
- The location of the garage and garage entrance will not change as part of this proposal; therefore, vehicle parking will not be impacted for the houses located along this portion of SW Dosch Rd. The response from PBOT also indicates no objections to the proposal (Exhibit E.1).

The above information demonstrates, the proposal equally or better meets the purpose of the regulation because only the rooftop deck is proposed within the setback and due to the applicant proposed condition that the art studio will not be converted to a dwelling unit or used as a short-term rental. When the selected location which maintains a large yard, options for privacy, light and air, while adding on to an existing structure that is well screened and separated from nearby homes are factored in as well, the proposal demonstrates meets the purpose of the regulation.

Based on this information, 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 proposed Adjustment must not significantly detract from the livability or appearance of the residential area. The proposed art studio addition is attractively designed with the majority of the massing located outside the setback. The existing bulk of the garage is actually diminished at the property line because the gable roof becomes flat. Due to the relatively small size of the art studio addition and new impervious surface, stormwater management thresholds are not even triggered (although runoff will be routed into the existing stormwater system). Furthermore, an arborist has been consulted and no trees are proposed for removal with information on tree protection being included with the permit. The permit for the art studio addition addresses tree protection and includes an arborist review of excavation work. Privacy has also been preserved through the removal of two windows facing the property to the south. The applicant proposed condition requires that the art studio remain as a workspace rather than being converted to an ADU or short-term rental which removes potential activity that could result from the structure and expanded use of a deck in the setback. Based on this information, 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: 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. The site contains a small portion of identified scenic resources in the northeast corner. The proposed art studio addition is 130 feet from the scenic resource and separated by a large grove of trees. As the art studio is located outside of and will not impact the aesthetics of the identified scenic resource, this criterion is met.

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

Findings: The applicant proposed condition of approval and the thoughtful placement of the art studio addition including the rooftop deck, and the overall design above but offset from the existing location of the detached garage results in no impacts necessary for mitigation. Therefore, 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: The site and proposed art studio addition are not located within an environmental zone, 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 proposal involves an art studio and rooftop deck addition located partially above an existing detached garage which is only partially within the required 10-foot side setback. The rooftop deck is the only new development within the setback because the art studio building is located entirely outside of the setback. The rooftop deck is well placed, the project is well designed and any potential for impacts on neighbors, have been considered with the proposed art studio addition and application. PBOT, BES and the Fire Bureau as well as all other reviewing bureaus responded with no concerns. Approval criteria have been met and the proposal to locate an art studio and rooftop deck above an existing detached garage with a portion of the garage and rooftop deck located 1-foot 8-inches from the south property line is approved.

ADMINISTRATIVE DECISION

Approval of a reduction to side setback for an art studio addition that contains a rooftop deck. The rooftop deck is approved with a reduction to the south side setback from 10 feet to 1-foot 8 inches, per the approved site plans, Exhibits C.1 through C.3, signed and dated June 8, 2022, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition, Condition B, 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 22-104373 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The accessory structure may not be converted to an accessory dwelling unit (ADU) or used as an accessory short-term rental.

Staff Planner: Matt Wickstrom

Decision rendered by:  **on (June 8, 2022)**
By authority of the Director of the Bureau of Development Services

Decision mailed: June 10, 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 January 18, 2022, and was determined to be complete on March 18, 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 March 18, 2022.

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: July 16, 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 June 24, 2022**). **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 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 **June 24, 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 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 and original submittal rec'd 1/18/22
 - 1. Incomplete letter dated 2/10/22
 - 2. Applicant submittal dated 3/18/22
 - 3. Applicant email requesting condition of approval dated 5/13/22
 - 4. Applicant email addressing neighbor concerns with revised southeast elevation drawing dated 5/23/22
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Front and rear elevations (attached)
 - 3. Side elevations (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Portland Bureau of Transportation Development Review
 - 2. Life Safety Section of BDS
 - 3. Fire Bureau
 - 4. Site Development Section of BDS, Bureau of Environmental Services, Water Bureau
- F. Correspondence:
 - 1. Jill Reynolds, April 21, 2022, concern ADU may be used as short-term rental
 - 2. Peter and Martha Reynolds, April 21, 2022, concerns regarding noise, accessibility, pets, run off, old growth timber, privacy, potential ADU may be used as short-term rental, erosion and potential for damage to pool
- G. Other:
 - 1. Original LU Application

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).