

City of Portland, Oregon Bureau of Development Services Inspection Services - Land Use Services Dan Saltzman, Commissioner Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

FROM CONCEPT TO CONSTRUCTION

**Date:** October 8, 2015

To: Interested Person

From: Amanda Rhoads, Land Use Services 503-823-7837 / Amanda.Rhoads@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 mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, 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

<u>http://www.portlandonline.com/bds/index.ctm?c=46429</u>. 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 15-132730 AD

## **GENERAL INFORMATION**

Applicant:	Mike Coyle Faster Permits 14334 NW Eagleridge Lane Portland, OR 97229
Owners:	Rory Greenfield and Anita Stacey 3552 NE Tillamook St Portland, OR 97212-5157
Site Address:	3552 NE TILLAMOOK ST
Legal Description: Tax Account No.: State ID No.: Quarter Section: Neighborhood: Business District: District Coalition: Plan District: Zoning: Case Type: Procedure:	BLOCK 4 LOT 5, HANCOCK ST ADD R356600690 1N1E25DC 04400 2834 Grant Park, contact Ken Peterson at gpnalanduse@gmail.com. Hollywood Boosters, contact Angela McKenzie at 503-281-1800. Northeast Coalition of Neighborhoods, Lokyee Au at 503-388-9030. None R5 – Single-Dwelling Residential 5,000 AD – Adjustment Review Type II, an administrative decision with appeal to the Adjustment Committee.

### **Proposal:**

The applicant is proposing to demolish an existing detached garage and replace it with a onestory detached accessory structure containing a 319-square-foot Accessory Dwelling Unit and a 102-square-foot storage space. The Portland Zoning Code requires accessory structures that are not garages in the R5 zone to be located at least 5 feet from the side and rear property lines. The applicant proposes to place this new accessory structure within the side setback. Therefore, the applicant requests an Adjustment to Zoning Code Section 33.110.220.B to reduce the side building setback from 5 feet to 3 feet for the building wall, and from 4 feet to 2 feet for the 1-foot roof eaves, as shown on the attached plans.

The notice had also included a request to reduce the rear setback from 5 feet to 3 feet. However, the Bureau of Environmental Services was unable to support the reduction due to a utility easement at the rear of the sites along this block in the location of an underground sewer line. The applicant has altered the design so that the south building wall is 5 feet from the rear property line. The side setback Adjustment is still required.

## **Relevant Approval Criteria:**

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

## ANALYSIS

**Site and Vicinity:** The subject site is a 4,500-square-foot lot developed with a single-dwelling residence constructed in 1915 and a one-car garage near the rear of the site. The surrounding area has single-dwelling residences on sites of similar size to the subject site. Grant High School is located two blocks to the north and NE Broadway is two blocks to the south.

**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.

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

Public Review: A "Notice of Proposal in Your Neighborhood" was mailed August 31, 2015.

Agency Review: The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation (Exhibit E.2);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.5);
- Bureau of Parks Urban Forestry Division (Exhibit E.6); and
- Life Safety (Building Code) Plans Examiner (Exhibit E.7).

The Bureau of Environmental Services stated the following in their response (Exhibit E.1):

- 1. *Sewer Easement Present:* A 2 foot sewer easement granted to the City of Portland exists over the public sanitary sewer that runs across the back of this site.
  - BES Maintenance Engineering has indicated that this sewer pipe is in poor condition and will likely require rehab or replacement in the near future.
    Access for maintenance for this pipe is essential to ensure the livability of this residential neighborhood and the required 5-foot setback is needed for equipment to access to the pipe. Therefore, BES does not support the requested reduction of the 5 foot rear setback. However, BES does not oppose the reduction of the required 5 foot side setback.

More information regarding the easement is included in Exhibit E.1.

**Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### 33.805.010 Purpose (Adjustments)

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 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

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

**Findings:** The purposes for the setback regulations are found in Zoning Code Section 33.110.220.

<u>Purpose</u>: The building setback regulations serve several purposes:

- They maintain light, air, separation for fire protection, and access for fire fighting;
- They reflect the general building scale and placement of houses in the City's neighborhoods;
- They promote a reasonable physical relationship between residences;
- They promote options for privacy for neighboring properties;
- They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;
- They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and
- They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.

Staff has considered all purpose statements and has addressed only those considered applicable to this project.

• They maintain light, air, separation for fire protection, and access for fire fighting;

The new structure is just over 7 feet longer than the garage it is replacing, but the structure will be 3 feet from the west side property line, rather than the current 6 inches. There are no structures on adjacent properties in the area of the proposed ADU/storage building. The proposal will result in sufficient separation from surrounding structures for fire protection. The new ADU will be accessible on all sides for access for fire fighting. The Fire Bureau responded to the Adjustment request with no concerns.

- They reflect the general building scale and placement of houses in the City's neighborhoods;
- They promote a reasonable physical relationship between residences;

The new accessory structure will be roughly the same distance from the street as the current garage. The roof pitch matches those of the existing house; both the house and the ADU have several complementary roof sections all at the same pitch (see Exhibits C.2 and C.4). This repetition helps the ADU complement the existing house. Most of the bulk of the ADU will not be visible from the street and located behind the house.

Many properties nearby have garages within the required side setbacks. As shown in Exhibit C.1, the closest structure to the proposed ADU on other properties is the house to the west at almost 12 feet, and the neighboring garage, 20 feet to the southeast. The proposal results in a structure that maintains a reasonable physical relationship with other structures in the immediate area.

The applicant's proposal has been modified extensively from the initial set of plans. The structure has been moved entirely out of the rear setback due to a BES easement. The ADU has been reduced significantly in size and scale: from a two-story, 552-square-foot ADU with exterior stairs plus garage, built almost to the side and rear lot lines, to a one-story ADU with storage space, totaling 421 square feet for both sections, and pulled 5 feet from the rear lot line and 3 feet from the side lot line. At 28 feet deep, the proposal is several feet longer than what would be allowed for a new garage built in the setback, but the other dimension is less than 20 feet across. Given the low profile and the modest size, the structure will not be significantly larger than garages allowed outright by code to be located in side and rear setbacks.

• They promote options for privacy for neighboring properties;

The applicant proposes only one window on the west elevation. As it is located in the area of the bathroom, and the existing fence covers half of it, it is not likely to have privacy impacts on adjacent properties. The other windows are proposed outside of the building setbacks.

• 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

Locating the new ADU in the same location as the old garage fits in with the existing neighborhood character. The Adjustment will help the applicant maximize the outdoor area.

• 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 existing driveway to the west of the house will be retained. It is currently not wide enough to accommodate a legal parking space. Since the proposal requires the removal of the existing legal parking space in the garage, a condition of approval will require the applicant to create a legal, 9-foot by 18-foot parking pad on the site as part of the building permit process. Creating this parking pad as part of the driveway, as the applicants are considering, will not impact the existing visibility of the driveway when backing onto the street.

For the reasons stated above, and with the condition of approval that the driveway be widened to accommodate a legal parking space, the proposed Adjustment will at least equally meet all the relevant purposes for setbacks. This criterion is met.

**B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

**Findings:** The accessory structure will remain roughly the same distance from the street as the garage currently sits. Street and yard trees along NE Tillamook will help limit the visibility of this new structure, and much of the bulk of the new building is concealed behind the house. The new ADU will also meet all ADU design guidelines to match the siding, trim and other elements of the primary house on the lot. Given this, along with the limited windows on the west façade, the proposal will not significantly affect either the appearance or the livability of the residential area. This criterion is met.

**C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one adjustment is requested. This criterion is not applicable.

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

**Findings:** City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

**Findings:** There are no discernible impacts that would result from granting the requested adjustment. This criterion is met.

**F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** 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 the site is not within an environmental zone, 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 proposal to replace a garage with a new Accessory Dwelling Unit plus storage will meet the purpose statements for setbacks, will contribute to the attractiveness and livability of the neighborhood, and will not have negative impacts on the surrounding lots. The proposal meets all relevant approval criteria and should be approved.

## **ADMINISTRATIVE DECISION**

Approval of an Adjustment to Zoning Code Section 33.110.220.B to reduce the west side building setback from 5 feet to 3 feet for the building wall, and from 4 feet to 2 feet for the 1-foot roof eaves, per the approved site plans, Exhibits C.1 through C.3, signed and dated October 6, 2015, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition B must be noted on each of the 4 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 15-132730 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. A legal parking place meeting the standards of Zoning Code Section 33.266.120.D.1 must be shown on the plans at time of permit.

1. ....

### Staff Planner: Amanda Rhoads

Decision rendered by:	the		W	on October 6, 2015
By authority of the Directo	or of the	Bui	reau	of Development Services

### Decision mailed: October 8, 2015

**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 12, 2015, and was determined to be complete on **August 24, 2015**.

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 12, 2015.

*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: December 22, 2015.** 

### 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 October 22, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> 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 <u>www.portlandonline.com</u>.

**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 October 23, 2015 the day following the last day to appeal.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034 For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

**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. Original Narrative
  - 2. Original Plans
  - Revised Project Description, August 24, 2015
  - 4. Revised Plans (not final), August 24, 2015
  - 5. Site Photos, August 24, 2015
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. ADU Elevations (attached)
  - 3. Floor Plan (approved)
  - 4. Primary House Elevations
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice

- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety (Building Code) Plans Examiner
- F. Correspondence: none received
- G. Other:
  - 1. Original LU Application and Receipt
  - 2. Incomplete Letter, March 26, 2015
  - 3. Memorandum, July 24, 2015
  - 4. Memorandum, August 12, 2015

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).





NE TILLAMOOK ST.



