



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

Ted Wheeler, Mayor
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: April 22, 2019
To: Interested Person
From: Hannah Bryant, Land Use Services
503-823-5353 / Hannah.Bryant@portlandoregon.gov

NOTICE OF A TYPE I DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. 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 19-105850 HR – HVAC UNIT

GENERAL INFORMATION

Applicant: Edward C Epp & Marilyn D Johnson
3035 NE 23rd Ave
Portland, OR 97212-3454

Site Address: **3035 NE 23RD AVE**

Legal Description: BLOCK 12 LOT 2, IRVINGTON
Tax Account No.: R420402390
State ID No.: 1N1E26AA 16000
Quarter Section: 2732
Neighborhood: Alameda, contact Dave Johansen at johansendr@gmail.com, Irvington, contact Dean Gisvold at 503-284-3885.

Business District: Soul District Business Association, contact at info@nnebaportland.org
District Coalition: Northeast Coalition of Neighborhoods, contact Laura Becker at 503-388-6088.

Plan District: None
Other Designations: Contributing Resource in Irvington Historic District
Zoning: R5 – Single Dwelling Residential Zone
Case Type: HR – Historic Resource Review
Procedure: Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

Proposal:

The applicant seeks Historic Resource Review approval for a new 40" long x 14.5" wide x 36" high mechanical unit located south of the front porch, on the south side of the contributing house. The applicant is also proposing a wood screen on the south and east sides of the unit, with dimensions to be determined.

Historic resource review is required because the proposal is for non-exempt exterior alterations on a resource in the Irvington Historic District.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland's Zoning Code. The relevant approval criteria are:

- *33.846.060.G Other Approval Criteria*

ANALYSIS

Site and Vicinity: The single dwelling was built in 1925 in the Spanish Colonial Revival style and is a contributing resource in the Irvington Historic District. It is located one lot south of the intersection of NE 23rd Avenue and NE Siskiyou, with frontage on NE 23rd avenue. NE 23rd Avenue is a local service walkway and a local service bikeway.

Platted in the late Nineteenth Century, today's Irvington Historic District represents the first additions to Portland that employed restrictive covenants from the outset. These included the exclusion of most non-residential uses from the interior of the neighborhood, and where non-residential uses were allowed, such as the fire station and the telephone exchange, the buildings were purposely disguised to appear more residential in character. Other deed restrictions excluded minority groups, established uniform front setbacks, and required minimum expenditure on new buildings. The area developed generally from southwest to northeast and its growth was greatly influenced by the installation of streetcar lines that introduced an easy commuting option to downtown.

The contributing resources in Irvington range in design character from expressions of the late Victorian Era styles, especially Queen Anne, through the many Period Revival modes of the early decades of the Twentieth Century, to a few early modernist examples. There is also a wide diversity in the sizes of lots and houses. In terms of the streetscape, the numbered north-south avenues in Irvington vary dramatically in width, and they mostly form rather long block faces which the houses generally face. The named east-west street block faces are more consistent in length, almost all being traditional 200' Portland blocks. All are lined with mature street trees. Original development in many cases included garages or other accessory structures, typically facing side streets on corner lots and accessed by a variety of driveway types on mid-block sites. Garages that were added within the historic period were sometimes built at the sidewalk and/or out of architectural character with the house.

Zoning: The Residential 5,000 (R5) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Minimum lot size is 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 5,000 square feet of site area.

The Historic Resource Protection overlay is comprised of Historic and Conservation Districts, as well as Historic and Conservation Landmarks and protects certain historic resources in the region and preserves significant parts of the region's heritage. The regulations implement Portland's Comprehensive Plan policies that address historic preservation. These policies recognize the role historic resources have in promoting the education and enjoyment of those living in and visiting the region. The regulations foster pride among the region's citizens in their city and its heritage. Historic preservation beautifies the city, promotes the city's economic health, and helps to preserve and enhance the value of historic properties.

Irvington Historic District Platted in the late Nineteenth Century as the first addition to Portland that employed restrictive covenants, the Irvington area developed intensely with a mix of middle-class housing types and sizes during the first two decades of the Twentieth Century. The contributing resources in Irvington range in design character from expressions of the late Victorian Era styles, especially Queen Anne, through the many Period Revival modes of the early decades of the Twentieth Century, to a few early modernist examples.

There is also a wide diversity in the sizes of lots and houses. In terms of the streetscape, the numbered north-south avenues in Irvington vary dramatically in width, and they mostly form rather long block faces which the houses generally face. The named east-west street block faces are more consistent in length, almost all being traditional 200' Portland blocks. All are lined with mature street trees. These patterns help to lend the neighborhood the distinctive and homogeneous historic character.

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 on **February 15, 2019**. No bureaus have any concerns or comments about this proposal.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **February 15, 2019**. One written response has been received from either the Neighborhood Association or notified property owners in response to the proposal.

1. Gisvold, Dean. February 28, 2019. The ICA land use committee supports the proposal provided there is screening on two sides.

PROCEDURAL HISTORY

The application was deemed complete on January 28, 2019. A Public Notice was mailed on February 15, 2019. The applicant was encouraged to locate the mechanical unit to meet the exemptions for Historic Resource Review. The applicant opted not to alter the proposal to meet the exemptions. On the final day of the public notice period, the applicant submitted a letter requesting ADA accommodations. The Bureau of Development services provided the applicant with a covenant for future compliance with the zoning regulations. The covenant provides a temporary exemption from the zoning code standard for the purposes of accommodating a single resident's disability. The applicant chose not to sign the covenant and did not request an extension. To ensure a timely review process and to maintain options for the applicant, Staff added Conditions of Approval to facilitate a Decision of Approval.

ZONING CODE APPROVAL CRITERIA

Chapter 33.846.060 - Historic Resource Review

Purpose of Historic Resource Review

Historic Resource Review ensures the conservation and enhancement of the special characteristics of historic resources.

Historic Resource Review Approval Criteria

Requests for Historic Resource Review will be approved if the review body finds the applicant has shown that all of the approval criteria have been met.

Findings: The site is within the Irvington Historic District and the proposal is for non-exempt treatment. Therefore, Historic Resource Review approval is required. The approval criteria are those listed in *33.846.060 G – Other Approval Criteria*.

Staff has considered all guidelines and addressed only those applicable to this proposal.

33.846.060 G - Other Approval Criteria

1. **Historic character.** The historic character of the property will be retained and preserved. Removal of historic materials or alteration of features and spaces that contribute to the property's historic significance will be avoided.
2. **Record of its time.** The historic resource will remain a physical record of its time, place, and use. Changes that create a false sense of historic development, such as adding conjectural features or architectural elements from other buildings will be avoided.
3. **Historic changes.** Most properties change over time. Those changes that have acquired historic significance will be preserved.

4. Historic features. Generally, deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement, the new feature will match the old in design, color, texture, and other visual qualities and, where practical, in materials. Replacement of missing features must be substantiated by documentary, physical, or pictorial evidence.

5. Historic materials. Historic materials will be protected. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials will not be used.

Findings for 1, 2, 3, 4 and 5: The proposed addition of a detached mechanical unit, exterior to the house, does not entail the removal or alteration of features that contribute to the property's historic significance. The resource will remain a physical record of its time, place and use.

To ensure that the mechanical unit does not detract from the historic character of the contributing resource, or its historic district context where open front yards with porches and stairs are the primary elements between the front building wall and the street, Condition of Approval D states that exterior mechanical equipment shall be screened from view from the street (east) and the neighboring property to the south by a fully sight-obscuring fence that is equal to, or greater, than the height of the pad-mounted mechanical unit. The east fence shall be in line with, or set behind, the front wall of the house. The fence shall not be set between the front wall plane of the house and the street.

To further minimize the visual and auditory impact of the mechanical equipment and its associated screening, on the pedestrian realm, Condition of Approval E states that evergreen landscaping between the fence and the street shall provide a continuous screen of shrubs at least 3 feet high.

With the addition of Condition of Approval D, that exterior mechanical equipment shall be screened from view from the street (east) and the neighboring property to the south by a fully sight-obscuring fence that is equal to, or greater, than the height of the pad-mounted mechanical unit, and that the east fence shall be in line with, or set behind, the front wall of the house, and Condition of Approval E that evergreen landscaping between the fence and the street shall provide a continuous screen of shrubs at least 3 feet high, these guidelines are met.

7. Differentiate new from old. New additions, exterior alterations, or related new construction will not destroy historic materials that characterize a property. New work will be differentiated from the old.

8. Architectural compatibility. New additions, exterior alterations, or related new construction will be compatible with the resource's massing, size, scale, and architectural features. When retrofitting buildings or sites to improve accessibility for persons with disabilities, design solutions will not compromise the architectural integrity of the historic resource.

9. Preserve the form and integrity of historic resources. New additions and adjacent or related new construction will be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic resource and its environment would be unimpaired.

10. Hierarchy of compatibility. Exterior alterations and additions will be designed to be compatible primarily with the original resource, secondarily with adjacent properties, and finally, if located within a Historic or Conservation District, with the rest of the district. Where practical, compatibility will be pursued on all three levels.

Findings for 7, 8, 9 and 10: The proposed detached mechanical unit will be clearly differentiated from the historic architecture of the contributing resource and will not obscure the resource's massing, architectural features, or the integrity of the historic resource. Condition of Approval D states that the exterior mechanical equipment shall be screened from view from the street (east) and the neighboring property to the south by a fully sight-obscuring fence that is equal to, or greater, than the height of

the pad-mounted mechanical unit. The east fence shall be in line with, or set behind, the front wall of the house. This neighborhood is notable for its tree-lined streets and uniform front setbacks, and therefore placing mechanical equipment in front of the front building wall would not be compatible with the character defining physical development. This Condition of Approval ensures that the mechanical unit is not visible from the public realm or the neighboring property, and that the screening is compatible with the primary resource, the adjacent property and the Historic District. Condition of Approval C states that the conduit shall run inside the house, to ensure that the detached mechanical unit does not impair the form or integrity of the historic resource. The mechanical unit and its screening may be easily removed without damage to any historic materials or features.

With Condition of Approval C, that all conduit shall be run directly inside the house at the foundation level and that there shall be no exterior conduit, and Condition of Approval D that exterior mechanical equipment shall be screened from view from the street (east) and the neighboring property to the south by a fully sight-obscuring fence that is equal to, or greater, than the height of the pad-mounted mechanical unit and that the east fence shall be in line with, or set behind, the front wall of the house, these guidelines are met.

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 requirements of Title 11 can be met, and 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 purpose of the Historic Resource Review process is to ensure that additions, new construction, and exterior alterations to historic resources do not compromise their ability to convey historic significance. This proposal meets the applicable Historic Resource Review criteria and therefore warrants approval.

ADMINISTRATIVE DECISION

Approval of a detached mechanical unit less than 40' from the front property line, per the approved site plans, Exhibits C-1 through C-2, signed and dated April 19, 2019, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through F) must be noted on each of the four required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE- Case File LU 19-105850 HR." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. At the time of building permit submittal, a signed Certificate of Compliance form (<https://www.portlandoregon.gov/bds/article/623658>) must be submitted to ensure the permit plans comply with the Design/Historic Resource Review decision and approved exhibits.
- C. All conduit shall be run directly inside the house at the foundation level. There shall be no exterior conduit.
- D. Exterior mechanical equipment shall be screened from view from the street (east) and the neighboring property to the south by a fully sight-obscuring fence that is equal to,

or greater, than the height of the pad-mounted mechanical unit. East fence shall be in line with, or set behind, the front wall of the house.

- E. Evergreen landscaping between the fence and the street shall provide a continuous screen of shrubs at least 3 feet high.
- F. No field changes allowed.

Staff Planner: Hannah Bryant

Decision rendered by:  **on April 19, 2019**

By authority of the Director of the Bureau of Development Services

Decision mailed: April 22, 2019

Procedural Information. The application for this land use review was submitted on January 14, 2019, and was determined to be complete on January 28, 2019.

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 January 14, 2019.

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 further extended by the applicant, **the 120 days will expire on: May 28, 2019.**

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.

This decision, and any conditions associated with it, is final. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. Contact LUBA at 775 Summer St NE Suite 330, Salem, OR 97301-1283 or phone 1-503-373-1265 for further 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.

Recording the final decision.

If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **April 23, 2019** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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:

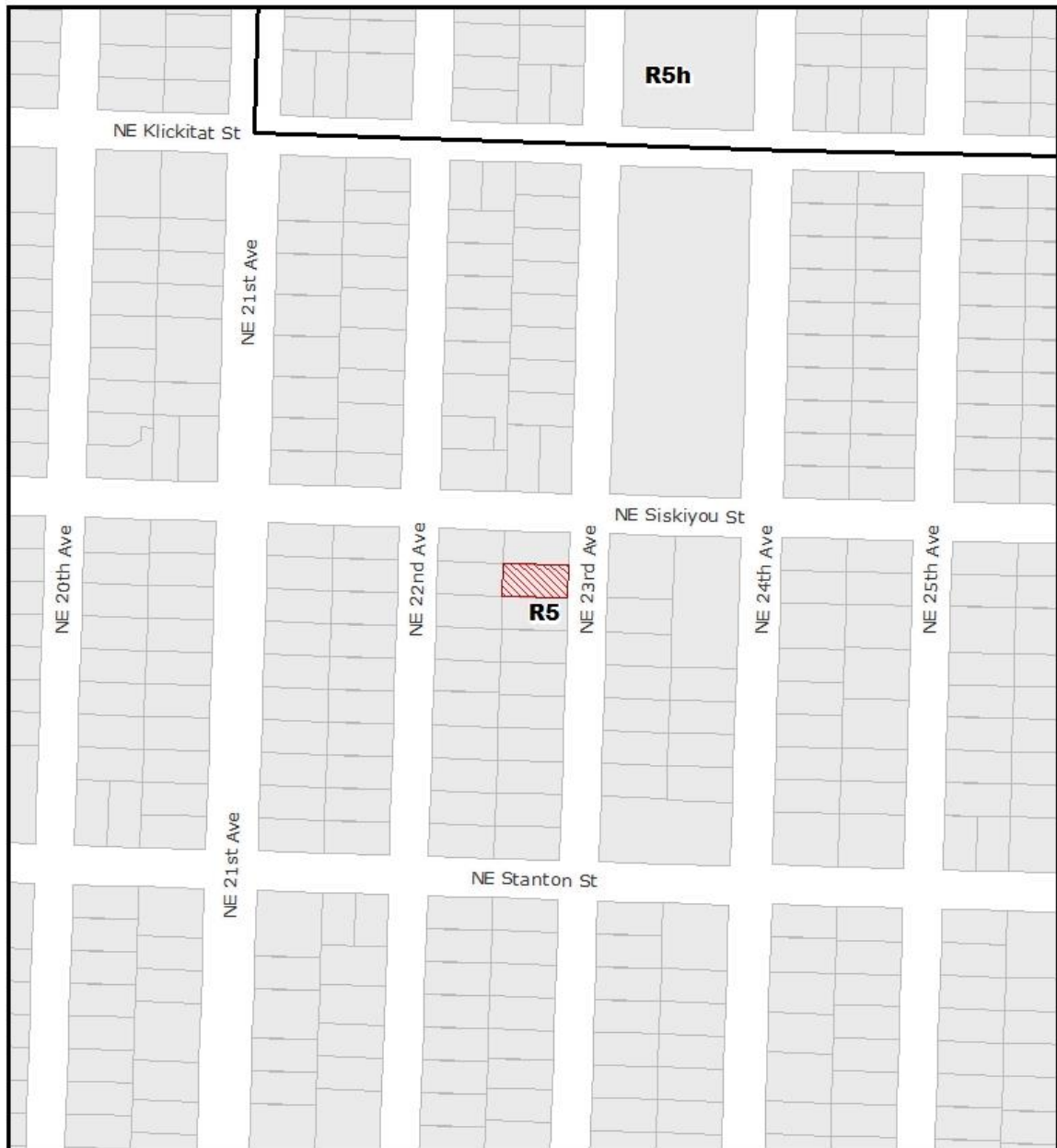
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code for the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittals
 - 1. Original Narrative and Proposal
 - 2. Applicant request for ADA accommodation
 - 3. Applicant email regarding extension
 - 4. Applicant email regarding covenant, March 19, 2019
 - 5. Site Photos Provided by Applicant
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Cutsheet for Mechanical Unit
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses: None
- F. Correspondence:
 - 1. Gisvold, Dean, February 28, 2019. The ICA land use committee supports the proposal provided there is screening on two sides.
- G. Other:
 - 1. Staff Emails to Applicant
 - 2. Unsigned ADA Covenant
 - 3. Staff emails re: delay in issuing Notice
 - 4. Original Application
 - 5. Oregon Historic Site Record

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 
NORTH
THIS SITE LIES WITHIN THE:
IRVINGTON HISTORIC DISTRICT

 Site

File No.	<u>LU 19-105850 HR</u>
1/4 Section	<u>2732</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1N1E26AA 16000</u>
Exhibit	<u>B Jan 16, 2019</u>

