



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

Carmen Rubio, Commissioner
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Date: May 24, 2023
To: Interested Person
From: Amanda Rhoads, 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 23-011492 AD

GENERAL INFORMATION

Applicant: Mathieu Deraspe | Made Partnership, LLC
P.O. Box 86664 | Portland, OR 97286
808-639-0227 | mathieu@deraspedesign.com

Owners: Tyler and Chiara Townley
1904 SE 43rd Ave | Portland, OR 97215

Site Address: 1904 SE 43RD AVE

Legal Description: BLOCK 4 S 40' OF LOT 3, MALLORY ADD; BLOCK 4 S 1/2 OF LOT 9, MALLORY ADD

Tax Account No.: R528700620, R528700700

State ID No.: 1S2E06CB 12600, 1S2E06CB 11700

Quarter Section: 3235

Neighborhood: Richmond, contact at richmond.pdx.lutc@gmail.com

Business District: Hawthorne Blvd. Bus. Assoc., contact at explore@hawthornepdx.com

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

Plan District: NONE

Zoning: R5 – Residential 5,000

Case Type: AD – Adjustment Review

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

Proposal:

The applicant has applied for a building permit to construct a 36.5-foot by 12.5-foot detached accessory structure behind the existing house on this site. The building is located 1.5 feet from the north lot line for a length of 24 feet, which is 3.5 feet into the required building setback. The applicant therefore requests an Adjustment to Zoning Code Section 33.110.220.B and Table 110-4 to reduce the required setback for the building wall from 5 feet to 1.5 feet. No eaves are proposed.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The 5,400-square-foot site is developed with a one-and-a-half story house constructed in 1915. The site is located in the middle of a large single-dwelling-zoned neighborhood roughly equidistant from the SE Hawthorne Blvd, SE Division St, and SE 50th Ave commercial areas.

Zoning: The Residential 5,000 (R5) single-dwelling zone is 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. Generally, minimum lot size is 3,000 square feet with minimum width and depth dimensions of 36 and 50 feet, respectively, and a maximum density of 1 lot per 5,000 square feet of site area. For attached houses, minimum lot size is 1,500 square feet with minimum width and depth dimensions of 15 and 50 feet, respectively, and a maximum density of 1 lot per 1,500 square feet of site area.

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 **March 16, 2023**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1);
- Bureau of Transportation (Exhibit E.2);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.5); and
- Life Safety Plans Examiner (Exhibit E.6).

Neighborhood Review: No written responses were received from either the Neighborhood Association or notified residents in response to the proposal.

ZONING CODE APPROVAL CRITERIA**33.805.010 Purpose (Adjustments)**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown 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 setbacks in single-dwelling zones is stated in Zoning Code Section 33.110.220.A:

A. Purpose. *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 to locate the detached accessory structure 1.5 feet from the north property line rather than the required 5 feet is equally consistent with the relevant purpose statements above for the following reasons:

- The detached accessory structure is also located more than 20 feet from the house on the subject site. This spacing will allow for adequate light, air and separation for fire fighting. The applicant is also showing a 1-hour firewall along the north property line as required by the Life Safety Plans Examiner reviewing the building permit (22-179325 RS – see Exhibits C.2 and C.3). The Fire Bureau responded with no concerns to the proposal (Exhibit E.4).
- While not a residence, the structure is in a common location for accessory structures like garages, and in fact the structure is already located here as a garage. Therefore, the accessory structure reflects the general building scale and placement of accessory structures in single-dwelling neighborhoods.
- The proposed detached accessory structure is relatively small, with a building coverage of 360 square feet, and a low height of 10 feet at its highest point. Its relationship to other properties is reasonable in that it is not creating impacts or imposing massing that will affect other neighbors.
- The proposed building's length along the common property line within the setback will be 24 feet. The structure is currently in this location as a garage and, given its height, width, and other factors, could be located in the setback at this size by right. The fact that there is an addition to the structure that makes it more than 24 feet long is the cause of this Adjustment Review. However, the 12.5-foot addition to the structure is located 5 feet from the north property line. Therefore, the work will not lengthen the amount of building currently within the setback.
- Much of the length of the building wall within the setback is adjacent to the neighbor's garage (18 feet, 4 inches), and no windows are proposed on the northern facade. Therefore, the impact on that neighbor is limited and the low, modest structure is not likely to cause privacy impacts on the neighbor.

- The subject site shares a driveway with the property to the north. The conversion of the garage to this office with bathroom retains sufficient area on the subject site to continue to accommodate a vehicle outside of the shared driveway and located behind the house. No impacts are expected to the relationship between the driveway and the street, or to the driver's visibility.

For these reasons, staff finds the proposal equally meets the purpose of the setback regulations. 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 located in a residential zone, and thus the proposal must not significantly detract from the livability or appearance of the residential area. This project is an addition onto an existing accessory structure. The addition is behind the existing structure and is at the same height as the rest of the building and therefore will not be visible from the street. The addition portion meets the required setbacks; the proposal does not add more building length in the required setback. The height of the building overall is not increasing, and no windows are proposed on the north façade. For these reasons, this relatively small and low building will not stand out among neighbors, will not draw attention from the street, and will not create privacy impacts on the neighbors. A new fence at the north property line will break up the view of the blank façade and provide additional screening between the two properties. For these reasons, staff finds the proposal will not significantly detract from the livability and appearance of the area. 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. This criterion is not applicable.

- D.** City-designated scenic resources and historic resources are preserved; and

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

Findings: There are no discernible impacts that would result from granting the requested adjustment. 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: 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 the site is not within an environmental zone, 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 convert an existing garage into an office with bathroom, and add onto the building outside the setback. The addition is to the rear of the structure so will not be visible from the street, and the structure will only be 10 feet high with no windows on the north façade. The proposal to allow this building to be located 1 foot, 6 inches from the north property line for a length of 24 feet equally meets the purposes of the standard being adjusted; will not impact the livability or appearance of the residential area; and will not adversely impact historical, scenic or environmental resources. As the proposal meets the approval criteria, the Adjustment must be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.220.B and Table 110-4 to reduce the required north building setback for the building wall of the accessory structure from 5 feet to 1.5 feet, per the approved site plans, Exhibits C.1 through C.3, signed and dated May 19, 2023, 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.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 23-011492 AD."

Staff Planner: Amanda Rhoads

Decision rendered by:  **on May 19, 2023**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 24, 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 February 8, 2023, and was determined to be complete on March 9, 2023.

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 February 8, 2023.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: July 7, 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 June 7, 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 County Recorder. *Unless appealed*, the final decision will be recorded by the Bureau of Development Services.

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
 - 1. Applicant Narrative
 - 2. Original Plan Set
 - 3. Full Plan Set – Updated
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations (attached)
 - 3. Floor Plan and Rendering
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Plans Examiner
- F. Correspondence: none received
- G. Other:
 - 1. Original Land Use Application
 - 2. Incomplete Letter, February 24, 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).