



CITY OF PORTLAND  
Bureau of Development Services  
1900 SW Fourth Avenue, Suite 5000  
Portland, OR 97201 **P524**  
**Land Use Decision Enclosed**  
**Case # LU 10-135387 AD**

16

**Return Service Requested**



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

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

**Date:** July 9, 2010  
**To:** Interested Person  
**From:** Sheila Frugoli, Land Use Services  
503-823-7817 / [frugolis@ci.portland.or.us](mailto:frugolis@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 10-135387 AD**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Ellen C Ostern  
3557 NE Fremont St.  
Portland, OR 97212

**Site Address:** 3557 NE FREMONT ST

**Legal Description:** BLOCK 2 LOT 3, RAILROAD HTS  
**Tax Account No.:** R684000130  
**State ID No.:** 1N1E24DC 20200  
**Quarter Section:** 2634

**Neighborhood:** Beaumont-Wilshire, contact Michael Rounds at 503-936-0740.  
**Business District:** None  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

**Plan District:** None  
**Zoning:** R5h, Single-Dwelling Residential 5,000 zone and the h, Aircraft Landing overlay zone

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

**Proposal:** The applicant is requesting an Adjustment to waive a required 5-foot side building setback for an Accessory Dwelling Unit (ADU). The applicant is requesting building permits to legalize a conversion of a garage into an ADU. Because a porch was added to the garage (which received permits in 2002), the building setback requirement applies along the east property line.

This property is under code enforcement for the unpermitted conversion of the garage to an accessory dwelling unit as well as the construction of a detached accessory structure located near the NE 35<sup>th</sup> Place property line (code compliance case #09-154636 VI). *Note: The*

*accessory structure is not shown on the submitted site plan. This application does not address the possible code issues regarding that detached structure.*

## ANALYSIS

**Site and Vicinity:** The subject site is located on the northeast corner of NE Fremont and NE 35<sup>th</sup> Place. The 1.5-story, bungalow-style home is set back from NE Fremont approximately 25 feet and is elevated approximately 3 feet above the NE Fremont right-of-way. A tall wood fence screens the home and back yard from the streets. The 1.5 story detached accessory structure is located approximately 75 feet from the front property line (NE Fremont) and is not readily visible.

The surrounding lots are developed with single-dwelling residences. Many also have detached garages. NE 35<sup>th</sup> Place is a narrow unimproved street with a gravel surface. NE Fremont is fully improved with a paved roadway, curbs, sidewalks and planter strips.

**Zoning:** The site and surrounding properties are zoned R5h. The R5, Single-Dwelling Residential zone provides housing opportunities for individual households. This zone is generally developed with detached homes on individual lots at a density of one unit per 5,000 square feet. The h, Aircraft Landing overlay zone provides safer operating conditions for aircraft in the vicinity of the Portland International Airport by limiting the height of structures and vegetation. The height limit in the R5 zones is more restrictive than the height limit implemented through the “h” overlay zone.

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

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **June 2, 2010**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS (Exhibit E.2)

The Life Safety Plan Review Section of BDS submitted the following information: Exterior walls less than three feet to a property line shall be one-hour fire-rated with no openings allowed. Roofs and eaves may project not closer than two feet to a property line. Eaves less than three feet to a property line must be protected on the underside as required for one-hour fire-rated construction. ORSC R302.1 (Exhibit E.1)

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on June 2, 2010. One written response has been received from a notified property owner in response to the proposal. The nearby neighbor raised concerns about increased density and parking problems created by the ADU (Exhibit F.1).

## 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; and

**Findings:** The purpose of the setback regulations, per 33.110.220, is to:

- Maintain light, air, separation for fire protection, and access for fire fighting;
- Reflect the general building scale and placement of houses in the city's neighborhoods;
- Promote a reasonable physical relationship between residences;
- Promote options for privacy for neighboring properties;
- Require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;
- 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
- 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.

Because a porch was added to the garage (which received permits in 2002), the building setback requirement applies along the east property line. The Zoning Code allows only garages within the setback. Zoning Code section 33.205.030.D. allows the conversion of detached structures into an ADU however alterations that move it out of conformance are not allowed. The addition of the porch conflicts with the setback requirements and therefore, the applicant is requesting an Adjustment to the side setback.

Converting an existing garage into a dwelling unit will not diminish access to light or air between structures. The detached structure abuts a detached garage. The structure is separated from the house on the eastern abutting lot by a driveway. In order to obtain a building permit for the ADU, the proposal must comply with Building Code fire separation requirements for the east wall of the structure. Access for fire fighting is available via the driveway. The Fire Bureau reviewed the proposal and responded with no concerns.

With an approved building permit and complete inspection, the conversion of the detached structure, with front porch, into a legal ADU will maintain the purpose of the setback regulations. This approval criterion is met.

**B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

**Findings:** A nearby property owner submitted written concerns. He stated that accessory dwelling units increase density which degrades livability. Further, he raised concerns that on-street parking is crowded in the area. Accessory dwelling units are allowed in single-dwelling zones. Density is regulated through development standard 33.205.030.C.2 2 which states, "The total number of individuals who reside in both units may not exceed the number that is allowed in a household." Zoning Code Chapter 33.910 defines household as follows:

*One or more persons related by blood, marriage, legal adoption or guardianship, plus not more than 5 additional persons, who live together in one dwelling unit; or none or more handicapped persons as defined in the Fair Housing Amendment Act of 1988, plus not more than 5 additional persons, who live together in one dwelling unit.*

Further, Zoning Code Section 33.205.030.C.5 requires no additional on-site parking to serve the ADU. The long driveway satisfies the one on-site parking space requirement for the house. The proposed ADU does not conflict with density or parking requirements.

As explained under criterion A, the detached ADU structure is separated from the abutting homes by at least 10 feet. Because the structure is set back from the adjacent streets, it does not dominate the street or change the character of the residential areas. A covered porch is an architectural feature commonly found on residential structures. The ADU will not adversely impact the livability of nearby neighbors.

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 development standard—setbacks, is being adjusted. Therefore this criterion does not apply.

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

**Findings:** The site is not within a City-designated scenic resource area or a historic resource area. Therefore, this criterion does not apply

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

**Findings:** There are no significant impacts that would result from granting the requested adjustment. Therefore no mitigation is required. This criterion is met.

**F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** The site is not within an environmental zone. 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 approval criteria are met and therefore this request should be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to waive a required 5-foot side building setback (33.110.220.B) along the east property line for a detached Accessory Dwelling Unit (ADU), per the approved site plan, Exhibit C.1, signed and dated July 7, 2010, subject to the following conditions:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 10-135387 AD."

NOTE: This decision does not address the detached structure located near the west property line.

**Staff Planner: Sheila Frugoli**

**Decision rendered by:**  **on July 7, 2010**

By authority of the Director of the Bureau of Development Services

**Decision mailed: July 9, 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 May 6, 2010, and was determined to be complete on May 27, 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 May 6, 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 July 23, 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 **July 26, 2010– (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

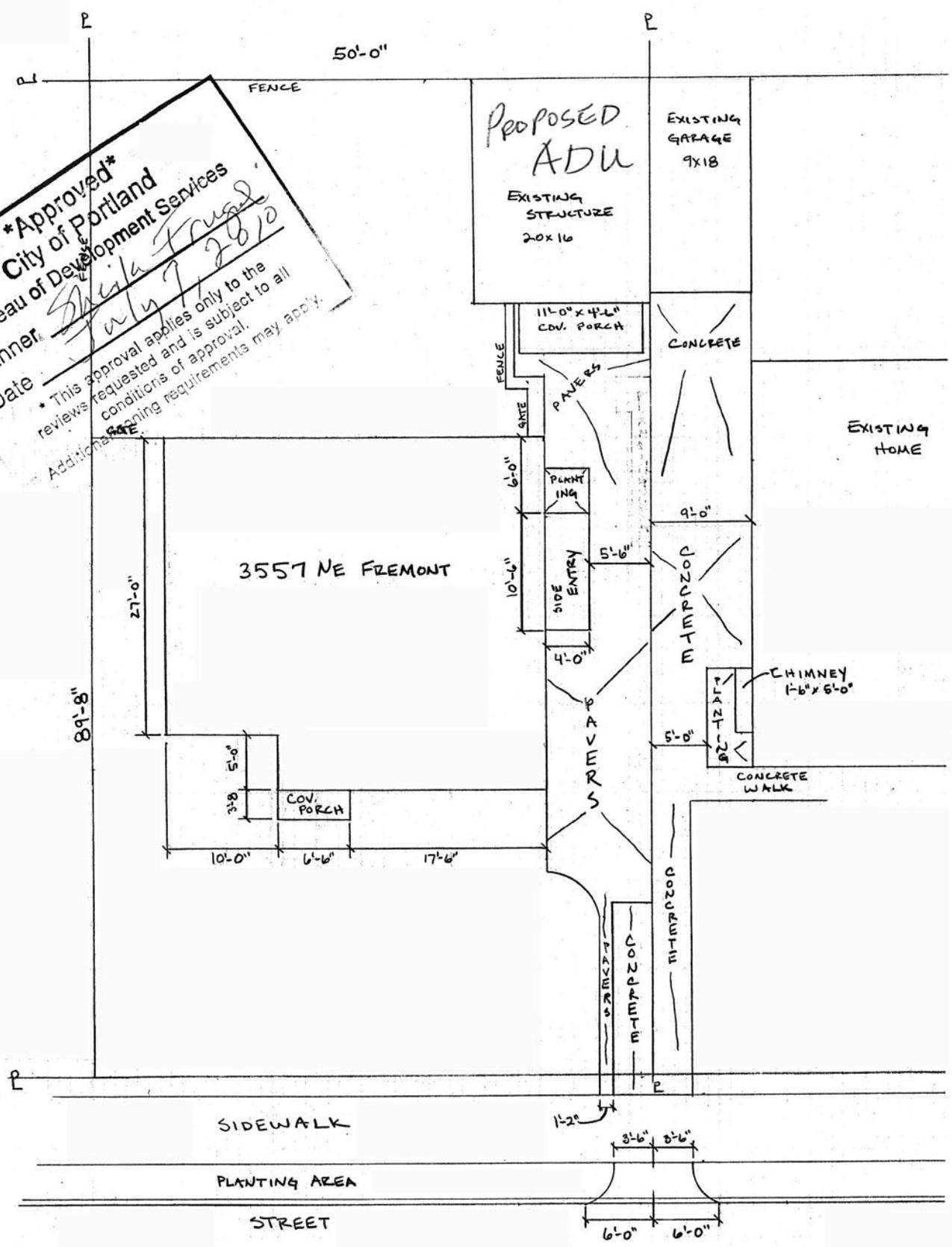
- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. South and East Elevation
  - 3. Photos of Detached Structure
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Life Safety Plan Review Section of BDS
  - 2. TRACS Print-out – No Concerns
- F. Correspondence:
  - 1. Joe Mattevich, June 14, 2010, opposes request
- 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).**



**\*Approved\***  
**City of Portland**  
**Bureau of Development Services**  
 Planner: *Spika Frugal*  
 Date: *July 7, 2010*

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



SITE MAP 3557 NE FREMONT  
 $\frac{1}{8}'' = 1'-0''$   
 LU10-135387

