



City of Portland, Oregon

Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

July 28, 2011 Date:

To: Interested Person

From: Nan Stark, Land Use Services

503-823-7828 / Nan.Stark@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 11-143575 AD

GENERAL INFORMATION

Applicant/Owner: John Anderson

Anderson Portland Properties LLC

9111 N Vancouver Ave Portland OR 97217

Representative: Ryan Schera, Group Mackenzie

1515 SE Water Ave Ste 100

Portland OR 97214

Site Address: 2544 NW UPSHUR ST

Legal Description: BLOCK 1 W 27' OF LOT 4 LOT 5-7, ATKINSONS ADD; BLOCK 13

LOT 1&7, NORTH PORTLAND ADDITION

Tax Account No.: R042800040, R612701690

1N1E29DD 06000, 1N1E29DD 06100 State ID No.:

Quarter Section: 2826

Neighborhood: Northwest District, contact John Bradley at 503-313-7574.

Business District: Nob Hill, contact Kay Wolfe at 503-227-0898.

District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.

CM, Mixed Commercial Zoning:

Case Type: AD, Adjustment

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

Committee.

Proposal:

The owner of this property wishes to develop a 6-space parking area at the rear of the existing building. There is an existing driveway that is between 17.5 and 22 feet wide, leading to an area at the rear that is currently undeveloped. The proposal is to create 6 parking spaces at the rear. Due to the grade change from the rear of the building to the rear property line, the parking area would need to be graded with a 3 to 4-foot high retaining wall around it.

As proposed, the parking lot does not meet the Zoning Code development standards for setbacks and landscaping. The Zoning Code requires a 5-foot setback, landscaped with shrubs, trees and groundcover around the perimeter of the parking area and along the property line adjacent to the driveway. The owner is requesting Adjustments to reduce the required 5-foot setbacks. Since the original notice for this proposal and in response to concerns of staff, the owner modified the request, adding to the depth of the setback along the rear and west side of the parking area, and adding three trees. The Adjustments requested are to reduce the setback from the required 5 feet to between 2½ feet and 5 feet (following the slant of the south (rear) property line), with a retaining wall in the middle of the setback; to approximately 4 feet along the west side of the parking area; and to 18 inches along the west side of the driveway. The required shrubs are proposed along the driveway in the 18-inch setback; the required landscaping (2 trees, shrubs and groundcover) is proposed in the west setback adjacent to the parking area). The required trees in the west setback along the driveway are requested to be waived. Shrubs, one additional tree, and groundcover are proposed in the rear setback, with the shrubs and tree between the property line and retaining wall, and groundcover in the remainder of the setback, which the front of the parked vehicles can extend over. There is an 8inch tree on the south property line that will remain. Consequently, the Adjustments are to zoning code standard 33.266.130 (Parking area development standards) to reduce the depth of the landscape setbacks as described, and to waive the required trees in the west setback along the driveway.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the relevant approval criteria of 33.805.040 A.-E., Adjustments.

ANALYSIS

Site and Vicinity: The site is 7,073 square-feet in area and is developed with a commercial building that was built in 1956. The building has two bays facing the street on each side of it, and an entry and windows between them. A graveled, partially paved driveway is to the west side, and a 6-foot high chain-link fence extends along the west property line. To the rear of the building is undeveloped land containing gravel and weeds, situated a few feet below the abutting residential properties to the south and east. A retaining wall is along the east side and a chain-link fence topped with barbed wire is along the rear property line.

The site is located between NW 25th and 26th Avenue on Upshur Street. The vicinity is characterized primarily by multi-dwelling development, with the exception of the abutting property to the west, which is also a commercial site. Upshur St is a local service street for all modes. The neighborhood collector streets of Vaughn and Thurman are on either side of it, and they are also transit streets. The site and vicinity are in the Northwest Pedestrian District.

Zoning: The site is zoned CM, Mixed Commercial. This zone corresponds to the Urban Commercial designation of the Comprehensive Plan. The CM zone requires at least one square-foot of residential development for every square-foot of commercial development. This site has not been occupied by residential uses, and consequently is nonconforming. A site such as this that is nonconforming in its use is allowed to remain as such, but cannot be vacant for more than three years or the nonconforming rights are lost and future uses must conform to the zoning code requirements.

Land Use History: City records indicate there are no prior land use reviews for this site.

Summary of Applicant's Statement: The owner wishes to create a parking area at the rear of the building to serve future tenants; improvements to the building will follow. He states that the constraints created by the building location restrict meeting the landscaping standards, and proposes alternatives to those standards.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **June 30, 2011**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation
- Water Bureau
- Fire Bureau

- Site Development Section of BDS
- Life Safety Review section of BDS
- Bureau of Parks-Forestry Division

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 30, 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 (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 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 development standards for parking areas promote vehicles areas which are safe and attractive for motorists and pedestrians. The parking area layout standards are intended to promote safe circulation within the parking area, provide for the effective management of stormwater runoff from vehicle areas, and provide for convenient entry and exit of vehicles. The setback and landscaping standards:

- Improve and soften the appearance of parking areas
- Reduce the visual impact of parking areas from sidewalks, streets and especially adjacent residential zones;
- Provide flexibility to reduce the visual impacts of small residential parking lots;
- Direct traffic in and shade and cool parking areas;
- Reduce pollution and the amount and rate and temperature of stormwater runoff from parking areas; and
- Decrease airborne and waterborne pollution.

The applicant wishes to develop the rear of the property with a 6-space parking area. This requires two Adjustments to zoning code standards:

- to reduce the required 5-foot landscape setbacks, to between 2½ and 5 feet along the south (rear) property line, with a 6-inch deep retaining wall in the middle of the setback; to 4 feet along the west side of the parking area; and to 18 inches along the west side of the driveway.
- To waive the required trees in the west setback. The standard requires one tree every 15 to 30 feet, depending on the species are proposed to be waived.

Shrubs, one additional tree, and groundcover are proposed in the rear setback, with the shrubs and tree between the property line and retaining wall, and groundcover in the remainder of the setback, in its reduced depth as described above.

The location of the building on the site largely determines what is possible at the rear of the site, and creates the constraints to developing the rear parking area that result in the requested Adjustments to the landscaping standards. The current condition of the proposed parking area is poor; it is unusable in this state due to uneven ground filled partially with gravel, and the remainder untended weeds, all sitting below the grade of the abutting properties on all sides. As a result, the proposal represents a fairly significant improvement to the site which will enhance its usability as well as its appearance.

Although there are only 18 inches along the west property line for landscaping, due to the space available for two-way access between the building and the west property line, this amount is adequate for planting a row of shrubs. Currently a chain-link fence separates the site and the abutting commercial property to the west. By removing some asphalt for 18 inches of landscaping, the proposed shrubs (Nandina domestica and Ilex glabra), which will grow to a height of at least 6 feet at maturity, will over time offer a landscape screen that will more clearly separate the properties. In addition, it will offer all of the benefits listed above as the reasons for the landscaping requirement, by visually softening the paved areas and hard edges, contributing to pollution reduction and stormwater retention benefits, and generally enhancing the site's appearance as seen from the street, which is predominantly occupied by residential structures.

At the rear, the site abuts three residential properties that appear to be single dwellings, and a multi-plex development to the east. The three lots directly to the rear contain dwellings that have minimal back yards, and are built with rear decks that are quite close to the common property line between them and the subject site. The proposal adds one tree in the east side of the rear setback, one tree in the east setback, and two trees in the west setback, all to the rear of the building in the perimeter of the parking area. In addition, two trees are proposed in an island on the east side of the parking spaces. There is an existing tree in the west side of the rear setback, and another one a few feet west of it that is less than 5 feet from the subject rear property line. This is a total of 6 new trees in and around the parking area. These trees more than satisfy the tree requirements in the perimeter setbacks of the parking area, all adjacent to the residential properties. They will fulfill the purpose of the standard, providing the pollution-reduction qualities, as well as shading and creating a fairly strong visual separation between the subject site and adjacent properties.

The retaining wall in the middle of the rear setback will be 18-inches deep, and will separate the setback into two landscape areas: one which will in effect screen the parking area for the sake of the abutting properties, at the higher grade meeting the top of the retaining wall, and the other that will be at grade level of the parking area, below the retaining wall. The latter will contain groundcover only, and will provide vehicle overhang space. The zoning code allows the front two feet of parking spaces to be landscaped. This is similar to what is proposed except that only one foot will be landscaped, and the applicant requests to count that as part of the perimeter setback area, which is not how the code normally allows this situation. Due to the site constraints posed by the building, however, this is a reasonable alternative, offering additional pervious area that can also function as usable parking space area. The additional landscaped rather than paved area will, like the configuration for landscaping behind the retaining wall, contribute to pollution and stormwater runoff reduction, supporting the purpose of the landscaping regulation for parking areas.

For these reasons, this criterion is met for the two proposed Adjustments.

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 the CM, Mixed Commercial zone. It is in the Northwest Pedestrian District. NW Upshur St is a local service street for all modes. NW Thurman and Vaughn Streets to the north and south are classified in the *Transportation System Plan* as Neighborhood Collector streets, Transit Access Streets, and Bikeways.

The *Northwest District Plan* was adopted by City Council in 2003 and includes a policy specifically about the subarea in which the proposal is located. Policy 15, Thurman-Vaughn Subarea intends to retain the established pattern of residential and commercial development, while acknowledging the subarea's proximity to the Industrial Sanctuary. The policy seeks to enhance the pedestrian environment of the main street (Thurman St) and overall subarea, through pedestrian safety and transit service improvements.

The proposal is essentially to enhance the opportunities for this commercial site by utilizing the undeveloped, derelict rear portion of the property behind the building for a small parking area. Such improvement to the site will enhance its viability and marketability, consistent with the zoning and the desired character as described in the neighborhood plan. Therefore, 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: Two adjustments are requested; to reduce the depth of the landscape setbacks as previously described, and to waive the required trees in the west setback along the driveway. The commercial zones are intended to provide opportunities for commercial development that serve local and/or regional markets. The CM zone is intended to be a mixed-use zone with both residential and non-residential uses on a site. In this case, the owner wishes to enhance the site with the development of a small parking area to the rear of the building, thus optimizing the entire site. This is consistent with the purpose of the commercial zones, creating a more viable site that will lead to future occupancy of commercial tenants, and therefore satisfies this criterion.

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 adjustments. The applicant has responded to staff concerns about the significant reductions in landscaping, as originally proposed, by adding 3 more trees and a fairly substantial amount of landscaping area along all three perimeters of the parking area. As a result, the shrub and tree density are essentially in compliance with zoning code standards, in a slightly reduced depth of the west and south setbacks.

The west setback that separates the site from the abutting commercial property is proposed to be landscaped with two species of shrubs that will grow to 6 feet in height or more, along the existing new chain-link fence. The combination of shrubs and fencing will result, over time, in a green wall, which will enhance and soften the site with greenery while also providing a clear delineation between properties. From the street, the addition of shrubs will visually enhance the site and will enhance its interaction with the surrounding residential development. While no trees are proposed along the driveway, the shrubs will provide a fairly significant green edge.

With only 18 inches of landscape setback available, shrubs will be the only planting option of size that will be viable in this area. Trees would not be able to survive in such a constricted space, surrounded by asphalt on all sides, and thus should not be considered as an option. The existing building creates the constraints, and the tradeoff is to allow a two-lane driveway that can be safely navigated in lieu of trees.

At the rear of the site where it abuts residential uses, the proposal will add substantial landscaping, while ensuring with the fence above the retaining wall that residents of the abutting properties will not inadvertently fall into the proposed parking area, several feet below those properties. The new shrubs, groundcover and trees will provide a strong screening between properties. Additionally, the grade of the parking area is 3 to 4 feet below the adjacent properties, and consequently vehicles and headlights will be fully obscured by the retaining wall on all three sides. For these reasons, 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, which is designated on the zoning map by either a "c" or "p" overlay. Therefore, 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 has requested two Adjustments to parking lot landscaping standards, as part of a plan to develop a small parking area to the rear of the existing building. The alternative plan proposed results in a fairly substantial amount of landscaping in and around the 6-space parking area that will be close to meeting the standards, but in an arrangement that will work within the constraints of the site. The reduction of trees along the driveway, also constrained by the location of the building, will result in a green living screen that will enhance the site's appearance as seen from the site. The proposed landscaping additions will provide pollution reduction and other environmental-related benefits intended by the regulations. The analysis shows that the alternative landscaping scheme proposed satisfies all of the relevant Adjustment approval criteria, thus allowing for an affirmative decision.

ADMINISTRATIVE DECISION

Approval of two Adjustments to zoning code standard 33.266.130 G:

- to reduce the required 5-foot landscape setbacks, to between 2½ and 5 feet along the south (rear) property line, with a retaining wall in the middle of the setback; to 4 feet along the west side of the parking area; and to 18 inches along the west side of the driveway.
- To waive the required trees in the west setback, which will be landscaped with shrubs only, as shown on the site/landscape plan, with a minimum of two species of evergreen shrubs that will grow to at least 6 feet in height at maturity.

This approval is subject to the approved revised site plan and landscaping plan, Exhibit C-1, signed and dated July 25, 2011, subject to the following condition:

A. As part of the building permit application submittal, the site plan must be labeled "ZONING COMPLIANCE PAGE - Case File LU 11-143575 AD". All requirements must be graphically represented on the site and landscape plan, and must be labeled "REQUIRED."

Staff Planner: Nan Stark

Decision rendered by: on July 25, 2011

By authority of the Director of the Bureau of Development Services

Decision mailed: July 28, 2011

About this Decision. This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. 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 May 27, 2011, and was determined to be complete on **June 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 May 27, 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 further extended by the applicant, **the 120 days will expire on: October 26, 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 August 11, 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 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 August 12, 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.

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 (revised statement, June 22, 2011)
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan, revised (attached)
 - 2. Original drawings: site plan, grading plan, utility plan, details
- 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
 - 7. Life Safety Review section of BDS
- F. Correspondence: none
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete submittal letter, June 16, 2011
 - 3. Email correspondence, Stark-Schera, June 24 through June 30, 2011

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).

