



# City of Portland, Oregon

# **Bureau of Development Services**

#### **Land Use Services**

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

**Date:** July 25, 2013

**To:** Interested Person

**From:** Shawn Burgett, Land Use Services

503-823-7618 / shawn.burgett@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 the version located on the BDS website <a href="http://www.portlandonline.com/bds/index.cfm?c=46429">http://www.portlandonline.com/bds/index.cfm?c=46429</a>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 13-165135 AD

## **GENERAL INFORMATION**

**Applicant:** Jeff Wackerly

Blackstone Builders, LLC

5631 NE 33rd Ave Portland, OR 97211

Owners: Damien Semprevivo & Junko Otsu

915 SE 70th Ave

Portland, OR 97215-2163

**Site Address:** 915 SE 70TH AVE

**Legal Description:** BLOCK P LOT 5 TL 11600, TABOR HTS

**Tax Account No.:** R818603520 **State ID No.:** 1S2E05BA 11600

Quarter Section: 3137

**Neighborhood:** Mt. Tabor, contact Stephanie Stewart at 503-230-9364.

**Business District:** None

**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.

**Zoning:** R5 (Single Family Residential 5,000 square feet)

Case Type: AD (Adjustment)

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

Committee.

## Proposal:

The applicant is proposing to build a 2 story addition to the west façade of the existing house which will provide additional living area on both levels. The addition has a building footprint that measures approximately 16 feet wide by 28 feet in deep (for a total of 448 square feet). It does not conform to current Zoning Code setback standards due to its location in the front setback. The site is considered a through lot with frontage along both SE 70<sup>th</sup> Avenue and SE

Belmont Street; both street frontages are defined as front property lines per the Zoning Code. The front of the existing house is oriented toward SE 70th Avenue. The applicant is requesting an adjustment to standards found in Zoning Code sections 33.110.220 (Table 110-3, Setbacks) which require a 10 foot front setback. The applicant has proposed a 5 foot setback for the southwest portion of the proposed addition adjacent to SE Belmont Street.

# Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

#### ANALYSIS

**Site and Vicinity:** The site is a through lot with frontage along SE 70<sup>th</sup> Avenue and SE Belmont Street. The front façade of the existing home on the site faces SE 70<sup>th</sup> Avenue which is developed with a paved roadway, curbs, sidewalks and a planter strip. SE Belmont Street has a gravel roadway and appears to function as an undeveloped "alleyway." Many of the homes adjacent to the subject site with frontage along SE Belmont Street have front street facing facades oriented toward adjacent streets and the rears of these homes facing SE Belmont Street which appears visually as a "rear" lot line. The southern property line of the subject site abuts an undeveloped 500 square foot piece of property located at the corner of SE 70<sup>th</sup> Avenue and SE Belmont Street which records indicate is owned by the City of Portland (Bureau of Environmental Services).

**Zoning:** The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

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 27, 2013**. 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
- Bureau of Parks-Forestry Division
- · Life Safety

**Neighborhood Review:** 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 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.

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

**Findings:** The applicant is seeking an Adjustment to the front building setback. The purpose of the building setback standards are found in Section 33.110.220, which states:

**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.

Because the subject site has street frontage on two non-intersecting streets, the Zoning Code defines it as a "through lot". Through lots have two front lot lines and therefore the front setback requirement applies to both street frontages. The requested Adjustment is to reduce the required front building setback adjacent to SE Belmont Street from 10 to 5 feet for the southwest portion of the proposed addition to the existing house. The proposed addition will be 23 feet tall (measured to mid-point of roof) and provide additional living area. The homes located southwest and directly north of the subject site with frontage along SE Belmont Street have front facing façade entrances oriented toward adjacent streets. The rears of these homes face SE Belmont Street which appears more as an unpaved "alley" than as a primary street. The requested setback Adjustment will not conflict with the purposes of the regulation. Light, air, separation for fire protection, and access for fire fighting is maintained, the Fire Bureau had no objection to the proposal. The proposal reflects the general building scale and placement of houses in the neighborhoods; as noted above, many of the adjacent homes have rear facing facades along SE Belmont Street.

The subject site has a west property line abutting SE Belmont Street which runs at an approximately 45 degree angle from north to south abutting the SE Belmont Street right of way. The majority of the proposed addition will be well outside the 10 foot front set back required; only a small 5 foot deep triangular shaped corner of the southwestern façade of the proposed addition will encroach into the set back. The western property boundary of the subject site abuts SE Belmont Street while the southern property line abuts an undeveloped 500 square foot piece of property located at the corner of SE 70<sup>th</sup> Avenue and SE Belmont Street which records indicate is owned by the City of Portland (Bureau of Environmental Services). The addition within the reduced setback area abuts a public right of way (SE Belmont St.) and is adjacent to a City owned property to the south which provides additional buffering from neighboring properties from any impacts resulting from the addition. This also allows the proposal to promote a reasonable physical relationship between residences while also promoting options for privacy for neighboring properties.

The main entrance to the house is oriented toward to SE 70<sup>th</sup> Avenue and is set back greater than 10 feet. Therefore, the front façade facing SE 70<sup>th</sup> Avenue meets the intent of the purpose statement which requires larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards. Allowing the addition to encroach within the setback along SE Belmont Street provides adequate flexibility so additional living area can be added to the home in way that is compatible with the neighborhood. The addition leaves plenty of room on the subject site for the required outdoor area. Therefore, 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 to the home within the setback area will maintain the architectural character of the existing home which was built in 1904. The addition will not detract from the livability or appearance of the area or adjacent residences. As noted above, SE Belmont Street appears as an "alley" with the rear façade of several adjacent homes facing it. Only a small portion within the southwest portion of the proposed addition will encroach into the setback area. 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:** Only one adjustment is requested. This criterion is not applicable.

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

**Findings:** City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. The site is not within either overlay zone; thus, this criterion is not applicable.

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

**Findings:** There are no discernible impacts that would result from granting the requested adjustment. 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 located in 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

Based upon the findings of this report, each applicable approval criterion is met.

# **ADMINISTRATIVE DECISION**

Approval of an Adjustment to reduce the required front building setback (Section 33.110.220.B) from 10 to 5 feet for a proposed addition to the existing home, in substantial conformance with the approved plans, Exhibits C.1 and C.2, signed and dated July 23, 2013, subject to the following condition:

A. As part of the building permit application submittal, each of the 4 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-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-165135 AD."

Staff Planner: Shawn Burgett

AMR

Decision rendered by:		on July 23,	2013
By	authority of the Director of the Bureau of Development Ser	vices	

Decision mailed: July 25, 2013

**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 June 6, 2013, and was determined to be complete on June 20, 2013.

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 June 6, 2013.

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 August 8, 2013** 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 <a href="https://www.portlandonline.com">www.portlandonline.com</a>.

**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 775 Summer St NE, Suite 330, Salem, OR 97301-1283, 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 August 9, 2013 (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. Narrative
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevations (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
- F. Correspondence: (None received)
- 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).





