

City of Portland, Oregon Bureau of Development Services

Land Use Services

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FROM CONCEPT TO CONSTRUCTION

Date: May 7, 2015

To: Interested Person

 From:
 Marguerite Feuersanger, Land Use Services

 503-823-7619 / Marguerite.Feuersanger@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

<u>http://www.portlandonline.com/bds/index.cfm?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 15-133082 AD

GENERAL INFORMATION

Applicant:	Lisa Christie / Christie Architecture 9532 SW 18th Place / Portland OR 97219
Owners:	Georges and Mary Birenbaum 1806 Barnes Circle / West Linn OR 97068-4114
Site Address:	653 SE ANDOVER PL
Tax Account No.: State ID No.: Quarter Section: Neighborhood: Business District: District Coalition: Zoning: Case Type:	C16299 11E26AB00400 3932 Sellwood-Moreland, contact Ellen Burr at 503-754-3868. Sellwood-Westmoreland, contact Tom Brown at 503-381-6543. Southeast Uplift, contact Bob Kellett at 503-232-0010. R10a, Single Dwelling 10,000 Residential Zone, within the Alternative Design Density Overlay Zone (a) AD , Adjustment Review
Procedure:	Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal: The owners propose a renovation and expansion of the existing house and garage, including a new second story, a new main level master bedroom at the west side of the house, new basement living area, and an art studio room attached to the existing garage at the east side of the house. The garage and art studio building will be attached to the main house with a canopy cover.

For new development, the R10 zone requires a minimum 10-foot side setback, measured from property lines to exterior building walls. The existing house, however, is nonconforming with respect to its location in the minimum side setback, being only 8 feet, 3 inches from the west property line. The existing detached garage is also nonconforming, being located 8 feet, 4

inches from the east property line. The proposed additions will continue this same setback distance, with a 1-foot eave overhang. The zoning code allows additions to existing buildings located within required setbacks <u>only</u> where there is not an increase in height of the building wall. Because the walls of the new additions are proposed to be higher than the existing building walls, an adjustment review is required for both the east and west building additions.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria for Adjustment reviews are found in Section 33.805.040.

ANALYSIS

Site and Vicinity: The site is within a single-dwelling residential neighborhood called Garthwick, which is part of the larger Sellwood-Moreland neighborhood. The lot is over 13,000 square feet in area. The house is a one-story ranch style, built in 1950. Garthwick was developed with large residential lots, varying from 10,000 square feet to 20,000 square feet. Tudor and English Country-style, 2 to 2-1/2 story houses (generally built between 1920 and 1940) intermix with Ranch and Cape Code style, 1-story homes (generally built between 1940 and 1960). Front setbacks are fairly uniform; most houses are set back approximately 40 feet from the streets, resulting in expansive front yard lawns and mature trees and shrubs. The streets are winding and tree-lined. Traffic volumes on Garthwick streets are low, in part due to the low density character of residential development and also the limited street connections to other neighborhoods. Waverly Golf Club is located to the south and west. A rail right-of-way is contained with SE Ochoco, coinciding with the site's rear (north) property line. A mix of industrial, employment and commercial development is located approximately 300 feet east of the site, along SE 17th Avenue. The Milwaukie light rail transit line is located along SE 17th Avenue.

Zoning: The site and surrounding properties are located in an R10, Single-Dwelling Residential 10,000 zone. The regulations of the Single-Dwelling zones are intended to create, maintain and promote single-dwelling neighborhoods. The development standards work together to preserve the character of neighborhoods, and promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

The site is also mapped with the Alternative Design Density of "a" Overlay Zone designation. This zone offers some opportunities for additional density when Community Design Standards are met or when approved through Design Review. This project is not taking advantage of the additional density provisions of this overlay zone.

Land Use History: City records indicate that prior land use reviews include the following: VZ 124-66 – 1966 Variance request. No information on this record is available.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **April 1, 2015**. The following Bureaus have responded with no issues or concerns with approval of the Adjustment Review:

- Bureau of Environmental Services provided information on sanitary infrastructure and discussed the City's Stormwater management requirements (Exhibit E-1).
- Bureau of Transportation Engineering noted that no right-of-way improvements will be needed as city standards are already exceeded (Exhibit E-2).
- Portland Water Bureau provided information on the existing water service and generally outlined requirements for any expansions to the service (Exhibit E-3).
- Site Development Section of BDS offered an analysis of the physical characteristics of the site and noted Title 10 requirements for erosion prevention and sediment control (Exhibit E-4).

• Life Safety Plans Examiner of BDS, stated that a building permit is required for the proposed work (Exhibit E-5).

Neighborhood Review: Two written responses were received from nearby property owners in response to the proposal (Exhibits F-1 and F-2). A summary of issues raised in the letters includes:

- 1. Desire to maintain the historic character of Garthwick
- 2. Contemporary architectural design does not fit with historic character of existing homes
- 3. Loss of privacy inside home and in backyards
- 4. Loss of light and views

The first two issues are not relevant to the approval criteria, in that Garthwick is not designated as a historic resource, and compatible architectural style is not a requirement of the R10 zone and is not part of the approval criteria.

The last two issues are relevant to the approval criteria and are discussed below in the findings.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of Adjustment Reviews

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Adjustment Approval Criteria

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

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

Findings: The purpose of the regulation is as follows (relevant excerpts of 33.110.220.A):

- 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;

The request is to reduce both the east and west side yard setbacks from the minimum required 10 feet to approximately 8 feet. The proposal for additional buildings within the required side setbacks will not significantly reduce light, air, fire protection, and access for firefighting between adjacent properties to the east or west. The closest structure to the east of the site is 19 feet away from the new garage/art studio and is separated from the building by a driveway. The closest structure to the west of the site is 30 feet away from the new master bedroom addition, and is also separated by a driveway. Therefore, a reasonable separation between the existing houses is established, and will be maintained by the proposal.

On the one hand, the proposal results in additional building mass within the required 10-foot setback area. But, this is mitigated due to the low height of the proposed building walls within the setback area. The proposed second floor of house is centered on the lot, 36 feet away from side property lines. For the one-story garage expansion on the east side, the wall is proposed to be at 10 feet tall. For the one-story master bedroom, on the west side, the wall is proposed to be at 13 feet tall.

A closer examination of existing and proposed conditions shows that the existing garage roof peak is 13 feet in height, so some of the building mass within the setback area is reduced in height. Similarly, along the west property line, the existing master bedroom roof peak wall is 17 feet in height, while the new renovation and expanded master bedroom roof is 13 feet in height. This is due to the change in roof style, from pitched or hipped roof style to a flat roof. It allows for a reduced building mass, but requires a small wall height increase to accommodate the revised structure.

Privacy, light and air are reasons for requiring building setbacks. Neighborhood letters raised concerns about the loss of privacy, light, and air. As stated above, the proposed walls are relatively low in height and set back approximately 8 feet from property lines. In addition, existing driveways border the side property lines, ensuring that light and air will be maintained. Also, as noted above, while the height of the building wall will increase approximately one foot, the overall height of the structure will be reduced by replacing a hipped roof with a flat roof. As such, there should be no increased impacts on light and air reaching adjacent properties.

The expanded garage wall has no windows or openings in the setback area and therefore has little effect on neighbors' privacy. The master bedroom wall contains windows and does have the potential to reduce privacy. While the existing bedroom wall currently has windows, the northernmost proposed two windows have the potential to impact privacy of neighbors' backyards. To reduce potential impacts on privacy, a condition will require that these windows be removed.

The purpose statement for building setbacks additionally includes the following statements:

- 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.

The proposal meets the three purpose statements above, as it preserves the wide, landscaped front setback that is a prominent and defining feature of the Garthwick neighborhood. In addition to maintaining the front yard setback of almost 38 feet, existing trees will be preserved. Compared with other lots along SE Andover Place, the site is relatively narrow in width, and its existing buildings are located within the required 10-foot side setbacks. A reasonable response to these site conditions is to expand existing buildings along the same setback line. This is supported by the zoning code regulations, which include a setback exception for "established building lines." This project, however, cannot meet the exception because the walls are increasing in height to accommodate a flat roof style.

In consideration of all the above factors, the proposal meets the purpose statement for setbacks with the condition that the northernmost two windows be removed from the west elevation. With this condition, this criterion can be 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 proposal will not detract from the livability or appearance of the immediate neighborhood area. Neighborhood features will be retained, such as the established front building setback prevalent along Garthwick streets. Existing mature trees on the site will be maintained. Zoning standards that regulate front entrance location, front facing window area, and garage wall width and location will be met.

The architecture of the existing ranch-style house is being transformed into a contemporary and modern style, marked by flat roofs and a generous amount of street-facing window area. While there is precedence for modern design in the neighborhood, some neighbors contend that the proposed house design is out of place with the prevalent Tudor, English Cottage and Cape Cod styles. However, allowing "architectural diversity" is part of the purpose statement for setbacks. While in contrast to the predominant character of the architectural styles of houses in Garthwick, this proposal for a modest reduction in the building setbacks fits in with other neighborhood characteristics.

The proposal extends existing one-level building walls and adds a second story, expanding the existing house's floor area. The area added within the side setbacks will not be noticeable from the street. Note that this project is not considered infill development as it seeks to transform and expand an existing house. Additionally, all new and renovated floor area is for the primary household use; an accessory dwelling unit or a short term accessory rental unit are not proposed.

For the reasons stated above, 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: The applicant is requesting to vary from one development standard, the minimum side building setback requirement. The overall purpose of the R10 zone is to create, maintain, and promote single-dwelling neighborhoods. The zone preserves land for housing and provides housing opportunities to individual households. As a remodeling project that expands and upgrades the existing one-story home on the property, that generally follows the pattern of spacing between houses and accessory buildings, and respects front yard setbacks, the project is consistent with this overall purpose. Therefore, this criterion is met.

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

Findings: There are no City-designated scenic or historic resources on the site. Therefore, this criterion does not apply.

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

Findings: Negligible impacts result from the expanded garage and art studio. The master bedroom wall expansion will result in a building wall that is 45 feet in length, and extends into backyard landscaping areas. To minimize neighbor's privacy concerns, the northern-most two windows on the west elevation will be required to be removed. With this condition, privacy impacts will be mitigated and this criterion can be met.

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

Findings: The site is located outside the Environmental Overlay Zone. Therefore, this criterion does not apply.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The additions that are proposed to be located within the building setback areas on the east and the west sides of the site are low in height (10 feet on the east side and 13 feet on the west side. The setbacks will only be reduced by about two feet, to approximately eight feet. These low profile additions will each be abutting driveways on the adjacent properties, which further reduces any potential impacts. With a condition that requires the design to be amended to remove the two northernmost windows on the proposed west elevation that could potentially impact privacy, the proposal can be approved in general compliance with the site plan and elevation drawings.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.220, to reduce the minimum side building setback, from 10 feet to 8 feet, 3 inches from the west property line and from 10 feet to 8 feet, 4 inches from the east property line, with a one-foot wide roof eave on each side, in general compliance with the approved site plan and elevation drawing, signed and dated May 5, 2015, and 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 15-133082 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Remove the two northernmost windows on the west elevation of the master bedroom addition, as shown on Exhibit C-2.

Staff Planner: Marguerite Feuersanger

dandy

on May 5, 2015.

Decision rendered by:

By authority of the Director of the Bureau of Development Services

Decision mailed: May 7, 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 13, 2015, and was determined to be complete on **March 26, 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 13, 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.

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 May 21, 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 5th floor. **An appeal fee of \$250 will be charged**. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 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 May 22, 2015.
- 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
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Proposed Elevations, South and West
 - 3. Proposed Elevations, North and East
 - 4. Proposed East Elevation showing Garage and Art Studio
- 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. Site Development Review Section of BDS
 - 5. Life Safety Plans Examiner of BDS
- F. Correspondence:
 - 1. D. Anderson Letter, Received April 21, 2015
 - 2. M. Hudspeth Letter, Received April 22, 2015
- G. Other:
 - 1. Original LU Application
 - 2. Applicant's Statement and Photos of Adjacent Properties

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).





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