

# 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:** June 2, 2011

**To:** Interested Person

From: Kathleen Stokes, Land Use Services

503-823-7843 / Kathleen.Stokes@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 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 11-132145 AD

# **GENERAL INFORMATION**

**Applicant:** Tara A Leake and Jean A Murzi

3953 NE 15th Ave Portland, OR 97212

Site Address: 3953 NE 15TH AVE

Legal Description: BLOCK 5 LOT 2, DIXON PL

**Tax Account No.:** R210500580 **State ID No.:** 1N1E23DC 04500

Quarter Section: 2632

**Neighborhood:** Sabin Community Assoc., David Sweet at 503-493-9434.

**Business District:** North-Northeast Business Assoc., Joice Taylor at 503-445-1321. **District Coalition:** Northeast Coalition of Neighborhoods, Shoshana Cohen at 503-823-

4575.

**Zoning:** R5h, R5,000, or High Density Single-Dwelling Residential, with an

Aircraft Landing (height) Overlay

**Case Type:** Adjustment Review

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

**Proposal:** The applicants constructed a small tool shed in the southwest corner of this property. The shed, which is 12 feet wide by 16 feet deep and 9.5 feet tall and has 5-inch-wide roof eaves, is located about 1.25 feet (15 inches) from the south property line. The Building Code only requires permits for accessory structures that are over 200 square feet or have an average roof height that is over 10-feet tall, so no building permit is required for this structure. However, the Portland Zoning Code, Title 33, requires that accessory structures that are over 6 feet tall be located a minimum of 5 feet from side and rear property lines in the R5 zone. Exceptions to this requirement are approved through Adjustment Reviews if all of the relevant approval criteria are met or if the criteria can be met through conditions of approval. Therefore, the applicants are requesting approval of an Adjustment to Code Section 33.110.220 to reduce the minimum required building setback from the south side property line, from 5 feet to 1.25 feet (15 inches) to the building wall and from 4 feet to 10 inches for the roof eave of the tool shed.

**Relevant Approval Criteria:** To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

#### **ANALYSIS**

**Site and Vicinity:** The applicants' site is a 5,250 square-foot parcel that is located on the west side of NE 15<sup>th</sup> Avenue, one lot to the south of the intersection with NE Shaver Street. The site is developed with a single-dwelling residence that was constructed in 1926. The area around the site is generally developed with other single-dwelling residences of a similar vintage.

**Zoning:** The site is zoned R5, High Density Single-Dwelling Residential. This zone is intended to accommodate single-dwelling development, with an average of one unit per 5,000 square feet of site area. This site also has an "h" or Aircraft Landing Overlay. The provisions of this overlay zone, that limit the height of structures within the aircraft landing approach patterns for the Portland International Airport, are not relevant to this 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 **May 2, 2011**. The following Bureaus have responded to indicate that there are no issues or concerns related to approval of the requested Adjustment. Agencies that provided written comments regarding permit review requirements are noted with exhibit numbers. The other agencies listed below provided electronic responses of, "no concerns":

- Environmental Services indicated that gutters and downspouts would need to be installed to prevent storm water runoff onto the adjacent property (Exhibit E-1).
- Water Bureau provided information on the existing water service for the site (Exhibit E-2).
- Transportation Engineering
- Fire Bureau
- Site Development Section of BDS
- · Life Safety Plan Review Section of BDS
- Parks-Forestry Division

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on May 2, 2011. 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 of 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 to provide certainty and rapid processing for land use applications.

## 33.805.040 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below have been met.

- **A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and
- **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

- **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
- D. City-designated scenic resources and historic resources are preserved; and
- **E.** Any impacts resulting from the adjustment are mitigated to the extent practical.
- **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 AND CONCLUSIONS

The applicants' proposal meets all of the relevant approval criteria: *The purposes of building setback requirements are to maintain light, air, separation for fire protection, and access for fire fighting. Setback standards also reflect the general building scale and placement of development in the City's neighborhoods and promote a reasonable physical relationship between residences. They promote options for privacy for neighboring properties and 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.* 

The applicants' request is to allow a tool shed to be located within the required building setback, 1.25 feet (15 inches) from the south side property line. The roof eaves come to 10 inches from the side property line. There will be no impacts on light or air from this proposal, beyond what would be expected by right. The structure could actually be located in this setback area, if it were larger, as it could then be considered to be a garage and would qualify for the exception that allows garages to be located in the side and rear setbacks. This structure is only 16 feet deep and so it could not contain the standard 9-foot by 18-foot parking space and so it cannot be classified as a garage. There will be adequate separation for fire protection and access for fire fighting from this proposal because, although a building permit is not required, the shed will be required as a condition of approval of this review, to have a one-hour fire-rated construction on the south side. Privacy will not be an issue, as there will be no openings on the side of the building that faces the south property line. The shed is similar to other structures in the neighborhood and so it appears to be compatible with the surrounding development, in regards to the general building scale and placement of development and the reasonable physical relationship between residences. The proposal will maintain the building's compatibility with the neighborhood and the existing architectural diversity of the area and will not have any effect on the outdoor areas on the site. No significant impacts on livability will occur because a condition will require that the structure have gutters and down spouts installed, in order to ensure that storm water drainage from the roof will be directed away from the neighbor's property to the south. Only one Adjustment has been requested. There are no scenic or historic resources on this site; and it is not located in an environmental zone, so the criteria related to these issues do not apply. Therefore, all of the relevant approval criteria are met and the proposal can be approved, in substantial compliance with the proposed site plan and elevation drawings.

#### 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.

#### ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.110.220 to reduce the minimum required building setback from the south side property line, from 5 feet to 1.25 feet (15 inches) to the building wall and from 4 feet to 10 inches for the roof eave of the tool shed, in general compliance with the approved site plans, Exhibits C-1 through C-2, signed and dated May 31, 2011, subject to the following conditions:

- A. As part of the permit application submittal, the following development-related conditions (B through D) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE Case File LU 11-132145 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. A zoning permit is required, in order to determine that the Conditions of Approval have been met.
- C. One-hour fire-rated construction is required on the south side of the structure, within three feet of the property line.
- D. Gutters and down spouts must be installed on the building, in order to ensure that storm water drainage is directed away from the adjacent property to the south.

Staff Planner: Kathleen Stokes

Decision rendered by:

on May 31, 2011.

By authority of the Director of the Bureau of Development Services

Decision mailed: June 2, 2011

**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 April 20, 2011, and was determined to be complete on **April 28, 2011.** 

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 April 20, 2011.

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 extended by the applicant, **the 120 days will expire on: August 27, 2011.** 

# 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 June 16, 2011** 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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 <a href="https://www.portlandonline.com">www.portlandonline.com</a>.

**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 June 17, 2011- (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:

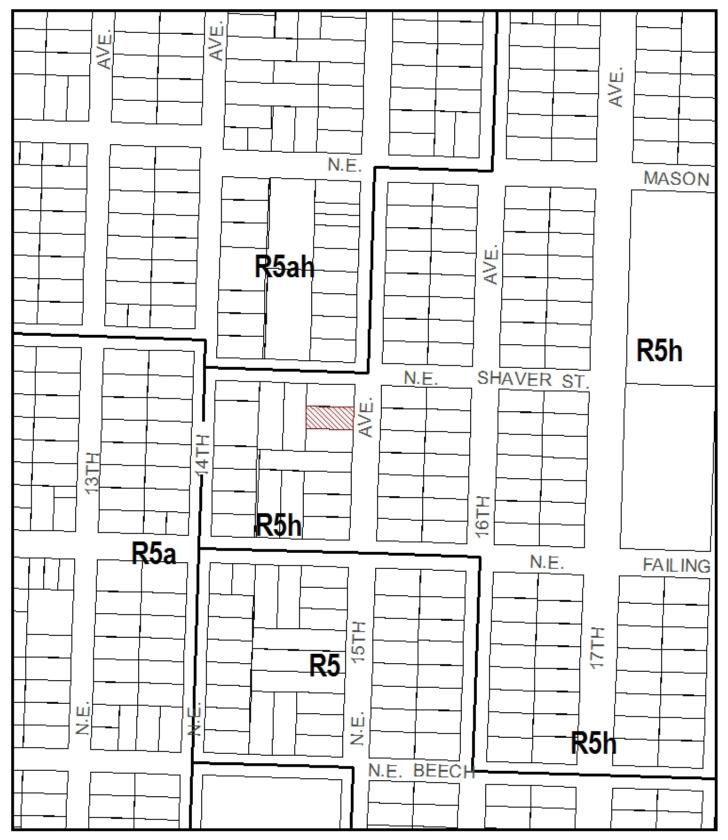
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

## **EXHIBITS**

#### NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevation Drawing (attached)
  - 3. Section Drawing
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Water Bureau
  - 3. Summary of electronic responses from City agencies
- F. Correspondence: (none received)
- G. Other: (none)

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).

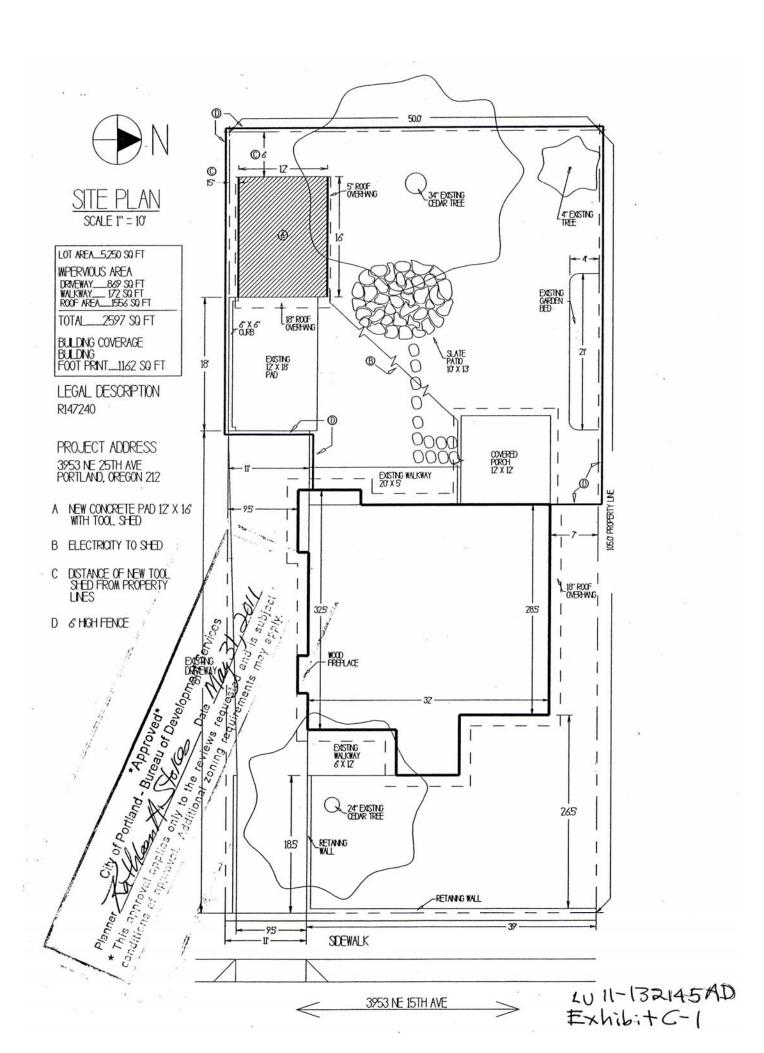


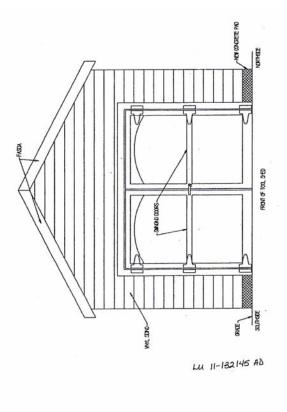
ZONING Site

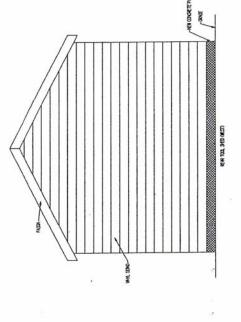
LU 11-132145 AD File No. 2632 1/4 Section \_ 1 inch = 200 feet Scale.

1N1E23DC 4500 State\_Id . (Apr 21,2011) Exhibit \_

NORTH







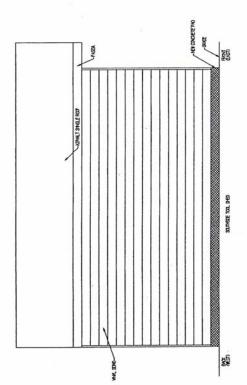


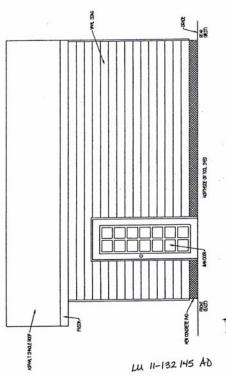
\* This entrest applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

City of Portland - Bureau of Development Services

\*Approved\*

Styleen A. Store Date





Exhibitc-2