



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

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**Date:** December 18, 2009  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
503-823-7612 / [sean.williams@ci.portland.or.us](mailto:sean.williams@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 09-164110 AD**

#### **GENERAL INFORMATION**

**Applicant:** Barbara A Lockhart  
1405 NW 24<sup>th</sup> Avenue  
Portland, OR 97210-2619

**Representative:** Mark Lyles  
7325 N Denver Avenue  
Portland, OR 97217

**Site Address:** 1415 NW 24<sup>th</sup> Avenue

**Legal Description:** EXC N 13.8' OF W 22' LOT 1 BLOCK 10 S 14.3' OF E 68' OF LOT 2  
BLOCK 10, GOLDSMITHS ADD

**Tax Account No.:** R331301600

**State ID No.:** 1N1E33BB 10500

**Quarter Section:** 2927

**Neighborhood:** Northwest District, contact John Bradley at 503-313-7574.

**Business District:** Nob Hill, contact Kay Wolfe at 503-227-0898.

**District Coalition:** Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.

**Plan District:** None

**Zoning:** Residential 2,000 (R2)

**Case Type:** Adjustment (AD)

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

#### **Proposal:**

The applicant is requesting an adjustment to the minimum lot area for multi dwelling development in the R2 zone (33.612.200) from 4,000 square feet to 3,800 square feet as a result of a planned property line adjustment with the adjacent property to the south (1405 NW 24<sup>th</sup> Avenue).

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Section **33.805.040 A.-F., Approval Criteria for Adjustments.**

**ANALYSIS**

**Site and Vicinity:** The subject property is located approximately 65 feet north of the intersection of NW 24<sup>th</sup> Avenue and NW Pettygrove Street. Existing improvements consist of a 6 unit apartment complex within 1415 NW 24<sup>th</sup> Avenue and a single family dwelling within 1405 NW 24<sup>th</sup> Avenue. Water and sanitary sewer service is available within NW Pettygrove Street. However, only water is available within NW 24<sup>th</sup> Avenue. Because the subject property's sole street frontage is on NW 24<sup>th</sup> Avenue a sanitary sewer lateral that serves the apartment complex connects to the main in NW Pettygrove Street through the westernmost portion of 1405 NW 24<sup>th</sup> Avenue. The vicinity is comprised of a mixture of single and multi dwelling development with corresponding zoning types. Wallace Park is located one block to the west and the NW 23<sup>rd</sup> Avenue commercial corridor is located one block to the east.

**Zoning:** The R2 designation is one of the City's multi-dwelling zones which is intended to create and maintain higher density residential neighborhoods. The zone implements the comprehensive plan policies and designations for multi-dwelling housing.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **October 23, 2009**. All of the responding bureaus have no objection to approval of the adjustment. However, some bureaus have provided advisory comments relevant to approval of the subsequent property line adjustment and potential future development. See agency responses under the E exhibits for further details.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on October 23, 2009. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

**ZONING CODE APPROVAL CRITERIA****APPROVAL CRITERIA FOR ADJUSTMENTS****33.805.010 Purpose**

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.

**33.805.40 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. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and**

**Findings:** The applicant is requesting an adjustment to the minimum lot area for multi dwelling development in the R2 zone (33.612.200) from 4,000 square feet to 3,800 square feet as a result of a planned property line adjustment with the adjacent property to the south (1405

NW 24<sup>th</sup> Avenue). The purpose of the lot dimension standards for lots in multi dwelling zones is as follows:

- **Each lot has enough room for development that meets all the requirements of the zoning code;**
- **Lots are an appropriate size and shape so that development on each lot can be oriented toward the street as much as possible.**
- **The multi-dwelling zones can be developed to full potential; and**
- **Housing goals for the City are met.**

Both properties are under the same ownership and the desired result of the property line adjustment is to accommodate a new garage/accessory dwelling unit within 1405 NW 24<sup>th</sup> Avenue. However, a reduction in size of 1415 NW 24<sup>th</sup> Avenue will result in this property moving further out of conformance which necessitates an adjustment to the minimum lot area standard for multi dwelling development in the R2 zone. The owner also plans to remove 2 units of the apartment complex and will be required to resolve any utility issues prior to the property line adjustment.

1415 NW 24<sup>th</sup> Avenue is currently nonconforming in the lot area requirements for multi dwelling development and density in the Residential 2,000 (R2) zone. The proposed property line adjustment will result in a reduction of 1415 NW 24<sup>th</sup> Avenue by approximately 531 square feet for a total lot area of 3,800 square feet. This will create a situation in which 1415 NW 24<sup>th</sup> Avenue will have a minimum and maximum density of 2 units with a 4 unit apartment complex on the site after the removal of 2 units to accommodate the PLA. 1405 NW 24<sup>th</sup> Avenue will contain an area of 6,200 square feet after the PLA which yields a minimum density of 2 and maximum density of 3 with the presence of a single family dwelling on the site. The combined maximum density of both properties equates to 5 units, which is the amount of units that are ultimately planned between 4 apartment units on 1415 NW 24<sup>th</sup> Avenue and 1 unit on 1405 NW 24<sup>th</sup> Avenue. However, based on the lot configurations, 1405 NW 24<sup>th</sup> Avenue would appear to be further dividable or accommodate additional units. Therefore, a transfer of density shall be required of 2 units from 1405 NW 24<sup>th</sup> Avenue to 1415 NW 24<sup>th</sup> Avenue. This will allow the apartment complex on 1415 NW 24<sup>th</sup> Avenue to be compliant with density requirements after the planned removal of 2 units. A stipulation of the density transfer allowance is that buildings on sites receiving transferred density must meet all of the development standards of the zoning code with the exception of maximum density. Therefore, prior to the property line adjustment, the applicant shall obtain final approval of a building permit to remove 2 of the apartment units on 1415 NW 24<sup>th</sup> Avenue and address any Multi-Dwelling development standards the existing development needs to meet as a result of the change to the lot dimensions and development. Additionally, a covenant shall be executed with the City that is attached to and recorded with the deed of both sites which reflects the resultant density of each site after the transfer of density. With the required improvements, each lot will contain enough room so that the existing development may meet the requirements of the zoning code.

Development on both properties is currently oriented towards NW 24<sup>th</sup> Avenue and this will not change as a result of the proposal. As demonstrated in the findings above, both 1405 & 1415 NW 24<sup>th</sup> Avenue combined are developed to the full potential of the Residential 2,000 (R2) zone thereby meeting the housing goals of the City. With the conditions of approval noted above, this proposal equally or better meets the purpose of the multi dwelling lot dimension standards. This criterion is therefore satisfied.

- 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 subject property is zoned for multi dwelling use and is located within the Northwest District neighborhood. Residential development within the vicinity of the site is

comprised of a mixture of single family homes and multi dwelling development. With the exception of the removal of two of the apartment units on 1415 NW 24<sup>th</sup> Avenue, the livability or appearance of the area will not be compromised. 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:** The site does not contain any scenic or historic resource designations. This criterion is not applicable.

**E. Any impacts resulting from the adjustments are mitigated to the extent practical;**

**Findings:** As addressed in the preceding findings, there are no discernable impacts that will result from the proposed adjustment. The applicant will be required to remove two of the apartment units on 1415 NW 24<sup>th</sup> Avenue, through which any applicable development standards of the multi dwelling zone shall be brought into conformance where practical. Additionally, a transfer of density is required to mitigate for the site moving further out of conformance with the multi dwelling lot area standard. This 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 overlay 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 has requested an adjustment to the minimum lot area standard for multi dwelling development in the R2 zone (33.612.200) as a result of a planned property line adjustment with the adjacent property to the south. As noted in this report, the proposal to allow a reduction in lot area of property identified as 1415 NW 24<sup>th</sup> Avenue is able to meet the adjustment approval criterion based on substantial conformance with applicable standards and established situations on the site and in the surrounding neighborhood.

## **ADMINISTRATIVE DECISION**

**Approval** of an adjustment to the minimum lot area standard for multi dwelling development in the R2 zone from 4,000 square feet to 3,800 square feet as the result of a planned property line adjustment, as illustrated with Exhibit C-1, subject to the following conditions:

- A. Prior to approval of the subsequent property line adjustment, the applicant shall obtain final approval of a building permit to remove 2 of the apartment units and address any

Multi-Dwelling development standards that apply to the change in development or that would be moving further out of conformance as a result of the property line adjustment.

- B. Prior to approval of the subsequent property line adjustment, the property owner must execute a covenant with the City that is attached to and recorded with the deed of both the site transferring and the site receiving the density reflecting the respective increase and decrease of potential density. The covenant must meet the requirements of Section 33.700.060.

**Staff Planner: Sean Williams**

**Decision rendered by:**  **on December 16, 2009**

By authority of the Director of the Bureau of Development Services

**Decision mailed: December 18, 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 October 13, 2009, and was determined to be complete on October 20, 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 October 13, 2009.

*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 January 5, 2010** 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. 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 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](http://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 **January 6, 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
- 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 & Bureau of Parks, Forestry Division
  - 5. Site Development Review Section of BDS
  - 6. Life Safety Plans Examiner
- F. Correspondence: NONE
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research

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



