



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

1900 SW 4th Avenue, Suite 5000 Portland, Oregon 97201 503-823-7300 Fax 503-823-5630 TTY 503-823-6868 www.portlandonline.com/bds

Date: November 24, 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 09-163975 AD

GENERAL INFORMATION

Applicant: Cynthia L Coburn, property owner

PO Box 75474

Seattle, Wa 98175-0474

Site Address: 3707 NE SIMPSON ST

Legal Description: EXC E 45' LOT 1&2 BLOCK 5, KENNEDYS 2ND ADD

Tax Account No.: R444400010 **State ID No.:** 1N1E13DD 01500

Quarter Section: 2434

Neighborhood: NECN, Concordia, contact George Bruender at 503-287-4787.

Business District: None

District Coalition: Northeast Coalition of Neighborhoods, contact Lauren McCartney at

503-823-4135.

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

Zoning: R5ah: Single Dwelling Residential 5,000 with Alternative Design

Density and Aircraft Landing overlays

Case Type: AD: Adjustment

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

Committee.

Proposal:

The applicant constructed a new garage with an ADU above via building permit 07-130883 RS. During final inspection it was determined that a new heat pump serving the ADU had been placed such that it encroaches into the required 5 foot setback. Therefore the applicant requests an Adjustment to reduce the required setback for this mechanical equipment from 5 feet to 2 feet 8 inches. Attached to this Notice are plans depicting the setback request. [Note:

the original Notice stated the setback was 1 foot 6 inches; the applicant has since verified the setback dimension to the property line.]

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 site is a relatively flat lot 5,500 square feet in area and developed with a single dwelling house and detached garage with an Accessory Dwelling Unit [ADU]. Located at the northeast corner of the intersection of NE 37th and NE Simpson Street, the site is surrounded on all sides by residential uses and development typical of the R5 zone. To the east, approximately 150 feet away is the City owned Fernhill Park, zoned Open Space. Both NE 37th and NE Simpson are designated Local Service Streets at this location.

Zoning: The site is located in the R5 Single Dwelling residential zone, one of several that implements the Comprehensive Plan Designation for Single Dwelling residential. The site is also within two overlay zones: Alternative Design Density and Aircraft Landing zones. None of the regulations for the 'a' or 'h' overlay zones are triggered by the proposal.

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 on October 30, 2009. The following Bureaus have responded with no issues or concerns:

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

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on October 30, 2009. One written responses has been received from the Concordia Neighborhood Association stating no opposition 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 is requesting a setback Adjustment for a heat pump associated with an ADU. In this situation, the zoning code considers such mechanical equipment as an accessory structure, and is subject to both the setback regulations and the accessory structure requirements. The purpose statement for accessory structures is found at 33.110.250 A, which states:

This section regulates structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site. The standards provide for necessary access around structures, help maintain privacy to abutting lots, and maintain open front setbacks.

The purpose of the setback regulations are found at 33.110.220, which states:

The building setback regulations 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 houses in the City's neighborhoods;
- They promote 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.

The request to reduce the required setback from 5 feet to 2 feet 8 inches meets the purpose statement for Accessory Structures because the placement of the heat pump allows the unit to be on the site in such a way that it cannot be seen from surrounding streets or properties and therefore there is no visual prominence of this mechanical equipment. The placement does not impinge on access nor does it have impact on privacy to adjacent properties because it is located behind a fence and a thick arbor vitae hedge and is relatively low to the ground. By placing the heat pump near the rear of the garage/ADU, there is no impact on the existing open front yard.

Likewise, the placement has no negative impact on air, light or access for fire fighting. The Fire Bureau notes no concerns regarding the proposal. The placement of the heat pump does not affect the physical relationship between houses nor does it impact the general building scale in this developed residential neighborhood. The proposed reduction of the setback for the heat pump allows a fully functional ADU on the site, thus promoting diverse housing options and architectural diversity in the residential area. The reduced setback would have no impact on parking on the site. 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: Given the 'tucked away' aspect of the heat pump's location, behind a fence and buffered from the adjacent property to the north by a significant hedge of arbor

vitae, the proposal has no impact on the appearance of the residential area. The applicant notes that she has contacted the two abutting property owners regarding the placement of the heat pump, and that neither indicated any issues with noise or visual impacts. Given no comments opposing the proposal, it is assumed that there is no significant impact of the livability of the residential area. For these 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. 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 constructed a new garage with an ADU above via building permit 07-130883 RS. During final inspection it was determined that a new heat pump serving the ADU had been placed such that it is encroaching into the required 5 foot setback. Therefore the applicant requests an Adjustment to reduce the required setback for this mechanical equipment from 5 feet to 2 feet 8 inches. The proposal meets all of the applicable approval criteria, and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of:

• An Adjustment to 33.110.220, Setbacks, to reduce the setback from 5 feet to 2 feet 8 inches for a heat pump associated with an existing ADU, per the approved site plans, Exhibits C-1 through C-3, signed and dated November 20, 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-C.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-163975 AD."

Staff Planner: Sylvia Cate

Decision rendered by:

on November 20, 2009

By authority of the Director of the Bureau of Development Services

Decision mailed: November 24, 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 October 13, 2009, and was determined to be complete on .

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 13, 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. Unless further extended by the applicant, **the 120 days will expire on: February 25, 2010.**

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 December 8, 2009** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, 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 call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, 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 **December 9, 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:

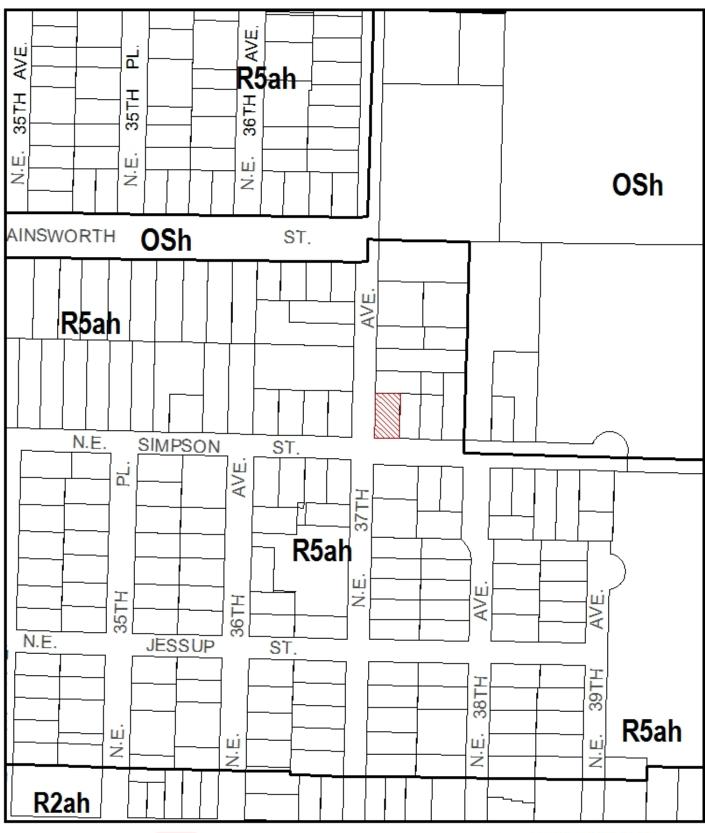
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Detail of Heat Pump
 - 3. Dimensional verification of setback distances
- 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:
 - 1. Concordia Neighborhood Assn, George Bruender; November 18, 2009: No objections
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete letter

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).



ZONING



File No. LU 09-163975 AD

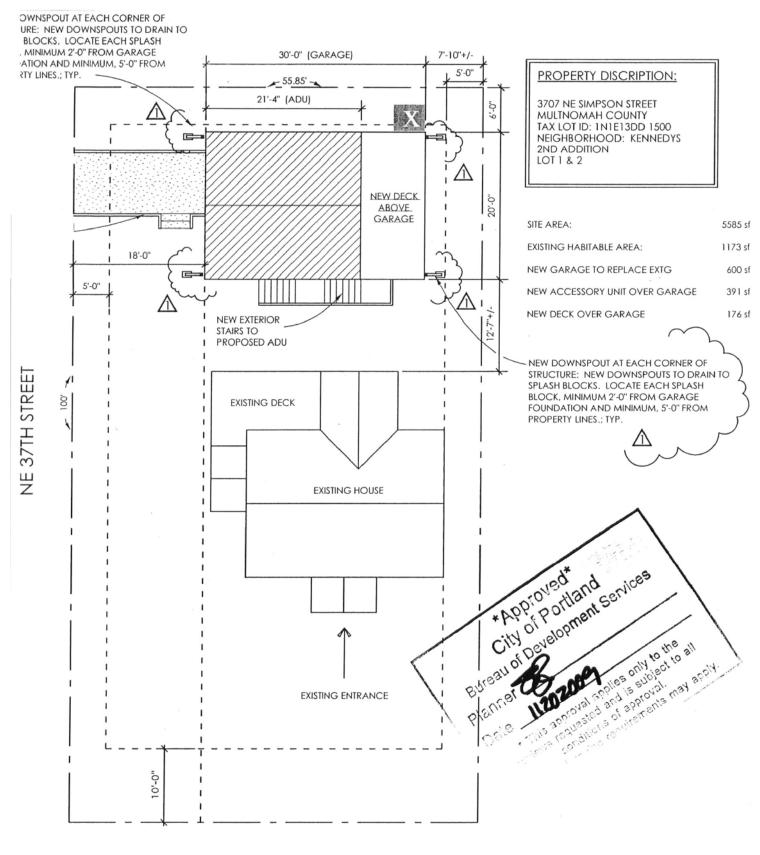
1/4 Section 2434

Scale 1 inch = 200 feet

State_Id 1N1E13DD 1500

Exhibit B (0 ct 12,2009)





SIMPSON STREET

1 SITE PLAN 09-163975 AD
A 1"=10" C-1

