



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

Carmen Rubio, Commissioner  
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**Date:** February 10, 2023  
**To:** Interested Person  
**From:** Matt Wickstrom, Land Use Services  
503-865-6513 / [Matt.Wickstrom@portlandoregon.gov](mailto:Matt.Wickstrom@portlandoregon.gov)

## **NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 22-210836 AD**

#### **GENERAL INFORMATION**

**Applicant:** Justin Smith | Emerick Architects  
321 SW 4th Ave, Ste 200 | Portland OR 97204  
Email: [justin@emerick-architects.com](mailto:justin@emerick-architects.com) | Phone: 503-235-9400

**Contractor:** Dave Rush | Rush to Build  
3610 NE Hancock St | Portland, OR 97212

**Owners:** Steve Freer and Katrina Perry  
3454 NW Thurman St | Portland, OR 97210

**Site Address:** 3454 NW THURMAN ST

**Legal Description:** BLOCK 32 LOT 1-4 TL 5300, WILLAMETTE HTS ADD  
**Tax Account No.:** R913405300  
**State ID No.:** 1N1E29CB 05300  
**Quarter Section:** 2825

**Neighborhood:** Northwest District, contact Greg Theisen at [planningchair@northwestdistrictassociation.org](mailto:planningchair@northwestdistrictassociation.org)

**Business District:** None  
**District Coalition:** Neighbors West/Northwest, contact Darlene Urban Garrett at [darlene@nwnw.org](mailto:darlene@nwnw.org)

**Plan District:** Northwest Hills - Forest Park  
**Zoning:** R5z (Residential 5,000 with a Constrained Sites Overlay zone)  
**Case Type:** AD (Adjustment Review – 1 Adjustment)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

**Proposal:**

The applicant proposes to add an Accessory Dwelling Unit (ADU) to the existing home at this site by converting a portion of the first floor living area to a separate dwelling unit. The Portland Zoning Code limits the living area of ADUs to 800 square feet or 75% of the living area of the house, whichever is less (Section 33.205.040.C.2). The existing living area of the house is 5,644 square feet and the ADU is proposed to occupy 1,255 square feet of this area. This will result in an ADU that is 22% of the existing living area of the house but that exceeds the 800 square foot overall size limitation. The applicant proposes one Adjustment to Section 33.205.040.C.2 to increase the allowed size of the ADU from 800 square feet to 1,255 square feet.

**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 21,000 square foot lot is developed with a 5,644 square foot 2-story house with a basement. The house is a documented resource in the City of Portland's Historic Resource Inventory.

The surrounding vicinity is steeply sloping and developed with other large single-dwelling homes. It is adjacent to Forest Park. Some environmental resources are located in the vicinity but not on the subject site.

**Zoning:** The site is zoned R5z (Residential 5,000 with a Constrained Sites Overlay zone). The R5 zone is a high density single-dwelling zone. The R5 zone allows attached and detached single-dwelling structures and duplexes. The "z" overlay zone reduces development potential such that more than two dwelling units are not allowed on lots in order to comply with protective measures adopted and acknowledged pursuant to statewide land use planning goals.

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

- LU 21-029009 EN – A 2021 Environmental Review for Bureau of Environmental Services sewer conveyance improvements.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **January 3, 2023**. The following Bureaus have responded with no issues or concerns:

- The Portland Bureau of Transportation responded that there are no transportation-related approval criteria for the proposed Adjustment and the project does not propose access changes to the site, nor will it have any effect on the public right-of-way or transportation system (Exhibit E.1).
- The Life Safety Section of BDS responded with no objections stating that a separate building permit is required and the proposal must meet all applicable building codes and ordinances (Exhibit E.2).
- The Site Development Section of BDS, Fire Bureau, Bureau of Environmental Services and Water Bureau responded with no concerns (Exhibit E.3).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on January 3, 2023. 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 the accessory dwelling unit (ADU) to be no more than 75% of the living area of the house or a maximum of 800 square feet, whichever is less, is stated in Zoning Code Section 33.205.040.A:

**33.205.040 Development Standards**

*Standards for creating accessory dwelling units address the following purposes:*

- *Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;*
- *Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;*
- *Ensure that accessory dwelling units are smaller in size than primary dwelling units; and*
- *Provide adequate flexibility to site buildings so that they fit the topography of sites.*

Staff finds the proposal to increase the maximum allowed size of the ADU from 800 square feet to 1,255 square feet equally or better meets the purpose statement above for the following reasons:

- The ADU is proposed to be located on the first floor of the existing home and its creation will not change the architectural style or character of the home. Occupancy of the ADU and any related impacts will not significantly increase beyond those resulting from the occupants of the home prior to the creation of the ADU. ADUs are allowed in all single-dwelling zones including the R5 zone on sites with houses or manufactured homes. Based on this information, the ADU will be compatible with the desired character and livability of the residential area.
- As the ADU is proposed to be located on the first floor of the existing house, it will respect the general building scale and placement of structures since no new structures are proposed. It also will allow for the sharing of existing spaces such as the driveway and yard.
- Although the ADU is proposed to be 455 square feet larger than the 800-foot size limit allowed for ADUs, the ADU will be less than 22 percent of the current living area of the house (5,644 square feet). Once completed, the ADU will be 29 percent of the proposed living area of the house (4,389 square feet). Based on this information the ADU will be clearly accessory to the large house both before construction and after.
- As the ADU is proposed to be located on the first floor of the existing house, no new building will be sited on the lot thus reflecting a flexibility to create an accessory dwelling unit by repurposing existing living area.

Based on the information above especially considering that creation of the ADU involves converting existing living area in the large home and because the ADU will occupy only 29 percent of the proposed living area of the primary dwelling unit, 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 will not significantly detract from the livability or appearance of the residential area. As mentioned above the ADU will occupy existing living area on the first floor of the house. It will not result in the construction of any new structures on the site and therefore will not impact the appearance of the site.

Furthermore, any impacts resulting from the ADU will not be substantially different than impacts that could be expected from residents of the home previously.

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:** Only one Adjustment is requested, therefore 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 mapped on the subject site this portion of the criterion is not applicable. The home is identified as a documented resource on Portland’s Historic Resource Inventory; however, minimal exterior changes are proposed and include rebuilding an existing side stair and porch for access to the ADU and adding a couple windows. As there are minimal exterior changes proposed for the existing house and those improvements will meet zoning code standards, this portion of the criterion is met.

- 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 especially considering the creation of the ADU involves repurposing of existing living area within the house and the size of the ADU will only be 29% of the proposed living area for the primary dwelling unit. 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 is not located in 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 applicant has proposed to create a new 1,255 square foot ADU within existing living area on the first floor of a 5,644 square foot home. The Portland Zoning Code limits the size of ADUs to 75% of the living area of the primary dwelling or 800 square feet, whichever is less. As the ADU will only occupy 29 percent of the remaining living area of the primary dwelling unit and will be created by repurposing existing living area previously occupied within the home thus eliminating any impacts a new structure may pose, the proposal meets the applicable approval criteria and is approved.

**ADMINISTRATIVE DECISION**

Approval of an Adjustment to Section 33.205.040.C.2 to allow the internal conversion of living area within the existing house for a 1,255 square foot ADU (accessory dwelling unit), per the approved site plans, Exhibit C.1, signed and dated February 2, 2023, subject to the following condition:

- 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 Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 22-210836 AD. No field changes allowed."

**Staff Planner: Matt Wickstrom**



**Decision rendered by:** \_\_\_\_\_ **on February 2, 2023**

By authority of the Director of the Bureau of Development Services

**Decision mailed: February 10, 2023**

**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 December 12, 2022, and was determined to be complete on December 15, 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 December 12, 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: April 14, 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 February 24, 2023. The completed appeal application form must be emailed to [LandUseIntake@portlandoregon.gov](mailto:LandUseIntake@portlandoregon.gov) and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIx decisions on property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

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 **February 24, 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
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Existing/Proposed Site Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Portland Bureau of Transportation
  - 2. Life Safety Section of BDS Bureau of Transportation Engineering and Development Review
  - 3. Site Development Review Section of BDS, Fire Bureau, Water Bureau
- F. Correspondence: None
- G. Other:
  - 1. Original LU Application
  - 2. Applicant submittal received December 15, 2023

**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).**