



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

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Date: Thursday, April 2, 2009

To: Interested Person

From: Kate Marcello, Land Use Services

503-823-9162 / kate.marcello@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 08-176797 AD

CONVERSION OF EXISTING GARAGE TO ACCESSORY DWELLING UNIT

GENERAL INFORMATION

Applicant/Architect: Victor Valle, Innovative Spaces, (503) 960-7150

1533 SE Main St / Portland, OR 97214

Owner: Pilar Pennell, (503) 310-3915

1664 SE Marion Street / Portland, OR 97202

Site Address: 1664 SE Marion Street

Legal Description: LOT 18 BLOCK 82, SELLWOOD

Tax Account No.: R752713930 **State ID No.:** 1S1E26AB 05500

Quarter Section: 3932

Neighborhood: Sellwood-Moreland, contact Mat Millenbach at 503-239-1134.

Business District: None

District Coalition: Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.

Plan District: None

Zoning: Residential 2,000 base zone (R2), Alternative Design Density overlay zone,

(a), Design overlay zone (d)

Case Type: Adjustment Review (AD)

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

Committee.

Proposal: The applicant requests approval for development associated with the conversion of an existing automobile garage into an accessory dwelling unit (ADU). The project involves the following elements:

• An internal connection will be created between the existing single-family house and the existing garage. To create the connection, the southwest corner of the house, which is located directly in front of the northeast corner of the garage, will be expanded by about 30 square feet. This internal connection represents additional living area for the existing house.

- Approximately 117 square feet of living area and a 63-square foot covered porch will be added to the front of the existing garage, to be part of the ADU.
- The ADU and the internal connection between the house and the ADU will have wooden shake siding and asphalt composition shingles that match those of the existing house and existing garage.
- An entry door and a one-over-one vinyl window will be installed on the front façade of the ADU.
- The existing garage has no windows on the west façade. None will be added for the proposed ADU.

In order to facilitate the proposed design, the applicant requests **two Adjustments** to standards of the Portland Zoning Code:

- 1. 33.205.030 Design Standards (in Accessory Dwelling Units chapter)
 - 33.205.030.C.6 states that the living area of an ADU cannot be larger than 33% of the living area of the house, or no more than 800 square feet, whichever is less.
 - The living area of the house is about 704 square feet. The living area of the proposed ADU is about 546 square feet. (The proposed covered porch is not considered "living area.") Therefore the living area of the proposed ADU is about 74% of the living area of the house.*
 - 33.205.030.C.4 states that only one entry door on a house can face the street.
 - An existing entry door on the house faces the street. The new entry door for the ADU will also face the street. (The ADU will be attached to the house and thus is considered part of the house for the purposes of this standard.)
- 2. 33.120.220 Setbacks (in Multi-dwelling Zones chapter)
 - 33.120.220, Table 120-4 states that a side setback of at least five feet is required.
 - The ADU is proposed at an approximately 0'-6" setback from the western property line.**

*Note: The previous proposal notice stated that the living area of the ADU would be about 60% of the living area of the house. The percentage was miscalculated. The actual proposed size of the living area of the ADU has not changed from the time of the previous proposal notice.

**Note: The previous proposal notice stated that the western side setback was proposed at about 0'-0". The ADU will actually be about 0'-6" from the western property line. The actual proposed location of the ADU has not changed from the time of the previous proposal notice.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33 (Portland Zoning Code). Adjustment requests are approved if it is found that approval criteria *A* through *F* of 33.805.040 Adjustment Approval Criteria have been met.

ANALYSIS

I. Site and Vicinity: The subject site is about 5,000 square feet in size. The site contains a one-story house and a one-story garage. The house, and presumably the garage as well, were constructed around 1951. The house and garage have wooden shake siding, vinyl windows, and asphalt composite shingles. The front of the house has a main entry door at the center, flanked by a window bay on each side. The house is set back about 21 feet from the front property line. A paved walkway leads from the sidewalk to the main entry door of the house. A paved driveway leads from SE Marion Street to the garage. The driveway is about 37'-0" long x 11'-0" wide. The garage is located about 0'-6" from the western property line. The driveway is located about 0'-0" from the western property line. A covered patio is located at the rear façade of the house. Beyond the patio, there is a rear yard about 44'-7" deep.

With the exception of the west side of the garage, the west, east, and south (rear) edges of the property are enclosed by a fence about 6'-0" tall. The north edge (front) of the property is also enclosed by a fence about 3'-0" tall. The fence contains a gate at the sidewalk that leads to the entry door of the house. A gate about 6'-0" tall is located across the driveway, about 10'-0" from the front property line.

The site is located on the block bounded by SE Marion Street, SE 17th Avenue, SE Linn Street, and SE 16th Avenue in the Sellwood-Moreland neighborhood. The site's street frontage is on SE Marion Street. Two properties are located between the site and SE 17th Avenue to the east. The property directly abutting the site contains a one-story single-family house and a two-story motel-style duplex. The next property to the east, which has frontage on SE 17th Avenue, contains a one-story commercial building with a paved parking lot.

To the west, the site abuts a property containing a single-family house, driveway, and small shed. The driveway is located along the eastern edge of the property. A wooden fence at least five feet tall is located across the driveway, and is aligned with the northeast corner of the house. The shed is located in the driveway, behind the fence, just west of the garage on the subject site. The east façade of the house is located about 14 feet away from the garage on the subject site.

The remainder of the block contains residential properties. Most buildings are single-family homes, although there are also two duplexes, a four-plex, and a multi-family condominium complex. The surrounding blocks contain predominantly residential properties, including single-family houses, duplexes, multi-family apartment buildings, and a multi-unit complex for seniors. SE 17th Avenue is a primary commercial corridor in the neighborhood. Businesses such as an auto repair garage, furniture store, commercial storefronts, and restaurants are located on SE 17th Avenue.

The site is located near the southern city limits of Portland. The City of Milwaukie is located about 550 feet south of the site.

The City of Portland's Transportation System Plan (TSP) has classified SE Marion Street as a Local Service Bikeway and Local Service Walkway. The TSP has classified SE 17th Avenue as a Community Main Street, Neighborhood Collector Street, Transit Access Street, City Bikeway, and City Walkway. The nearest transit stop is located about 150 feet from the site, at the southeast corner of SE Marion Street and SE 17th Avenue. The transit stop is served by TriMet bus route #70 northbound, with service to Rose Quarter Transit Center. Because the site is within 500 feet of a TSP-designated Transit Street with at least 20-minute peak-hour service, no on-site parking is required by the Zoning Code.

It is anticipated that TriMet's future light-rail line to Milwaukie will be located near the site, on SE 17^{th} Avenue.

II. Zoning:

- The <u>R2 base zone</u> is a low-density multi-dwelling residential zone. The R2 zone allows approximately 21.8 dwelling units per acre. The major type of new development is duplexes, townhouses, rowhouses, and garden apartments. These housing types are intended to be compatible with adjacent houses. Generally, R2 zoning is applied near neighborhood collector streets, district collector streets, and local streets adjacent to commercial areas or major streets.
 - (Note: For the subject site, two primary dwelling units could be developed by right.)
- The purpose of the <u>Alternative Design Density (a) overlay zone</u> is to focus development on vacant sites, preserve existing housing, and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements.

(Note: This proposal is not using the provisions of the Alternative Design Density overlay zone.)

- The <u>design (d) overlay zone</u> promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review. In addition, Design Review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area. (Note: This proposal is exempt from Design Review, per 33.420.045.0.)
- III. Land Use History: City records indicate no prior land-use reviews for this site.
- **IV. Agency Review:** A *Notice of Proposal in Your Neighborhood* was mailed on January 19, 2009. The *Re-Notice of Proposal in Your Neighborhood* was mailed on March 12, 2009.
 - Three bureaus responded with no comments:
 - Portland Water Bureau;
 - Portland Fire & Rescue; and
 - Urban Forestry Division of Portland Parks & Recreation.
 - Four bureaus have responded with no objections to the proposed Adjustments.
 - The <u>Bureau of Environmental Services</u> responded with comments regarding stormwater management requirements at the time of building permit submittal (Exhibit E-1).
 - The <u>Site Development Section of the Bureau of Development Services</u> responded with comments regarding stormwater management and utility plan requirements at the time of building permit submittal (Exhibit E-2).
 - The <u>Development Review Section of the Bureau of Transportation</u> responded, stating that public transit (bus route #70) is located near the site (Exhibit E-3).
 - The <u>Life Safety (Building Code) Section of the Bureau of Development Services</u> responded with comments regarding Life Safety requirements and building permit submittal (Exhibit E-4).
- **V. Neighborhood Review:** A *Notice of Proposal in Your Neighborhood* was mailed on January 19, 2009. The *Re-Notice of Proposal in Your Neighborhood* was mailed on March 12, 2009. Five written comments in response to the proposal have been received.

The following written comments were submitted during the first public comment period (January 19th through February 10th):

(Note: Following the first public comment period in which these comments were received, it was discovered that the proposal is exempt from Design Review. Therefore, the Design Review and Design Review-related Modifications referenced in these comments are no longer relevant. However, the comments remain part of the record.)

- 1. A letter was received via electronic mail on February 10, 2009 from Mat Millenbach, chair of the Land Use Committee of the neighborhood association, the Sellwood-Moreland Improvement League (SMILE). (Exhibit F-1)
 - The letter states that the proposal notice for this land-use review does not contain any demonstration that "granting the adjustment will equally or better meet the purpose of the regulation to be modified and that the proposal will not significantly detract from the livability or appearance of the residential zone," nor does the proposal notice show how "the resulting development will better meet the applicable design guidelines" or how the proposal "will be consistent with the purpose of the standard for which a modification is requested."
 - The letter goes on to state that SMILE is unable "to reach a conclusion as to whether this proposal meets the pertinent criteria," so SMILE is unable to provide Staff with "a substantive recommendation on this case."

• The letter also states that SMILE thinks "it would be reasonable to ask the applicant to furnish the showings described in the regulations," and that SMILE reserves "the right to further comment on and appeal any decisions on this case as more information becomes available."

Staff response:

- In the land-use review process, showing/demonstrating how a proposal meets the applicable approval criteria is not part of the proposal notice. The proposal notice is required to describe the proposed development and state why the land-use review is necessary. The decision notice is required to show/demonstrate, through findings, how a proposal meets the applicable approval criteria. This decision notice contains such findings.
- The applicant furnished a narrative that describes how the proposal meets the applicable approval criteria. The narrative was a required application material for the land-use review.
- 2. Electronic mail was received on February 10, 2009 from Danielle Ruhnke, resident of 1654 SE Marion Street, which is the westerly abutting property. (Exhibit F-2)
 - The e-mail states opposition to the Adjustment, and requests that changes be considered, including elimination of the porch, decreasing the size of the additional living space, locating the additional living space on the eastern side of the garage, or locating the additional living space at the rear of the garage.
 - The e-mail also states opposition to Modification #1, again requesting that the addition be located elsewhere, so that the applicant can abide by the five-foot setback from the western property line. The e-mail questions the actual location of the western property line, and requests that the applicant provide "evidence of the exact location of the west-side property line *prior to any construction*" (emphasis contained in letter).
 - The e-mail raises concern regarding current usage of the property, stating that a daycare is operated at the site but that it appears no one lives there, as there are "no signs of occupancy during the evenings or on the weekends." The e-mail raises concern that the proposed addition to the garage for the ADU will increase "the business traffic" and intensity of the daycare use located at the site. The e-mail requests that, if possible, staff provide contact information for the appropriate department with whom this issue should be discussed.

Staff response:

- According to the Portland Zoning Code, the porch is not defined as "living area;" therefore, elimination of the porch would not affect the Adjustment. The Adjustment is required because the living area of the ADU will be about 74% of the size of the living area of the existing house/primary residence.
- As part of this land-use review, the applicant is not required to provide evidence of the exact location of property lines prior to construction of proposed development. The applicant signed the Responsibility Statement on the land-use review application form, which states that the applicant is "responsible for the accuracy of the information submitted," and that the "information being submitted includes a description of the site conditions." Further action and discussion regarding this matter would best be addressed by Ms Ruhnke and the applicant and/or property owner.
- According to the Portland Zoning Code, in the R2 zone, family daycare with up to 16 children is allowed in the home of the daycare provider. Family daycare is allowed to occur in an ADU on a site where a family daycare is located in the primary residential structure; in this case, in the existing single-family house.
- Family daycare with up to 16 children is regulated as a "certified family childcare home" by the State of Oregon's Child Care Division (CCD). CCD rules are enforced by CCD. Additionally, Code Compliance Services at the Bureau of Development Services at the City of Portland has purview to enforce daycare-related rules, such as the stipulation that such family daycare occur in the home of a daycare provider. Staff has provided Ms Ruhnke with contact information for CCD. Additionally, Staff

has provided Ms Ruhnke with the phone number for BDS Code Compliance Services, which is (503) 823-7305.

- For more information, refer to the findings in this decision notice.
- 3. Electronic mail was received on February 11, 2009 from Jonathan Cogan, resident of 1646 SE Marion Street, which is the second property west of the subject site. (Exhibit F-3)
 - The e-mail states that the requested Adjustment and Modifications do not "meet the prevailing neighborhood standards and would not fit [in]," and that "homes should have buffer between them, per the [zoning] code, and this is ideal for the Sellwood neighborhood."
 - The e-mail states that the owner should be able to "conform to the existing rules/standards."

Staff response:

- Adjustments/Modifications to these development standards (33.205.030 and 33.120.220) are allowed by the Portland Zoning Code when approval criteria are met.
- For more information, refer to the findings in this decision notice.

The following written comments were received during the second public comment period (March 12th through March 26th):

- 4. Electronic mail was received on March 16, 2009 from Dennis and Wauneta McLean, owners of the property at the northwest corner of SE 17th Avenue and SE Marion Street. (Exhibit F-4)
 - The e-mail states that the McLeans have no objection to the proposal.
- 5. Electronic mail was received on March 26, 2009 from Mat Millenbach, chair of the Land Use Committee of the neighborhood association, the Sellwood-Moreland Improvement League (SMILE). (Exhibit F-5)
 - The e-mail states 1664 SE Marion Street "was the subject of a complaint" made to the State of Oregon's Child Care Division (CCD), "alleging that nobody is living in the residence as required" by the rules for certified family childcare homes. The e-mail explains that CCD inspected the home on February 18, 2009 and "verified that nobody was living there." When the inspector returned on February 23, 2009, it was found that the daycare owner had moved a "portable bed and bedding material," "clothing" and "toiletries" into the house, and a daycare staff person told the inspector that she/he was living there. CCD now considers the complaint closed/corrected.
 - The e-mail states that Sellwood residents have spoken with Mr Millenbach about their concerns that the house, and another house in Sellwood, are being used "as businesses providing day care for children," rather than as certified family childcare homes.
 - The e-mail states that the applicant's narrative does not "show that the Adjustments will equally or better meet the purpose of the regulation to be modified," nor does the narrative show that the Adjustments "will not detract from the livability of the neighborhood, particularly considering that the converted garage will probably be used to expand the day care center."
 - The e-mail states that SMILE does not "support this proposal" because it does not believe that the Adjustment request meets the "Adjustment approval criteria regulations nor the spirit of the rules pertaining to certified family child care homes."

Staff response:

- According to the Portland Zoning Code, in the R2 zone, family daycare with up to 16 children is allowed in the home of the daycare provider. Family daycare is allowed to occur in an ADU on a site where a family daycare is located in the primary residential structure; in this case, in the existing single-family house.
- Family daycare with up to 16 children is regulated as a "certified family childcare home" by the State of Oregon's Child Care Division (CCD). CCD rules are enforced

by CCD. Additionally, Code Compliance Services at the Bureau of Development Services at the City of Portland has purview to enforce daycare-related rules, such as the stipulation that such family daycare occur in the home of a daycare provider. Staff has provided Mr Millenbach with contact information for CCD. Additionally, Staff has provided Mr Millenbach with the phone number for BDS Code Compliance Services, which is (503) 823-7305.

• For more information, refer to the findings in this decision notice.

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 citywide, 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.

<u>Adjustment Requests:</u>

- **1.** The applicant requests an Adjustment to Portland Zoning Code Standard 33.205.030.C, *Design Standards*, in the *Accessory Dwelling Units* chapter.
 - <u>33.205.030.C.4</u> states that only one entry door on a house can face the street. The new entry door for the ADU will also face the street. (The ADU will be attached to the house and thus is considered part of the house for the purposes of this standard.)
 - <u>33.205.030.C.6</u> states that the living area of an ADU cannot be larger than 33% of the living area of the house, or no more than 800 square feet, whichever is less. The living area of the house is about 704 square feet. The living area of the proposed ADU is about 546 square feet. (The proposed covered porch is not considered "living area.") Therefore the living area of the proposed ADU is about 74% of the living area of the house.
- **2.** The applicant requests an Adjustment to Portland Zoning Code Standard 33.120.220, *Setbacks*, in the *Multi-dwelling Zones* chapter.
 - <u>33.205.030</u>, <u>Table 120-4</u>, states that a side setback of at least five feet is required. The ADU is proposed at an approximately 0'-6" setback from the western property line.

Staff addresses approval criterion "A" separately for each Adjustment. Approval criteria "B" through "E" are addressed concurrently for both Adjustments.

A. Granting the Adjustment will equally or better meet the purpose of the regulation to be modified.

Adjustment Request #1

Findings for A: As stated in the Portland Zoning Code, the purposes of 33.205.030, *Design Standards*, in the *Accessory Dwelling Units* chapter, are as follows:

- Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;
- Respect the general building scale and placement of structures to allow sharing common space on the lot, such as driveways and yards;
- Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and

Provide adequate flexibility to site buildings so that they fit the topography of sites.

The proposed Adjustment equally meets the purposes of the regulation. The ADU is proposed to be 546 square feet in size. The necessity for the Adjustment to increase the maximum allowed size of the ADU is more a function of the small size of the existing house/primary residence rather than the proposed size of the ADU. In fact, the existing house is one of the smallest single-family houses on this block of SE Marion Street.

The ADU will not conflict with the desired character of the R2 zone in this area. The R2 zone is a multi-dwelling residential zone intended to provide a variety of housing opportunities. The R2 zone allows two primary dwelling units on sites such as the subject site. Given the 5,000-square-foot size of the site and the development standards of the R2 zone, the subject site could accommodate significantly more intense development than that proposed. If the existing house were demolished, the site could accommodate such development as a duplex with a total of 1,700 square feet of living area. The building or buildings could be as tall as 40 feet. This would be allowed by right; no Adjustment review would be required.

Livability will not be adversely impacted. The primary residence (the existing house) is located toward the front of the site. In contrast, the garage where the ADU will be located is toward the rear of the site, behind a driveway and gated fence. Thus the ADU will not visually compete with the presence of the house as the primary residence. Additionally, livability for the abutting neighbors to the west will not be adversely impacted. The addition at the front of the garage will have no windows on its west façade, nor will the existing west façade of the garage have any windows added to it. Furthermore, the addition at the front of the garage will be concealed from view by an existing six-foot-tall fence, which is located at the western edge of the driveway. (The fence begins about 10 feet from the front property line, and terminates about 53 feet from the front property line.) These characteristics – no windows on the west façade, and the existing fence at the western edge – ensure that livability concerns such as privacy are maintained for the abutting neighbor.

With regard to the entry door of the ADU facing the street, there will be no conflict with the desired character of the R2 zone in this area. Typically, residential structures such as ADUs are located and designed to appear as the secondary structures that they are, to retain the visually prominent role of the primary structure on the site. The proposed ADU is consistent with this desired character. Because the ADU will be located at the end of the existing paved driveway, near a rear corner of the house, and behind an existing gated fence, the entry door of the ADU will not visually compete with the main entry door of the existing house/primary residence, nor will the ADU itself visually compete with the existing house.

The ADU also allows for the sharing of common space on the lot. The expansion of the garage for the ADU will occur at the front of the garage, where paved driveway is currently located. After the addition is completed, the driveway between the existing gated fence and the ADU will be about 27'-0" long x 11'-0" wide, which will still provide ample parking area for residents of the site. Even so, the Zoning Code does not require that on-site parking be provided, due to the site's proximity to transit service offering at least 20-minute peak-hour service. Additionally, placing the addition at the front of the garage, as opposed to the rear or the east façade, also maintains the existing rear yard at its current size.

The ADU respects the general building patterns in the neighborhood, including placement, scale, and character. Aside from a shed on the westerly property, no structures on neighboring lots are located in close proximity to the ADU, thus ensuring that living areas will not be located too close together. The ADU also respects general building patterns through the use of windows, siding, and roof materials consistent with those of the existing house and other houses in the surrounding area.

With the condition that a fence equally as sight-obscuring as the existing fence or more sight-obscuring than the existing fence remain along the western edge of the site, beginning 10 feet from

the front property line, and terminating 53 feet from the front property line, the approval criterion is met for the reasons stated above.

Adjustment Request #2

Findings for A: As stated in the Portland Zoning Code, the purposes of 33.205.030, *Setbacks*, in the *Multi-dwelling Zones* chapter, are as follows:

- 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; and
- 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.

The purposes of the Setbacks standard are still met. Separation for fire protection is maintained, as the western façade of the accessory dwelling unit (ADU) will be fire-rated to meet the Building Code. Access for fire-fighting will also be maintained. The ADU, to be located in the existing garage at the end of a paved driveway, will not affect the ability of firefighters to access the existing house on the site or the existing houses on abutting properties. The existing house on the westerly abutting property is located about 14 feet away from the proposed ADU, west of the driveway on that property. Because the westerly abutting property contains a driveway along its eastern edge, near the side property line with the subject site, it is unlikely that the house on the abutting property will be expanded in close proximity to the side property line and the proposed ADU. Thus separation between the house on the abutting property and the proposed ADU is likely to remain. Additionally, the availability of light and air will not be compromised, as the ADU will remain one story in height. In fact, the proposal will result in more separation for fire protection, light, and air than otherwise afforded by the minimum side setbacks for this particular residential zone. In the R2 zone, the minimum side setback is five feet; therefore, if two houses on abutting lots each were each set back by the minimum amount, the separation between the two would be only 10 feet. The proposed ADU will be located about 14 feet from the house on the westerly property, exceeding the 10-foot distance allowed by the Zoning Code.

The Adjustment will not adversely impact privacy for the abutting neighbors to the west. Firstly, the addition at the front of the garage will have no windows on its west façade, nor will the existing west façade have any windows added to it. Secondly, the addition will be concealed from view by an existing six-foot-tall fence, which is located at the western edge of the driveway. (The fence begins about 10 feet from the front property line, and terminates about 53 feet from the front property line.). Lastly, the existing house on the westerly abutting property is located about 14 feet away from the proposed ADU, west of the driveway on that property. These characteristics – no windows on the west façade, and the existing fence at the western edge, and the location of the driveway and house on the westerly property – ensure that privacy is maintained for the abutting neighbor.

The proposed setback of the ADU respects general building patterns in the neighborhood, including placement, scale, and character. Firstly, the existing house on the site is located toward the front of the site, befitting its role as the primary structure. The existing garage, where the ADU will be located, is toward the rear of the site, behind an existing gated fence running across the existing driveway. This location for the ADU is appropriate for its role as a secondary structure. This configuration is consistent with the general scale and placement of structures in the neighborhood, where secondary structures such as additional dwelling units and storage sheds typically are located toward the rear of the property, and are not as visually prominent as primary structures. Secondly, granting the Adjustment respects the general building scale and placement of structures in the neighborhood by allowing the existing garage to be re-used. Re-using the garage for the ADU, as opposed to building a new structure on the

site, minimizes visual impact of the development on the neighborhood, allowing the site's existing configuration of buildings to remain largely intact. Thirdly, general building patterns of the area are respected through the use of windows, siding, and roof materials consistent with those of the existing house and other houses in the surrounding neighborhood. Fourthly, it should be noted that the surrounding area contains a number of houses and accessory structures such as sheds located within side setbacks, due to their dates of construction before current Zoning Code development standards. In this respect, the proposed ADU does not present an aberration from the general building placement and scale of the surrounding area.

The ADU maintains a reasonable physical relationship between residences. Aside from a shed on the property to the west, no structures on neighboring lots are located in close proximity to the ADU, ensuring that living areas will not be located too close together.

The existing front and rear setbacks will not be affected by the proposal. The front yard will remain open and visually pleasing.

Lastly, the rear yard, which comprises the site's primary outdoor area, will be retained. Locating the ADU in the existing garage, and locating the addition at the front of the garage where there is currently paved driveway, allows the rear yard to remain at its existing size, and continue to provide recreational opportunities to residents of the site.

With the condition that a fence equally as sight-obscuring as the existing fence or more sight-obscuring than the existing fence remain along the western edge of the site, beginning 10 feet from the front property line, and terminating 53 feet from the front property line, the approval criterion is met for the reasons stated above.

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

Findings for B: The proposed size of the ADU – 74% of the size of the existing house/primary residence – will not significantly detract from the livability or appearance of the residential area. The primary residence is located toward the front of the site. In contrast, the garage where the ADU will be located is toward the rear of the site, behind a driveway and gated fence. Thus the ADU will not visually compete with the house as the primary residence.

The expansion of the garage for the ADU will occur at the front of the garage, where paved driveway is currently located. After the addition is completed, the driveway between the existing gated fence and the ADU will be about 27'-0" long x 11'-0" wide, which will still provide ample parking area on the site. Therefore the ADU will not have parking-related effects on the livability or appearance of the residential area. Even so, the Zoning Code does not require that on-site parking be provided on the subject site, due to its proximity to transit service offering at least 20-minute peak-hour service. Locating the addition at the front of the garage, as opposed to the rear or east façade, also maintains the existing rear yard at its current size, ensuring that livability for residents on the site is not adversely impacted.

The proposed location of the entry door on the front façade of the ADU also will not significantly detract from the livability or appearance of the residential area. As stated above, the primary residence is located closer to the front of the site than the ADU. The front-façade entry door of the ADU will be located toward the rear of the site, behind a driveway and gated fence. The visual prominence of the primary residence and its entry door will be maintained, consistent with the appearance and livability of the residential area.

In addition, the Adjustment will not adversely impact livability for the abutting neighbors to the west. Firstly, the addition at the front of the garage will have no windows on its west façade, nor will the existing west façade of the garage have any windows added to it. Secondly, the addition, including the entry door, will be concealed from view by the existing six-foot-tall fence

located along the western edge of the site. Lastly, the existing house/primary residence on the westerly abutting property is located about 14 feet away from the proposed ADU, west of the driveway on that property. These characteristics – no windows on the west façade, the existing fence at the western edge, and the location of the driveway and house on the westerly property – ensure that livability, including privacy, is maintained for the abutting neighbor.

The proposal to allow the ADU at approximately 0'-6" from the western property line will not significantly detract from the livability or appearance of the residential area. The western façade of the existing garage has been located 0'-6" from the western property line for several decades. The addition to the western façade of about 10'-9" linear feet of living area and 6'-0" linear feet of covered porch area will not increase adverse impacts of the garage structure.

Lastly and quite notably, the proposed 546-square-foot ADU exerts a significantly lesser impact on the overall neighborhood than other types of development allowed by right in the R2 zone. The R2 zone allows multi-dwelling development on 5,000-square-foot sites such as the subject site. By right, the subject site could accommodate an attached house, a duplex, or an attached duplex, all of which arguably would exert a more significant effect than a 546-square-foot ADU with a front door facing the street.

With the condition that a fence equally as sight-obscuring as the existing fence or more sight-obscuring than the existing fence remain along the western edge of the site, beginning 10 feet from the front property line, and terminating 53 feet from the front property line, the approval criterion is met for the reasons stated above.

C. If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which [sic] is still consistent with the overall purpose of the zone.

Findings for C: Two Adjustments are being requested. Findings for criteria "A," "B," and "E" note that no adverse impacts are expected to result from the requested Adjustments. The R2 zone is intended to preserve land for urban housing and to provide opportunities for multidwelling housing. The proposed ADU is consistent with the overall multi-dwelling purpose of the R2 zone and the general development pattern allowed by standards of the zone. For these stated reasons, the approval criterion is met.

D. City-designated scenic resources and historic resources are preserved.

Findings for D: The proposed Adjustments do not affect City-designated scenic resources or historic resources. *Therefore this criterion does not apply.*

E. Any impacts resulting from the Adjustment are mitigated to the extent practicable.

Findings for E: The addition to be constructed at the front of the garage will have no windows on its west façade, to ensure that the abutting neighbor's privacy is not adversely impacted. Additionally, an existing six-foot-tall fence, which is located at the western edge of the driveway, will remain. (The fence begins about 10 feet from the front property line, and terminates about 53 feet from the front property line.) The fence will protect the neighbor's privacy by concealing the walls of the addition, and its front-facing entry door, from view. Thus potential impacts are mitigated to the extent practicable.

With the condition that a fence equally as sight-obscuring as the existing fence or more sight-obscuring than the existing fence remain along the western edge of the site, beginning 10 feet from the front property line, and terminating 53 feet from the front property line, the approval criterion is met for the reasons stated above.

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 for F: The subject site is not located within an environmental zone. *Therefore this criterion does not apply.*

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 two Adjustments associated with a project to convert an existing garage on the subject site into an accessory dwelling unit (ADU). The first Adjustment is to 33.205.030 Design Standards in the Accessory Dwelling Units chapter, to allow an increase in the maximum allowed size of the ADU in relation to the size of the living area of the primary residence, and to allow two doors – the existing door on the primary residence and a new door on the front of the ADU – to face the street. The second Adjustment is to 33.120.220 Setbacks in the Multi-dwelling Zones chapter, to allow the ADU to be located about 0'-6" from the western property line.

As noted in the findings above, the requested Adjustments meet the approval criteria. The size of the ADU and the location of an entry door on its front façade are sufficiently mitigated by the ADU's location toward the rear of the site, behind an existing gated fence, at the end of an existing driveway. Thus the primary residence and its entry door will be more visually prominent. Allowing the ADU to be 0'-6" from the western property line permits re-use of an existing structure, the garage. Granting the Adjustment also retains shared common areas on the site: the rear yard, for recreation, and the paved driveway, for parking.

With approval requiring that the permit drawings substantially conform with the site plan and elevation drawings attached herein, the requested Adjustments meet the applicable criteria and therefore warrant approval.

ADMINISTRATIVE DECISION

Approval of the following Adjustments associated with a project to convert an existing garage into an Accessory Dwelling Unit (ADU):

- Adjustment to 33.205.030.C, Design Standards, to allow:
 - o the size of the living area of the ADU to be about 74% of the size of the living area of the primary residence/existing house, and
 - o the entry door of the ADU to face the street.
- Adjustment to 33.120.220, Setbacks, to allow the western side setback of the ADU to be 0'-6".

Approval in substantial conformance with the approved site plans, Exhibits C-1 through C-5, signed and dated March 31, 2009, subject to the following conditions:

A. As part of the building permit application submittal, the following development-related condition must be noted on each of the four required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE- Case File LU 08-176797 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

B. A fence that is equally as sight-obscuring as the existing fence or more sight-obscuring than the existing fence must remain along the western edge of the site, beginning 10 feet from the front property line, and terminating 53 feet from the front property line.

Staff Planner: Kate Marcello

Decision rendered by: ______ on March 31, 2009

By authority of the Director of the Bureau of Development Services

Decision mailed: Thursday, April 2, 2009

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 November 10, 2008, and was determined to be complete on January 14, 2009.

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 November 10, 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 requested that the 120-day review period be extended for a total of 16 days. See Exhibit A-2.

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 Thursday, April 16, 2009** 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 Friday, April 17, 2009 (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.

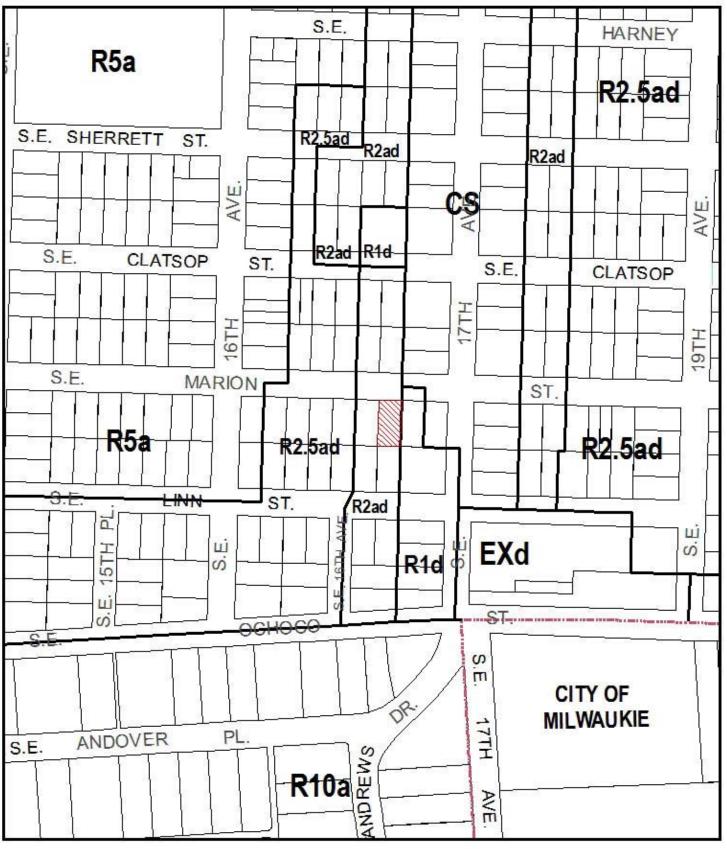
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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
 - 1. Applicant's Narrative
 - 2. Request for Extension to 120-day Timeline
- B. Zoning Map (attached)
- C. Plans and Drawings:
 - 1. Site Plan (attached)
 - 2. North, South, East, West Elevations (attached)
 - 3. Roof Plan, Foundation Plan, Foundation Section, Post Detail
 - 4. Section Details
 - 5. Two Photographs of Existing Fence at Western Edge of Property
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
 - 3. Re-Notice Mailing List
 - 4. Re-Notice Mailed Notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Site Development Section of the Bureau of Development Services
 - 3. Development Review Section of the Bureau of Transportation
 - 4. Life Safety (Building Code) Section of the Bureau of Development Services
- F. Correspondence:
 - 1. Mat Millenbach, Chair of the Land-use Committee of Sellwood-Moreland Improvement League (neighborhood association); February 10, 2009; stating insufficient demonstration that approval criteria are met
 - 2. Danielle Ruhnke; westerly abutting resident; February 10, 2009; in opposition to Modification #1 and Adjustment, raising concerns about existing daycare use at site
 - 3. Jonathan Cogan; February 11, 2009; in opposition to Modifications and Adjustment
 - 4. Dennis and Wauneta McLean; March 16, 2009; stating no objections to proposal
 - 5. Mat Millenbach, Chair of the Land-use Committee of Sellwood-Moreland Improvement League (neighborhood association); March 26, 2009, in opposition to Adjustments; raising concerns about existing daycare use at site
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. 14-Day Letter ("Incomplete Letter")



ZONING Site



File No. __LU 08-176797 DZM AD 3932 1/4 Section _ 1 inch = 200 feet Scale. 1S1E26AB 5500 State Id (Nov 21, 2008) В Exhibit



