

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: September 5, 2013 **To:** Interested Person

From: Mark Walhood, City Planner

503-823-7806 / mark.walhood@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 http://www.portlandonline.com/bds/index.cfm?c=46429. 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 13-136723 AD - REAR ADDITION GENERAL INFORMATION

Applicant: Narada Fairbank / Green Gables Design And Restoration

Po Box 4264 / Portland OR 97208

Property Owners: Paul and Regan Dekoning

7514 SW 33rd Ave. / Portland, OR 97219-1859

Site Address: 7514 SW 33RD AVE

Legal Description: BLOCK 8 LOT 25, BUCKINGHAM HTS

Tax Account No.: R113801490 **State ID No.:** 1S1E20AC 13000

Quarter Section: 3726

Neighborhood: Multnomah, contact Susan Rudloff at 503-358-2316.

Business District: Multnomah Village, contact Michele Cassinelli at 503-244-1821.

District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.

Zoning: R5 (Single-Dwelling Residential 5,000)

Case Type: AD (Adjustment Review)

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

Committee.

PROPOSAL: The applicant has proposed construction of a single-story addition to the rear of a home at 7514 SW 33rd Avenue. The addition will be used as a bonus room, and will be connected to the home through an existing doorway on the rear façade. The addition measures approximately 24'-9" long by 13'-6" wide, with a 4'-0" roof overhang on the interior side. The addition features a flat roof, a metal roof and fascia at the roofline, horizontal wood siding, and an exposed concrete. The only windows on the addition face north into the yard, where full-height windows and sliding doors are provided on almost the entire façade. The addition is 9'-0" tall.

Regulations of the R5 zone require a minimum 5'-0" setback at the side and rear property lines (33.110.220.B/Table 110-3). The south wall of the existing home, however, is located at or within 0'-1" of the south side property line. The proposed addition would be inset from the existing south building wall by 0'-6", resulting in less than the required side setback per current Zoning Code regulations. The addition is located out of the 5'-0" rear setback.

Therefore, in order to approve the addition as proposed, the applicant has requested an Adjustment to reduce the south side setback for the addition from 5'-0" to 0'-6".

RELEVANT APPROVAL CRITERIA: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are **33.805.040.A-F, Adjustment Approval Criteria**.

ANALYSIS

Site and Vicinity: The site includes a single rectangular residential lot of 4,221 square feet, which is typical and standard for this block. The 1.5-story home is located near the southern edge of the lot, with the driveway, carport, and an accessory shed/greenhouse structure located on the northern portion of the site. The rear yard has a small covered porch area and uncovered deck. The rear yard is bordered by a tall evergreen laurel hedge on the north side, a tall 8'-0" slatted, partially sight-obscuring fence on the east side, and low shrubs on the south side. The home is of a size and scale that are typical of the neighborhood, although there are both larger and smaller homes in the vicinity.

Southwest 33rd Avenue abutting the site is improved with an asphalt roadway, but no curbing or paved public sidewalks. The shoulders are typically graveled and used as on-street parking, which is the case at this site. The character of the neighborhood is exclusively single-family residential, although the site is nearby the cultural and commercial attractions of the Multnomah Village Main Street, one long block to the south.

Zoning: The Residential 5,000 (R5) base zone is intended to preserve land for housing, and to provide housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

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

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **May 20, 2013**. The following Bureaus have responded:

The *Bureau of Environmental Services* (BES) has reviewed the proposal and provided informational comments, but no objections to the requested Adjustment. The site has access to a public sanitary sewer, and all development or redevelopment projects at the site must meet the City's Stormwater Management Manual during the building permit review process and at the time of development. Exhibit E.1 contains additional technical details and information regarding the sanitary and stormwater regulations and issues, as well as staff contact information.

The *Development Review Section of Portland Transportation* has reviewed the proposal and responded without concerns. Exhibit E.2 is a hard copy of their electronic 'no concerns' response.

The *Water Bureau* has reviewed the proposal and responded with comments regarding the availability of water services to the site, but no objections or concerns regarding the requested Adjustment. Exhibit E.3 contains staff contact and additional information.

The *Fire Bureau* has reviewed the proposal and responded without concerns. Exhibit E.4 is a hard copy of their electronic 'no concerns' response.

The Site Development Section of the Bureau of Development Services has reviewed the proposal and provided comments about the need to decommission an original septic tank at the site that was not removed when the 1925 house was connected to the public sewer system in 1966. Decommissioning of the septic tank will be required as part of the building permit review

process for the project, and must be completed before the foundation is poured for any addition as proposed. No objections are raised in the letter regarding the requested Adjustment request. Exhibit E.5 contains staff contact and additional information.

The *Life Safety Section of the Bureau of Development Services* has reviewed the proposal and offered permit- and building code-related information, but no objections to the requested Adjustment. A separate building permit is required for the project, and the proposal must be designed to meet all applicable building codes and ordinances. Exterior walls less than three feet to a property line shall be one-hour fire-rated with no openings allowed. Exhibit E.6 contains staff contact and additional information.

The *Urban Forestry Division of Portland Parks and Recreation* has reviewed the proposal and noted that all tree code regulations must be observed. City code Title 20.40 requires a street tree review for new construction and projects that exceed \$25,000 in value and for all land divisions. Street trees may be required during permitting, with tree species and location to be determined by the City Forester during plan review. Existing street trees are to be protected and preserved. A written permit from the City Forester is required to remove, destroy, cut, break, injure, or plant any tree of any size in or upon any street, park, or public area. Exhibit E.7 contains staff contact and additional information.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 20, 2013. A total of two written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal. One letter was received from a neighbor located directly east of the subject site on the same block, opposite the rear lot line of the site (Exhibit F.1). This letter states that the request does not fit well with the purposes mentioned in 33.110.220.A, particularly the first four bulleted items listed in this section (purpose statement for setbacks, per Adjustment criterion A). This letter claims that it should be possible to shift the proposed addition so that it exists entirely within the five foot setback and still allow for connections to the existing structure. A second letter was received from the property owners directly to the south of the site, opposite the south side lot line (Exhibit F.2). This letter expresses full support for the requested setback reduction, stating that they have no issues or concerns.

STAFF NOTE: Issues with regards to the bulleted statements identified in the first letter will be discussed further during the findings on the approval criteria, later in this report. Staff originally expressed concerns about the setback reduction as well, suggesting that it be moved at least 3 feet from the south property line. At that time the applicant placed the case on hold and signed a 120-day waiver, in order to allow time for them to consider options and/or provide additional evidence to support their proposal. One factor that comes into play with the proposed addition is the location of an existing interior stair landing near grade at the rear portion of the house, which is located directly adjacent to the south lot line. To connect to the house anywhere else on the southern portion of the house would require a complete internal reconstruction of the interior stairs to the second floor.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of Adjustment Reviews

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 providing certainty and rapid processing for land use applications.

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. below have been met.

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

Findings: The purpose for setbacks in the single-dwelling zones, as articulated at 33.110.220.A (relevant excerpts) is as follows:

- "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 provide a reasonable physical relationship between residences;
- They promote options for privacy for neighboring properties; and
- 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."

The existing home is located along the south property line, with a six-foot fence located between the rear yard and the neighboring property to the south. The two-story portion of the house along the south edge of the property is adjacent to a fence and already precludes pedestrian access to the rear of the lot on the southern property line. The one-story addition will generally follow the building line of the current house, but will be off-set from the property line by 0'-6". Because the addition will be no closer to the property line than the existing structure and will only be one-story in height, the addition will have no greater adverse impact on fire protection and fire fighting than the existing structure. Fire access could be gained by travelling up the driveway and around the north side of the house, or through the open side setback area of the house to the south. Building Code regulations will also require all walls within three feet of the south lot line to be one-hour fire-rated construction, further limiting potential fire-related concerns.

The addition will be a single-story element, with only a few feet of projection above the existing fence along the south lot line. The topography of the site slopes generally downhill from northeast to southwest, creating a situation where the proposed addition has a foundation that sits below the lot line level of the property to the east, but slightly above the property to the south. No windows are proposed along the south or east facades of the addition. By nature of the location of the addition to the north of the directly impacted property to the south, given the predominant location of the sun in the sky during the year, there will be only limited times of the year (mid-summer) where the addition will cast any shadow on the abutting property to the south, and this will be minimal in relation to the existing fence along the south lot line. For these reasons there are no significant impacts from the proposal in terms of access to light and air for the neighboring property, the owners of which have written in full support of the requested Adjustment.

The applicant points out that the surrounding area includes several other homes with unusual placement of the main building relatively close to, or on, one of the side lot lines. Such homes are found on the same block face at 7424, 7522, and 7532 SW 33rd Avenue. The placement of the addition will allow the owners to maintain an open cultivated vegetable garden on the north side of the rear yard as well as an open deck in the center of the yard, which is the best location for outdoor sun exposure on the site given the size and location of existing tree canopy at the site. The addition is fully outside of the 5'-0" rear setback.

For the reasons discussed above, the proposed south side setback reduction at least equally meets the regulatory intent of the setback standards, and 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: As noted above under findings for criterion A, the proposed addition will project about 3'-0" above the existing wood fence along the south lot line, is a single-story, and due to the topography of the site is nestled somewhat down into the slope of the site when viewed from uphill sites to the east. The addition will be barely visible above the fence and vegetation from the neighboring property to the east. For the same reasons as discussed above under findings for criterion A, the proposal will not significantly detract from the livability or appearance of the residential 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 does not apply.

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. There are no such resources present on the site. *Therefore, this criterion does not apply.*

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, given the scale, height, and context of the project as discussed above under findings for criterion A. Also, the directly impacted property owners of the lot and home to the south have voiced full support for the requested setback reduction. *Therefore, 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. 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 applicant has requested a setback reduction request for an addition to the south side of the house at 7514 SW 33rd Avenue. After a neighbor to the east objected, staff suggested that the applicant move the addition at least three feet further north out of the south side setback. At that time, the applicant placed the case on hold to consider options and/or to submit

additional evidence supporting their proposal. After submitting additional narrative statements addressing the approval criteria, and given the location of an existing stair landing inside the home and sunlight access to an existing outdoor space and garden in the rear yard, among other considerations, the applicant has made the case that the reduced setback is able to meet the approval criteria without significant detrimental impacts on surrounding properties. Therefore, the request must be approved.

ADMINISTRATIVE DECISION

Approval of an **Adjustment** to reduce the south side setback from 5'-0" to 0'-6" for a rear yard addition to the home at 7514 SW 33rd Avenue, in substantial conformance with the approved plans and drawings, Exhibits C.1 through C.4, all signed and dated August 30, 2013, and 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.4. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-136723 AD."

Staff Planner: Mark Walhood

Decision rendered by: ______ on August 30, 2013.

By authority of the Director of the Bureau of Development Services

Decision mailed: September 5, 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 April 5, 2013, and was determined to be complete on May 15, 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 April 5, 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 requested that the 120-day review period be extended on two different occasions, for a total of 73 days (Exhibits G.5 & G.6). Unless further extended by the applicant, **the 120 days will expire on November 25, 2013.**

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 September 19, 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 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 **September 20, 2013.**
- 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.

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.

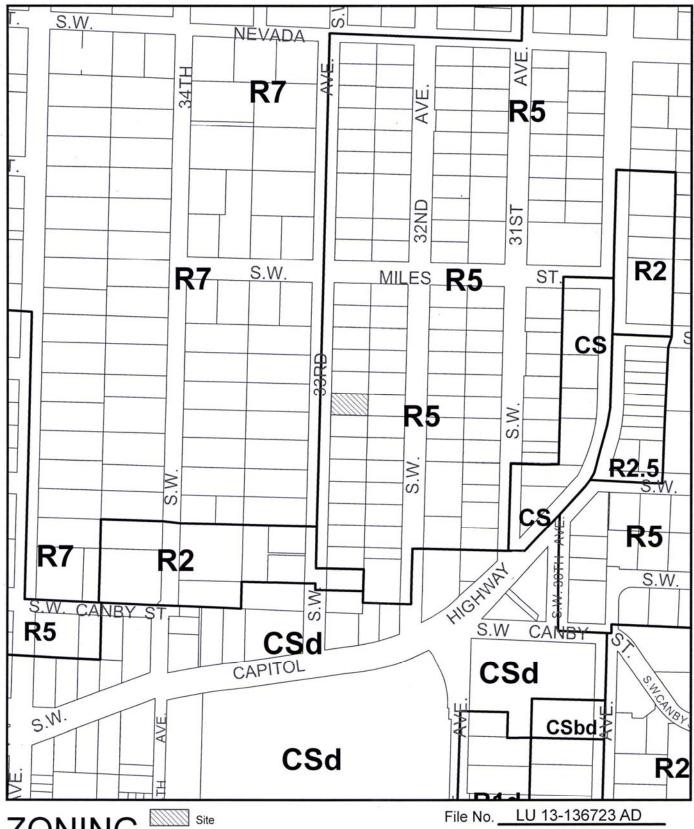
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statements
 - 1. Original narrative statements and (unapproved) drawings
 - 2. Supplemental memo and site photos, received 5/7/13
 - 3. Supplemental memo, received 5/15/13
 - 4. E-mail discussion between applicant and staff and supplemental questions and information provided by applicant with site photos, received 7/16/13
 - 5. Supplemental narrative specifically addressing approval criteria, received 8/21/13
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Overall Site Plan (attached)
 - 2. Enlarged Site Plan (attached)
 - 3. East and West Elevations (attached)
 - 4. North and South Elevations (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Development Review Section of Portland Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of the Bureau of Development Services
 - 6. Life Safety Section of the Bureau of Development Services
 - 7. Urban Forestry Division of Portland Parks and Recreation
- F. Correspondence:
 - 1. Letter with concerns from Michael Croftus, received 6/6/13
 - 2. Letter in support from Ric Jackson, received 7/3/13
- G. Other:
 - 1. Original LU Application Form and receipt
 - 2. First incomplete letter from staff to applicant, sent 4/23/13
 - 3. Second incomplete letter from staff to applicant, sent 5/10/13

- 4. E-mail correspondence between applicant and staff regarding change of applicant contact person, ending 5/13/13
- **5.** Original 120-day extension of 23 days from applicant, received 7/3/13
- **6.** Second 120-day extension from applicant, amounting to 50 days extension, received 7/19/13

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

3618,3726 1/4 Section_ 1 inch = 200 feet Scale. 1S115DC04700 State_Id .

Exhibit_ (Apr 10,2013)



