



City of Portland
Bureau of Development Services
Land Use Services Division

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Portland, Oregon 97201
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FAX: 503-823-5630
www.portlandonline.com/bds

Date: September 2, 2008
To: Interested Person
From: John Cole, Land Use Services
503-823-3475 / ColeJA@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 07-179312 AD

GENERAL INFORMATION

Applicant: Joseph and Shelby Bergen
54 NE Wygant St
Portland, OR 97211

Site Address: 54 NE WYGANT ST

Legal Description: LOT 16 BLOCK 9, MAEGLY HIGHLAND
Tax Account No.: R526704090
State ID No.: 1N1E22AD 10200 **Quarter Section:** 2530
Neighborhood: Humboldt, contact Paul Anthony at 503-367-9679.
Business District: N/NE Business Assoc, contact Joyce Taylor at 503-445-1321.
District Coalition: NE Coalition of Neighborhoods, contact Lauren McCartney at 503-823-4135.

Plan District: None
Zoning: R2.5a Single Dwelling Residence 2,500 with an "a" Alternate Design Density Overlay

Case Type: AD Adjustment from Frontyard Setback Requirements
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal: The Applicants are seeking a reduction in the ten foot front building setback requirements of the R2.5 Zone to permit the construction of a one story 196 square foot addition on the west side of their home that will extend to within 6.5' of their Cleveland Street property line. Please refer to the attached siteplan and building elevations.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are contained in Code Section *33.805.040 Approval Criteria for Adjustments*.

ANALYSIS

Site and Vicinity: This request takes place on a site located at the southeastern corner of NE Cleveland Ave and Wygant St. This is a 5,000 square foot rectangular property with an existing two story single family residence located on the western ½ of the site. Although this residence is oriented towards NE Wygant St. (Its front door faces north.) by zoning code definition the front property line and front building setback requirements are applied to the NE Cleveland Street frontage.

This site fronts on NE Cleveland Street which is also a zoning district boundary line between the “R2.5” high density single dwelling zone and an “R1a” multi-dwelling residential district to the west. The surrounding properties include a mixture of single family residences and multi dwelling residential structures.

Zoning: The R2.5 designation is one of the City’s single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

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. (Provisions of the “a” overlay zone are not relevant to this proposal or review.)

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 **August 4, 2008**. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division

The Bureau of Environmental Services and the Bureau of Development Services, Site Development Section both indicated that they have no objections to the request. They did indicate that documentation of compliance with the City’s stormwater management manual will be required at the time any building permits for this addition are submitted for City review and approval. Exhibit E-1 and E-5 contain additional details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on August 4, 2008. Two written responses have been received from notified property owners in response to the proposal.

One letter was in support of the proposal. One letter in opposition to the proposal expresses concerns that the addition will block visibility of the street (light and air) from the house located immediately to the south.

Staff response: The existing residences are located close to each other having been built prior to the advent or strict enforcement of zoning setbacks. The proposed addition will be set back from their shared property line in conformance with all applicable zoning regulations. After the requested adjustment the proposed addition will be located eight and one half feet from the inside edge of the public sidewalk on NE Cleveland Street. Staff’s analysis and findings regarding the adequacy of this setback are discussed below.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of Adjustments
33.805.040 Adjustment Approval Criteria

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

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

Findings: The setback regulations for buildings in Section 33.110.220 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 requested adjustment is to reduce the required front yard setback by 3.5 feet from ten feet required to 6.5 feet proposed. This reduction is requested to facilitate the construction of a 196 square foot, one story addition to the south side of the existing residence.

Staff is influenced by the fact that the house on this corner lot faces Wygant street; that the Wygant Street frontage functions as the "front yard" for this property in that this is where the front door is and this is where the greatest building setback is located (13'). The Cleveland Street front building setback requirement is more a function of a technical code definition than how the house and property are actually perceived. This property could actually be further subdivided while still meeting the density and lot size requirements of the R2.5 zone and by doing so would result in a lot that is narrower along its Wygant Street frontage than Cleveland. Under this foreseeable option this site's Cleveland Street frontage would become its side property line and only a 5-foot setback would be required. To this extent the requested adjustment is consistent with the purpose of setback requirements promoting visually pleasing frontyard.

Because the setback reduction is being sought from a street setback it will not interfere with fire access to either this residence or the neighboring property to the south. The Fire Bureau has responded that they have no concerns regarding this application.

Components of the purpose statement related to general building scale and placement of houses; reasonable physical relationship between residences and privacy for neighboring properties must also be considered. Towards this end staff is influenced by the fact that the requested setback is to facilitate the construction of a one-story addition along a portion of the existing residence. As such it represents a relatively minor addition to the streetscape comprised of predominantly two story residences and apartment houses that are in the surrounding blocks. At this location the side property line is located two feet within the sidewalk. Therefore the finished addition wall will be located 8.6" from the Cleveland Street sidewalk. Given the one story mass of the proposed development and the earlier discussion comparing this proposal to a functional five foot sideyard setback this request is consistent with the general building placement, character and scale of the neighborhood. Because the adjustment is to a street facing setback the addition will not impose on any portion of the adjoining property that is not already visible from the public right of.

For the reasons stated above 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.

Findings: The proposed adjustment will facilitate the construction of a single story addition adjacent to the Cleveland Street right of way. This portion of the site appears and functions like a side yard because the front of the house faces NE Wygant. The side building setback in the R2.5 zone is only 5 feet. Because the proposed addition extends from only a portion of the existing residence's side wall; and because the addition will be located 6.5' from its Cleveland Street property line, and 8.5' from the edge of the Cleveland Street sidewalk staff finds that this adjustment will result in a building that will not significantly detract from the livability of appearance of the neighborhood. The compatibility of the proposed addition is further supported by the inclusion of three windows on the west side of the addition that act to reduce the apparent bulk of the addition and add to the visibility from the addition out onto the street. 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

Findings: A single setback adjustment is being requested. This criterion is not applicable.

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

Findings: There are no City designated scenic or historic resources on this site or in the immediate neighborhood Therefore, this criterion is not applicable.

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

Findings: The proposed addition will not have any significant impacts on the neighborhood that require mitigation. Administration of any subsequent building permit will require that the site be returned to a clean and vegetated condition. 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 in an environmental zone. Therefore, this criterion does not apply.

The approval criteria for the requested adjustments are met.

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.

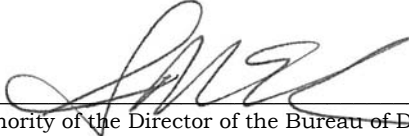
CONCLUSIONS

The Applicants request an adjustment from the front building setback requirements to facilitate a one-story addition to an existing residence on a corner lot with reverse orientation towards the side property line along NE Wygant. As shown above this request can meet the approval criteria. With approval requiring that the permit drawings substantially conform to the site plan and elevations submitted the request can be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment from Code Section 33.110.220B to reduce the required frontyard setback from ten feet required to six feet, six inches. This adjustment will allow for the construction of a one story addition to the existing residence substantially similar to the approved siteplan and elevations attached to this decision as exhibits C-1 and C-3 signed and dated August 28, 2008, subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 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 and C-3. The sheets on which this information appears must be labeled, " Proposal and design as approved in Case File # LU 07-179312 AD

Decision rendered by:  **on August 28, 2008**
By authority of the Director of the Bureau of Development Services

Decision mailed: September 2, 2008

Staff Planner: John Cole

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 November 28, 2007, and was determined to be complete on May 22, 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 November 28, 2007.

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 requested that the 120-day review period be extended to allow the submittal of a revised addition design.

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 September 16** 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 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 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 **September 17, 2008 – (the day following the last day to appeal)**. A building or zoning permit will be issued only after the final decision is recorded.

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

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

County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

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

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

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

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.

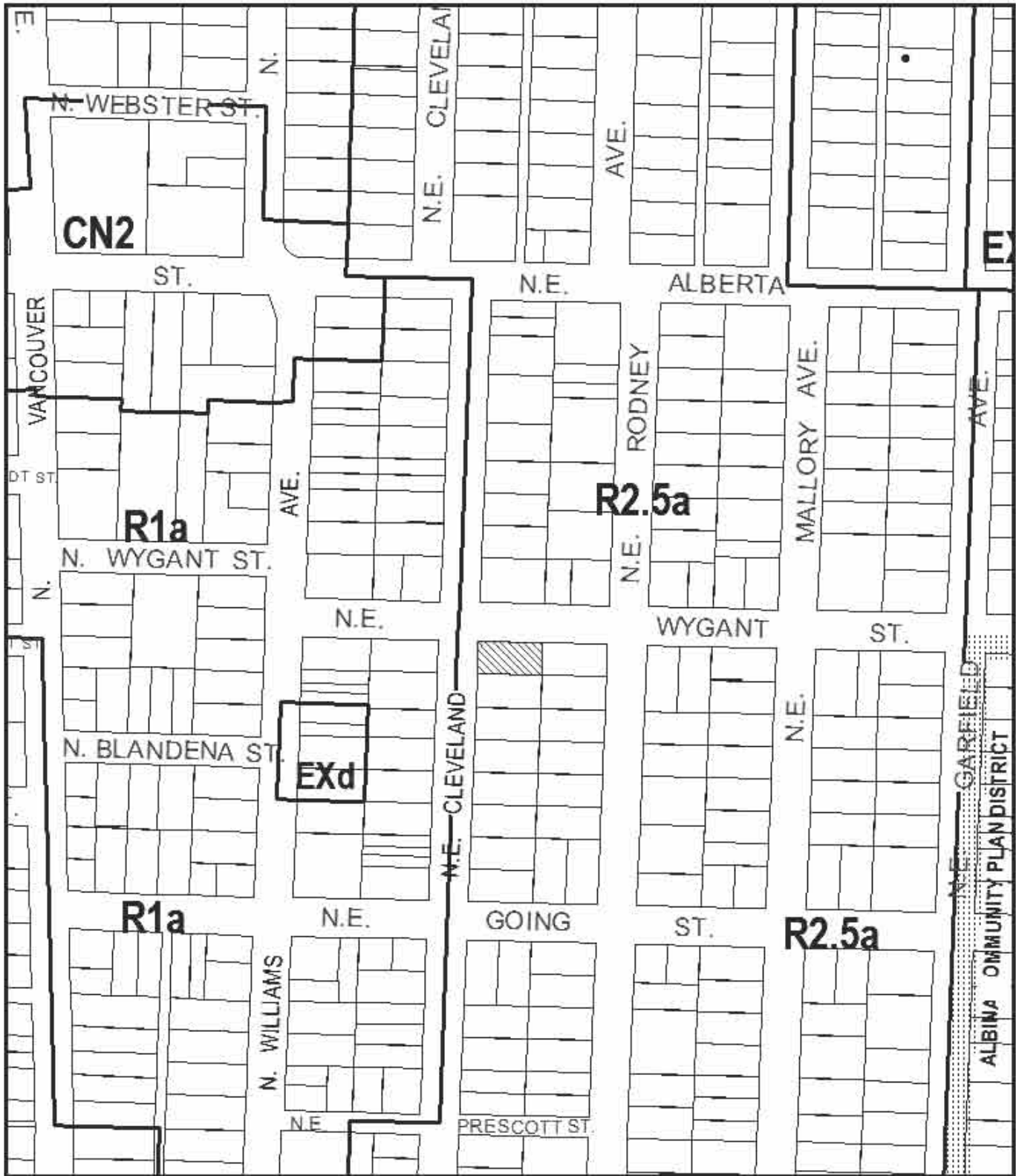
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Building elevation (North)
 3. Building elevation (West) (attached)
- 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. McGowan 4733 NE Cleveland Place, in support
 2. On behalf of Whitlow, 4728 NE Cleveland, in opposition
- G. Other:
 1. Original LU Application
 2. Incomplete letter.

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).



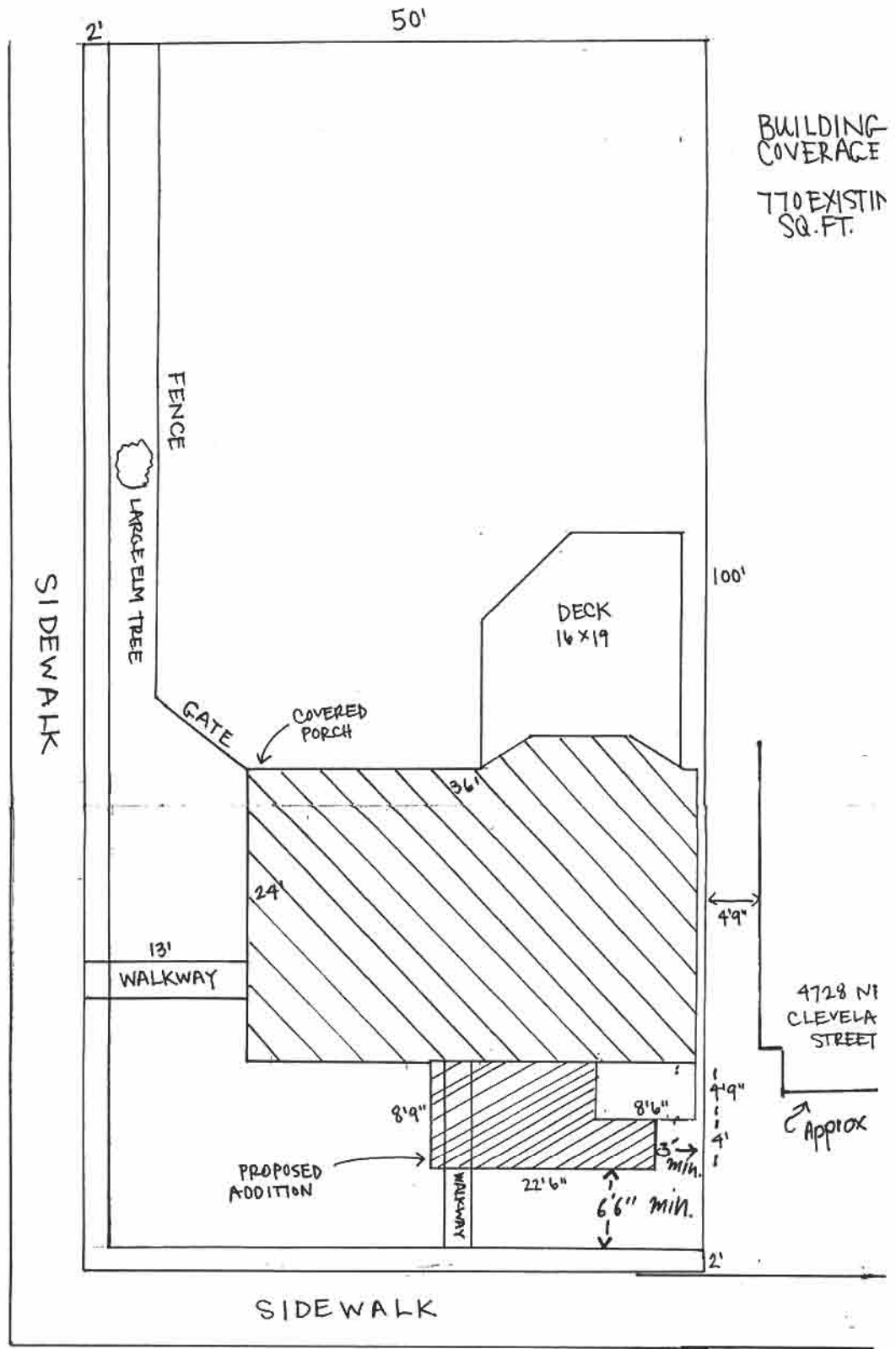
ZONING

 Site



File No. LU 07-179312 AD
 1/4 Section 2530
 Scale 1 inch = 200 feet
 State Id 1N1E22AD 10200
 Exhibit B (Nov 30,2007)

City of Portland - Bureau of Development Services
 Planner *[Signature]*
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.
 Date 8/28/08
 Approved



BUILDING
 COVERAGE
 770 EXISTING
 SQ. FT.

PROJECT ADDRESS
 54 NE WYGANT
 PDX. OR 97211



CLEVELAND STREET

SITE PLAN
 SCALE: 1" = 8'

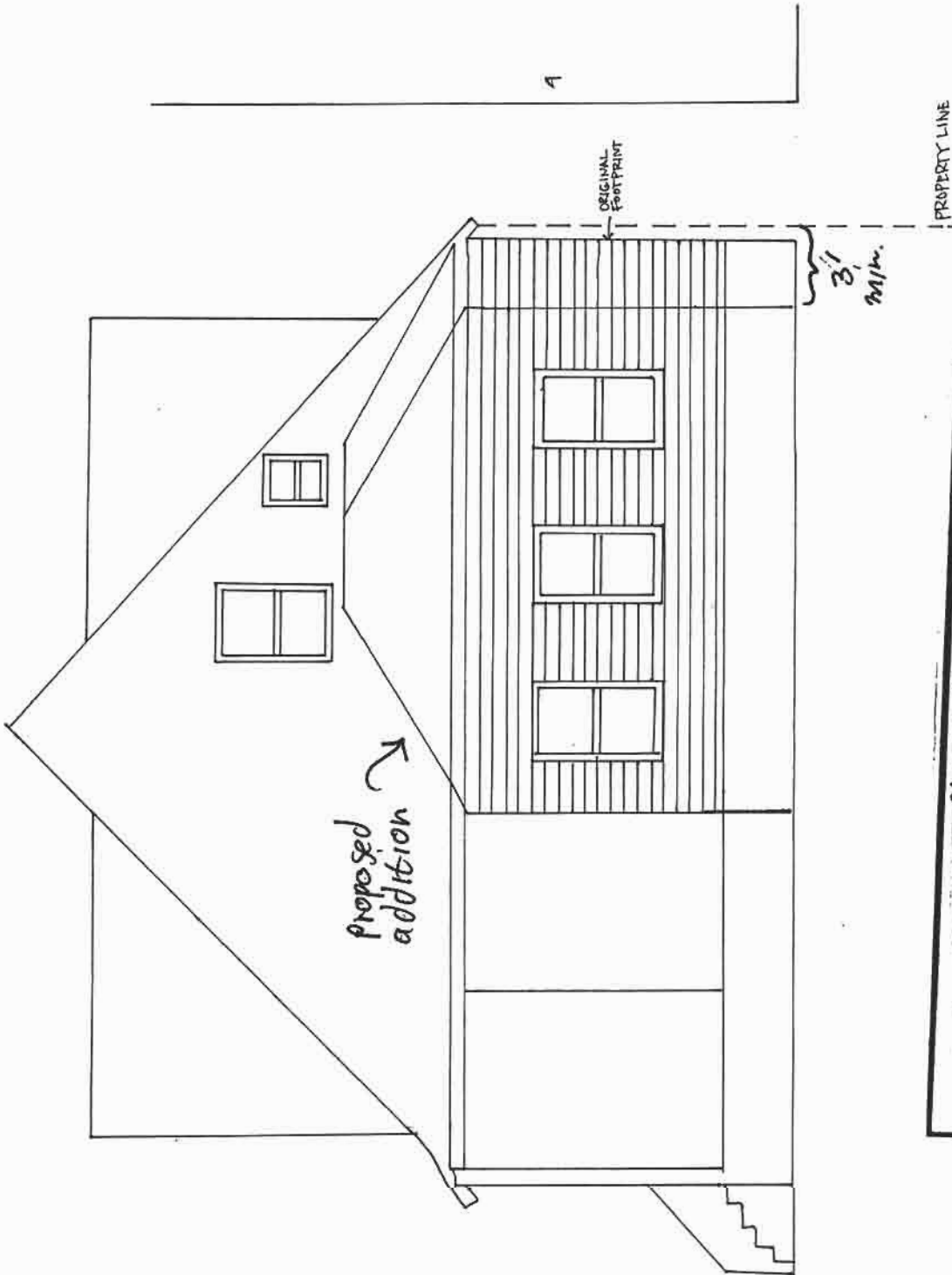
CONTACT INFO
 JOE BERGEN
 SHELBY BRACKEN
 503-238-5520

1 8/28/08 *[Signature]*
 CASE NO. C-1
 EXHIBIT 07-179312

WEST ELEVATION

PROJECT ADDRESS
59 NE WYGLANT ST.
PORTLAND OR. 97241

SCALE
1" = 4'



PROPERTY LINE

ORIGINAL FOOTPRINT

3' MIN.

proposed addition

WALKWAY
13'3"

CASE NO. 07-179312
EXHIBIT C-3

8/28/08 *[Signature]*

Approved
City of Portland - Bureau of Development Services

Planner *[Signature]* Date 8/28/08

* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.