

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

Date: October 30, 2012 **To:** Interested Person

From: Shawn Burgett, Land Use Services

503-823-7618 / shawn.burgett@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 the version located on the BDS website http://www.portlandonline.com/bds/index.cfm?c=46429. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 12-176663 AD GENERAL INFORMATION

Applicant: Steven & Krista Shipsey

1565 SE Umatilla St Portland, OR 97202

Site Address: 1565 SE UMATILLA ST

Legal Description: BLOCK 68 LOT 5, SELLWOOD

Tax Account No.: R752711150 **State ID No.:** 1S1E23DC 16700

Quarter Section: 3832

Neighborhood: Sellwood-Moreland, contact Ellen Burr at 503-234-2233. Sellwood-Westmoreland, contact Tom Brown at 503-381-6543.

District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010.

Zoning: R5 (Single Family Residential 5,000)

Case Type: AD (Adjustment)

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

Committee.

Proposal:

The applicant is proposing to build a new detached garage on the footprint of the existing single story detached garage located in the northwest corner of the lot. The new garage is approximately 20' 3" wide by 18'3" in depth and is proposed to be located 2 ft. from the northern and western property lines, the same setback distance as the existing detached garage.

The applicant is proposing to add a second story craft room to the new detached garage which will result in an increase of height in comparison to the existing one story detached garage. The new detached garage will measure approximately 18' in height at mid-point of the roof (which is where the Zoning Code requires height to be measured to in this case). The second story craft room will be accessible via an external staircase along the east façade of the proposed accessory structure, which leads to a 9 ft. high deck that measures approximately 4.5 ft. wide by 24 ft. in length along the south façade of the detached garage. The southwestern corner of the deck is located 2 ft. from the property line, within the required 5 ft. side (west) setback.

Zoning Code Section 33.110.220 also limits the eave extension into a required setback to 20 percent of the depth of the setback. Therefore, for a minimum 5-foot setback, an eave may project 1 foot into the setback and be as close as 3 feet to the property line. In this case, the applicant has proposed to extend the eave 1 foot into the 2 foot setback.

Due to the increase in height proposed and the deck addition, the new garage will not conform to current Zoning Code setback standards, which require 5 ft. side and rear setbacks for accessory structures of this size. The applicant is requesting adjustments to standards found in Zoning Code sections 33.110.220 (Table 110-3, Setbacks):

- Zoning Code section 33.110.220 (Table 110-3) requires a 5 ft. building setback between a structure and the side and rear property lines. The applicant is proposing a 2 ft. side and rear setback between the proposed detached garage and the adjacent property line to the north and west. In addition, the applicant has proposed to extend the eave 1 foot into the 2 foot setback.
- Zoning Code section 33.110.250.C.3.b (1) does not allow uncovered accessory structures (decks) that are more than 2.5 ft. above ground to extend into the required building setback more than 20 percent and must maintain at least 3 ft. from the lot line. The applicant is proposing a 4.5 ft. wide by 24 ft. long deck located 9 ft. off the ground adjacent to the south façade along the second story of the detached garage adjacent to the craft room which does not meet the side setback standards in regard to the western lot line. The southwestern corner of the deck is located 2 ft. from the property line, within the required 5 ft. side (west) setback.

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 5,000 square foot lot is developed with a single dwelling residence that was built in 1907. The home is located north (across the street) from Sellwood Middle School. SE Umatilla St. is fully improved with sidewalks, curbs and a paved road. The property abutting the subject site to the north is zoned R2 (Multi-Family 2,000 sq. ft). The homes west of the subject site along SE Umatilla St. are single family homes built between 1888 and 1951. The homes located east of the subject site fronting SE 16th Ave were both built in 1902.

Zoning: The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. The "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This proposal is not using any of the provisions of the "a" overlay.

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 **September 21, 2012**. 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
- · Life Safety

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on September 21, 2012. 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 purpose of the standards for accessory structures is explained under Section

33.110.250. A as follows:

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.

Further, the purposes of the setback standard requested for Adjustment are found in Section 33.110.220, Setbacks. The setback regulations for Garages 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.
- 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 detached garage is set back approximately 76 feet from SE Umatilla St. This distance provides abundant vehicle parking area within the driveway and meets the

purpose statement by allowing adequate room for a car to park in front of a garage door without overhanging into the street or sidewalk.

The proposed detached garage is compatible with the neighborhood and will not impact the property to the north and to the west (adjacent to the detached garage) since the existing detached garage is currently located in the same location as the new proposal. The property to the north is zoned R2 (Multi-family 2,000), which allows structures as tall as 40 feet in height outside of the setback. The applicant has provided documentation (exhibit A-2) that shows the property to the northwest has a tall detached garage with a second story ADU that is clearly visible from the applicant's rear yard at the subject site. The applicant has also provided photographs that show two existing two story single family homes located directly north of the subject site that appear to be at least 30' in height and that would not be impacted by the applicant's proposed detached garage. In addition, the height of the proposed detached garage (18') is well below the maximum height allowed in the R5 zone of 30 ft. Based on the discussion above, the proposed detached garage will be compatible with the neighborhood, this criterion is met.

While the existing detached garage has exterior walls that are approximately 10 ft. in height (total height of approximately 15 ft.), the new detached accessory structure will have walls that are approximately 15 ft. in height (total height approximately 18). The increase of 5 ft. of wall height and 5.5 ft. overall height between the existing garage and new garage while maintaining the 2 ft. side and rear setback, will not impact light and air separation for fire fighting (the Fire Bureau had no concerns). Therefore, this criterion is met.

In addition, since the new structure will not be located any closer to the adjacent property lines that than previous use; the new proposal maintains a reasonable physical relationship between residences. The only increase to the buildings footprint is related to the 9 ft. high. 4.5 ft. wide, 24 ft. long second story deck which will primarily be located internal to the site along the south facade of the detached garage. The staircase is located along the east façade of the structure (internal to the rear yard) and does not affect any adjacent neighbors. The impact of the elevated deck is primarily limited to the subject site since the deck is adjacent to the driveway and back yard area associated with the site. The southwestern corner of the deck extends 3 ft. into the 5 ft. setback. It is not anticipated that the 3 ft. encroachment of the elevated deck will have any more of an impact on the privacy of adjacent neighboring properties than if the deck were setback the 5 ft. that is required by code. The deck maintains the same setback distance as the detached garage, which mitigates its impact visually since the deck blends in with the south façade of the garage, and at 9 feet in height, is much lower than the peak of the new detached garage proposed, which measures approximately 18' in height. In addition, there is mature plum tree and a large hedge that separates the proposed garage and deck from the neighbor's property to the west, which provides additional privacy.

Allowing the new detached garage and associated deck to be located within the same side and rear setbacks on the site as the existing detached garage will not impact any of the adjacent property owners negatively. The design of the new garage blends in well with the existing architectural character of the street (see exhibit C-2). Allowing the 1 ft. eaves to extend into the 2 ft. setback further contributes to the proposed detached garage fitting in better architecturally with the surrounding neighborhood, where most of the homes have eaves which extend into the side setbacks.

The requested setback Adjustment will result in a project that is consistent with the overall development pattern in the immediate area, which in turn creates a typical physical relationship between homes and existing detached garages along SE Umatilla St. Because of the separation maintained between the existing homes to the west and

the north, there are no anticipated impacts on privacy. Based on this discussion, the approval criterion which requires "promoting options for privacy for neighboring properties" has been met

For the reasons stated above, this approval 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: As stated above, the reduced side and rear setbacks of the proposed detached garage and associated deck will not detract from the livability of nearby residences. The new detached garage and deck will fit in nicely with the existing development located along SE Umatilla St. and the existing homes to the north of the subject site on the same block, with frontage along SE Tenino St. to the north. Many of the homes in this area have existing detached garages of various sizes. For these reasons, the 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: Individually and cumulatively, the requested Adjustments for the new detached garage and associated deck are consistent with the purpose of the zone and this criterion is met

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: As found under criterion A and B, the requested Adjustments will not create impacts and therefore do not require mitigation to lessen their effect. This approval criterion is satisfied.

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

Based upon the findings of this report, each applicable approval criterion is met.

ADMINISTRATIVE DECISION

Approval of Adjustments to: (1) reduce the required side (west) building setback from 5 feet to 2 feet for the detached garage with living area above (with no kitchen) (Section 33.110.220) and (2) to reduce the required rear (north) building setback from 5 feet to 2 feet for the detached garage; and (3) to allow the eave to extend 1 ft. from the north and west property lines; (4) to reduce the required side (west) setback for an uncovered accessory structure (deck) that is more than 2.5 feet above ground from 5 feet to 2 Feet, per the approved plans, Exhibits C.1 and C.2 signed and dated October 26, 2012, subject to the following condition:

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 and C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 12-176663 AD".

Staff Planner: Shawn Burgett

Decision rendered by: ______ on October 26, 2012

By authority of the Director of the Bureau of Development Services

Decision mailed: October 30, 2012

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 August 28, 2012, and was determined to be complete on **September 14, 2012.**

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 August 28, 2012.

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 November 13, 2012** 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 **November 14, 2012.**
- 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.

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:

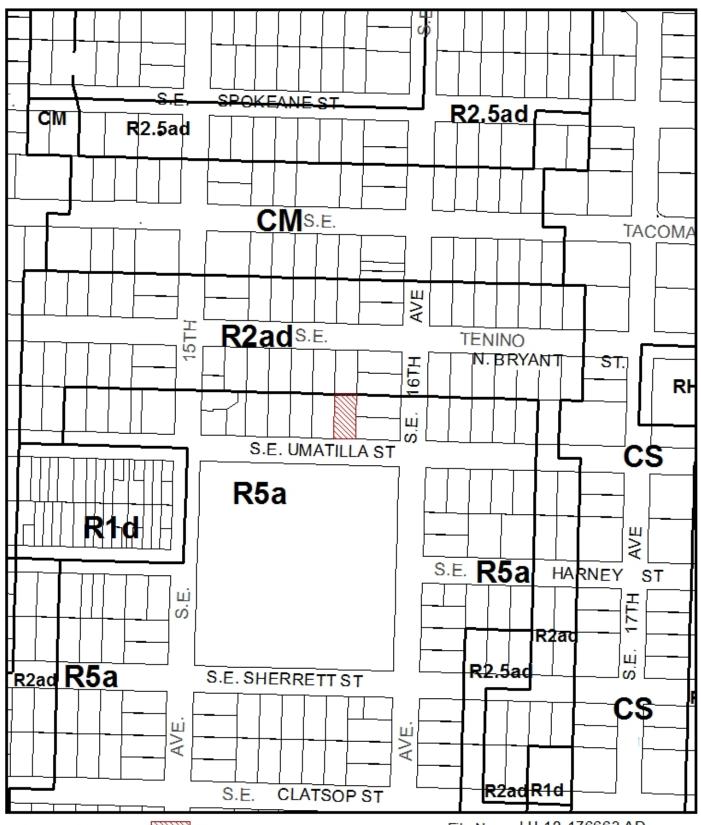
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicants Narrative
 - 2. Photographs of adjacent neighbors to north
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Proof of 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
- F. Correspondence: (None received)
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete Letter
 - 4. Building Code appeal #9168

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).

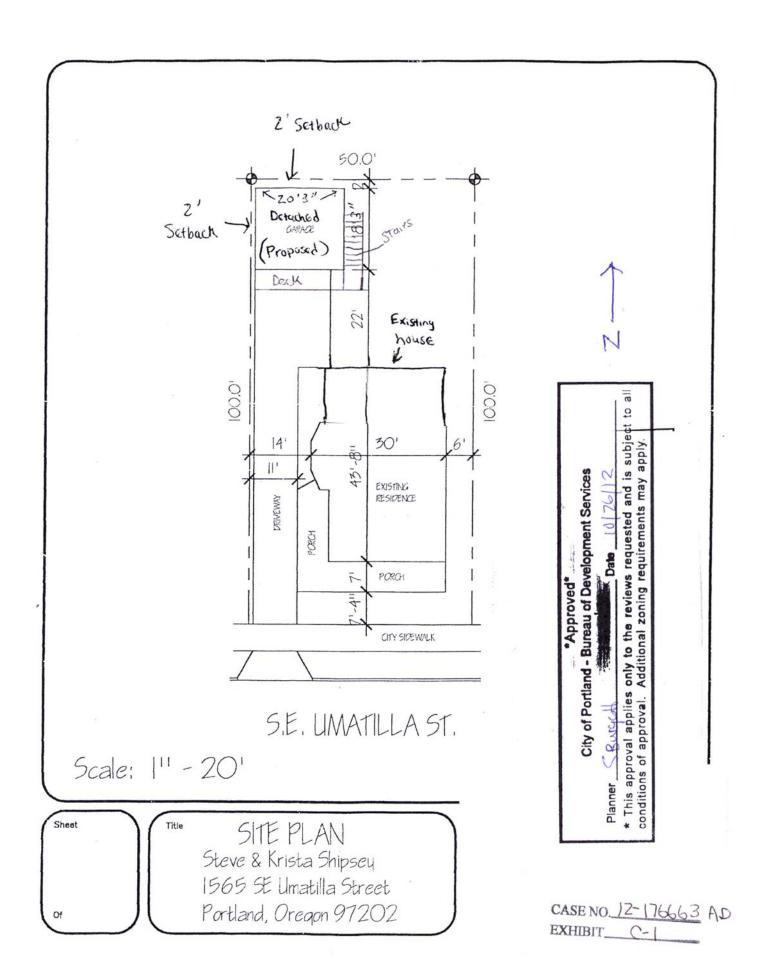


ZONING Site

Historic Landmark



File No	LU 12-176663 AD
1/4 Section	3832
	1 inch = 200 feet
	1S1E23DC 16700
Exhibit _	B (Aug 28,2012)



All elevations not to Scale

