



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

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Date: November 8, 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 22-182387 AD

GENERAL INFORMATION

Applicant: Nathan Arnold | Faster Permits
2000 SW 1st Ave, Suite 420 | Portland OR 97201
Phone: 503-438-8113 | Email: nathan@fasterpermits.com

Owner/Agent: Ryan Zygar | 2440 N Lombard LLC
13023 NE Hwy 99 #7 PMB 274 | Vancouver, Wa 98686
Phone: 360-798-4838 | Email: ryan@tieonbuilt.com

Site Address: 7480 N DELAWARE AVE

Legal Description: BLOCK 10 W 1/2 OF LOT 22&23 W 1/2 OF LOT 24 EXC PT IN ST & EXC PT IN HWY, FIRST ELECTRIC ADD

Tax Account No.: R283804690

State ID No.: 1N1E16AB 10600

Quarter Section: 2328

Neighborhood: Arbor Lodge, contact Dan Craver at landuse@arborlodgeneighborhood.com

Business District: None

District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-8877.

Zoning: CM2 (Commercial Mixed Use 2)

Case Type: AD – Adjustment Review (2 Adjustments)

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

Proposal:

The applicant proposes to build a 4-story, 16 unit multi-dwelling building at this site and is requesting two Adjustments to help the building provide necessary clearance from a high

voltage line that runs along the north side of the site. In the CM2 zone, pedestrian connections that connect internal areas of the site for building occupants are required to be 6 feet in width. The applicant proposes a 4-foot wide pedestrian connection. Buildings in the CM2 zone are required to provide a 10-foot setback from abutting residentially zoned lots. The setback is required to be landscaped to a high screen standard; however, pedestrian connections are allowed in the first 5 feet of the setback. The applicant proposes a 9-foot setback but to maintain the full landscape buffer as required. In total, the applicant proposes two Adjustments, the first to reduce the required internal pedestrian connection from 6 feet to 4 feet (33.130.240.B.2.a) and the second to reduce the required minimum setback from 10 feet to 9 feet (33.130.215.B.1.b).

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 3,226 square foot site is currently developed with a single-story commercial building. The lot is relatively flat and is located at the southeast corner of N Lombard and N Delaware. The building has a detached garage and driveway accessed from N Delaware. The detached garage and driveway separate the commercial building from the one and a half-story single-dwelling home on the lot south of the site.

For the purposes of this review, the surrounding vicinity is defined as the area within 400 feet of the site. The lot to the east of the site is developed with a one and a half-story single dwelling house. The lot across N Delaware to the west is developed with an electrical substation. Heavy duty electrical lines are located on the south side of N Lombard and the west side of N Delaware and lead to the electrical substation. An automobile repair business is located to the west of the substation. Single-story commercial buildings are located at the northwest and northeast corners of the N Lombard and N Delaware intersection. The remainder of the vicinity is developed with single-dwelling homes.

Zoning: The site is zoned CM2 (Commercial/Mixed Use 2). The CM2 zone is a medium scale zone intended for sites in a variety of centers, along corridors, and in other mixed use areas that have frequent transit service. The zone allows a wide range and mix of commercial and residential uses, as well as employment uses that have limited off-site impacts.

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

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **September 28, 2022**. The following Bureaus have responded with no issues or concerns:

- The Portland Bureau of Transportation (PBOT) reviewed the proposal for potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designation and the Adjustment Review approval criteria. PBOT responded with no objections to the proposal (Exhibit E.1).
- The Life Safety Section of BDS responded with no objections (Exhibit E.2).
- The Bureau of Environmental Services responded with no objections stating that he stormwater management plan was reviewed under permit #21-081500 CO.
- The Site Development Section of BDS, Fire Bureau and Water Bureau responded with no concerns (Exhibit E.4).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on September 28, 2022. One written response has been received from a neighbor and states enthusiastic support for the Adjustments due to the need for additional housing in the neighborhood and in Portland. The response states that delays in the project will serve to make the housing crisis worse (Exhibit F.1).

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 for the south setback to be 10 feet rather than the proposed 9 feet is listed in 33.130.215.A and the purpose of the requirement for the pedestrian connection to be 6 feet wide rather than the proposed 4 feet is stated in Zoning Code Section 33.130.240.A and Those purpose statements are included below:

33.130.215 Setbacks

The required building setbacks promote streetscapes that are consistent with the desired character of the different commercial/mixed use zones. The setbacks promote buildings close to the sidewalk to reinforce a pedestrian orientation and built-up streetscape. The setback requirements for areas that abut residential zones promote commercial/mixed use development that will maintain light, air, and the potential for privacy for adjacent residential zones.

The front setback requirements for Civic Corridors in Eastern and Western pattern areas provide opportunities for additional pedestrian space and separation from the vehicle traffic along these major streets to create an environment for building users and pedestrians that is less impacted by close proximity to traffic, and provide opportunities for front landscaping reflective of the vegetated characteristics of these neighborhood pattern areas.

The minimum building setbacks along local service streets adjacent to residential zones work together with requirements for step downs in building height (33.130.210.B.2.b.) to ensure that there is a transition in street frontage characteristics to lower scale residential zones. In these situations, the building setback regulations promote street frontages with landscaping and residential uses to provide a transition and a cohesive street environment with similar street frontage characteristics on both sides of the street, and limit exterior display and storage to minimize impacts to nearby residentially-zoned areas.

33.130.240 Pedestrian Standards

The pedestrian standards encourage a safe, attractive, and usable pedestrian circulation system in all developments. They ensure a direct pedestrian connection between abutting streets and buildings on the site, and between buildings and other activities within the site. In addition, they provide for connections between adjacent sites, where feasible.

Staff finds the proposal to reduce the required south setback from 10 feet to 9 feet is equally consistent with the purpose statement above for the following reasons:

- The proposed setback reduction is at the rear of the building and therefore will not impact the street-facing frontages of the building.
- The proposal to reduce the required 10-foot setback to 9 feet will preserve light for the abutting residential property because the site is located to the north of that lot and therefore southern exposure will not be compromised.
- The availability of air will also be preserved since the new building will also serve as a sound and air buffer for the traffic along N Lombard.
- The width of the required minimum 5-foot wide landscape strip separating the new building from the house to the south will remain the same and will be planted to the L3 standard of the Portland Zoning Code. The L3 standard is a landscape treatment which uses screening to provide the physical and visual separation between uses or

development. It is used in those instances where visual separation is required. The landscaping will serve to limit visual impacts of the reduced setback, preserve privacy and reduce acoustic impacts from traffic on N Lombard.

- The site is not located on a Civic Corridor in the Eastern or Western pattern areas and therefore setback requirements associated with those pattern areas do not apply.
- The proposed building is not across a local service street or alley from a residentially zoned property and meets the step-down height requirements because its overall height is less than allowed.

Staff finds the proposal to decrease the required pedestrian connection width from 6 feet to 4 feet is equally consistent with the purpose statement above for the following reasons:

- The portion of the internal pedestrian connection that allows access from N Lombard to the rear portion of the building is almost 5 feet wide. All entrances for the four ground level apartments are located along that pedestrian connection.
- The Portland Zoning Code allows pedestrian connections in Commercial/Mixed Use zones to be only 3 feet wide when they provide access to no more than 4 dwelling units. Although the pedestrian connection provides access to stairways leading to upper floor dwelling units, it only provides direct access to entrances of 4 ground floor dwelling units
- The pedestrian connection is proposed to be made of brick with proper accessibility clearances and slope so it will be more attractive than an asphalt pedestrian connection and will maintain its functionality and purpose.
- The pedestrian connection from N Delaware will be lined with trees and landscaping required as part of the L3 landscape screen separating the new building from the lot to the south.
- The internal pedestrian connection system proposed allows combined access to both N Delaware and N Lombard. In other words, residents can enter from N Lombard and exit onto N Delaware using the same pedestrian connection. This creates a more effective and efficient system which makes up for its reduced width.

The proposal equally or better meets the purpose of the setback and pedestrian connection requirements because the proposed 9-foot setback is located to the north of the adjacent residentially developed lot and will not decrease southern exposure. A 5-foot deep high screen landscaped area will also provide separation between the new building and the lot to the south. The proposed 4-foot wide pedestrian connection also equally or better meets the purpose of that requirement because the portion that provides access from N Lombard will be almost 5 feet wide and that is the portion where ground floor dwelling unit entrances are access. Furthermore, it is thoughtfully designed and provides access to both streets plus it be constructed with brick rather than a less attractive material. 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 Commercial/Mixed Use zone, so the proposed Adjustment must be consistent with the classifications of the adjacent streets and the desired character of the area.

Concerning consistency with the classification of the adjacent streets, in this location, N Lombard is classified as a major city walkway, a freight district street, a city bikeway, a major transit priority street and a major emergency response street and N Delaware is classified as a neighborhood walkway, city bikeway, local service transit street, and a minor emergency response street. Overall, N Lombard has more robust pedestrian, bicycle, transit and freight classifications than N Delaware.

PBOT responded to the Adjustment Review approval criteria stating:

The only evaluation factor related to the public transportation system is ensuring a direct pedestrian connection between abutting streets and the building on the site. Per page 10 of the Portland Pedestrian Design Guide, a person using a mobility device or carrying bags is usually between 3-ft and 4-ft in width. While the requested 4-ft width is not sufficient to allow 2 people to pass one another, it should be sufficiently wide for use by 1 person at a time, even if that person is pushing a bicycle as is likely given the site layout. The proposed width also exceeds minimum ADA requirements. PBOT does not object to this adjustment given the existing constraints on the site.

It is important to stress that the requested pedestrian connection Adjustment only relates to the internal pedestrian connection for use by residents of the building and their guests. The Adjustment request will not impact the width or design of the public sidewalk adjacent to the site.

As for the desired character of the area, the description of the CM2 zone states:

The Commercial/Mixed Use 2 (CM2) zone is a medium scale zone intended for sites in a variety of centers, along corridors, and in other mixed use areas that have frequent transit service. The zone allows a wide range and mix of commercial and residential uses, as well as employment uses that have limited off-site impacts. Buildings in this zone will generally be up to four stories tall unless height and floor area bonuses are used, or plan district provisions specify other height limits. Development is intended to be pedestrian-oriented, provide a strong relationship between buildings and sidewalks, and complement the scale of surrounding residentially zoned areas.

The proposed building is a four-story multi-dwelling building built close to the sidewalk on both the N Lombard and the N Delaware frontages. It has two individual pedestrian access points from each street; those access points lead to an interior walkway that moves from the south setback at N Delaware through the building's interior and opens onto the N Lombard sidewalk. The building design is consistent with those found in the CM2 zone and along transit corridors. The scale of the building is consistent with development allowed on residentially zoned lots in the vicinity.

Based on the above 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: No cumulative effect will result from the Adjustments because both compliment each other. One Adjustment reduces the width of the interior pedestrian connection while the other reduces the south side setback by 1-foot as to maintain a 5-foot deep landscape screen between the site and the residentially developed lot to the south. The requested Adjustments do not result in a building which is out of scale with the purpose of the CM2 zone as both thoughtfully consider design impacts – one through the use of a higher quality paving material, brick, for the pedestrian connection and one by ensuring that the required depth of the landscape screen is maintained. Based on this information this criterion is met.

- 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: City-designated environmental resources and functional values are identified on the official zoning maps with a lower case “p” or “c,” the Environmental Protection or Environmental Conservation Overlay zones. As there are no environmental overlay designations mapped on the subject 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

The applicant proposes to reduce the south setback of the building from 10 feet to 9 feet and to reduce the width of the internal pedestrian connection from 6 feet to 4 feet. As noted above, the reduced setback will not result in a decrease in southern exposure for the residentially developed lot to the south and the required high screen of landscaping will be maintained. The proposed decreased width of the pedestrian connection is acceptable because the more commonly used portion of the internal pedestrian connection will be almost 5 feet and the ground floor unit entrances are accessed from that portion. The pedestrian connection will also be constructed of brick rather than a lower quality paving material. Based on the information provided, the proposal meets the approval criteria and is approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.130.240.B.2.a to reduce the required internal pedestrian connection from 6 feet to 4 feet and approval of an Adjustment to Zoning Code Section 33.130.215.B.1.b to reduce the required south setback from 10 feet to 9 feet, per the approved site plans, Exhibits C.1 through C.2, signed and dated November 4, 2022, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 22-182387 AD. No field changes allowed."

Staff Planner: Matt Wickstrom

Decision rendered by:  **on November 4, 2022**

By authority of the Director of the Bureau of Development Services

Decision mailed: November 8, 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 September 13, 2022, and was determined to be complete on September 23, 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 September 13, 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: January 21, 2023.**

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 22, 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 **November 22, 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
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Ground Floor Plan (attached)
 - 2. West Elevation Drawing (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Portland Bureau of Transportation
 - 2. Life Safety Division of BDS
 - 3. Bureau of Environmental Services
 - 4. Site Development Review Section of BDS, Fire Bureau, Water Bureau
- F. Correspondence:
 - 1. George Patterson, 10/1/22, support for housing development
- G. Other: 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).