



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

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Date: June 13, 2022
To: Interested Person
From: Andrew Gulizia, Land Use Services
503-865-6714 / Andrew.Gulizia@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 22-126732 AD

GENERAL INFORMATION

Applicant: Anne De Wolf
Arciform LLC
2303 N Randolph Ave.
Portland, OR 97227
(503) 890-8284
anne@arciform.com

Property Owners: Elizabeth and Aaron Grossberg,
3551 E Burnside St
Portland, OR 97214-2052

Site Address: 3551 E Burnside St.

Legal Description: BLOCK 84 WLY 1/2 OF LOT 18 LOT 19, E 15' OF LOT 20,
LAURELHURST

Tax Account No.: R479117190

State ID No.: 1N1E36DB 17000

Quarter Section: 3034

Neighborhood: Laurelhurst, contact Amy Smith at asmith@lrsarchitects.com

Business District: None

District Coalition: Southeast Uplift, contact Matchu Williams at matchu@seuplift.org

Plan District: Laurelhurst-Eastmoreland

Other Designations: Laurelhurst Historic District

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 proposes to demolish the existing garage and construct a new garage in the northeast corner of the lot with a new covered patio attached to the west side of the garage. The new construction will be attached to the main house with a covered breezeway. Generally, structures in the R5 zone must be set back at least 5 feet from side and rear lot lines (Zoning Code Section 33.110.220.B, Table 110-4) and eaves must be set back at least 3 feet (Zoning Code Section 33.110.220.C.2). For this proposal, the applicant requests Adjustments to reduce the minimum setback from the garage to the east side lot line from 5 feet to between 33 inches and 39 inches. The applicant requests to reduce the minimum setback from the garage to the rear (north) lot line from 5 feet to 6 inches. For the covered patio on the west side of the garage, the applicant requests to reduce the minimum setback from the post to the north lot line from 5 feet to 3 feet and to reduce the minimum setback from the eave to the north lot line from 3 feet to 2'-3½”.

Note: The “Notice of Proposal” mailed to neighbors May 3, 2022 described a zero setback from the east lot line. The applicant subsequently agreed to revise the proposal to set the garage back between 33 inches and 39 inches from the east lot line in response to concerns from a neighbor and from staff.

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 subject site is 8,801 square feet in area and located on the north side of E Burnside Street, between NE Laurelhurst Place and NE Floral Place. The site is developed with a 2-story house and a detached, approximately 480-square-foot garage in the rear yard which the applicant intends to demolish. The ground slopes upward from the street toward the house, which was originally constructed in 1918. Surrounding properties are also developed with single-dwelling houses constructed in the early 20th Century. Many neighboring properties also have detached garages in the rear yard.

Zoning: The R5 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.

The Laurelhurst Plan District applies special setback requirements from street lot lines to maintain Laurelhurst’s established character. The proposed construction meets the Laurelhurst Plan District setback requirement.

The Laurelhurst Historic District is a nationally designated area with structures that have historic significance. Generally, contributing structures in the Laurelhurst Historic District cannot be demolished without prior approval of a Demolition Review. Demolition of the detached garage on this site is exempt from the Demolition Review requirement per Zoning Code Section 33.445.200.E.2.c.

Land Use Review History: There are no prior land use reviews for this site.

Agency Review: A “Notice of Proposal” was sent May 3, 2022 (Exhibit D-2). The following Bureaus responded with no objections to the proposed Adjustments:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2);
- Water Bureau (Exhibit E-3);
- 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).

Neighborhood Review: The owner of the abutting property to the east submitted comments (Exhibit F-1). The neighbor expressed concern about the new wall blocking light and appearing to loom over their fence. The neighbor was also concerned about potential damage to their fence.

Staff response: The neighbor's comments were in response to the applicant's original proposal, which placed the new garage on the east lot line (Exhibit D-2). Subsequently, the applicant agreed to revise the proposal to provide a building setback of between 33 inches and 39 inches from the east lot line (Exhibit C-1). Staff finds the revised proposal will not impact the neighbor's fence, which is located to the east of the shared lot line (Exhibit C-1), and will meet the applicable approval criteria for access to light and visual impacts, as discussed below.

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 proposes to reduce the minimum building setback requirements. Zoning Code Section 33.110.220.A states the purposes for the setback requirements:

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 residences in the city's single-dwelling neighborhoods;*
- *They foster 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 equally meets the intent of the side and rear building setback requirements for the following reasons:

- The total building length within the east side setback area will be 30 feet, which is 30% of the 100-foot-long east side setback. The building length (including the covered patio) within the rear setback will be 41 feet long, which is about 47% of the 88-foot-long rear setback. A majority of the east side and rear setback areas will remain open and unobstructed, preserving light, air, and access for fire fighters.
- During the building permit review and inspection process, the new construction will be required to meet current fire protection requirements in the residential building code. The Fire Bureau and BDS' Life Safety Review Section both reviewed the Adjustment proposal and responded with no objections (Exhibits E-4 and E-6, respectively).

- The new garage will be adjacent to existing garages on the abutting properties to the east and north (Exhibit C-1) and will not be adjacent to neighboring homes. A reasonable physical separation between homes will be maintained.
- The new garage will be a single story, which is a typical building scale for accessory structures. In the initial proposal, which requested a zero setback from the east lot line, staff was concerned the east wall was unusually tall for a garage wall abutting a lot line. The applicant subsequently revised the proposal to set this wall back approximately 3 feet from the east lot line (Exhibit C-1), and staff finds this setback will minimize impacts to light and air for the neighboring yard. The proposed garage will be immediately adjacent to the garage to the north (Exhibit C-1), so impacts on the northerly neighbor's yard will be minimal.
- No windows are proposed on the north or east sides of the garage, protecting the privacy of the neighboring lots (Exhibits C-2 and C-3). The covered patio on the west side of the garage could affect the privacy of the northerly neighbor's yard if not for the existing, fully sight-obscuring fence along the north lot line (Exhibits C-1 and A-5). To preserve privacy, a condition of approval will require a sight-obscuring fence to be continuously maintained along the north lot line.
- The proposed construction is at the back of the property and will have no impact on the front yard.
- The open area in the rear yard will remain in compliance with the minimum outdoor area requirement in Zoning Code Section 33.110.240.B-C.
- The driveway between the garage door and the front lot line will be approximately 69 feet long (Exhibit C-1), which is more than enough for cars to park on the driveway without overhanging the sidewalk. The new construction will be entirely behind the driveway, so driver visibility when backing onto the street will not be affected.

With a condition of approval for a privacy fence to be maintained along the rear lot line, staff finds the proposal equally meets the intent of the setback requirements. With this condition of approval, criterion A 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 a residential zone, the Adjustment proposal must not significantly detract from the livability or appearance of the residential area. The surrounding residential area is developed with single-dwelling houses constructed in the early 20th Century, and many neighboring properties also have detached garages in the rear yard. As discussed above, while the new construction will be closer than 5 feet to the east side and rear lot lines, it will be near neighbors' existing garages and will not be adjacent to neighboring houses (Exhibit C-1). Staff finds the placement of the structure in relation to neighboring garages will prevent the reduced setbacks from creating a crowded or incompatible appearance from neighboring homes or yards. The new construction will have an attractive, traditional design that will be compatible with the historic neighborhood (Exhibits C-2 and C-3). The east and north walls subject to the reduced setbacks will have no windows, and an existing, fully sight-obscuring fence along the north lot line will prevent the covered patio from impacting the privacy of the adjacent yard (Exhibits C-1 and A-5). With a condition of approval for a privacy fence to be maintained along the north lot line, staff finds the 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: This criterion applies because Adjustments to both side and rear setback requirements are requested. The purpose of single-dwelling residential zones such as R5 is described in Zoning Code Section 33.110.010:

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.

A. Use regulations. The use regulations are intended to create, maintain and promote single-dwelling neighborhoods. They allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood.

B. Development standards. 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 property will continue to be used as a residence, as intended for the R5 zone. As discussed in the findings for approval criteria A and B, the proposal will not create safety issues and will not appear incompatible with the surrounding residential neighborhood. The Adjustments will not inhibit opportunities for energy conservation or recreation on the site, and the building walls subject to the reduced setbacks will have no windows, preserving neighboring lots' privacy. The existing wood fence along the north lot line will prevent the reduced setback for the covered patio from impacting the privacy of the neighboring yard. For all these reasons, staff finds the Adjustments will provide flexibility without unreasonably impacting neighbors. With a condition for a privacy fence to be maintained along the north lot line, staff finds the proposal is consistent with the overall purpose of the R5 zone. With this condition of approval, criterion C is met.

- D.** City-designated scenic resources and historic resources in Historic, Conservation and National Register Districts and within the boundaries of Historic, Conservation and National Register Landmarks are preserved; and

Findings: This site is within the Laurelhurst Historic District, which requires Demolition Review approval to demolish contributing structures. (The house on this site would be subject to the Demolition Review requirement, but the existing, detached garage is exempt per Zoning Code Section 33.445.200.E.2.c.) Staff finds the new garage's traditional building design will be compatible with the Historic District and help to preserve its character (Exhibits C-2 and C-3). Therefore, staff finds criterion D is met.

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

Findings: For the new garage, staff has identified no negative impacts specifically resulting from the reduced building setbacks which require mitigation. For the new

covered patio on the west side of the garage, staff finds the existing, fully sight-obscuring wood fence along the north lot line will adequately mitigate potential impacts from the reduced setback from the north lot line. With a condition of approval for a privacy fence to be maintained along the north lot line, staff finds criterion E 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 maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on the site, 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

Staff finds the proposed Adjustments to be consistent with the purpose of the building setback requirements and with the overall purpose of the R5 residential zone. No significant negative impacts are expected, and the proposal will not detract from the appearance or livability of the surrounding residential area. With conditions of approval listed below, staff finds the proposal meets each of the applicable Adjustment Review approval criteria. Since the approval criteria are met, the proposal must be approved.

ADMINISTRATIVE DECISION

Approval of the following Adjustments to Zoning Code Section 33.110.220 for a new garage and covered patio:

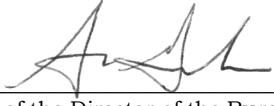
- To reduce the minimum building setback from the east garage wall to the east side lot line from 5 feet to between 33 inches (northeast building corner) and 39 inches (southeast building corner)
- To reduce the minimum building setback from the north garage wall to the rear (north) lot line from 5 feet to 6 inches
- For the covered patio on the west side of the garage, to reduce the minimum setback from the post to the rear (north) lot line from 5 feet to 3 feet and to reduce the minimum setback from the eave to the rear (north) lot line from 3 feet to 2'-3½"

per the approved plans, Exhibit 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, 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 through C-3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 22-126732 AD."

- B. If the existing wood fence along the rear lot line is ever removed or destroyed, it must be replaced with a new, fully sight obscuring, wood fence at least 6 feet in height along the entire rear lot line.

Staff Planner: Andrew Gulizia

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

Decision mailed: June 13, 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 March 28, 2022 and was determined to be complete on April 29, 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 28, 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 August 27, 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.portland.gov/sites/default/files/2020/lu_type2_2x_appeal_form_071116.pdf. Appeals must be received **by 4:30 PM on June 27, 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 email, 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 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 27, 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 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 narrative
 - 2. Original plan set
 - 3. Revised narrative submitted April 27, 2022
 - 4. Revised plan set submitted April 27, 2022
 - 5. Photographs submitted April 27, 2022
 - 6. Revised narrative submitted April 29, 2022
 - 7. Revised plan set submitted April 29, 2022
 - 8. Revised plan set submitted June 7, 2022
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site plan (attached)
 - 2. South and east building elevations (attached)
 - 3. West and north building elevations (attached)
- D. Notification Information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Review Section of BDS
- F. Correspondence:
 - 1. Email from Melissa Janiak, received May 5, 2022
- G. Other:
 - 1. Land use review application form
 - 2. Incompleteness determination letter, dated April 25, 2022

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).