

City of Portland, Oregon Bureau of Development Services

Land Use Services

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FROM CONCEPT TO CONSTRUCTION

Date:March 17, 2014To:Interested PersonFrom:Sheila Frugoli, Land Use Services
503-823-7817 / Sheila.Frugoli@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 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 13-238870 AD GENERAL INFORMATION

Applicant:	Edward Radulescu, Architect / EPR Design, LLC 825 NE 20th Ave, Suite 202 / Portland, OR 97232 (503) 265-8461
Owner:	Rivera Properties LLC 3701 SE 174th Ave / Portland, OR 97236-1253
Site Address:	2220 SE 174 th Avenue
Legal Description:	TL 6300 0.73 ACRES, SECTION 06 1S 3E, TL 6300 0.73 ACRES; LOT 1 INC UND INT TRACT A, PARTITION PLAT 2013-59
Tax Account No.:	R993061670, R649642330
State ID No.:	1S3E06DC 06300, 1S3E06DC 06301
Quarter Section:	3248
Neighborhood:	Centennial, contact Tom Lewis at 503-347-5715.
District Coalition:	East Portland Neighborhood Office, Richard Bixby at 503-823-4550.
Zoning:	R7a, Single-Dwelling Residential 7,000 zone with the "a" Alternative
Case Type: Procedure:	Design Density overlay zone AD, Adjustment Review Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant has proposed an approximate 2,400 square foot addition to the existing home, an existing Adult Care Facility. An Adjustment Review is requested to exceed the maximum allowed building coverage by 1,713 square feet. On this 11,211 square foot lot, the Zoning Code allows up to 3,182 square feet (28. 3 percent coverage). The applicant is requesting to increase the coverage allowance to 4,895 square feet (48.6 percent). The enclosed site plan identifies the existing footprint of the home as well as the additions. The enclosed building elevations illustrate the proposed exterior sides of the home.

This lot was recently created through a land division review--LU 12-142972 LD. A new private street has been constructed on the south side of the lot. The private street (identified as SE Sherman) will provide vehicle access for this lot and the two lots to the east.

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 are met.

ANALYSIS

Site and Vicinity: The subject site is a newly created 11,211 square foot lot that was created via a recent land division. An existing approximate 3,000 square foot home has most recently been permitted as an Adult Care Home. The site is located approximately 600 feet north of the intersection with SE Division Street. The surrounding area is primarily comprised of single-dwelling residential development. Most of the adjacent and nearby residential lots that are located on the east side of SE 174th Avenue are served by private streets/tracts. On the west side of SE 174th Avenue is the "Division Street Corral Estates Subdivision". This subdivision includes single-dwelling residential development and attached housing that is located along SE 171st Avenue, in an area zoned for multi-dwelling residential development. Most are built relatively close together. Most are two-stories or more in height, and most have yards that are located behind tall fences. The boundary between the City of Portland and the City of Gresham is located approximately 175 feet to the east of the subject site.

Zoning: The site and surrounding properties are located in an R7a Single-Dwelling Residential 7,000 zone and the "a", Alternative Design Density overlay 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 "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This proposal is not using the provisions of the "a" overlay zone.

Consistent with the Federal Fair Housing Act, the Portland Zoning Code allows Adult Care Homes in single-dwelling residential zones, if they fit the code's definition of "household". The Zoning Code definition states:

Household. One or more persons related by blood, marriage, legal adoption or guardianship, plus not more than 5 additional persons, who live together in one dwelling unit; or one or more handicapped persons as defined in the Fair Housing Amendments Act of 1988, plus not more than 5 additional persons, who live together in one dwelling unit.

The Fair Housing Act defines "handicapped" as a person with a physical or mental impairment which substantially limits one or more of such person's major life activities.

Therefore, a dwelling may be occupied by a family (related by blood, marriage, adoption or guardianship) plus an unlimited number of handicapped persons. The scale of the building that the "household" occupies is essentially limited by the base zone development standards that regulate the scale of the development--setbacks, height, and building coverage limits.

Land Use History: City records identify the following prior land use review: LU 12-142972 LDS: A 3-parcel partition that created 3 standard lots and a private street tract was approved with conditions.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **February 4, 2014**. The following Bureaus have responded with no issues or concerns:

- Water Bureau (Exhibit E.1);
- Bureau of Environmental Services (Exhibit E.5);
- Life Safety Plan Review Section of BDS (Exhibit E.4); and
- Bureau of Parks-Forestry Division (Exhibit E.5).

The Fire Bureau responded with the following comments:

Prior to approval of development, the applicant shall demonstrate that the existing number of fire hydrants and fire flow will meet the demand of the proposed structure.

The applicant provide the Fire Bureau with the proposed total square footage with the existing and new construction along with the available fire flow and specific location of the existing fire hydrant to review to determine if the Fire Code requirements are met. (Exhibit E.2)

The Portland Bureau of Transportation responded with the following comments:

The subject site was created in relation to a prior land use action (12-142972 LDP). In association with this prior land division request, the applicant was required to construct frontage improvements along SE 174th to the satisfaction of the City Engineer. Said frontage improvements were required to be reviewed/approved through the City's Public Works Permitting process & the applicant has already gotten through (at least) the 90% plan review phase of this process (12-158280 WT & 12-158661 WE).

There is no transportation-related approval criteria associated with the proposed AD; PBOT has no objections. (Exhibit E.6)

The BDS Site Development Section responded with the following comments:

Septic system. The residence at 2220 SE 174th Avenue was served by multiple cesspools.

The cesspool that was located near the former pool house was decommissioned and a compaction testing report is available from Carlson Testing (see 12-169528-RS and 12-169528-RS).

Efforts were made to locate the cesspool located to the east of the original 1978-era residence. The cesspool was not located, but adequate efforts were made. Decommissioning Waiver 2013-055245 was received and approved (see 12-169528-RS and 12-169528-RS).

No efforts have been made to locate cesspool located to the west of the residence. The applicant originally communicated to the inspector that no addition would be made to the west side of the residence. The applicant must decommission the cesspool located west of the residence at 2220 SE 174th Avenue.

<u>Erosion control</u>. Erosion prevention and sediment control requirements found in Title 10 apply to both site preparation work and development. Full compliance with the erosion control requirements of Title 10, as well as maintenance of the erosion control elements, such as silt fences on private property, storm drain inlet protection and bio bags in the public right-of-way, is the responsibility of the property owner, the developer of the land division and the builders of structures on the individual lots. Please refer to the City of Portland *Erosion and Sediment Control Manual* for additional information regarding erosion and sediment control requirements.

Site Development requests that the following condition of approval be required as part of the decision:

 The applicant must decommission the cesspool located west of the residence at 2220 SE 174th Avenue (Exhibit E.3)

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the "Notice of Proposal" that was mailed on February 4, 2014.

ZONING CODE 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: Zoning Code Section 33.110.225 describes the purpose of the building coverage standard as follows:

Purpose. The building coverage standards, together with the height and setback standards control the overall bulk of structures. They are intended to assure that taller buildings will not have such a large footprint that their total bulk will overwhelm adjacent houses. Additionally, the standards help define the character of the different zones by limiting the amount of buildings allowed on a site.

Based upon Zoning Code Table 110-4, up to 3,182 square feet (28.3 percent) of building coverage is allowed on this 11,211 square foot site. The applicant has requested an increase of 1,713 square feet, which will result in 48.6 percent coverage. The applicant's submitted plans identify most of the addition, 1,952 of the 2,400 square feet, as one-story. From SE 174th Avenue, the home will appear the same but with an updated facade. The one-story addition with approximate 9 foot tall walls and will not be readily visible behind a 6-foot tall fence. If the proposed addition were 2-stories, the overall bulk of the structure would be considerable. The minimum required 5 foot side setback and 22 foot wide private street provides separation between the subject property and the homes to the south. The addition will be set back 9 feet from the north property line and there will be at least 5.5 feet between the building addition and the east (rear) property line. The applicant's submitted exterior elevations show windows, patio doors and alcoves and outdoor patio area that have a low-scale residential character. These architectural elements diminish the size of the building.

To ensure that the project is constructed consistent with this application, the following conditions are necessary: (1) The addition at the rear of existing home must be limited to one-story; (2) The exterior elevations—windows, patio doors, variations in plane of building wall, and roof line, as shown in the submitted plans must not be substantially altered; and (3) A 6-foot tall solid/sight obscuring fence must be installed along the side and rear property lines, approximately along the length of the addition.

Further, given the proposed amount of building coverage on the lot, the BDS Site Development team has flagged a concern that the proposed addition will be located on an abandoned cesspool. To address this concern, a condition will require the applicant to include in the building permit application, the identification and decommissioning of the cesspool.

With compliance with the conditions, the proposal will not overwhelm nearby houses and will be consistent with the purpose of the regulation.

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: BDS did not receive any comments from notified nearby property owners. The proposed addition will be lower in scale than the existing portion of the home. Most of the homes in the immediate area were constructed within the last 20 years. Most are two-stories in height and appear, based on a site visit and aerial photos, to cover nearly 50 percent of their respective lots. Conditions of approval, identified under criterion A, will ensure the proposed addition is consistent in scale, design and is adequately screened. Hence the project will not significantly detract from the livability or appearance of the area.

Because the adult care home fits within the Portland Zoning Code definition of a "household", the number of "handicapped" residents and their unique needs/circumstances are not relevant to this review.

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. The site is not within either overlay zone; thus, 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: The site is not within an environmental zone, which is designated on the zoning map by either a "c" or "p" overlay. Therefore, 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.

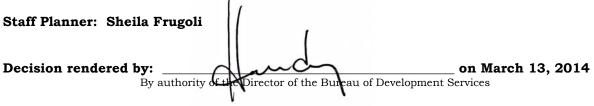
CONCLUSIONS

As the findings under the relevant approval criteria explain, with conditions, the proposal can meet the criteria and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to exceed the maximum allowed building coverage (33.110.225) by 1,713 square feet, from 3,182 square feet (28.3 percent coverage) to 4,895 square feet (48.6 percent) for an addition to an adult care home, per the approved plans, Exhibits C.1 through C.3, signed and dated March 13, 2014, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through E) 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 13-238870 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The addition at the rear and to the south of the existing home is limited to one-story in height.
- C. The exterior elevations—windows, patio doors, variations in plane of building wall, and roof line, as shown in the submitted plans (Exhibits C.1-C.3) must not be substantially altered.
- D. A 6-foot tall solid, sight obscuring fence must be installed along both side property lines, from the rear property line at least 83 feet in length to the west, and along the entire length of the rear property line.
- E. The building permit application must include the decommissioning of the cesspool that is located on the west side of the existing home.



Decision mailed: March 17, 2014

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 December 17, 2013, and was determined to be complete on January 30, 2014.

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 December 17, 2013.

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 March 31, 2014** at 1900 SW Fourth Ave. 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 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 April 1, 2014.
- 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 Submittal
 - 1. Written Response to Approval Criteria
 - 2. E-Mail Memo from Applicant Identifying Revised Plans, Jan. 27, 2014
 - 3. E-Mail from Applicant that Describes Clients Living at Adult Care Home, Feb. 24, 2014
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Revised Site Plan, Submitted Jan. 27, 2014 (attached)
 - 2. Revised Building Elevation, Front (West) and Side (South), Submitted Jan. 27, 2014 (attached)
 - 3. Revised Building Elevation, Rear (East) and Side (North), Submitted Jan. 27, 2014 (attached)
 - 4. Floor Plans, Submitted Jan. 27, 2014
 - 5. Original Site and Elevation Plans
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Water Bureau
 - 2. Fire Bureau
 - 3. Site Development Review Section of BDS

- 5. TRACS Print-Out Showing "No Concerns" from BES and Urban Forestry
- 6. Portland Bureau of Transportation
- F. Correspondence:
 - 1. Email Correspondence between Staff and Linda Bauer Regarding Use Classification, Submitted Feb. 24, 2014
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Application Letter from Staff to Applicant, Dec. 27, 2013
 - 3. Revised/Corrected Incomplete Application Letter from Staff to Applicant, Jan. 10, 2014
 - Second Revised/Corrected Incomplete Application Letter from Staff to Applicant, Jan. 16, 2014
 - 5. Summary Memo from Sylvia Cate for Pre-App. Conference EA 11-184944

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).

