



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

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Date: June 8, 2010
To: Interested Person
From: Mark Bello, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in 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 10-123957 AD

GENERAL INFORMATION

Applicant	Owner
RJ Johnson 808 SE Miller Street Portland, OR 97202	James E Nolke 825 SE Miller St Portland, OR 97202

Site Address: 825 SE MILLER ST

Legal Description: BLOCK 18 LOT 17, CITY VIEW PK
Tax Account No.: R158702940
State ID No.: 1S1E23CB 07100
Quarter Section: 3831

Neighborhood: Sellwood-Moreland, contact Mat Millenbach at 503-239-1134.
Business District: Westmoreland, contact Tom Brown at 53-381-6543.
District Coalition: Southeast Uplift, contact Leah Hyman at 503-232-0010.

Zoning: R5a Residential, "a" Alternative Design Density overlay zoning

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

Proposal:
 The property owner is proposing a major remodel of the house on this site and the addition of a new detached garage in the northeast corner of the site. All of the proposed development meets the development standards of the Zoning Code, except that the proposed front porch will encroach into the 10-foot required front setback, measured from the property line, as follows:

- The porch decking will be 9.5 feet from the front property line.
- The porch railing will be 9 feet from the front property line.
- The porch posts will be 8.5 feet from the front property line.
- The eave overhang will be 7 feet from the front property line.

There is a provision in the Zoning Code that allows setback averaging by using the average of the setbacks of the development on either side of the subject site. In this case the house to the east is set back approximately 10 feet and the house to the west is set back approximately 7.5 feet, from their respective front property lines. This would allow the subject porch to be 8.75 feet from the front property line instead of 10 feet. However, since the eave overhang will be as close as 7 feet to the front property line, approval of an Adjustment to the required front setback (33.110.220) is required to construct the porch as proposed.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, Section 33.805, Approval Criteria A - F.

ANALYSIS

Site and Vicinity: The site is a regularly platted 5,000 sq.-ft. lot on the north side of SE Miller Street. There is an existing house on the site about 13 feet back from the front property line, along SE Miller Street. There is a large Oregon White oak located in the southwest corner of the front yard adjacent to the front property line.

The house to the west is set back approximately 7'-6" from SE Miller Street. The house to the east is on a corner site.

Zoning: The site is zoned R2.5. The remodel of the existing house is allowed by R2.5 zoning except for the reduction in the 10' front building setback for which the applicant has requested this adjustment.

Land Use History: City records indicate there are no prior land use reviews for this site. The City has issued a permit for remodeling other than this proposed work.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **April 15, 2010**. All Bureaus responded with no issues or concerns except that Forestry wishes the applicant to contact them prior to work on the porch in the vicinity of the oak.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 15, 2010. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.040 Adjustment Approval Criteria

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

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

Purpose: The building setback regulations serve several purposes:

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of houses in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*

- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
 - They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.
- 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
- 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
- D.** City-designated scenic resources and historic resources are preserved; and
- E.** Any impacts resulting from the adjustment are mitigated to the extent practical.
- 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 AND CONCLUSIONS

With a condition regarding preservation of the White Oak, the applicants' proposal meets all of the relevant approval criteria:

The purposes of setback adjustments are met as follows:

- The access for fire protection would not be changed by this proposal. In addition the light that this area receives is already dictated by a large oak tree that is on the southwest corner of the property.
- This proposal would result in a house with a building scale that is similar to other houses in the neighborhood.
- The location of the porch posts at 8.5 feet from the front property line and the eaves at 7 feet is similar in position to any immediate neighbor to the west and similar to other houses in this block of Miller Street. The large oak tree on the southwest corner of the property already provides maximum privacy from the neighbor to the west and the neighbor to the east does not face Miller Street, but rather SE 9th Avenue.
- The area between the sidewalk and the porch will be attractively landscaped providing a visually attractive yard.
- The porch fits the topography of the site and maintains the architectural diversity of the neighborhood.
- This request does not impact access to a garage.

The encroachment of the porch into the front setback will result in an appearance that is very similar to both the immediate neighbor on the west, but also to many other houses on this block of SE Miller Street. Also, the encroachment of the porch into the setback on the west side of the house is mitigated by the location of a large oak tree that visually shields a portion of the porch from the west side. This administrative approval includes a condition requiring City Forester oversight of construction so that the tree is not damaged during construction of the porch.

Finally, there are no environmental overlay zones on this site. Only one adjustment is being requested. No city-designated scenic or historic resources will be affected by this request.

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.

ADMINISTRATIVE DECISION

Approval of Adjustment to the setback requirements of 33.110.220 as follows:

- The porch decking will be 9.5 feet from the front property line.
- The porch railing will be 9 feet from the front property line.
- The porch posts will be 8.5 feet from the front property line.
- The eave overhang will be 7 feet from the front property line.

Per the approved site plans, Exhibits C-1 and C-2, signed and dated June 3, 2010, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition B must be noted on each of the 4 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 10-123957 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. As part of building permit review, the applicant shall protect the White Oak at the southwest corner of the site. The City Forester shall approve the specified method of construction and activities shall be performed under his supervision.

Staff Planner: Mark Bello

Decision rendered by:  **on June 4, 2010**

By authority of the Director of the Bureau of Development Services

Decision mailed: June 8, 2010

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 April 1, 2010, and was determined to be complete on April 15, 2010.

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 April 1, 2010.

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 June 22, 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.

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 14 days from the date of mailing.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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

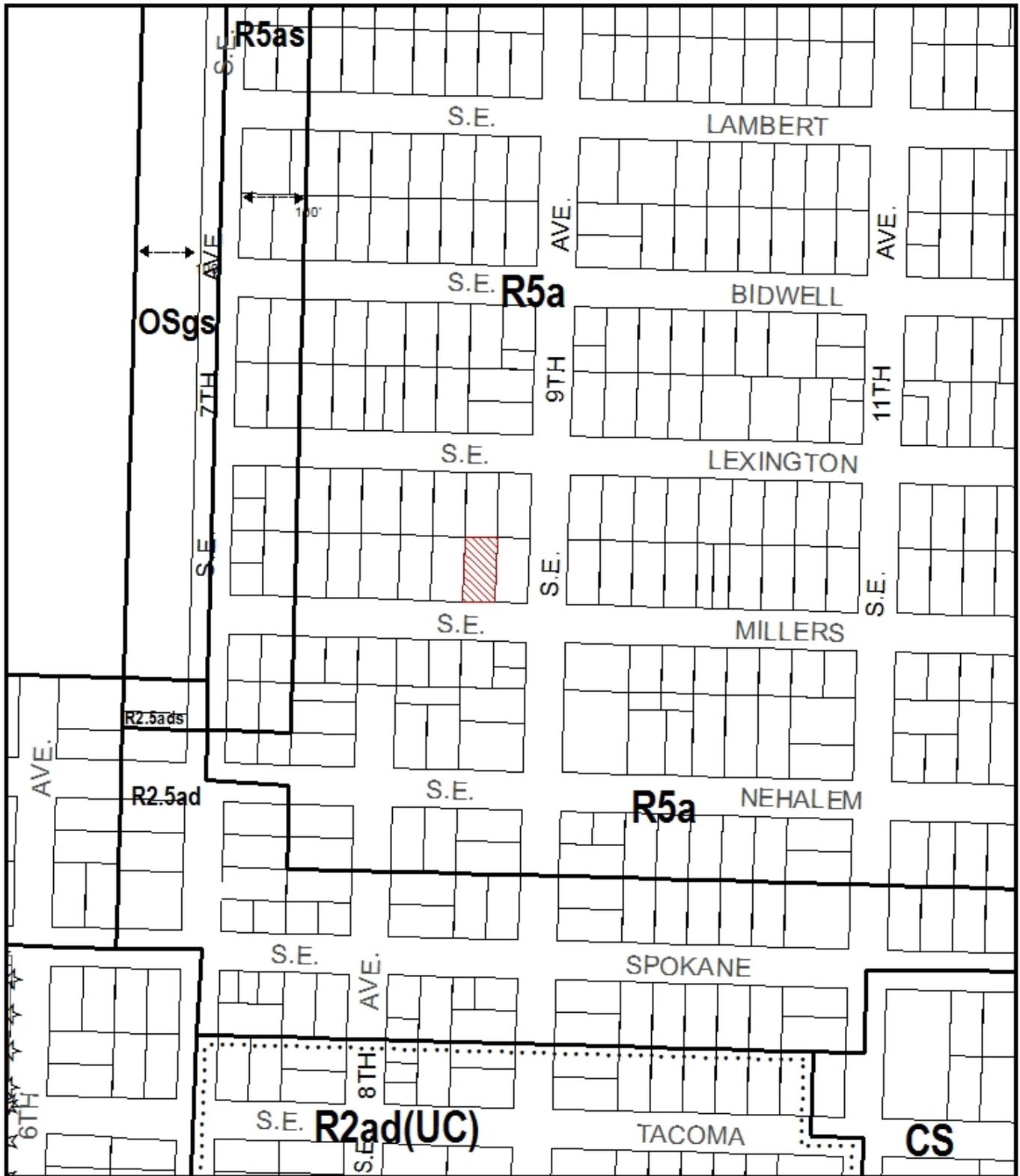
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety, BDS
- 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).



ZONING



Site



NORTH

File No. LU 10-123957 AD
 1/4 Section 3831
 Scale 1 inch = 200 feet
 State_Id 1S1E23CB 7100
 Exhibit B (Apr. 06, 2010)

