

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: January 22, 2013

To: Interested Person

From: Sylvia Cate, Land Use Services

503-823-7771 / Sylvia.Cate@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 12-212779 AD

GENERAL INFORMATION

Applicant: Donnella Wood, property owner

225 NE 65th Ave Portland, OR 97213

Site Address: 225 NE 65TH AVE

Legal Description: BLOCK 13 LOT 30, ORCHARD HOMES R629804830, R629804830, R629804830

State ID No.: 1N2E32CB 04400, 1N2E32CB 04400, 1N2E32CB 04400

Quarter Section: 3037

Neighborhood: North Tabor, contact Nicole Davenport at 661-965-9602.

Business District: 82nd Avenue

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

Zoning: R5, Single Dwelling Residential 5,000

Case Type: AD, Adjustment

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

Committee.

Proposal:

In 2008, the City of Portland approved a side setback adjustment from 5 feet to 2 feet for an addition to and conversion of an existing garage into an office and art studio space. The current property owners seek to convert the office and art studio space to an Accessory Dwelling Unit [ADU] by installing a kitchen into the existing structure. No other changes are proposed, and the existing structure will remain the same size and maintain the current appearance. Because the proposal includes a change of use [from art studio/office to residential] an Adjustment is required. Therefore, the applicant requests an Adjustment to reduce the side setback from 5 feet to 2 feet for an ADU. Attached to this Notice are plans and a zoning map depicting the proposal.

Relevant Approval Criteria: 33.805.040. A-F

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

ANALYSIS

Site and Vicinity: The subject site is a 7,800 square foot lot developed with a one story house built in 1924 and a detached garage converted to artist studio and large garden area in the back yard. The site has frontage along the west side of NE 65th and is approximately 100 feet from the intersection of NE 65th and NE Davis. The immediately surrounding area [approximately 200 feet in all directions] is characterized by lots developed with residential uses in the R5 zone. Further south and northwest of the site, beyond approximately 200 feet] are parcels in the multi-dwelling R2 zone. NE Davis and NE 65th Avenue are designated Local Service Streets for all modes. The site is approximately one block south of NE Glisan Street and one block north of E Burnside.

Zoning: The site lies in the Single Dwelling Residential 5,000 zone, one of several that implement the Comprehensive Plan Map designation for single dwellings.

Land Use History: As described above, City records indicate that one prior land use review applies to this site: LU 08-167544 AD approved a side yard setback from 5 feet to 2 feet in order to convert an existing garage into an artist studio/office work space.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed December 21, 2012. The following Bureaus have responded with no issues or concerns:

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

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on December 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 setback regulations are found at 33.110.220 *Setbacks*, which states:

The setback regulations for buildings and garage entrances 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 proposal is to convert the existing 14 x 26 foot structure to an ADU. The existing structure is less than 15 feet high and is set back from the front lot line by approximately 82 feet. Given the location, set so far back from the street, the subject structure has no impact on the front yard configuration. The ADU, at approximately 365 square feet, is relatively small for an ADU, which in some circumstances can be up to 850 square feet in size. There is no impact on privacy as the façade of the structure closest to the property line is required to meet fire code, which doesn't allow windows, doors or other openings on that side of the building. Additionally, neighboring residential fences and existing vegetation provide visual buffering such that the ADU has no significant impact on privacy for neighboring properties. The ADU is set back sufficiently, providing room for a legal, on-site parking space without overhanging the into the public right of way. The placement and size of the ADU is a reasonable physical configuration in context with other residences, both on site and on adjacent properties. For these reasons, this criterion is met.

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

Findings: The site is in a residential zone. The proposal is for a reduced setback for an ADU that is proposed to be converted from an existing artist studio/home office structure. Because an ADU is an allowed dwelling unit, it is consistent with residential zoning. The subject structure has existed in this location since it was first constructed circa 1924 as a garage. The structure was proposed to be converted to an artist's studio/home office building, and received an Adjustment approval for the reduced setback. Because the proposal to convert to an ADU is a different use of the structure, a new Adjustment is required. The structure is set well back from the front lot line. It is immediately adjacent to the rear lot lines of two lots; however both of those back yards are open, so the reduced setback will have no impact on any other structures. There is no aspect of an ADU that would significantly impact the livability of the neighborhood. The existing structure is set well back from the street, is visually buffered by existing vegetation and residential fences. The structure will not have any detrimental impact on the immediately surrounding residential neighborhood. 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 applicants propose to convert the office and art studio space to an Accessory Dwelling Unit [ADU] by installing a kitchen into the existing structure. No other changes are proposed, and the existing structure will remain the same size and maintain the current appearance. Because the proposal meets all of the applicable approval criteria, it should be approved.

ADMINISTRATIVE DECISION

Approval of:

- An Adjustment to allow a 2 foot side setback along the southerly property line for the existing structure to be converted into an ADU, per the approved site plans, Exhibits C-1, signed and dated January 17, 2013, 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 Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 12-212779 AD."

AMEL	
Decision rendered by:	on January 17, 2013
By authority of the Director of the Bu	reau of Development Services

Decision mailed: January 22, 2013

Staff Planner: Svlvia Cate

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 December 7, 2012, and was determined to be complete on December 18, 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 December 7, 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. Unless further extended by the applicant, **the 120 days will expire on: April 17, 2013.**

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 February 5, 2013** 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 **February 6, 2013 (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.

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:

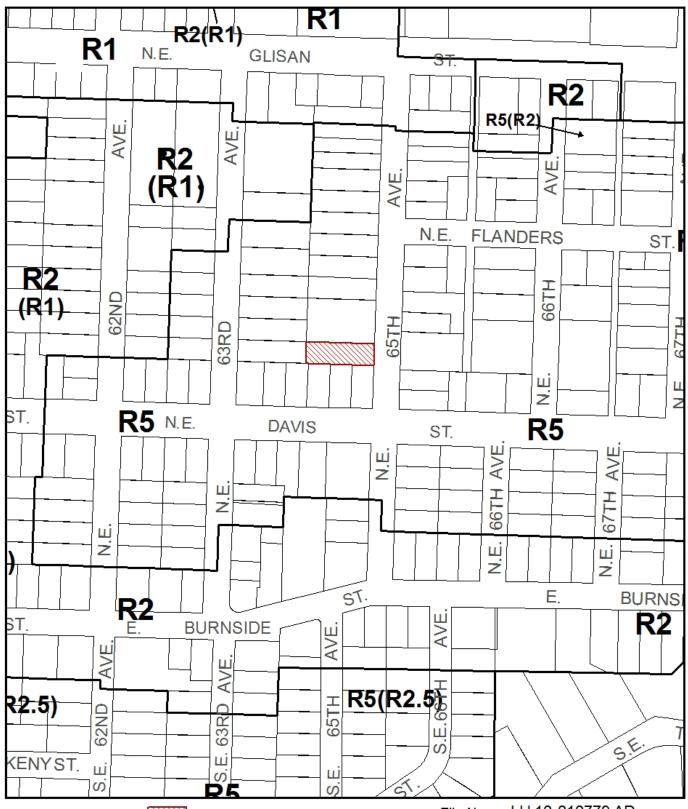
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

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

The Bureau of Development Services is committed to providing equal access to information and hearings. 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

File No. <u>LU 12-212779 AD</u>

1/4 Section <u>3037</u>

Scale <u>1 inch = 200 feet</u>

1N2E32CB 4400



NORTH

Bucon and Ciydo Curley SITE PLAN DENNIS MAERS DESIGNER BUILINER Single Femily Mesidence for Legal Descripcion Lot 30, 51k 13, Orchard Homes, Portland, CR EXHIBIT C-SSR NE GRIP RE SITEPLAN conditions of approval. This approval applies only to the Note: There are no changes to be made to the side and front settracks : peydlopment Services City of Portland *Approved* Bureau of plannel -Date z(Toon gnitsix Existing roof SCALE 115= 16 - PROPOSED ADU Existing Driveway Exstra Garage 8

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