

City of Portland, Oregon Bureau of Development Services Land Use Services

1900 SW 4th Avenue, Suite 5000 Portland, Oregon 97201 503-823-7300 Fax 503-823-5630 TTY 503-823-6868 www.portlandonline.com/bds

Date: November 13, 2008

To: Interested Person

From: Nan Stark, Land Use Services

503-823-7828 / nstark@ci.portland.or.us

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 08-166335 AD

GENERAL INFORMATION

Applicant/Owner: Diane C. Benjamin

6824 SE 18th Ave. Portland, OR 97202

Site Address: 6824 SE 18TH AVE.

Legal Description: LOT 9 BLOCK 15, WESTMORELAND

Tax Account No.: R899003270 **State ID No.:** 1S1E23AB 03700

Quarter Section: 3732

Neighborhood: Sellwood-Moreland, contact Paul Notti at 503-234-3570 **District Coalition:** Southeast Uplift, contact Cece Hughley Noel at 503-232-0010

Zoning: R5a, High Density Single-Dwelling with an Alternative Design Density

Overlay Zone

Case Type: AD, Adjustment Review

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

Committee

Proposal: The applicant proposes to construct a new driveway that will measure 18 feet in length and 9 feet in width at the southwest corner of the site, which will allow for on-site parking. Section 33.266.120 C of the Zoning Code states that parking spaces are not allowed within the first 10 feet from a front property line. Minimum dimensions for a residential parking space are 18 feet in length and 9 feet in width. In this case, this means that the proposed parking space must be 28 feet in length. However, because the proposed driveway is 18 feet in length, the applicant is requesting an Adjustment to the standard to allow parking within the first 10 feet from the front property line.

Relevant Approval Criteria:

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

ANALYSIS

Site and Vicinity: The site is a 5,000 square-foot lot developed with an early 20th-century cottage-style house, with a prominent front entry and covered porch. The house is situated fairly symmetrically across the lot, with a narrow side yard on both sides. There is an existing curb cut on the south side of the lot that originally served a single-car driveway leading to a single-car garage at the rear. At some point in the past, the driveway and garage were removed. The current owner, and applicant for this review, has constructed a 9-foot wide by 18-foot long driveway without benefit of permits. The driveway is composed of paving strips made of concrete, with gravel in the center between the strips, and a brick border around it.

The surrounding residential area is characterized by similar early to mid-century dwellings; many of the properties have driveways which typically lead to a rear single-car garage. Some driveways and garages are paired with abutting properties; others are single driveways.

The commercial area of Bybee/Milwaukie is two blocks to the west. A church is at the south end of the street, on Bybee Street.

Zoning: The site is zoned R5a. The R5 zone corresponds to the High Density Single-dwelling zone of the Comprehensive Plan. It is typically found in closer-in residential areas such as this, with high levels of public infrastructure. The 'a' overlay designates the Alternative Design Density overlay zone, which allows options for higher density in specific situations; this overlay is not relevant to the subject proposal.

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

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **October 14, 2008**. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Bureau of Parks Forestry Division

The Site Development Section of BDS responded with no objections to the requested Adjustment. It noted that the site plan shows a gravel surface for the driveway. The Zoning Code (33.266.120.E) requires parking spaces to be paved, and no Adjustment has been requested to that standard, so Site Development assumes the parking area will be paved. Stormwater runoff from impervious areas, including driveways, must be managed with onsite stormwater facilities. Staff responds that the driveway is paved with concrete tire strips, and that only the surface interior to the strips is graveled; such a configuration is allowed by the zoning code.

The Bureau of Environmental Services responded with no objections to the requested Adjustment, and noted that since the driveway slopes down toward the street it is important that any stormwater runoff from the impervious areas of the driveway be managed on-site to the maximum extent feasible using an approved onsite vegetated facility such as infiltration swale or planter, and that any stormwater runoff created by the new driveway not affect the abutting lot to the east.

The Life Safety Section of BDS responded with information about required paving depth and materials for driveways.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on October 14,

2008. Staff received seven written responses from notified property owners in response to the proposal. Of those, six expressed support for the proposal and one, the abutting neighbor to the south, expressed opposition to it. The neighbor opposed noted several concerns: the driveway affects the neighborhood's livability by allowing a vehicle next to her front lawn, producing exhaust, and blocking views of the street as well as being located near her front porch. It will require passengers to use her yard when getting out of a vehicle parked on the driveway. There are no similar driveways in the area that end at the front yard; rather, they extend to the sides of houses, and consequently this driveway will detract from the overall appearance of the neighborhood. In addition, the location presents danger to her children. Those expressing support commented on the appearance of the driveway as enhancing the neighborhood, and allowing the owner to park off the street, like most houses on the block.

Staff appreciates the input of all the neighbors who wrote in to respond to this proposal. The issues and concerns raised are discussed in the following section of this report, in the findings for the approval criteria.

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 purpose of the standard that regulates the size and placement of vehicle parking areas is to enhance the appearance of neighborhoods. The applicant has installed a 9-foot wide driveway that is 18 feet long from the property line to the house. The 9-foot width ends at the front wall of the house, which is about 7 feet from the south side property line, thus limiting the length of the driveway. The actual driveway is 20 feet long, but the first 2 feet, between the sidewalk edge and the property line, are in the public right-of-way, making it technically 18 feet long.

The zoning code requires a 28-foot long driveway when a driveway is constructed without a garage. When there is a garage, the front entrance must be at least 18 feet from the property line, which is adequate to fully accommodate a vehicle without encroaching onto a public sidewalk or right-of-way. Parking is not allowed in the first 10 feet from the front property line, which is also the front building setback standard. Implicit in the purpose for this regulation, intended to enhance the appearance of neighborhoods, is that vehicles should park alongside the house or at least out of that first 10 feet of yard area, keeping yards from being dominated by vehicles. The same regulation also limits paving for vehicles to 40 percent of the area between the front property line and the front building line; on a typical 50' x 100' lot, this allows a 20-foot wide driveway.

The proposed driveway configuration is requested because there is not space on either side of the house for a driveway to be longer than 18 feet, as the house is squarely in the middle of the lot, with about 7 feet on either side of it, not allowing passage of a vehicle on the side or to the rear. As a site visit indicated, most of the properties along this block are not constrained with too-small of setbacks on both sides of the house, and in fact most properties, though not all, include a driveway that leads to the side and typically rear of the house. Often the driveways are paired, so that there is an 18-foot wide driveway separating the houses. In the case of the subject site, a driveway leading to the rear on either side is not an option.

The applicant's proposal is for a driveway composed of a mix of paving materials, including concrete tire strips framed by a brick edge, with gravel between the strips. The resulting driveway is one that could be used as a patio as much as a vehicle storage area. When not in use as a driveway, its appearance is a front yard element that fits in well with this older, established residential neighborhood. Its small size further allows it to fit in with the scale of the front yard.

The neighbor opposing the reduced driveway depth rightfully points out that when the driveway does contain a vehicle, that vehicle will be parked in the front yard, and not in the side or rear yard as is the option on other properties in the area. In view of the purpose of the regulation, to enhance the appearance of neighborhoods, the question becomes, does the proposed driveway conflict with this standard? In its favor, the driveway is only 8 feet less than the required length, when measured from the public sidewalk, or 10 feet when measured from the property line. In both cases, that length more than accommodates most modern cars and does not set up a scenario in which the vehicle will extend over the public sidewalk. In addition, the driveway is almost entirely to the side of the house, so a vehicle parked in the driveway does not at all obscure the house. From the street, one can clearly see the house and windows facing it, as well as the landscaping in the front yard.

Parking in a driveway in the front setback is a common scenario found all across the city, on driveways that typically lead partially or totally to the back yard. In this neighborhood, and in this case, the driveway width accommodates a single vehicle. What results is that vehicles parked in front of or alongside the house are a fairly common part of the urban landscape, along with trees, shrubs, paths and other front yard elements. Consequently, the proposed driveway allows for off-street parking while still upholding the purpose of the regulation, thus meeting this criterion.

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, a short distance from the commercial area on Milwaukie/Bybee. The proposed driveway would allow on-site parking, using the existing curb cut which originally led to a driveway and garage at the rear of the house, as indicated on the City's Sanborn maps. As noted in the preceding findings, the driveway is to the side of the house, and would not limit views of the house from the street. The side setback of 7 feet is not sufficient to allow passage of a typical vehicle without encroaching onto the abutting property.

Staff received letters of support from several neighbors, who particularly emphasized the appearance of the driveway, using alternative paving that does not represent a typical concrete slab, but rather works as a landscape treatment when not storing a vehicle. Neighbors also commented on the desirability of off-street parking in this area. The abutting neighbor who opposes the driveway expressed concern about impacts to both appearance and livability, specifically noting that a vehicle next to her front yard would detract from the appearance, block her view of the street, requires someone leaving the car from the passenger side to use her property, creates exhaust fumes, and potential danger to her children. On visiting the site, staff observed that the driveway, when not in use, does function as a landscape feature, with the appearance of an open patio. When occupied with a vehicle, the brickwork framing the driveway will remain visible. At 9 feet in width, the driveway will generally be able to fully accommodate

both a vehicle and space to open doors and allow passengers to enter and leave while remaining on the driveway. As the minimum width for driveways, which are allowed to be situated on side property lines, 9 feet is expected to accommodate both the vehicle and its occupants.

By using the existing curb cut, there is not a need to create a new one or to close the existing one. At some point in the past the driveway and rear detached garage was removed. Had they not been removed, the same situation would exist as what is requested now, which is to park in the front yard because the minimal side yard limits passage of a vehicle, even if it had remained paved. Whether the vehicle is parked in the front setback or beyond it, it produces exhaust, as all vehicles (unless electric) do that pull into driveways. Vehicles all over the city are parked in driveways and on the street; they can be considered hazards to children in any location, and this particular situation does not pose any greater or lesser danger, although with a shorter backing-out distance, it would seem that visibility for drivers is likely heightened rather than lessened.

The main factors that ensure that the proposed driveway at 18 feet long does not detract from either the appearance or livability of this residential area are its paving elements and its location to the side of, rather than in front of the house. Further contributing to both appearance and livability is the fact that the curb cut is existing, thus bringing back an original condition, and allowing an opportunity for off-street parking in a way that is not uncommon in most residential neighborhoods. 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: 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. The existing driveway, using an interesting paving scheme of tire strips and brickwork, creates an aesthetic element that fits in with this older residential neighborhood, and will be visible even when a vehicle is parked on it. This provides strong mitigation, coupled with the location of the driveway and its minimal 9-foot width, which ensures that from the street and adjacent properties that the dwelling is the primary feature, and the driveway is secondary to it. While a parked vehicle will clearly be visible on the side of the front yard, it does not create a unique situation that stands out as different in this or most other neighborhoods. 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 proposes to construct a new driveway that will measure 18 feet in length and 9 feet in width at the southwest corner of the site, which will allow for on-site parking. Minimum dimensions for a residential parking space are 18 feet in length and 9 feet in width. However, Section 33.266.120 C of the Zoning Code states that parking spaces are not allowed within the first 10 feet from a front property line. This means that the proposed parking space must be 28 feet in length. The applicant has requested an Adjustment to Section 33.266.120 C to allow parking within the first 10 feet of the front property line.

As stated in the findings of this report, this proposal will equally or better meet the purpose of the standard that regulates the size and placement of vehicle parking areas by enhancing the appearance of the neighborhood. Paving elements of the driveway, which include brickwork framing and gravel, as well as its location to the side of the house rather than in front of the house, will ensure that the driveway does not diminish the appearance and livability of the residential area. Although a parked vehicle will be visible on the side of the front yard, this will not result in a unique situation within the area and will be consistent with the historic use of the site. No other discernible impacts will result from this proposal.

All applicable Adjustment approval criteria have been met and this proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to zoning code standard 33.266.120 C to allow parking within the first 10 feet from the front property line. This approval is subject to the approved site plan detail, Exhibit C-1, signed and dated November 7, 2008.

Decision rendered by:

on November 7, 2008

By authority of the Director of the Bureau of Development Services

Decision mailed: November 13, 2008

Staff Planner: Nan Stark

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 September 29, 2008, and was determined to be complete on October 10, 2008.

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 September 29, 2008.

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 28, 2008 at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., 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. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 contact the receptionist at 503-823-7967 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 **December 1, 2008 (the first business 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.

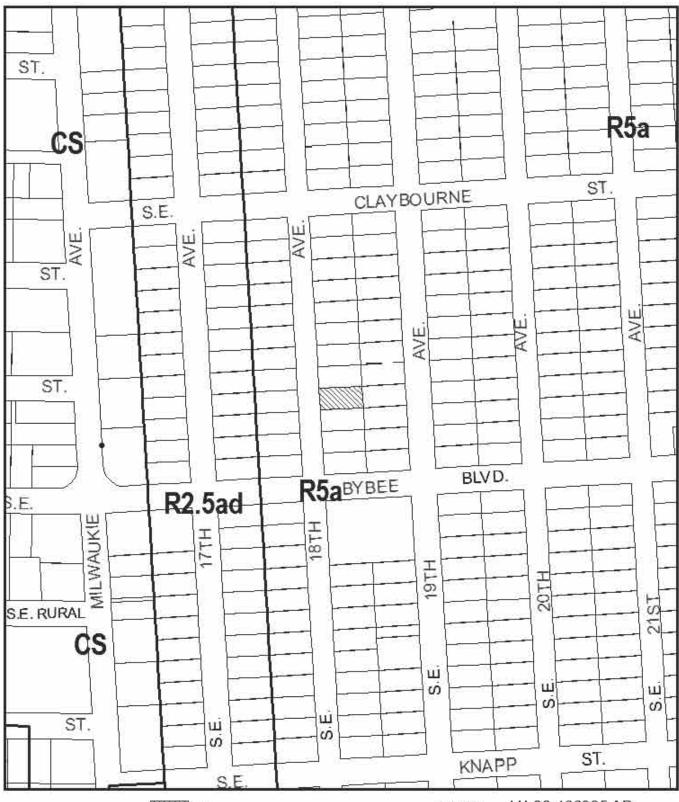
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan detail (attached)
 - 2. Site Plan
 - 3. Photo of site
 - 4. Photos of subject block
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services

- 2. Site Development Section of BDS
- 3. Life Safety Section of BDS
- F. Correspondence:
 - 1. Laura O'Hearn, October 15, 2008 (2 letters), October 16, 2008, October 29, 2008, letters in opposition
 - 2. Theresa Wright, October 18, 2008, letter in support
 - 3. John VanGorder, October 20, 2008, letter in support
 - 4. Cindy Force, October 20, 2008, letter in support
 - 5. Doug Force, October 23, 2008, letter in support
 - 6. Sharon Martine, October 18, 2008, letter in support
 - 7. Barbara Skinner, October 15, 2008, letter in support
- G. Other:
 - 1. Original LU Application
 - 2. Sanborn map of subject site and vicinity

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING Site

Historic Landmark



File No	LU 08-166335 AD
1/4 Section	3732
Scale_	1 inch = 200 feet
State Id _	1S1E23AB 3700
Exhibit _	B (Sep 30,2008)

