



City of Portland, Oregon Bureau of Development Services Land Use Services

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Date: April 15, 2009

To: Interested Person

From: Sylvia Cate, Land Use Services

503-823-7771 / scate@ci.portland.or.us

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 reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 09-112450 AD

GENERAL INFORMATION

Applicant: Toni Mendenhall and Andrew D Soulek, owners

2136 SE Taylor St

Portland, OR 97214-2833

Site Address: 2136 SE TAYLOR ST

Legal Description: LOT 1 BLOCK 5, CENTRAL PK E P

Tax Account No.: R147600440 **State ID No.:** 1S1E02AD 05300

Quarter Section: 3132

Neighborhood: Buckman, contact Susan Lindsay at 503-725-8257.

Business District: Belmont Business Association, contact Don Porth at 503-231-9118. **District Coalition:** Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.

Plan District: None **Other Designations:** None

Zoning: R5, Single Dwelling Residential 5,000

Case Type: AD, Adjustment

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

Committee.

Proposal:

The applicant proposes to remodel the second floor of the existing house with new paint, flooring, kitchen appliances and a new free standing gas heater. There will be no structural changes and no changes to the exterior of the home. The applicant proposes to use the second floor space as an Accessory Dwelling Unit [ADU] which is allowed by right in the R5 zone.

However, development standards for ADU's limits the maximum size of an ADU. The size of the accessory dwelling unit may be no more than 33% of the living area of the house, attached house, or manufactured home or 800 square feet, whichever is less. The proposed second floor

ADU is 30 % of the main living area of the house, but is larger than 800 square feet. Therefore the applicant requests an Adjustment to allow the second floor ADU to exceed the 800 square foot limit and comprise a total of 1,016 square feet. Please see attached site plan.

Relevant Approval Criteria:

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 site is a corner lot developed with a house and detached garage in the R5 zone. The development and uses surrounding the site are residential and the R5 zone is mapped on adjacent properties in all four directions. To the northwest and the north, roughly half a block away are lots in the R2.5 zone.

Zoning: The R5 zone is a high density single dwelling zone that implements the Comprehensive Plan Map designation for single dwelling residential.

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 23, 2009**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Transportation Engineering
- Bureau of Parks-Forestry Division

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on March 23, 2009. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 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 applicant proposes to remodel the second floor of the existing house and use the second floor space as an Accessory Dwelling Unit [ADU] which is

allowed by right in the R5 zone. The proposed second floor ADU is 30 % of the main living area of the house, but is larger than 800 square feet. Therefore the applicant requests an Adjustment to allow the second floor ADU to exceed the 800 square foot limit, as the second floor is 1,016 square feet in area.

The purpose for the regulations limiting the size of Accessory Dwelling Units is found at 33.205.030 A, which states:

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 houses, attached houses, or manufactured homes; and
- Provide adequate flexibility to site buildings so that they fit the topography of sites.

Because the proposed ADU is the second floor of the existing house, and no exterior changes are proposed, the dwelling until will have no visual impacts. Therefore, the size of the ADU will have no impact on the desired character or livability of the residential neighborhood and will be consistent with the general building scale of the surrounding residential development. Even with an approval, the ADU will be smaller than the main house. Therefore, because the proposed ADU is completely internal to the house, the adjustment request equally meets the purpose of the ADU regulations. For these reasons, this criterion is met.

B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The site is in a residential zone. Because the proposed ADU will be the second floor of the existing house, no exterior changes are proposed, and the ADU provides an additional unit in the residential zone, the proposal will have no adverse impacts on livability or appearance of the residential area. For theses reasons, 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, therefore the proposal is inherently self-mitigating. 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 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 the second floor of the existing house into an ADU. No exterior changes are proposed. Because the ADU is less than 30% of the primary living area, but exceeds 800 square feet, an Adjustment is necessary. Given the lack of any visual impacts and the internal location of the ADU, there are no adverse aspects of the proposal that could impinge on the livability of the immediate residential area. The proposal meets all of the applicable approval criteria, and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of:

- An Adjustment to 33.205.030 to allow the 1,016 square foot second floor to be an ADU exceeding the maximum of 800 feet, but less than 30% of the primary residence, per the approved site plans, Exhibits C-1, signed and dated April 13, 2009, 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. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-112450 AD.

Staff Planner: Sylvia Cate

Decision rendered by: on April 13, 2009

By authority of the Director of the Bureau of Development Services

Decision mailed: April 15, 2009

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 March 5, 2009, and was determined to be complete on March 19, 2009.

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 March 5, 2009.

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.

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, which will hold a public hearing. Appeals must be filed by 4:30 PM on April 29, 2009 at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. An appeal fee of \$250 will be charged. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

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 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, 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 must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- Unless appealed, The final decision may be recorded on or after April 30, 2009 (the day following the last day to appeal).
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034 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.

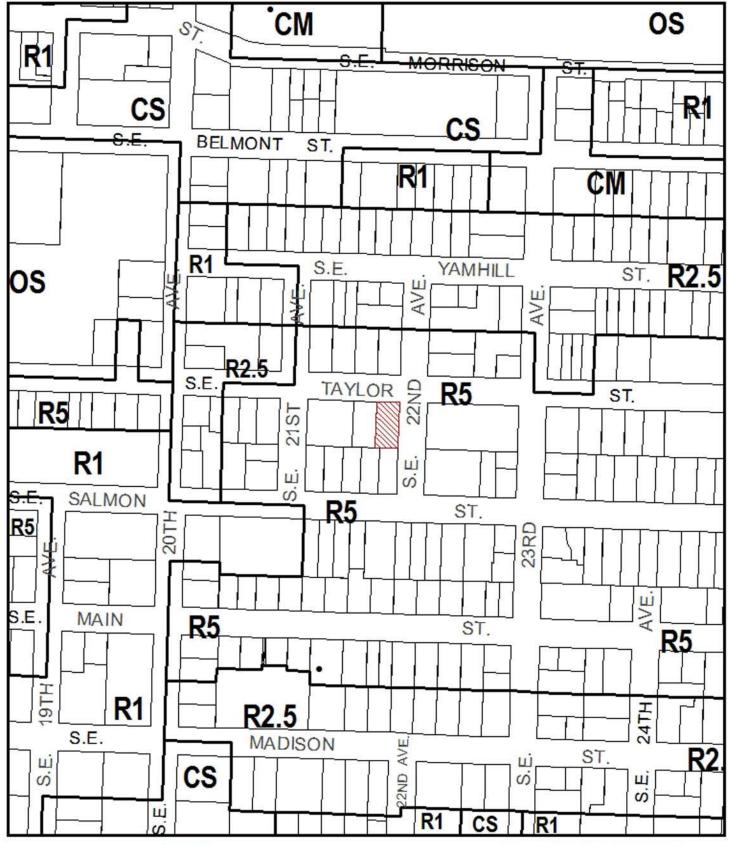
Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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.

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
- F. Correspondence: None received
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-7300 (TTY 503-823-6868).



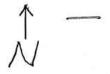
ZONING Site



LU 09-112450 AD File No. _ 3132 1/4 Section 1 inch = 200 feet Scale. 1S1E02AD 5300 State Id В (Mar 09,2009) Exhibit.



Site Map for Residence at 2136 SE Taylor



scale: 14"= 212" TAYLOR st. grass grass 10' sidewalk DISTRIBUTION OF THE PROPERTY O 20' property line grass Constant Con 4 St. 10 St porch 8' front door chimney sidewalk 101' residence 126' 62 grass REQUEST TO ON ZND FLOOR **⊬**8′→ 27 4* 6'> back door deck 31' 35' 15' driveway LU09-112450AD property line 66'