



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

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Date: December 23, 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 22-194673 AD

GENERAL INFORMATION

Applicant: Rachael Cook | Dogwood Construction
4815 NE 47th Ave | Portland OR 97218
Email: rachdcook@gmail.com | Phone: 503-929-2014

Property Owners: Dena and Noah Lieberman
4907 NE Ainsworth St | Portland, OR 97218

Site Address: 4907 NE AINSWORTH ST

Legal Description: BLOCK 6 E 1/2 OF LOT 8 EXC N 18.74', ENGLEWOOD PK
Tax Account No.: R252801940
State ID No.: 1N2E18CA 05900
Quarter Section: 2435

Neighborhood: Cully, contact Zach Powers at zachmull@gmail.com
Business District: None
District Coalition: Central Northeast Neighbors, contact Alison Stoll at alisons@cnncoalition.org

Zoning: R10(R5)h (Residential 10,000 with an Aircraft Landing Zone overlay and a Residential 5,000 Comprehensive Plan Map designation)

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

Proposal:

The property owners plan to construct a detached accessory structure with a single-car garage and a cellar. Detached accessory structures that are more than 15 feet in height must match the roof pitch, window orientation, siding and trim of the primary structure (the house). The detached accessory structure will have a shed roof with a roof pitch that is less sloped than the

roof pitch of the house. The applicant proposes one Adjustment to Portland Zoning Code Section 33.110.245.C.4.b.(1) to allow a different roof pitch than that of the house.

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 17,010 square foot lot is located at the corner of NE Ainsworth St and NE 50th Ave. It is developed with a single-dwelling house facing NE Ainsworth and a detached single-car garage facing NE 50th. The home was built in 1949 and has a large open area to the north comprising approximately two-thirds of the site.

For the purpose of this review, the surrounding vicinity is defined as the area within 400 feet of the site. The vicinity is developed with other single-dwelling residences that were generally built in the same era as the house on the subject site. Some lots in the vicinity are about 5,000 square feet in area while others are about the same size as the subject site.

Zoning: The site is zoned R10(R5)h (Residential 10,000 with an Aircraft Landing Zone overlay and a Residential 5,000 Comprehensive Plan Map designation). R10 is one of several single-dwelling zones that are intended to provide housing opportunities for individual households. The average lot size in the R10 zone is 10,000 square feet while the average lot size in the R5 zone is 5,000 square feet. The “h” overlay limits the height of buildings in the vicinity of Portland International Airport.

Land Use History: City records indicate one prior land use review for this site:

- LU 14-119699 AD. A 2014 Adjustment Review approval to construct an addition on the existing house by raising the roof and create additional headroom on the second floor. The land use review approved a reduction to the side setback from 10 feet to between 7.75 feet and 9.34 feet.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **November 21, 2022**. The following Bureaus responded:

- The Life Safety Section of BDS responded that a building permit has been applied for an is currently under review (Exhibit E.1). Bureau of Environmental Services
- Urban Forestry responded with no objections and provided information on tree preservation (Exhibit E.2). Water Bureau
- The Site Development Section of BDS, Fire Bureau, Water Bureau and BES responded with no concerns (Exhibit E.3 and E.4).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on November 21, 2022. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

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 taller accessory structures to match the roof pitch, siding, trim and window orientation of the primary structure is stated in Zoning Code Section 33.110.245.A:

33.110.245 Detached and Connected Accessory Structures

This section regulates detached and connected structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site. The standards limit the height and bulk of these structures, promote compatibility of design for larger structures, provide for necessary access around larger structures, help maintain privacy between abutting lots, and maintain open front setbacks.

Staff finds the proposal for the detached accessory structure to have a roof with a pitch that is less sloped than that of the house is equally consistent with the purpose statement above for the following reasons:

- The regulation requires that four exterior characteristics (roof pitch, siding, trim and window orientation) of taller accessory structures match the primary structure. Three of these characteristics, the siding, trim and window orientation, match that of the house and only one of the four characteristics is not met.
- Due to the large 17,010 square foot size of the site and the primarily smaller (approximately 5,000 square foot) size of most of the immediately surrounding lots, the proposed accessory structure will appear as a separate primary structure on its own lot and which therefore wouldn't be required to match the house on the subject site.
- The house has a roof pitch of approximately 6/12 (a typical roof pitch for a house of that era) and the proposed accessory structure has a roof pitch of approximately 4/12 (based on information provided by the applicant). These roof pitches are not dramatically different and therefore the contrasting roof pitches will be less apparent. Furthermore, the proposed accessory structure has a more modern architectural style which will provide visual interest and which will also result in the differing roof pitch being less apparent.

The proposal equally or better meets the purpose of the requirement that certain characteristics of taller accessory structures match the primary structure. This is due to the overall size of the site in which the backyard appears as its own lot and where requirements to match certain characteristics of the house wouldn't apply, the fact that three other characteristics (trim, window orientation and siding) match that of the house and that the proposed roof pitch of the accessory structure isn't significantly different from that of 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.

As for appearance, the proposal is attractively designed with an interesting roofline, building footprint articulation, substantial foundation with a basement (cellar) level resulting in the overall appearance of a quality building. Due to the 17,010 square foot size of the site and the average lot size of 5,000 square feet in the surrounding R5 zone, the proposed accessory structure will have the appearance of a separate primary structure on a separate lot consistent with zoning and some development in the vicinity. As for livability, the proposed accessory structure will have minimal impacts on the livability of the

surrounding vicinity because it is not proposed nearby any other structures on neighboring or nearby lots and is only one-story in height, with a basement level.

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: 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: 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 construct a detached accessory structure with a single-car garage and gardening space that is over 20 feet in height. Accessory structures over 20 feet in height must match certain characteristics of the primary structure on the site; these include roof pitch, siding, window orientation, and trim. The proposed accessory structure meets the siding, window orientation and trim requirements but does not meet the roof pitch requirement. Based on the information above, the proposal meets the approval criteria due to the overall size of the site and adjacency to other properties on smaller lots in the R5 zone, the overall design which will result in quality construction as well as the visually interesting appearance of the proposed accessory structure. Based on the information provided, this proposal meets the approval criteria and is approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Portland Zoning Code Section 33.110.245.C.4.b.(1) to allow a different roof pitch to that of the primary structure on the site, per the approved site plan, Exhibits C-1 through C-2, signed and dated 12/16/22, 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 22-194673 AD. No field changes allowed."

Staff Planner: Matt Wickstrom

Decision rendered by:  **on December 16, 2022**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 23, 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 19, 2022, and was determined to be complete on November 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 19, 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: March 17, 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 January 6, 2023. 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 **January 6, 2023** 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 LU Application
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. East and West Elevation Drawings (attached)
 - 3. North and South Elevation Drawings
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Life Safety Section of BDS
 - 2. Urban Forestry
 - 3. Site Development Section of BDS, Bureau of Environmental Services, Portland Bureau of Transportation, Water Bureau Engineering and Development Review
 - 4. Fire Bureau
- F. Correspondence: None received
- 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).