



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** October 28, 2011  
**To:** Interested Person  
**From:** Kathy Harnden, Land Use Services  
503-823-3581 / [Kathy.Harnden@portlandoregon.gov](mailto:Kathy.Harnden@portlandoregon.gov)

## **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 11-166158 AD**

#### **GENERAL INFORMATION**

**Applicant:** Terry and Teresa O'Malley  
14986 SE Hickory CT  
Milwaukie, OR 97267

**Site Address:** 3334 NE 76TH AVE

**Legal Description:** BLOCK 5 LOT 31&32, GREGORY HTS  
**Tax Account No.:** R344102190  
**State ID No.:** 1N2E29AB 01600  
**Quarter Section:** 2738

**Neighborhood:** Roseway, contact Denise Gorrell at 503-319-3259.  
**Business District:** Portland International District Business Association, contact Thomas Wright at 503-249-3926.  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

**Zoning:** R5h – Residential 5000 with the “h” Aircraft Landing Zone

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

#### **Proposal:**

The applicants constructed an addition to the rear of their house that measures 16.5 feet on each side and extends to four feet from the south side property line. The applicants state that the addition was constructed approximately 25 years ago by a contractor who did not obtain all the required building permit approvals. The applicants are now attempting to legalize the addition. The Portland Zoning Code, Title 33, requires that most structures in the R5 zone be located a minimum of 5 feet from side and rear property lines. Roof eaves may extend for one foot, or 4 feet, from side and rear property lines. Exceptions to this standard are approved through Adjustment Reviews, if all the relevant approval criteria are met or if the criteria can be met with conditions of approval. The exterior wall of the addition is located 4 feet from the

south, or side, property line and the eave is located 3 feet from that property line. Therefore, the applicants have requested approval of an Adjustment to Code Section 33.110.220.B, to 1) to reduce the minimum required building setback from the south/side property line from 5 feet to 4 feet for the wall of the addition, and from 4 feet to 3 feet for the roof eave.

**Relevant Approval Criteria:** To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

## ANALYSIS

**Site and Vicinity:** The property is located in northeast Portland in an older, single dwelling neighborhood where most homes were constructed in the early 1900s. The neighborhood is fully developed with one to two-level houses on 5,000 square-foot lots, except for a few newer homes developed on narrow, 25-foot wide lots, including a pair across the street from the subject property. A Grace Lutheran Church is located approximately 200 feet north of the site, at the end of the block. The subject site is consistent with the surrounding neighborhood development. According to aerial photography, it appears there are several structures on or near property lines in the general vicinity of this site.

**Zoning:** The site is zoned R5, a high density single-dwelling zone. The R5 zone allows attached and detached single-dwelling structures and duplexes.

**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 **September 9, 2011**. The following Bureaus responded with advice for the applicants, but with no issues, concerns, or conditions of approval:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Life Safety

The Site Development Section of BDS responded that an existing cesspool on the property should be decommissioned. Because the addition was likely built over the top of the old cesspool, the applicants signed a decommissioning waiver with the City, which holds the City harmless against any potential future problems with the cesspool. The applicant requested that the 120-day review period be extended until the cesspool issue could be resolved. Site Development approved the applicant's waiver on October 19, 2011.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on September 9, 2011. One written response was received from a notified property owner in favor of the proposal. No response was received from the Neighborhood Association.

## 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 purposes of setback requirements are to maintain light, air, separation for fire protection, and access for fire fighting. The setback standards also reflect the general

building scale and placement of development in the City's neighborhoods and promote a reasonable physical relationship between residences. They promote options for privacy for neighboring properties and provide adequate flexibility to site a building so that it can be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity.

The impacts on light and air from this proposal are almost negligible as compared to what would be expected if the proposal were to meet the required setbacks; i.e, if the addition were reduced in size, or relocated, to meet the required 5-foot wide side setback, the difference of only one additional foot of space to the amount of light and air in the vicinity would not be readily discernable. Because four feet remain between the addition and the south property line and three feet for the eave, separation for fire protection and access for fire fighting remains adequate without the need for fire code appeals.

**Conclusion:** This 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:** The addition was constructed at the rear of the existing house, but is visible from the street because it projects three feet beyond the south wall of the original house. However, shrubs and trees in the front yard and along the side property line partially obscure it. More importantly, the addition's exterior was constructed to match the exterior of the existing house and was painted the same color, so that it blends in with the house and looks as though it were constructed at the same time as the house. Also, the roof line of the addition is lower than that of the existing house, so that it is not visible from the street. Because of how well the addition blends with the existing house, there are no negative impacts to livability or appearance from the addition.

N.E. 76<sup>th</sup> Street is a local neighborhood street and the neighborhood character is single dwelling residential. The residential addition has no effect on adjacent street classifications and is consistent with the desired character, i.e., single dwelling residential, of the neighborhood.

**Conclusion:** The addition has had no impact on the livability or appearance of the neighborhood, and is consistent with both the desired character of the area and the adjacent street classifications. Therefore, this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

**Findings:** Two adjustments to the south side setback are required: one for the exterior wall of the addition and one for the roof eave above the wall on the south side of the addition. However, staff finds that the impacts from approval of the Adjustments will not be cumulative due to the addition's modest size and the design elements that were incorporated into the addition to make it match the design of the house. Also, no cumulative effects have been identified over the 25-year existence of the addition. The addition, which provides an additional bedroom with attached bath is consistent with the overall purpose of the R5 zone, which is to preserve land for high density housing and to provide housing opportunities for individual households.

A neighbor responded to the Public Notice stating that she viewed the addition from the street and that she found no problems with the it.

**Conclusion:** Impacts from allowing the adjustments are minimal, and the one comment received from neighbors voiced approval of the addition and supported the request for

adjustments. Therefore, this criterion is met.

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

**Findings:** There are no City-designated scenic or historic resources on the site.

**Conclusion:** Therefore, this criterion does not apply.

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

**Findings:** No impacts from the adjustment have been identified.

**Conclusion:** Therefore, this criterion does not apply.

- 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 in an environmental zone.

**Conclusion:** Therefore, this criterion does not apply.

## CONCLUSIONS

Approximately 25 years ago, the applicant constructed a small, approximately 272 square foot addition to the rear of the existing home. The addition includes a bedroom with attached bath and an outside door that exits onto a small deck. The bedroom addition encroached into the 5-foot wide side yard setback on the south side of the property.

After 25 years, no cumulative impacts have occurred from the encroachment into the side yard setback, and none are expected to occur as a result of the approval of this application. Further, the addition is consistent with the purpose of the R5 zone, which is to preserve land for housing and to provide housing opportunities for individual households. As described above, the addition meets all the criteria for granting an adjustment to the side yard setback. Therefore, because all of the relevant approval criteria are met, the proposal can be approved, in substantial compliance with the proposed site plan.

## ADMINISTRATIVE DECISION

Approval of an adjustment to allow the side yard setback to be reduced 1 foot for the wall of the addition and 1 foot for the roof eave of the addition per the approved site plan, Exhibit C.1, signed and dated October 26, 2011, subject to the following condition:

- A. As part of any building permit application submittal, the required site plan and any additional drawings, must reflect the information approved by this land use review as indicated in Exhibit C.1. The sheet on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 11-166158 AD.

**Staff Planner: Kathy Harnden**

**Decision rendered by:**



**on October 26, 2011**

By authority of the Director of the Bureau of Development Services

**Decision mailed: October 28, 2011**

**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 August 11, 2011, and was determined to be complete on **September 7, 2011**.

*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 August 11, 2011.

*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 until the cesspool issue could be resolved, which occurred on October 19, 2011, a period of 19 days. Unless further extended by the applicant, **the 120 days will expire on: February 16, 2012**

**Some of the information contained in this report was provided by the applicant.**

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on November 14, 2011** 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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 **November 15, 2011 (the next business day following the last day to appeal).**
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

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

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

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

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. Original narrative
  - 2. Revised Narrative, received August 11, 2011
  - 3. Applicant's request to extend the review period, dated October 11, 2011
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Building Elevations
- 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. Site Development Review Section of BDS
  - 5. Life Safety
- F. Correspondence:
  - 1. Gail Cripe, September 13, 2011, approves the proposal
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Incomplete Letter dated 8/31/11
  - 4. Decommissioning Waiver

**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



|             |                   |
|-------------|-------------------|
| File No.    | LU 11-166158 AD   |
| 1/4 Section | 2738              |
| Scale       | 1 inch = 200 feet |
| State_Id    | 1N2E29AB 1600     |
| Exhibit     | B (Aug 16,2011)   |



