

City of Portland, Oregon Bureau of Development Services Land Use Services

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FROM CONCEPT TO CONSTRUCTION

Date: June 8, 2012

To: Interested Person

From:Douglas Hardy, Land Use Services503-823-7816 / Douglas.Hardy@portlandoregon.gov

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

The Bureau of Development Services has **approved** a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 12-137355 AD

GENERAL INFORMATION

Applicant:	Anthony & Cindy Kaplan, property-owners 3227 NW Thurman Street Portland, OR 97210
Representative:	Matthew Roman, Designer Roman Design 107 SE Washington Street, Suite 227 Portland, OR 97214
Site Address:	3227 NW Thurman Street
Legal Description: Tax Account No.: State ID No.: Quarter Section: Neighborhood: District Coalition: Plan District: Other Designations: Zoning: Case Type:	Block 29 Lot 5, Willamette Heights Add R913404630 1N1E29CD 08800 2825 Northwest District, contact John Bradley at 503-313-7574 Neighbors West/Northwest, contact Mark Sieber at 503-823-4212 Northwest Hills - Forest Park R5 – Single-Dwelling Residential 5,000 Northwest Hills Plan District Adjustment Review (AD)
Case Type: Procedure:	Type II, Administrative decision with appeal to Adjustment Committee

PROPOSAL

The existing front-facing covered porch on the house is set back at varying distances from the front lot line of the subject site. This setback ranges from 8 feet, 7 inches to approximately 11 feet, 6 inches. The applicant is proposing to rebuild and expand the porch, increasing the length of porch that will be at the 8 foot, 7 inch setback.

Based on the front setback of existing development on the two adjacent lots east and west of the subject site, a minimum front setback of 9 feet, 5 inches is required for development on

this site. The applicant is requesting an Adjustment to allow portions of the expanded covered porch to be within 8 feet, 7 inches of the front lot line, 10 inches closer than the minimum required front building setback.

Relevant Approval Criteria

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

ANALYSIS

Site and Vicinity: The site is developed with a two-story, single-dwelling structure with a onestory porch that extends along the street-facing façade. As indicated above, much of the porch is set back from the front lot line more than the minimum setback required by the R5 zone. However, approximately 30 percent of the length of the porch does extend within the required front setback area.

The surrounding area is also developed predominantly with two-story single-dwellings, with homes on the north side of NW Thurman Street built close to the front property line. Several of these homes have porches that extend into required front setbacks. Homes along the south side of NW Thurman Street (in the immediate vicinity of the subject site) are set back a more substantial distance (approximately 20 to 25 feet) from the front lot line.

Both sides on NW Thurman Street in the vicinity of the subject site are developed with a six foot wide sidewalk and planter strip, ranging in width from three to four feet.

Zoning: The site and surrounding properties within a 150 foot radius are located in an R5 Single-Dwelling Residential 5,000 zone, and within the Forest Park subdistrict of the Northwest Hills plan district.

The use regulations of the Single-Dwelling zones are intended to create, maintain and promote single-dwelling neighborhoods. They allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood. The development standards work together to 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.

While the typical minimum front setback in the R5 zone is 10 feet, the zone allows for setback averaging, which allows the front setback to equal the average of the existing building setbacks for similar structures on abutting sites. Given the existing front building setbacks on the two adjacent sites to the east and west of the subject site, an average front setback of 9 feet, 5 inches is established for development on this site.

Regulations of the Northwest Hills plan district are intended to protect sites with sensitive and highly valued resources and functional values. The portions of the plan district that include the Forest Park Subdistrict contain unique, high quality resources and functional values that require additional protection beyond that of the Environmental overlay zone. The only regulation of the Northwest plan district that is pertinent to the proposed development is the prohibition on activities which expose soil to direct contact with stormwater between October 1 and April 30.

Land Use History: City records indicate there are no prior land use reviews for this site. **Agency Review:** A Notice of Proposal was mailed on May 14, 2012. The following City bureaus have responded with no issues or concerns:

- Bureau of Environmental Services;
- Portland Bureau of Transportation;
- Water Bureau;

- Fire Bureau;
- Bureau of Development Services/Site Development Section; and
- Bureau of Development Services/Life Safety Plans Examiner.

Neighborhood Review: No written comments have been received from either the Neighborhood Association or notified property owners in response to the Notice of 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 applicant is requesting an Adjustment to reduce the minimum required front setback for the rebuilt front porch. The purpose for requiring minimum building setbacks, as stated in Zoning Code Section 33.110.220.A, is as follows:

The setback regulations for buildings and garages 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.

As an accessory structure, porches are also regulated by standards included in Zoning Code Section 33.110.250 (Accessory Structures). The applicable regulation in this section states covered porches are not allowed in a front setback. The purpose for the regulations that apply to accessory structures, as stated in Zoning Code Section 33.110.250.A, is as follows:

This section regulates structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site. The standards provide for necessary access around structures, help maintain privacy to abutting lots, and maintain open front setbacks. The requested Adjustment to reduce the front building setback for a portion of the expanded porch equally meets the stated purpose of the regulations based on the following findings:

- The portion of the expanded porch that will be within the required front setback area will have no impact on maintaining light, air, separation for fire protection, and access for fire fighting. Only a small portion of the expanded porch, approximately 6.5 feet in width and less than a foot in depth, will extend into the required front setback. The porch will be open on the front and sides, allowing air and light within the remaining front setback area. The expanded porch will not extend into the minimum required side setbacks, thereby maintaining separation for fire protection. The porch will be open to, and easily accessed from, the street and thereby easily accessed for fire fighting.
- The existing development pattern in the immediate vicinity, primarily along the north side of NW Thurman Street, is characterized by single-dwellings located closer to the street and within the front setback area. Several of these existing homes, including those of the adjacent lots east and west of the subject site, have porches that extend into the front setback. The proposed porch on the subject site will extend only 10 inches further into the front setback than the average setback for these two adjacent porches. Given the existing development pattern on neighboring properties, the proposed Adjustment request will still reflect the general building scale and placement of houses in the surrounding area.
- The Adjustment request will have no impact of the intent of the regulation to promote a reasonable physical relationship between residences, and to maintain privacy for adjacent neighbors. The porch will be set back in excess of the minimum required five feet from both side lot lines. While the porch will encroach further into the required front setback, it will be only 10 inches closer to the front lot line than what is required by the zoning regulations, with a 60 foot wide right-of-way separating the subject site from the nearest property across NW Thurman Street.
- Regarding the intent of the regulation to provide open, visually pleasing front yards, as noted above, the development pattern along the north side of NW Thurman is largely characterized by homes built closer to the front lot line than what is allowed by the regulations of the R5 zone. As such, the slightly reduced depth of the front setback resulting from the approved Adjustment will have no noticeable visual impact on the desired front yard depth. Additionally, from a pedestrian perspective, given the front lot line begins two feet back from the edge of the sidewalk, the porch will be set back 10 feet, 7 inches from the sidewalk, thereby preserving a sense of open, landscaped area that is at least equal in depth to the 10 foot front setback that is required in the R5 zone. The east side setback, approximately 9.5 feet in width, also contributes to promoting an open area close to the street.
- Locating a portion of the front porch 10 inches into the required front setback will have no impact on the ability of vehicles to park on the site without overhanging the street or sidewalk. Access to the off-street parking area within the east side setback will be unchanged. The open nature of the porch, in combination with the 10 foot, seven inch setback between the closest edge of the porch and the sidewalk will still allow for driver visibility when backing onto the street.
- The expanded porch will still remain incidental to the two-story single-dwelling residence that is on the site. As illustrated on the submitted site plan (Exhibit C.1), the portion of the expanded porch that will extend into the required front setback is only about six square feet in area. Given the small increase in the portion of the deck that will be within the front setback, the two-story single-dwelling home will still remain the dominant element on the site.

Based on these findings, the intent of the setback regulation will be equally met, and therefore 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: As stated above, the requested Adjustment will result in development that will not significantly detract from the livability or appearance of the residential area. The reconstructed porch will not be substantially larger than the existing porch, and will not come closer to the front lot line than portions of the existing porch. There is a pattern of front porches extending into the front setback (at least along the north side of NW Thurman Street), and as such, the Adjustment request will be consistent with this established appearance. The applicant notes that this development pattern promotes a more vibrant, welcoming neighborhood by placing an interactive architectural element close to the public realm, and creating a more desirable streetscape. Additionally, the layout and detailing of the reconstructed porch complement the architecture of the house, thereby further enhancing not only the appearance of the existing dwelling on the site but also the overall streetscape.

As proposed, the Adjustment request will not adversely detract from the livability or appearance of the surrounding residential area, and this criterion is met.

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

Findings: As only one Adjustment is requested, this approval criterion is not applicable.

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

Findings: City-designated scenic resources are identified on the Official Zoning Maps with a lower case "s," and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. Because there is neither a scenic nor historic resource designation on the site, this criterion is not applicable.

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

Findings: As addressed in the findings above, the Adjustment request equally meets the intent of the minimum setback regulation, and has no adverse impact on the appearance or livability of the surrounding residential neighborhood. As such, there are no identified impacts that require mitigation, and 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: 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 via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant has demonstrated that the applicable approval criteria for the Adjustment request have been met. The request to reduce the minimum required setback for a portion of the reconstructed porch equally meets the stated intent of the minimum required setback regulation, with no adverse impacts on the appearance or livability of the surrounding single-dwelling residential neighborhood. There are no identified impacts resulting from the Adjustment request that would require mitigation.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the minimum required front building setback (Zoning Code Section 33.110.220.B) for a portion of the reconstructed porch from 9 feet, 5 inches to 8 feet, 7 inches, per the approved site plan and building elevations, Exhibit C.1 through C-4, signed and dated June 7, 2012, and subject to the following condition:

A. As part of the building permit application submittal, each of the four required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.4. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 12-137355 AD."

Staff Planner: Douglas Hardy

Decision rendered by:

By authority of the Director of the Bureau of Development Services

on June 7, 2012.

Decision mailed: June 8, 2012

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 May 3, 2012, and was determined to be complete on **May 14, 2012**.

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 May 3, 2012.

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 September 11, 2012.**

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 June 22, 2012**, at 1900 SW Fourth Avenue. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. An appeal fee of \$250 will be charged. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <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 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, 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 **June 25, 2012.**
- 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.

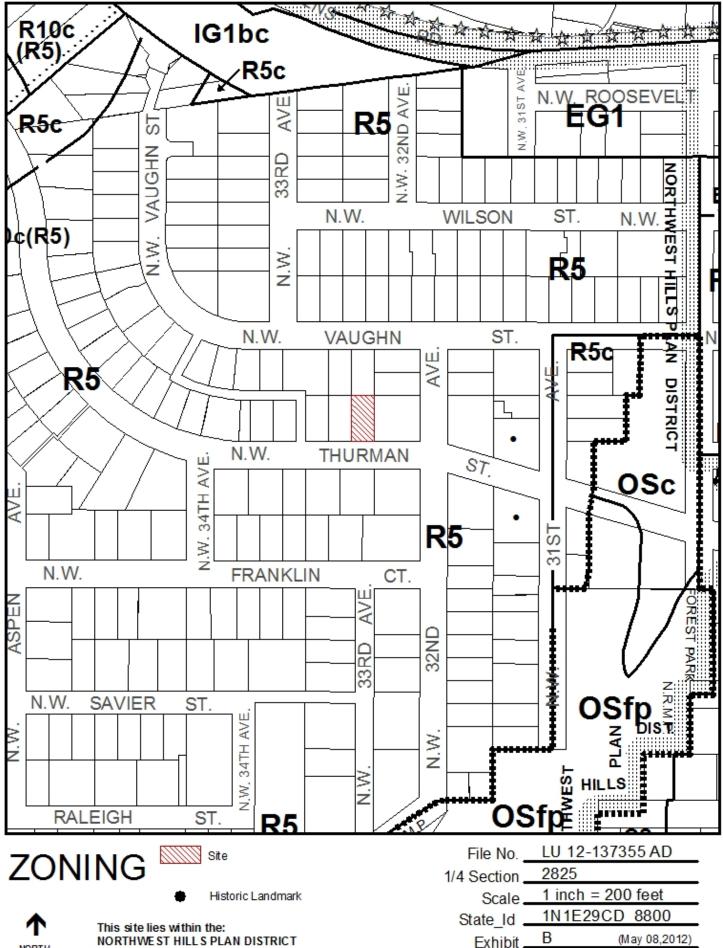
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Front Elevation (attached)
 - 3. Porch Perspective (attached)
 - 4. Isometric View (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Bureau of Development Services/Site Development Review Section
 - 6. Bureau of Development Services/Life Safety Plans Examiner
- F. Correspondence (none)
- G. Other:
 - 1. Original LU Application

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).



NORTH

