



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

1900 SW 4th Avenue, Suite 5000 Portland, Oregon 97201 503-823-7300 Fax 503-823-5630 TTY 503-823-6868 www.portlandonline.com/bds

**Date:** January 16, 2009 **To:** Interested Person

From: Sylvia Cate, Land Use Services

503-823-7771 / scate@ci.portland.or.us

# 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 08-167544 AD

# **GENERAL INFORMATION**

**Applicant:** Leslie G Piper

225 NE 65th Ave

Portland, OR 97213-5011

503 539 6718

Site Address: 225 NE 65TH AVE

**Legal Description:** BLOCK 13 LOT 30, ORCHARD HOMES

**Tax Account No.:** R629804830 **State ID No.:** 1N2E32CB 04400

**Quarter Section:** 3037

**Neighborhood:** Center, contact Sean Besso at 503-806-9014.

**Business District:** Eighty-Second Avenue, contact Nancy Chapin at 503-774-2832. Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.

**Plan District:** None **Other Designations:** None

**Zoning:** R5, Single Dwelling Residential 5,000

**Case Type:** AD, Adjustment

**Procedure:** Type II, an administrative decision with appeal to the Adjustment

Committee.

## Proposal:

The applicant proposes to add a small, 7 x14 foot addition to an existing garage and to add a pitched roof to the entire structure. The new roof line would become 15 feet in height, at the ridge line. The current roof is flat on an 8 foot high garage wall. The applicant also proposes to add a small, shed roofed storage area in front of the exiting garage for bike and wood storage. The applicant proposes to convert the garage into studio space, with a back door that opens onto a new 14 foot wide deck. The side set back for detached accessory structures in the R5 zone is 5 feet. Because the existing garage is 2 feet from the property line, the applicant

requests an Adjustment to reduce the side yard setback from 5 feet to 2 feet for the entire structure, which includes the deck, and all additions to the existing garage. Attached to this decision are site plans and elevations depicting the proposal.

## Relevant Approval Criteria:

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 7,800 square foot lot developed with a one story house built in 1924 and a detached garage and large garden area in the back yard. The site has frontage along the west side of NE 65<sup>th</sup> and is approximately 100 feet from the intersection of NE 65<sup>th</sup> and NE Davis. The immediately surrounding area [approximately 200 feet in all directions] is characterized by lots developed with residential uses in the R5 zone. Further south and northwest of the site, beyond approximately 200 feet] are parcels in the Multi dwelling R2 zone. NE Davis and NE 65<sup>th</sup> Avenue are designated Local Service Streets for all modes. The site is approximately one block south of NE Glisan Street and one block north of E Burnside.

**Zoning:** The site lies in the Single Dwelling Residential 5,000 zone, one of several that implement the Comprehensive Plan Map designation for single dwelling.

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

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **November 12, 2008**. The following Bureaus have responded with no issues or concerns:

- Water Bureau
- Fire Bureau
- Bureau of Parks-Forestry Division

The *Bureau of Environmental Services* responded with the following comment: BES has no objections to the proposed setback adjustment. At the time of building review, the new additions to the garage will be reviewed for stormwater management requirements. An appropriate stormwater disposal location will need to be identified on site plan when submitting for review.

The *Bureau of Transportation Engineering* responded with the following comment: Public Transit is located ~600 feet from the subject property. TSP classification is Local Service for all modes. Transportation has no objection to this proposal *provided that on-site parking is retained*.

The *Site Development Section of BDS* responded that *Site Development* has no objection to the requested land use review; however their response identifies a number of requirements that will be imposed during building permit review.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on November 12, 2008. A total of three written responses were received from notified property owners in response to the proposal.

Two of the letters expressed opposition to the proposal and expressed additional concerns. One letter raised a number of questions and concerns. A number of comments and concerns were raised about appearance, scale, and proximity to neighboring yards. Those comments that

directly relate to the approval criteria are discussed below, in this decision. Other concerns that were raised, while not directly relevant to the approval criteria, are listed below and discussed.

A concern was raised that the proposed addition to the existing garage might facilitate a reoccurrence of vermin in the neighborhood. <u>Staff comment</u>: There are no elements of the proposal that would suggest that an increase in vermin within the neighborhood would result from construction of the proposed additions. The agency that deals with potential vermin hazards is the Multnomah County Health Department, which can be contacted at 503 988-3464.

A concern was raised as to the precise location of the property line. <u>Staff comment</u>: The applicant is required to submit accurate site plans. During building permit review, location of property lines must be verified. [However, based on the site plan submitted by the applicant, a portion of which is based on a previous site plan approved by the city for a previous addition to the home circa 1995, indicates a 2 foot setback from the side property line]. [Exhibit C-1].

A concern was raised about the length of time construction could take place, with the associated noise and inconveniences related to the construction. <u>Staff comment</u>: Construction of structures approved via building permit issuance are subject to additional regulations that limit the start and stopping times for construction, etc. Delivery of construction materials are not anticipated to obstruct neighboring driveways.

A concern was raised about having a permanent structure less than 5 feet from the property line. <u>Staff Comment</u>: The existing garage is located less than 5 feet from the property line. It is important to note that garages that meet certain size and height thresholds are allowed by right up to a 0 foot setback from both the side and rear property lines. Therefore, the existing garage, at a 2 foot setback, is allowed to be at the property line. The request is to build an addition to the existing garage, and change the use to a studio space and receive approval to continue the existing 2 foot setback. An analysis of the request can be found below, as part of the findings of this decision.

A concern was raised about the potential for an increase in traffic and parking in the immediate neighborhood. <u>Staff comment</u>: There is no expectation of any increase in traffic, as the proposed studio space would be a residential use associated with the primary residence on the site, but is not an Accessory Dwelling Unit, or ADU. An ADU has additional development standards and requirements, which includes transportation review.

A question was raised regarding the ability of the existing foundation to support the proposed additions, and if not, would the structure then have to meet the current 5 foot setback. <u>Staff comment</u>: The Adjustment request, if approved, would allow the construction of a new foundation or reinforcement to the existing foundation in the current location, 2 feet from the property line. Adjustment reviews provide flexibility for various situations and allow for alternative ways to meet the purposes of the code.

A concern was raised that variances are usually approved for site hardships, such as lot size, and the site is a large lot. <u>Staff comment</u>: The Portland zoning code provides the Adjustment process that does not require a proof of hardship. Adjustment requests are generally evaluated under approval criteria 33.805.040 A through E. However, in certain situations, alternative criteria, to be applied in situations of hardship is allowed. This request is not subject to the 'hardship' criteria found at 33.805.040 G-I.

A question was raised about materials and firewall construction requirements. <u>Staff comment</u>: This review evaluates the request to Adjust the required setback for the proposed additions. During building permit review, specific fire wall rated materials that comply with current building code will be required.

A question was raised about a recently installed 6 foot high cedar fence at the property line and the height versus privacy concerns. *Staff comment*: In single dwelling residential zones, fences up to 8 feet in height along property lines are allowed. Fences above 6 feet in height require a building permit. Six foot high cedar fences along side and rear property lines are typical throughout the city's neighborhoods.

Questions were raised about the maximum allowable noise and light spillover from one property to the next. <u>Staff comment</u>: Noise is regulated by Title 18 of the City code, which includes restrictions at night and as previously noted above, noise associated with permitted construction activities are regulated as well. Light is regulated at 33.262.080, *Glare*, which limits both direct and indirect lighting to a maximum of 0.5 foot candle falling onto adjacent properties.

A question was raised about the length of time for construction. <u>Staff comment</u>: permitted structures must be completed as established by the building permitting and inspection process.

A question was raised regarding whether new or other materials will be utilized in the construction. *Staff comment*: Both recycled and new materials are required to meet building code. Compliance will be determined during building permit review.

# 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 purpose of the setback regulations are found at 33.110.220 *Setbacks*, which states:

The setback regulations for buildings and garage entrances 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.

The proposal is to expand an existing garage with a small addition to the rear of the garage and the overall footprint used as a studio space with a second story storage space. The existing 14 x 19 foot garage has a 2 foot setback from the side property line, which is allowed by right by the zoning code. In the R5 zone, buildings are subject to a 5 foot side setback. However, special standards for garages are found at 33.110.253 D that allow a garage to be in both the side and rear setbacks if the garage is set back at least 40 feet from a front lot line, has dimensions that do not exceed 24 feet by 24 feet, is no more than 15 feet high, with garage walls no more than 10 feet high, excluding the portion of the wall within a gable, contains no space for living, sleeping, eating, cooking or sanitation, and dormers are set back at least 5 feet from the side and rear lot lines.

The existing garage is 14 x 19 feet, is less than 15 feet high and is set back from the front lot line by approximately 82 feet and currently does not contain space for living or sanitation facilities. The proposed additions to the garage would result in an overall structure that will be 14 feet in width and 26 feet in length. The small shed proposed for the front of the garage for storage of wood and bicycles is less than the full 14 feet in width and will be approximately 4 feet in depth. Because the proposal is to convert the garage area to studio space with a storage area above, and the upgrades include water and sanitation fixtures within the proposed studio space, the development project must meet the 5 foot setback requirement or be approved by an Adjustment review.

Because of the way height is measured, as defined by the Portland Zoning Code, the overall height of the proposed addition is 15 feet, due to the proposed dormer, that faces the interior of the site and is well outside of the 5 foot side yard setback. The proposed additions do not impinge on access for fire fighting, and with appropriate firewall materials as required by the building code, the Fire Bureau has no concerns about the proposal.

The additions to the garage will result in a structure that is narrower but slightly longer than a garage that is  $24 \times 24$  feet, and with the storage area roof sloping away from the adjacent lot to the south, there are no anticipated impacts to light and air. Because of the 2 foot setback, there are no windows allowed on the south facing façade, so there are no anticipated impacts to privacy. Because the project is an addition to an existing garage, the relationship of the enlarged structure will still reflect the original placement and relationship to adjacent houses. The proposed additions are relatively small and therefore the scale of the proposal is consistent with the general scale of garages in nearby area.

Because the garage is located so far back from the front property line, the addition will not be particularly noticeable to passers by from the street, and legal on-site parking will be maintained. The proposed shed/storage area in front of the garage for bicycles and wood has a relatively small footprint and will provide flexibility to the applicant for storage on the property.

For these reasons, the proposal meets the intent of the setback regulations and 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 site is in a residential zone. The proposal for a reduced setback for an addition to the existing garage and the creation of a studio area within the expanded

footprint of the garage is not anticipated to have any significant detrimental impacts. As previously discussed, the slope of the shed style roof over the second story rises away from the adjacent property. With dormer features oriented toward the back yard, the most significant amount of bulk and massing of the proposed addition is located outside of the required 5 foot setback. The proposal and design, as shown in the submitted plans will have an attractive street facing façade with a window accent above the proposed bike storage shed.

The proposed use of the garage is as a studio space, and is not intended to be an Accessory Dwelling Unit [ADU]. However, because there will be water and sewer serving the studio space, a condition is warranted to preclude the studio being converted to an ADU without benefit of permits. Therefore, a condition of approval is necessary to ensure that the applicant sign and record a second sink agreement with the City at time of building permit application for the proposed studio space. With this condition, 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 scenic resources are shown on the zoning map by the 's' overlay; designated historic resources are identified on the zoning map by a large dot, and other historic resources may be identified as contributing structures within historic and conservation districts. There are no such resources present on the site, nor are there any such designated properties within 200 feet of 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, with the associated condition of approval, as discussed above in this decision. 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. 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 applicant proposes to add a small, 7 x14 foot addition to an existing garage and add a pitched roof to the entire structure. The new roof line would become 15 feet in height, at the

ridge line. The current roof is flat on an 8 foot high garage wall. The applicant also proposes to add a small, shed roofed storage area in front of the exiting garage for bike and wood storage. The applicant proposes to convert the garage into studio space, with a back door that opens onto a new 14 foot wide deck. The side set back for detached accessory structures in the R5 zone is 5 feet. Because the existing garage is 2 feet from the property line, the applicant requests an Adjustment to reduce the side yard setback from 5 feet to 2 feet for the entire structure, which includes the deck, and all additions to the existing garage.

Because the proposal meets all of the applicable approval criteria, with conditions of approval, the proposal should be approved.

#### ADMINISTRATIVE DECISION

Approval of:

- An Adjustment to reduce the side yard setback from 5 feet to 2 feet, in order to add an addition to an existing garage and change the use to a studio space with storage area above, per the approved site plans, Exhibits C-1 through C-4, signed and dated January 13, 2009, subject to the following conditions:
- A. As part of the building permit application submittal, the following development-related conditions (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 08-167544 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. At time of building permit review, the applicant must sign and record a second sink covenant with the city prior to permit issuance.

Decision rendered by:

on January 13, 2009

By authority of the Director of the Bureau of Development Services

Decision mailed: January 16, 2009

Staff Planner: Sylvia Cate

**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 October 2, 2008, and was determined to be complete on November 3, 2008.

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 October 2, 2008.

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 January 30, 2009 at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., 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. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 contact the receptionist at 503-823-7967 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 <a href="https://www.portlandonline.com">www.portlandonline.com</a>.

**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 February 2, 2009 (the first business 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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**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**

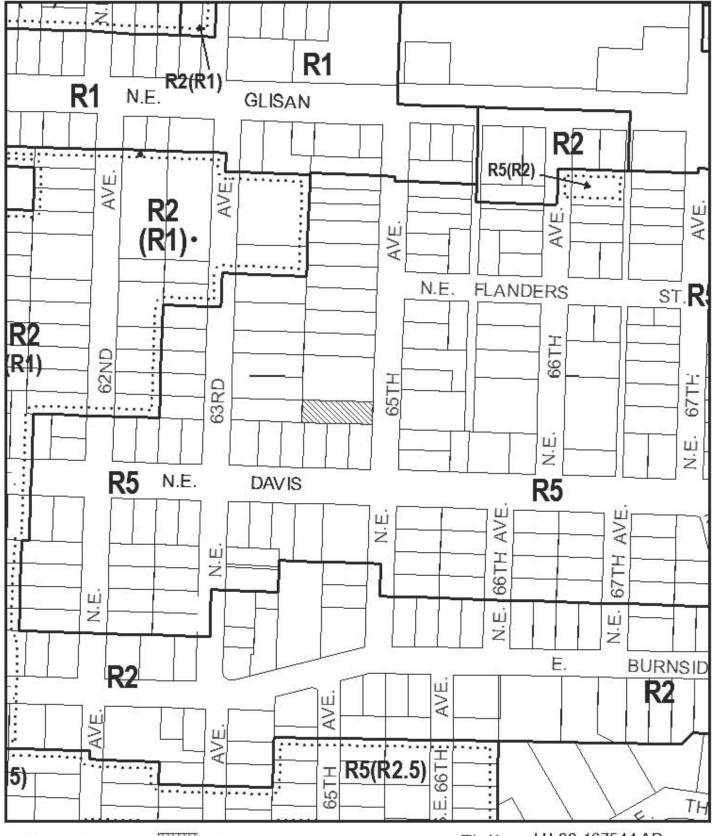
#### NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Application Narrative
  - 2. Additional Information with multiple plan drawings
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Floor Plan
  - 3. Street Facing Façade
  - 4. West facing facade

## 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. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
- F. Correspondence:
  - 1. Pitman, Nov 16, 2008, opposition and concerns
  - 2. Petrella, Nov 18, 2008 opposition and concerns
  - 3. Tryon, via email December 2, 2008, questions and concerns
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Letter to Applicant October 16, 2008, Add'l information required
  - 4. Letter to Applicant December 8, 2008, Re: Copies of public comments
- 5. Letter to Applicant December 19, 2008, Re: Agency responses and delay of decision for clarification purposes

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



**ZONING** 

Historic Landmark

↑ NORTH File No. LU 08-167544 AD

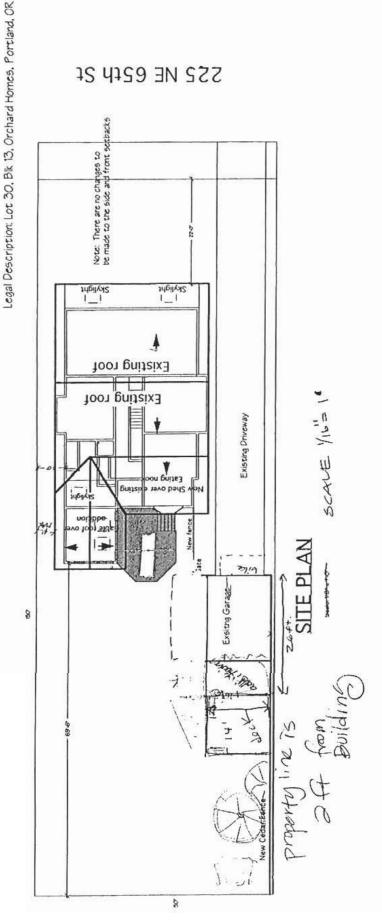
1/4 Section 3037

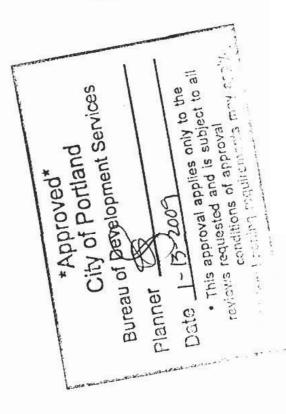
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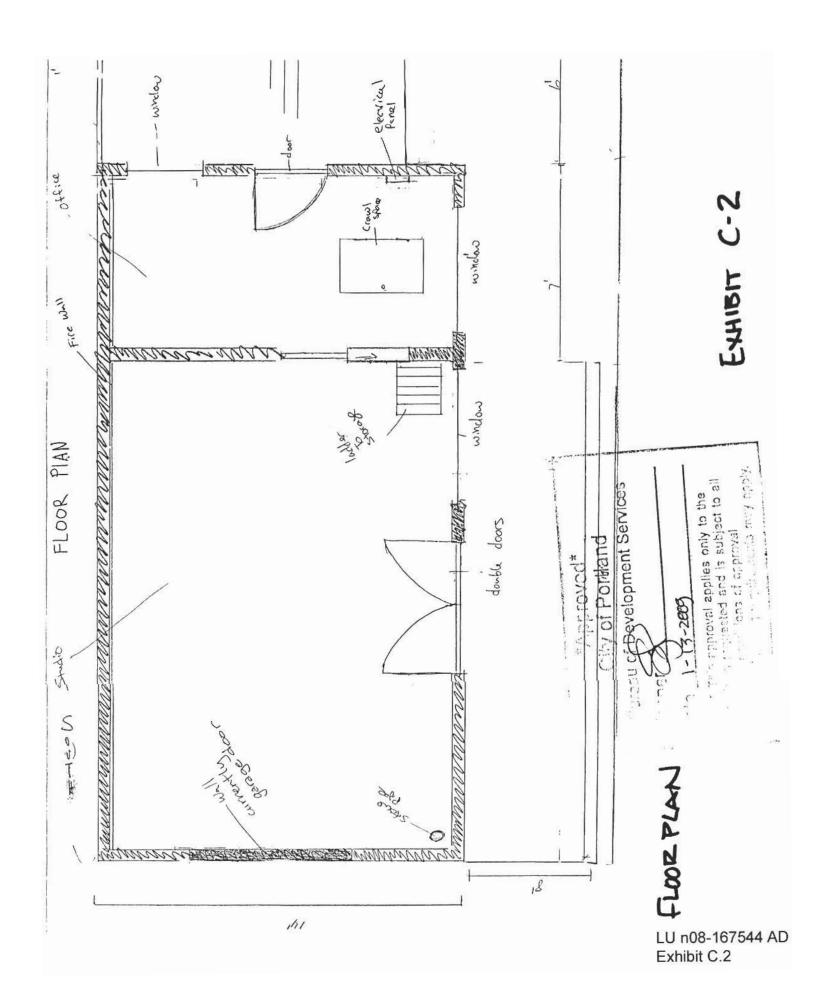
Exhibit B (0ct 06,2008)

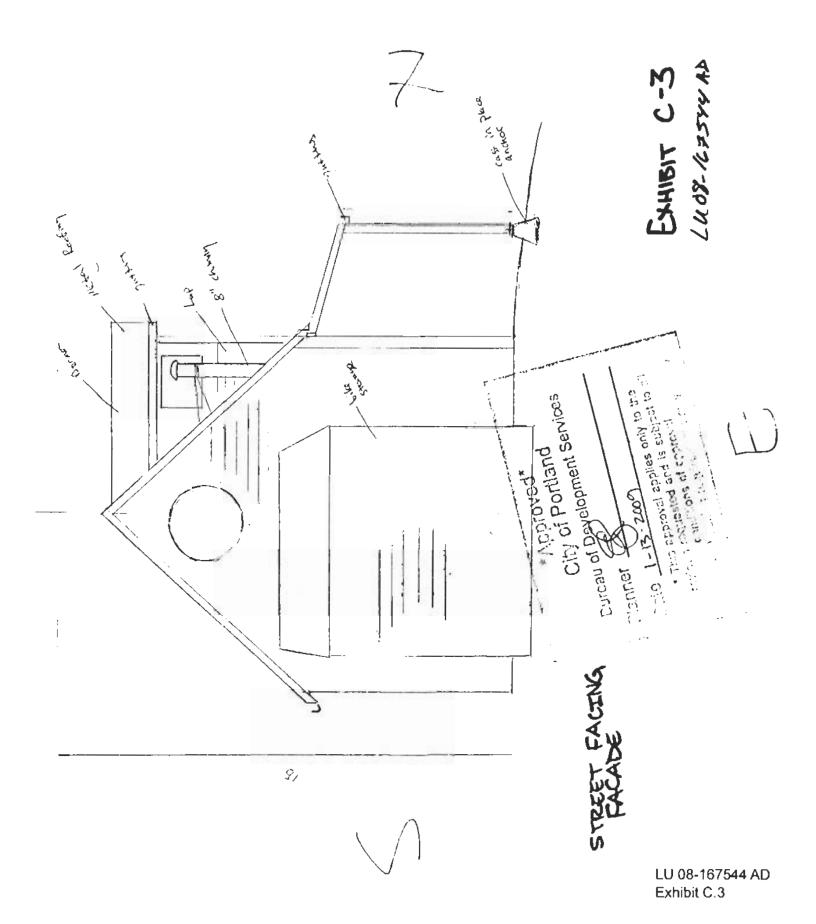
SS2 NE 65th St

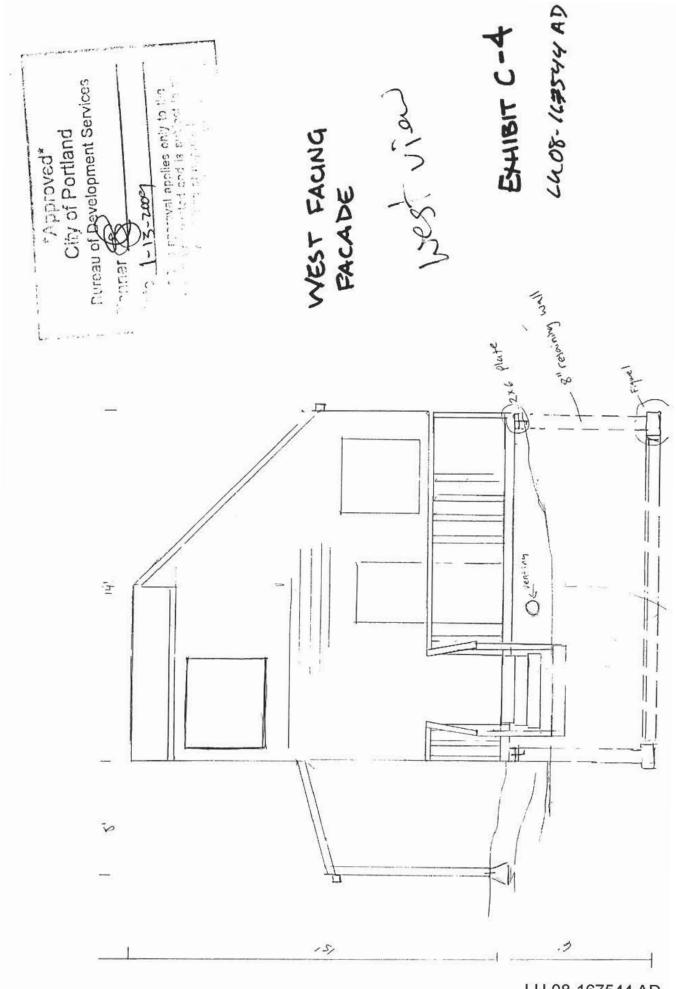




LU 08-167544 AD Exhibit C.1







LU 08-167544 AD Exhibit C.4