



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

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Date: May 8, 2019
To: Interested Person
From: Mark Moffett, City Planner
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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 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 19-129530 NE

GENERAL INFORMATION

Applicant: Brent Linden, Yes And Design LLC
2100 NW 19th Ave, #2
Portland, OR 97209

Property Owner: David J Esquibel
9139 N Willamette Blvd
Portland, OR 97203-2954

Site Address: 9139 N WILLAMETTE BLVD

Legal Description: BLOCK 10 TL 7500, ST JOHNS PK ADD
Tax Account No.: R739703570
State ID No.: 1N1W01CC 07500
Quarter Section: 2021

Neighborhood: Cathedral Park, contact Steve Capoccia at scapoccia21@gmail.com
Business District: None.
District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

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

Case Type: **NE** (Determination of Legal Nonconforming Status Review)
Procedure: **Type II**, an administrative decision with appeal to the Hearings Officer.

PROPOSAL: The applicant is working with the property owner to repair and reconstruct the exterior walls and windows of an existing detached garage at 9139 N. Willamette Boulevard. The garage is located in front of the house relatively close to the sidewalk, and was recently damaged by a fire. Regulations of the R5 zone require a minimum front setback of 10'-0", minimum side setback of 5'-0", and minimum garage entrance (garage door) setback of 18'-0" (33.110.220.B/Table 110-3). No changes are proposed to the existing 20'-6" by 15'-0" footprint

of the garage, but the walls are located at 1'-0" from the front lot line (0'-8" for the eaves) and 2'-6" from the closest side lot line (1'-0" for the eaves).

The garage can be rebuilt in a nonconforming location in the setbacks if the footprint size does not increase, if it was originally constructed legally, and if the rebuilt garage maintains walls less than 10'-0" high, and an overall height less than 15'-0". As proposed, the structure has 10'-0" tall walls and a height of 14'-5". Although the applicant has provided insurance map evidence that the garage was in place as early as the 1920's, there is no building permit record for the garage structure.

In order to document legal nonconforming status for the garage using standard evidence, the applicant must find a building permit for the structure. If no permit can be found, non-standard evidence such as written statements, photographs, old insurance maps, and other information can be provided through a land use review (33.258.038). Therefore, in order to rebuild the garage in the existing footprint, the applicant has provided non-standard evidence and requested this Type II Determination of Legal Nonconforming Status Review.

RELEVANT APPROVAL CRITERIA: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found at **33.258.075.D.1-2, Determination of Legal Nonconforming Status Approval Criteria**. You can find these criteria by scrolling down to Chapter 33.258 in the online Zoning Code database: www.portlandoregon.gov/zoningcode.

ANALYSIS

Site and Vicinity: The site is a standard 5,000 square-foot lot on the east frontage of N. Willamette Boulevard, located in the Cathedral Park neighborhood. The site is developed with a newer home developed in the same location as an earlier home on the site, with the original home on the site demolished in 1996 and the current home constructed in 1997. The existing detached garage in the front yard area of the site is visibly fire-damaged and located near the sidewalk and front lot line, and predates construction of the current home in 1997. Surrounding properties are exclusively single-family in character, with detached homes of varying ages, ranging from the late 19th Century to newer infill homes built more recently.

The abutting right-of-way in N. Willamette Boulevard is improved with a paved two-way roadway, on-street parking, concrete curbs, planting strip and a concrete public sidewalk on both sides of the street. North Willamette Boulevard is designated as a City Bikeway in the City of Portland Transportation System Plan (TSP), but as a Local Service street for all other modes in the TSP.

Zoning: The Single-Dwelling Residential 5,000 (R5) base zone is intended to preserve land for housing, and to provide housing opportunities for individual households. The development standards are intended to preserve and enhance the residential character and appearance of the area.

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 **March 27, 2019**. The following two agencies have responded without objections:

The *Development Review Section of Portland Transportation* has reviewed the proposal and responded without objections to the requested land use review, but with comments regarding permitting. There are no applicable transportation-related approval criteria for this review, and the project will not result in an increase in occupancy and is not expected to be a significant alteration as defined by Title 17. The garage door operation will be evaluated at the time of building permit review, and will need to operate in a manner which does not encroach into the right-of-way, such as by rolling up or swinging in, not swinging out towards the sidewalk. Exhibit E.1 contains staff contact and additional information.

The *Fire Bureau* reviewed the proposal and responded without comment or concern (Exhibit E.2).

Neighborhood Review: One written response has been received from a nearby neighbor, who wrote in support of the proposal (Exhibit F.1).

ZONING CODE APPROVAL CRITERIA

33.258.075 Determination of Legal Nonconforming Status Review

- A. Purpose.** This review will determine if a use or site has legal nonconforming situation rights. In addition, it will determine what the current legal use is, based on the use categories in Chapter 33.920.
- D. Approval criteria.**
1. The legal status of the nonconforming situation will be certified if the review body finds that:
 - a. The nonconforming situation would have been allowed when established; and
 - b. The nonconforming situation has been maintained over time.
 2. The review body will determine, based on the evidence, what the current legal use is, using the definitions in Chapter 33.910 and the use categories in Chapter 33.920.

Findings: Legal nonconforming status for the existing garage on the site cannot be documented using standard evidence because no original building permit for the structure can be found. A variety of non-standard evidence has been provided by the applicant (Exhibit A.1) that convincingly demonstrates that the existing garage structure has been on the site with the same footprint and location as found today:

- Photographs of the structure both before and after the fire, showing an older-looking building with a simple gable roof and horizontal siding;
- Photocopies of a Sanborn Fire Insurance map from 1924 showing the footprint of the structure in the current location, as well as written notes on the map clarifying that the structure is a single-story garage ('1' note indicating single-story, 'A' note indicating an accessory structure); and
- Copies of the approved site plan from the 1997 City of Portland building permit that was issued to construct the existing house on the site, showing the existing garage location and footprint.

It appears, therefore, that the garage was originally constructed in the 1920's, which was the historical time frame in which personal automobile ownership increased to significant levels and many of the first automobile garages were constructed all over Portland. Detached garages were allowed in residential areas at the time, and continue to be allowed. Although no building permit was found, the structure will be rebuilt with the benefit of a building permit and will conform with all relevant building and life safety codes. It does appear based on the above evidence that the garage has been maintained over time until the recent fire, and that the footprint and location have stayed the same since the original garage construction in the 1920's.

The use of the structure has been and continues to be single-family in nature. This garage will continue to be accessory to a household living use.

Based on the evidence submitted by the applicant, the existing garage as shown on Exhibit C.1 would have been allowed when established, and has been maintained over time. This criterion is 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 applicant has provided non-standard evidence to document the legal nonconforming status of a detached garage at 9139 N. Willamette Boulevard in Cathedral Park. Based on the information provided, the garage has been in place at least since 1924, and although no original building permit was found the structure will be rebuilt to current zoning and building code regulations with a permit. Because the relevant criteria are met, the request must be approved.

ADMINISTRATIVE DECISION

Approval of a Determination of Legal Nonconforming Status Review to document legal nonconforming status for the existing detached garage in front of the home at 9139 N. Willamette Boulevard, with a footprint and location as shown on Exhibit C.1, signed and dated May 2, 2019, 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 same footprint and garage location as shown on Exhibit C.1. The sheets on which this information appears must be labeled, "ZONING COMPLIANCE PAGE - Case File # LU 19-129530 NE."

Staff Planner: Mark Moffett

Decision rendered by: M. MOFFETT **on May 2, 2019.**
By authority of the Director of the Bureau of Development Services

Decision mailed: May 8, 2019.

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 March 7, 2019, and was determined to be complete on March 21, 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 March 7, 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 July 19, 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.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on May 22, 2019** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **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 Hearings Officer 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 Hearings Officer 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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded on or after **May 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 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 statement, including narrative, site plan, photos, and other evidence
 2. Building elevations
- B. Zoning Map (attached)
- C. Plans/Drawings (*n.b., per BDS Management Policy, both large/scalable and reduced or 8.5" x 11" copies of all drawings are to receive the same exhibit number. In short, there are two copies of each C exhibit in this case file, including the larger folded set and the smaller 8.5" x 11" sheets*):
 1. Site Plan (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Development Review Section of Portland Transportation
 2. Fire Bureau
- F. Correspondence:
 1. E-mail of support from Nick Ehnot, rec'd. 4/9/19
- G. Other:
 1. Original LU application form and receipt
 2. E-mail dialogue between staff and applicant regarding completeness and measuring height for dormers, 3/21/19 - 3/22/19

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING

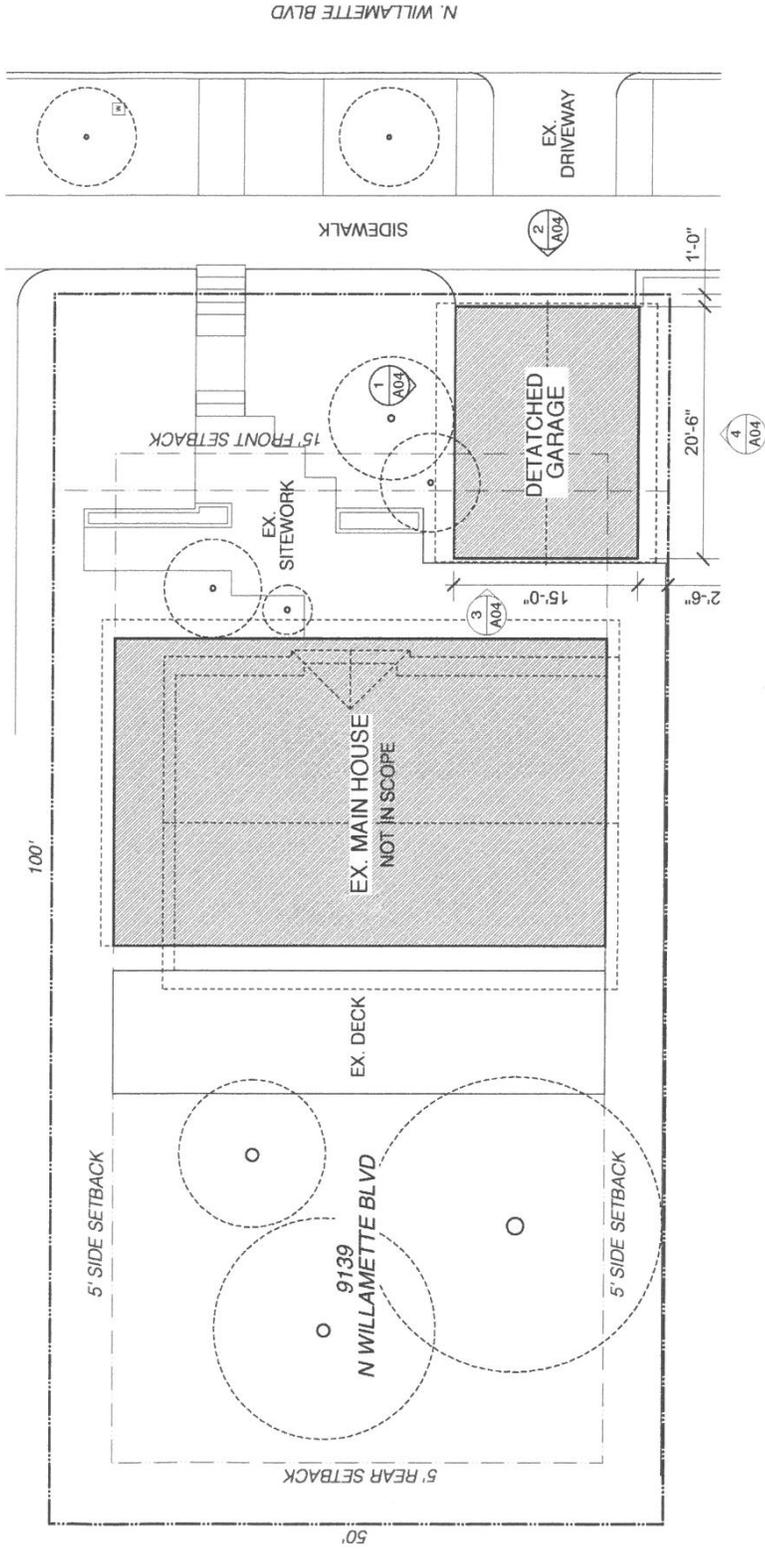


Site



Recreational Trails

File No.	LU 19-129530 NE
1/4 Section	2021
Scale	1 inch = 200 feet
State ID	1N1W01CC 7500
Exhibit	B Mar 11, 2019



SITE / ZONING DATA

SITE LOCATION:
 Address: 9139 N Willamette Blvd, Portland, OR 97203
 Property ID: R264263
 Tax Roll: ST Johns Pk Add, Block 10 TL 7500
 Neighborhood: Cathedral Park

ZONING:
 Base Zone: R5
 Overlays: none
 Comprehensive Plan: R5

SETBACKS:
 Front: 10'-0"
 Side / Rear: 5'-0"

9139 N WILLAMETTE BLVD | 07 MARCH 2019
 © YES AND DESIGN

Approved*
 City of Portland - Bureau of Development Services
 DATE: MAY 2, 2019
 BY: MARK MOFFETT
 *Approval applies only to the reviews requested and is subject to all provisions of applicable additional zoning requirements that apply.

SITE PLAN
 SCALE 3/32" = 1'-0"
 LU 19-129530 MC

LU 19-129530 NE C.1