



Steve
Novick
Commissioner

Leah Treat
Director

CITY ENGINEER REPORT OF AN ENCROACHMENT REVIEW REQUEST FOR AN ABOVE-GRADE BUILDING PROJECTION IN THE PUBLIC RIGHT-OF-WAY

DATE: September 24, 2014

TO: City Council

FROM: Bob Haley, Bureau of Transportation, B299/5000 (503) 823-5171

CASE: MISS, LLC Above-Grade Building Projections
Encroaching in the Public Right-of-Way

GENERAL INFORMATION

Applicant: MISS, LLC
1355 NW 13th Avenue
Portland, OR 97209

Representative: Steve Fosler, Portland Architecture LLC
1930 NW Lovejoy Street
Portland, OR 97209

Site Address: 3855 N MISSISSIPPI AVE

Legal Description:

Tax Account No.:

State ID No.:

Quarter Section:

Neighborhood: Boise Neighborhood Association

District Coalition: North Portland Neighborhood Services

Plan District:

Zoning:

1900 SW Fourth Avenue, Suite 5000 • Portland, OR 97201 • 503-823-5185
FAX 503-823-4554 • TTY 503-823-6868 • www.portlandoregon.gov/transportation

Case Type.	Major Encroachment Review in the Public Right-of-Way
Procedure.	Recommendation to the City Engineer with Major Encroachment Request Approval by City Council to be determined at a later date.
Review Type.	Above-grade encroachment for building projections in the City Wide District (1982 Bureau of Planning document, <u>Encroachments in the Public Right-of-Way</u>).

Proposal. The applicant requests encroachment approval for existing building projections in the public right-of-way along the east elevation of the MISS Apartments that extend over the Mississippi Avenue right-of-way.

Review of Encroachments in the Public Right-of-Way

All privately owned and maintained above-grade, at-grade and below-grade encroachments in the public right-of-way are subject to Encroachment Review.

The approval criteria for encroachments are the General Policies (Section III), City-Wide District Policies (Section VII) and Standards for Encroachment (Section VIII) of Chapter One of the 1982 Bureau of Planning document, Encroachments in the Public Right-of-Way.

Scope of Encroachment Review. This encroachment review will evaluate the following areas. Building projections into the Mississippi Avenue right-of-way.

Encroachment Review Process. The structure is an existing above-grade encroachment located in a portion of the City covered by City Wide Policies.

Relevant Approval Criteria.

In order to be approved, this proposal must comply with the applicable approval criteria of *Encroachments in the Public Right-of-Way*, adopted June 10, 1982. In accordance with Chapter One, Section VII A 2, the applicable approval criteria for the proposal are listed in.

- Chapter One, Section III
- Chapter One, Section VII

Additionally, Exceptions to the standards of Chapter One, Section VII can be allowed with specific review and advice to the City Engineer.

SUMMARY OF PROCESS

Why an Encroachment Review?

All privately owned and maintained above-grade, at-grade and below-grade encroachments in the public right-of-way, that are not prohibited, are subject to encroachment review [Table 1, *Encroachments in the Public Right-of-Way*]. The encroachments proposed are defined in Chapter One Section II Definitions of the same document.

What is requested?

The applicant requests approval from the City of Portland ("City") for an existing above-grade building projection along the east elevation of the new "MISS Apartments" that extend over the Mississippi Avenue right-of-way. At this point in the process, the Portland Bureau of Transportation ["PBOT"] provides a recommendation from the City Engineer regarding the requested encroachment.

The final decision on an encroachment in the public right-of-way is made by City Council.

ANALYSIS

APPROVAL CRITERIA FOR THE ENCROACHMENT REVIEW

Applicant's Request.

The applicant requests approval from the City of Portland ("City") for an existing above-grade building projection along the east elevation of the new "MISS Apartments" that extend over the Mississippi Avenue right-of-way.

SECTION I

INTRODUCTION

Encroachment Request

The City of Portland Code Guide for Window Projections into the Public Right-of-Way (IBC/32/#1) established standards for windows which are allowed to project into the public right-of-way including a schedule of all significant characteristics that must be present for a building projection to be considered a window. If the proposed building projection does not comply with the set of requirements in the referenced Code Guide, then review of the building projection falls under the City's Encroachment Policy administered by the Portland Bureau of Transportation.

The following are the standards for windows allowed to project into the public right-of-way:

- A. **Projection.** Maximum projection of 4 feet into the right-of-way including trim, eaves and ornament.
- B. **Clearance.** Clearance of above grade as defined in Chapter 32, Section 3202.3.2 of the current Oregon Structural Specialty Code. (The 2004 edition of the Oregon Structural Specialty Code states that no projection is allowed for clearance less than 8 feet above grade. For clearances above grade greater than 8 feet, 1 inch of projection is allowed for each additional inch of clearance, provided that no such projection shall exceed a distance of 4 feet).
- C. **Area.** Maximum wall area of all windows which project into public right-of-way on a wall is 40% of the wall's area.
- D. **Wall Length.** Maximum width of any single window which projects into public right-of-way is 50% of its building wall length.
- E. **Window Area.** Minimum of 30% window area at the face of the projecting window element. Projections greater than 2 feet 6 inches must have windows at all sides. Required side windows must be a minimum of 10% of side walls.
- F. **Width.** Maximum width of 12 feet for each projecting window element. When approved through design review, the width may vary provided the area of all windows on a wall which project into public right-of-way does not exceed 40% of

the wall's area and the width of any single projecting window element does not exceed 50% of its building wall's length.

- G. Separation.** Minimum separation of 12 feet measured from other projecting window elements on the same elevation or plane of wall. When approved through Design Review, required separation may vary provided the area of all projecting window elements on a wall does not exceed 40% of the wall's area and the width of any single projecting window element over the right-of-way does not exceed 50% of its building wall length.

Findings

The projection along the MISS Apartments' eastern façade does not satisfy Criteria E (Window Area) and Criteria F (Width) and therefore do not meet the definition of an oriel window.

SECTION II-B DEFINITIONS

ABOVE GRADE ENCROACHMENTS

Sub-section 1

Type I Skystructure

A structure spanning the rights-of-way (intended only for the movement of people or goods) whose width is 14 feet or less, and meeting the standards and policies of the appropriate district.

Finding

The proposed encroachment does not meet the criteria for Type I Skystructure. (Does not meet the definition of Type I Skystructure)

This policy is met.

Sub-section 2 Skywalk

A Type I or II Skystructure used only for pedestrian movement and not containing furniture.

Finding

The proposed encroachment does not meet the criteria for Skywalk. (Does not meet the definition of Skywalk)

This policy is met.

Sub-section 3 Type II Skystructure

A structure spanning the right-of-way with a width ranging from 14 feet to 60 feet, or having a width less than 14 feet but containing a function other than the movement of people and goods, or having a height greater than 12 feet.

Finding

The proposed encroachment is not considered a Type II Skystructure. (Does not meet the definition of Type II Skystructure)

This policy is met.

Sub-section 4 Type III Skystructure

A structure spanning the right-of-way with a width of 60 feet or more, or a height greater than 12 feet.

Finding

The proposed encroachment does not meet the criteria for Type III Skystructure. (Does not meet the definition of Type III Skystructure)

This policy is met.

Sub-section 5 Building Projection

A part of a structure or an appendage that extends into the right-of-way above grade and that is not a sign, and is not specifically covered under Title 24 of the City Code.

Finding

The proposed encroachment does meet the criteria for Building Projection. The encroachment is not a sign and is not specifically covered under Title 24 of the City Code (Section 24.40 – Use of and Projections Over Public Streets and Property). (Does meet definition of Building Projection)

This policy is met.

Sub-section 6 Through-Building Arcade

A concourse or corridor through a building which connects skywalks. Building arcades would normally be used in conjunction with a network of skywalks.

Finding

The proposed encroachment does not meet the criteria for Through-Building Arcade. (Does not meet the definition of Through-Building Arcade)

This policy is met.

Sub-section 7 Visual Focal Points

Architecturally-significant buildings or structures that help serve to identify downtown, downtown districts, or to provide orientation within the downtown.

Finding

The proposed encroachment does not meet the criteria for Visual Focal Points. (Does not meet the definition of Visual Focal Points)

This policy is met.

SECTION III GENERAL POLICIES

- A. The public right-of-way is an important resource and the utility of the right-of-way shall not be impaired. The City shall discourage private ownership or use in the public right-of-way.
 1. The public right-of-way provides for the movement of pedestrians and vehicles, for open space, landscaping, light, air, and vistas. As an important public resource, the public right-of-way should not be easily given up for private ownership or use.
 2. The street-level sidewalks are the primary pedestrian circulation system and encroachments should not be permitted which adversely affect this system.

Finding

The MISS Apartments building does not encroach into the public right-of-way at the street level. The façade above street level projects out over the sidewalk without the use of any

columns. All projections extend to the top of the building, floor four. The deepest project of the façade is 3' over the property line and is centered over the main building entry, is 20 feet wide and begins approximately 10 feet above the sidewalk.

These projections do not detract from pedestrian circulation or movement. The largest of the projections, at the main building's entryway, projects 3' into the right-of-way. The remainder of the upper façade projects 2' into the right-of-way. The total area of the 3' projections is 720 sq. ft. and the total area of the 2' projection is also 720 sq. ft.

The overhangs will provide a fully open clearance that allows for light, air and vistas to be maintained at the street level. Additionally, this overhang is over the newly dedicated 2' street zone which provides a wider sidewalk than was previously available along the site. Therefore, the proposed encroachments do not compromise or alter the street level sidewalks, which remain as the primary pedestrian circulation system.

This policy is met.

Sub-section B As a public resource, encroachments shall only be permitted as a part of a project fulfilling a significant public goal of the Comprehensive Plan, the Downtown Plan, or other adopted Plans and Policies. Encroachments must be in conformance with the City objectives for promoting the "Portland Character" as defined by the rivers, parks, vistas, buildings of architectural significance, and other important visual images as defined in the Comprehensive Plan, Downtown Plans, Development Regulations, and Design Guidelines, or neighborhood or area plans or guidelines.

Finding

The building's contextual and historically-based design is intended to enhance the existing character of Mississippi Avenue and the Boise Neighborhood, in general, and utilizes building form and proportion drawn from traditional neighborhood buildings. In support of this design goal, projecting bays serve as building massing accents at key locations on the facades. The size, or width of the bays are scaled in relation to relatively large building facades, and the proportions, window areas, and materials of the bays selected to emphasize a vertically consistent with the architectural style of neighboring buildings that in several

pre-design meetings the Boise Neighborhood Association identified to the developer as desirable.

The projecting bays as proposed intentionally include less window area than solid wall to emphasize the material surfaces, texture, and massing of the bay form as an accent to the overall building façade. In addition to the windows that are included, decorative glass tile spandrels between the windows provide visual interest.

The ground floor windows are wide, low and open, providing a positive pedestrian experience consistent with adjacent buildings, enhancing this site.

This policy is met.

Sub-section C In order to receive City approval for encroachments, an applicant must demonstrate a public benefit which cannot be achieved without the encroachment.

Finding

The project as designed is a carefully proportioned composition of complementary elements, designed to create an appropriate balance of cohesion, variety, and hierarchy. The encroachments as designed better serve to strengthen these qualities while meeting with the Boise Neighborhood Association requests to provide a variety of apartment types, sizes and price ranges in a transit oriented, bicycle oriented and pedestrian oriented new development in the heart of the Mississippi Avenue commercial district.

This policy is met.

Sub-section D Final approval of encroachments in the public right-of-way rests with City Council. The management of encroachments is assigned to and should remain with the City Engineer.

Finding

The applicant has worked with the City Engineer to meet all of the applicable City codes and requirements for the proposed building projections into the right-of-way for the existing encroachment.

This policy is met.

SECTION VII CITY-WIDE DISTRICT POLICIES

Sub-section B-4 Building Projections

Finding

The encroachment is an existing encroachment, not a planned or designed encroachment. Permitting will be after-the-fact since the building exists and demolition and reconstruction are not feasible and will be disruptive to residents, businesses, and the neighborhood.

The encroachment allows for different price ranges for units to allow a broader spectrum of incomes. The projection clearance is acceptable for the needs of the area with the additional 2' dedication (also existing). The encroachment avoids excessive blockage of natural sunlight for pedestrians on the sidewalk, as the property has dedicated 2' to provide for wider sidewalks than the existing conditions prior to development. Additionally, there are no columns in the public right-of-way supporting the projection.

This policy is met.

CONCLUSION

The existing encroachment fulfills the encroachment policies for City-Wide Districts (section VII) and the General Policies (section III) and will allow for unrestricted pedestrian, transit, and commercial activity at grade while supporting a broader range of housing options and therefore constitute a public benefit. Based on information provided, the proposed encroachment is an existing encroachment and there appears to be no viable option for the applicant that would not result in significant disruption for the neighborhood, businesses, and residents and result in reduced public benefits for a broad range of housing options. The proposed encroachments conform to development standards stated in *Encroachments in the Public Right-of-Way*. The proposed encroachments, on balance, meet the applicable review criteria based on the following condition.

- The property owner will enter into a lease agreement with the City for use of the space in the public right-of-way.