



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

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Date: 2/21/13
To: Interested Person
From: Shawn Burgett, Land Use Services
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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 12-219175 AD

GENERAL INFORMATION

Applicant/ Owner: Ron Miller
1135 SE Cesar E Chavez Blvd
Portland, OR 97214-4319

Site Address: 1135 SE CESAR E CHAVEZ BLVD

Legal Description: TL 10400 0.06 ACRES, SECTION 01 1S 1E
Tax Account No.: R991010080
State ID No.: 1S1E01AD 10400
Quarter Section: 3134
Neighborhood: Sunnyside, contact Paul Loney at 503-233-8265.
Business District: None
District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010.
Zoning: R2.5 (Single Family Residential 2,500 sq. ft.)
Case Type: AD (Adjustment)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant has constructed three additions along the western façade of the existing home on the site. Addition one is located in the northwest corner of the house and is approximately 12 feet in length and located 3 feet from the western property line. Addition two is approximately 12 feet in length and located in the middle of the homes façade 2.25 feet from the western property line. Addition three is approximately 12 feet in length and is located in the southwest corner of the existing house 3 feet from the western property line. All three additions are within the required side setback (see attached site plan). Zoning Code section 33.110.220 (Table 110-3) requires a 5 ft. side setback within this zone. The applicant has requested an adjustment to this standard to allow the three additions along the western facade to remain within the side setback area.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The site is located on a corner lot with frontage along SE Salmon St. and SE Cesar Chavez Blvd. a four lane transit access street abutting the eastern (side) property line of the site. The existing home on the site was built in 1925 and faces SE Salmon St. The property located directly south of the site (across SE Salmon St.) is zoned CN2 (Neighborhood Commercial 2). The properties located directly to the north and directly to the west are developed with single family homes. The home directly to the north was built in 1909, while the home located directly to the west was built in 1919. In addition, a triplex built in 1978 is located directly east of the site across SE Cesar Chavez Blvd.

Zoning: The R2.5 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

Land Use History: LU_12_179246_AD was recently approved to reduce the side and rear setback for an accessory structure (storage shed) from five feet to four feet from the northern (rear) and eastern (side) property lines.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **January 18, 2013**. 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

The **Life Safety Plans Examiner** (Exhibit E-7) had the following comments: A separate Building Permit is required for the work proposed and the proposal must be designed to meet all applicable building codes and ordinances. Exterior walls less than three feet to a property line shall be one-hour fire-rated with no openings allowed. Roofs and eaves may project not closer than two feet to a property line. Eaves less than three feet to a property line must be protected on the underside as required for one-hour fire-rated construction. Alternative methods and materials may be approved by the Administrative Building Code Appeal Board.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on January 18, 2013. One written response has been received from a notified property owner in response to the proposal against the adjustment request (Exhibit F-1). The respondent stated that the notice of proposal stated no valid reason for the encroachments; therefore he is in opposition of the adjustment request

Staff comment: The approval criteria addressed in the report does not ask for a "valid reason".

ZONING CODE APPROVAL CRITERIA**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 purposes of the setback standard requested for Adjustment are found in Section 33.110.220, Setbacks. The setback regulations serve several purposes:

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of houses in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity.*
- *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 three existing additions were constructed along the western side façade of the existing one story home and are each approximately 12 feet in length. Addition one and addition three are located approximately 3 feet from the adjacent (western) property line and both have exterior windows facing west. Addition two (the middle addition) is located along the western façade and is approximately 2.25 feet from the western property boundary. Addition two does not have any windows located within its façade wall (see Exhibit C-1). It should be noted, that out of the three additions located within the western side setback, addition two is the only one of the three that is located adjacent to a large picture window associated with the adjacent home to the west which would be impacted most by these setback encroachments (see Exhibit G-3). Since no openings (windows) are located along the façade of addition two, the impact on privacy in relation to the adjacent home is minimal. Additions one and three are located adjacent to areas where the existing windows do not appear to violate the privacy of the adjacent home. Addition three is located across from an area on the adjacent home to the west where windows are not present. Addition one is located along the northwestern corner of the home facing the rear yard of the residence to the west, a large shrub is located on the adjacent property adjacent to this addition providing a visual buffer. The existing 3 foot to 2.25 foot setback along the western property boundary provides room for a concrete path and adequate room to access the west side of the facade for maintenance purposes. The additions also have eaves which extend approximately 1 ft. from the façade and into the setback area which are included in this adjustment request, and appear to have no additional impact.

Based on the City's GIS aerial photography, it appears the home on the adjacent property to the west is located approximately 5 feet from the property line separating it from the subject site. Thus, there is typically 7.25 feet to 8 feet of separation between the additions and the adjacent home located on the property to the west. The home adjacent to the subject site to the west is a two story home, since the additions are located along the first story of the home on the subject site the additions will have no impact on the second story of the adjacent home to the west.

The separation between the two homes provides a reasonable physical relationship to properties within this residentially zoned area. The appearance of the additions would not be substantially different if a 5 ft. setback were in place along the side property lines, as opposed to the existing 2.25 foot to 3 foot setbacks provided. Based on GIS aerial photographs (see exhibit G-4), it appears the middle addition (addition 2) was constructed sometime between 1998 and 2000, the northwestern addition (addition 1)

was constructed sometime between 2003 and 2004 and the southwestern addition (addition 3) was added sometime between 2005 and 2007. This information is noted to demonstrate the setback encroachments have been in place for quite a long time. Approving these adjustments will allow the encroachments into the side setback that have existed for 6-15 years to remain in place.

The 2 foot to 2.75 foot reduction of the side setbacks from the west property lines does not significantly impact adjacent structures, or impinge on light, air and access for fire fighting. The Fire Bureau notes no concerns. The proposed reduction to the setback does not appear to reduce privacy for adjacent properties. The reduced site setback will not alter the existing front yard setback nor impact the visual appearance of the front yard area of the subject site.

By approving the requested reduction in the side setbacks, the current placement of the additions will remain as is. The location does not impinge on required outdoor area, remains compatible with the surrounding neighborhood. For these reasons, this criterion is met.

For the reasons stated above, 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 lies within the R2.5 residential zone. The additions cannot be seen very well from the front of the property along SE Salmon Street due to a large evergreen hedge located in the southeast corner of the neighboring property to the west (see Exhibit G-3). An existing wood fence currently provides a visual and physical buffer separating the additions from the existing home located to the west.

The requested Adjustment to reduce the side setback for the additions from 5 feet to 3 feet (additions 1 and 3) and from 5 feet to 2.25 feet (addition 2) adjacent to the side western property line will not create a significant visual detraction nor impinge on the livability of the residential area. For these reasons, this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: One adjustment is being requested, therefore this criteria 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: 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

The applicant requests an Adjustment to reduce the side setback requirement for three existing additions along the western facade. The required side setback in the R2.5 zone is 5 feet. The additions are located 3 feet to 2.25 feet from the western property boundary. The associated eaves encroach approximately 1 additional foot into the reduced setback area. Therefore the applicant requests an Adjustment to reduce the side setbacks from 5 feet to 3 feet for additions one and three, and from 5 feet to 2.25 feet for addition two. All three additions have a 1 foot encroachment for the existing eaves. The proposal meets all of the applicable approval criteria and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of:

- Adjustment to 33.110.220, to reduce the side setback for three existing additions located along the western façade of the home from five feet to 3 feet (addition one and addition three) and from 5 feet to 2.25 feet (addition two) from the western (side) property line, including the eaves which encroach an additional 1 foot into the adjusted setback per the approved site plan, Exhibit C-1, signed and dated February 19, 2013, subject to the following conditions:
 - A. As part of any building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and side setback approved by this land use review as indicated in Exhibits C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 12-219175 AD. No field changes allowed."

Staff Planner: Shawn Burgett



Decision rendered by: _____ **on February 19, 2013**

By authority of the Director of the Bureau of Development Services

Decision mailed: February 21, 2013

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 27, 2012, and was determined to be complete on January 11, 2013.

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 27, 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 3/7/13** 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 **3/8/13 – (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)

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 Plans

F. Correspondence:

1. Howard Shapiro, howeird3@gmail.com

G. Other:

1. Original LU Application
2. Site History Research
3. Photos of site
4. GIS aerial photos of site 1998-2007

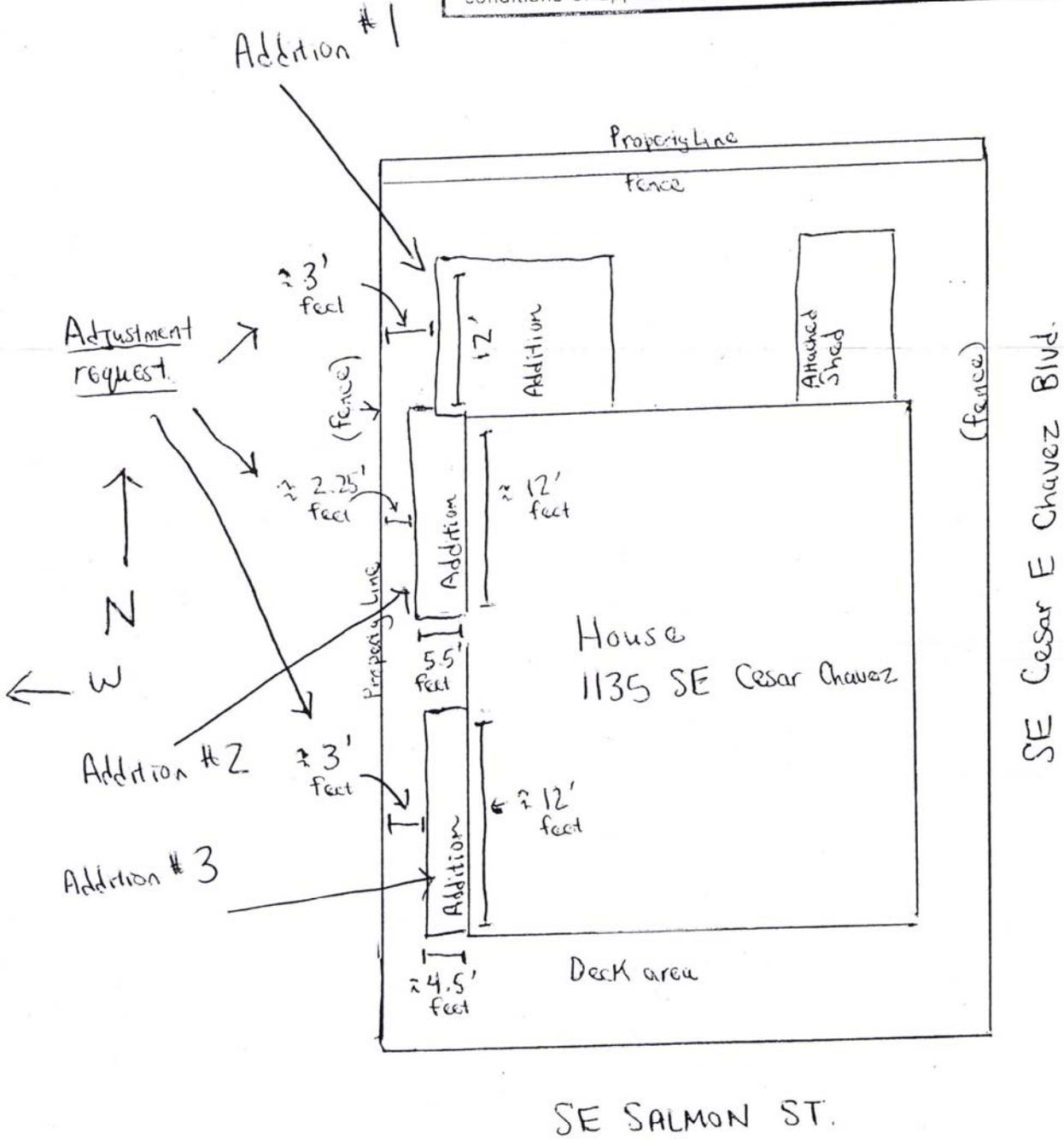
The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).

Approved

City of Portland - Bureau of Development Services

Planner SBurgak Date 2/19/13

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



CASE NO. 12-219175
 EXHIBIT C-1