



## 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:** January 10, 2014 **To:** Interested Person

From: Andrew Gulizia, Land Use Services

503-823-7010 / Andrew.Gulizia@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 13-226091 AD GENERAL INFORMATION

**Applicant:** David Spitzer / DMS Architects

2325 NE 19th Ave / Portland OR 97212

**Owner:** Dana S Whitley

1545 N Wygant St / Portland, OR 97217

**Site Address:** 1545 N Wygant Street

**Legal Description:** BLOCK 10 LOT 17, RIVERSIDE ADD

**Tax Account No.:** R709603980 **State ID No.:** 1N1E21AD 06600

Ouarter Section: 2528

**Neighborhood:** Overlook Neighborhood Association, Kent Hoddick at 503-286-9803. **Business District:** Interstate Corridor BA, Alexsandra Johnson at 503-735-4420.

**District Coalition:** North Portland Neighborhood Serv, Mary Jaron Kelley at 503-823-4099.

**Plan District:** North Interstate

**Zoning:** R2 – Multi-Dwelling Residential 2,000

**Case Type:** AD – Adjustment Review

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

Committee.

#### Proposal:

The applicant proposes to expand an existing, detached garage and convert the structure into an Accessory Dwelling Unit (ADU). The existing part of the structure is two feet from the side and rear property lines, and the proposed addition would be 3.5 feet from the rear property line. (See attached site plan and elevations.)

The applicant is requesting an Adjustment to Zoning Code Section 33.120.220 (Table 120-4) which requires a five-foot minimum setback from the side and rear property lines for this accessory building. Because the applicant proposes to both expand the garage *and* convert it to an ADU, the Adjustment to the setback requirement is necessary for the existing portion of the building as well as for the proposed addition.

#### Relevant Approval Criteria:

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A-F of the Portland Zoning Code.

#### **ANALYSIS**

**Site and Vicinity:** The 5,000 square-foot lot is located on the north side of N Wygant Street, between N Concord Avenue and N Interstate Avenue. The site is developed with a two-story single-family residence that is set back approximately 22 feet from the street lot line. The detached garage, which the applicant proposes to expand and convert to an ADU, is behind the existing house and approximately 78 feet from the street lot line. Surrounding lots to the north, south, and west are zoned R2 (multi-dwelling residential), while lots to the east are zoned EXd (Central Employment with a design overlay). Surrounding lots are mostly developed with single-family homes, though there are two motels at the intersection of N Wygant Street and N Interstate Avenue.

**Zoning:** The R2 designation is one of the City's multi-dwelling zones, which are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing.

The site is also within the North Interstate Plan District. The Plan District is intended to promote an urban level of mixed-use development to support the MAX line and the surrounding neighborhoods by encouraging development that increases neighborhood economic vitality, amenities, and services and successfully accommodates additional density.

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 December 12, 2013. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering and Development Review
- Water Bureau
- Fire Bureau
- Site Development Review Section of BDS
- Life Safety Review Section of BDS
- Parks Bureau, Urban Forestry Division

**Neighborhood Review:** A "Notice of Proposal in Your Neighborhood" was mailed on December 12, 2013. 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 applicant has demonstrated 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 requesting an Adjustment to the minimum five-foot side setback requirement for structures in the R2 zone. The purpose of the setback requirement is stated in Zoning Code Section 33.120.220.A:

**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 multi-dwelling development 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
- Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users.
- 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.

The ADU will be ten feet from the nearest neighboring building (another accessory structure), and twenty feet from the nearest residence, therefore the proposal maintains a reasonable physical relationship between residences and adequate space for light, air, and fire protection. The Building Code requires exterior walls that are less than three feet from the property lines to be one-hour fire-rated with no openings. These requirements will apply at Building Permit review.

Reflecting the predominant scale and placement of accessory structures in the neighborhood, the ADU will be one story, detached, and behind the house. Since no windows are proposed on the north and east building walls, the reduced setbacks from the north and east property lines will not impact neighbors' privacy. As the ADU will be located behind the house, the proposal will not affect the open front yard.

Conversion of the garage into an ADU in its existing location will maximize the usable outdoor area of the property. As the existing driveway into the back yard will remain unchanged, the proposal will not affect visibility for drivers backing onto the street and there will be ample space for cars to park on the driveway without overhanging the street or sidewalk.

Based on these reasons, the proposed Adjustment equally meets the intent of the regulation 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:** Because the site is located in a multi-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area.

The proposed ADU will be one story, relatively small in size (529 square feet), and 78 feet from the street lot line. Further, the ADU will be compatible in design with the primary house and with the surrounding area. Since no windows are proposed on the north or east walls of the ADU, the reduced setbacks from the north and east property lines will not negatively impact neighbors' privacy. To ensure that neighbors' privacy is not negatively impacted in the future, a condition of approval will prohibit future placement of windows or other openings on the north and east sides of the ADU.

With Condition B being met, there will be no significant negative impacts to neighborhood livability or appearance. 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: As only one Adjustment is being requested, this criterion is not applicable.

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

**Findings**: City-designated scenic resources are identified on the Official Zoning Maps with a lower case "s," and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

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

**Findings:** As discussed in the findings for approval criterion B, with a condition that restricts openings such as windows on the north and east sides of the ADU the proposal will have no adverse impacts on the livability of the surrounding residential area. As there are no identified adverse impacts for which mitigation would be required, this criterion is not applicable.

**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:** Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase "p" (Environmental Protection overlay zone) or a "c" (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on site, this criterion is not applicable.

#### **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 demonstrated that the applicable approval criteria have been met. The proposal to reduce the rear and side setbacks for an ADU equally meets the intent of the regulation, and does not have adverse impacts on the livability and appearance of the surrounding residential neighborhood.

#### **ADMINISTRATIVE DECISION**

Approval of the Adjustment to reduce the minimum rear and side setback for an accessory building from five feet to two feet, per the approved site plan and building elevations, Exhibits C-1 through C-4, signed and dated January 3, 2014, 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 through C-4. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-226091 AD."
- B. No windows or other openings are allowed on the north and east sides of the building.

Decision rendered by:

By authority of the Director of the Bureau of Development Services

On January 3, 2014.

Decision mailed: January 10, 2014

**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 November 8, 2013, and was determined to be complete on December 10, 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 November 8, 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. Unless extended by the applicant, **the 120 days will expire on: April 9, 2014.** 

#### 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 January 24, 2014** 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, Oregon 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 January 25, 2014.
- 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

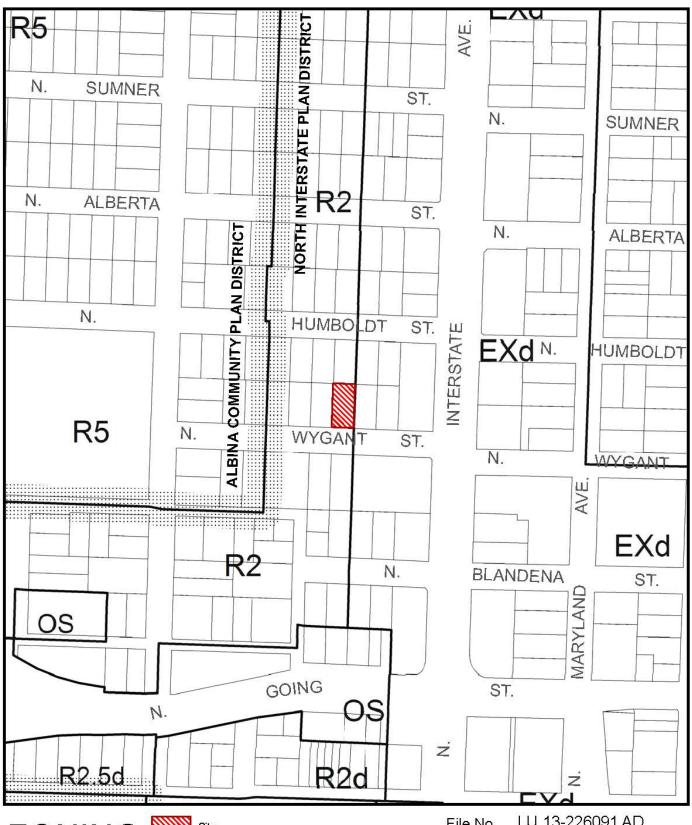
• All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

#### **EXHIBITS**

#### NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
  - 1. Written narrative, dated October 4, 2013
  - 2. Response to incompleteness determination letter, received November 26, 2013
  - 3. Photo of existing primary structure (main house)
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site plan (attached)
  - 2. South building elevation (attached)
  - 3. West building elevation (attached)
  - 4. North building elevation (attached)
  - 5. Floor plan
- 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. Life Safety Review Section of BDS
  - 7. Parks Bureau, Urban Forestry Division
- F. Correspondence none received
- G. Other:
  - 1. Original LU application
  - 2. Incompleteness determination letter, dated November 21, 2013

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** 



File No. LU 13-226091 AD

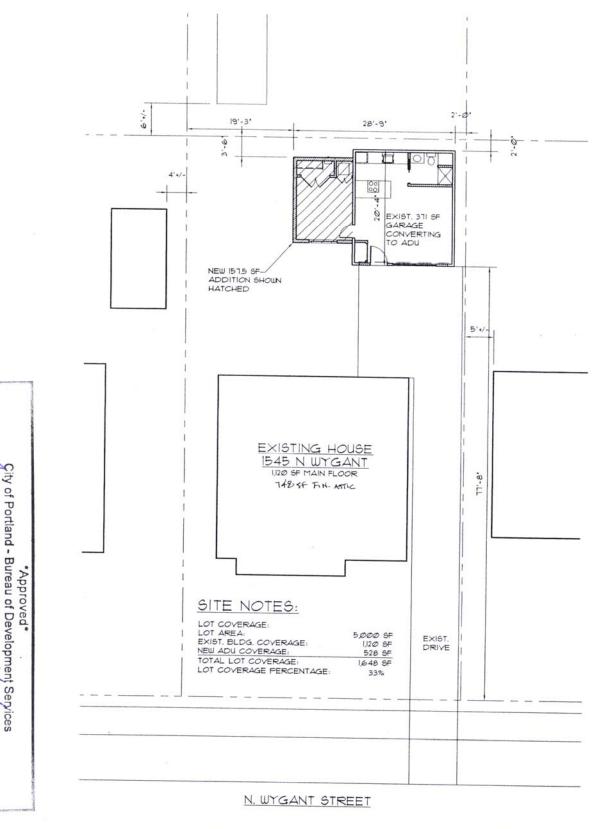
1/4 Section 2528

Scale 1 inch = 200 feet

State\_Id 1N1E21AD 6600

Exhibit B (Nov 13, 2013)

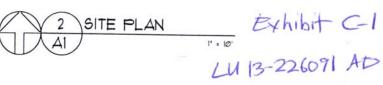




Planner

This approval applies only to the reviews requested and is subject to additions of approval. Additional zoning requirements may apply.

Date



of LOT PER 33.205,030.C.7.
HE MOSA Shingle Siding HORE: SIDING WATERIAN, PATTURA of TEIM UNW MATCH HUNN HOLESS 3min load \* This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply. Çity of Portland - Bureau of Development Services AND CARAGE / HELL ARE SOUTH ELEVATION \*Approved\* Planner NEW ADDITION

Exhibit C-2 LU 13-226091 AD

The approval applies only to the reviews requested and is subjections of approval. Additional zoning requirements may apply. City of Portland - Bureau of Development Services \*Approved\* WEST ELEVATION HEW ADDITION 1 02 1 अभाग क्यां 06

> Exhibit C-3 LN 13-226091AD

