



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

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Portland, Oregon 97201
503-823-7300
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www.portlandonline.com/bds

Date: May 8, 2009
To: Interested Person
From: Crystal Hitchings, Land Use Services
503-823-7583 / Crystal.Hitchings@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 09-118606 AD

GENERAL INFORMATION

Applicants: Brent and Wendy Usher
828 SE Lexington St
Portland, OR 97202-6334

Site Address: 814 SE LEXINGTON ST

Legal Description: BLOCK 18 LOT 3, CITY VIEW PK
Tax Account No.: R158702790
State ID No.: 1S1E23CB 05500
Quarter Section: 3831

Neighborhood: Sellwood-Moreland, contact Mat Millenbach at 503-239-1134.
District Coalition: Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.

Zoning: R5a, Single-dwelling Residential 5,000 with an Alternative Design Density Overlay Zone

Case Type: AD, Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicants are requesting an Adjustment to allow for alterations to the second floor of the existing 1.5 story home, which include raising the height of the roof and adding larger dormers and new windows to establish a full second story. The new second story will remain within the footprint of the existing home, which is located 3 feet from the west side property line, but will be approximately 3.4 feet higher than the existing home. The R5 zone requires a side building setback of 5 feet. Therefore, an Adjustment to **Section 33.110.220, Setbacks**, and **Table 110-3** is required in order to allow the existing home and newly constructed second story to be located 3 feet from the west side property line.

NOTE: Since the original Notice of Proposal was sent, the applicant has decided to remove the existing rear deck and add a 1-story, 24-foot long by 14-foot wide covered porch to the entire rear façade of the home. The covered porch will also be located at 3 feet from the west side property line. The addition of this covered porch is allowed by right under Zoning Code Section 33.110.220.D.5, Exceptions to the Required Setbacks/Established Building Lines. This exception allows new development which is no higher than the existing nonconforming building wall to be located at an established nonconforming setback provided that the nonconforming setback is not less than 3 feet from the property line and providing that at least 60% of the existing building wall of the respective façade (in this case, the west façade) is located within the required setback. The proposed 1-story porch addition is not higher than the existing 1.5-story building wall, 100% of the existing west façade is located within the required setback, and the setback is not less than 3 feet. Therefore, the covered porch addition meets the exception and is allowed by right.

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, have been met.

ANALYSIS

Site and Vicinity: The 5,000 square foot site is located on the south side of SE Lexington Street, between SE 7th and SE 9th Avenues. The site is developed with a single-dwelling, 1.5-story home. The home is located toward the front and west side of the lot, and the remainder of the lot is characterized by an open rear and east side yard. The rear yard is fully fenced.

SE Lexington is developed with an 8-foot planter strip, 6-foot sidewalk, and additional 2-foot right-of-way behind the sidewalk.

Within 200 feet of the subject site, development is predominantly single-dwelling residential, and is a mixture of one and two-story structures. A multi-dwelling residential structure is located on the southeast corner of the block. The structure directly to the west is a one-story home. Lots on the same block as the subject site and on adjacent blocks are typically 5,000 square feet in area, but some smaller blocks of 2,000 and 2,700 square feet in area occur, and some larger lots also occur in the neighborhood.

Zoning: The subject site and surrounding area is zoned R5a. Further to the west, the R5a zoning also has an “s”, or Scenic Resource Overlay Zone. About 350 feet west of the site is Sellwood Park, which is zoned Open Space and has Greenway and Scenic Resource Overlay Zones.

The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. The R5 zone is a high density single-dwelling zone. The R5 zone allows attached and detached single-dwelling structures and duplexes. The R5 zone requires a side building setback of 5 feet.

The Alternative Design Density Overlay allows for increased density for development that meets additional design compatibility requirements. The proposal does not take advantage of the provisions of this overlay zone, and therefore the standards of the Alternative Design Density Overlay are not relevant to this Adjustment request.

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

Agency Review: A “Request for Response” was mailed on April 9, 2009. The following Bureaus have responded with no issues or concerns (Exhibits E.1-E.5):

- Fire Bureau
- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Bureau of Parks-Forestry Division

The following Bureaus have submitted additional comments to assist with the building permit process:

- The Site Development Section of BDS (Exhibit E.6): has no objection to the requested Adjustment to setback requirements and noted building permit review plan requirements for stormwater management facilities.
- The Life Safety Bureau (Exhibit E.7): has no objection to the requested Adjustment to setback requirements and provided information about building code requirements for roofs and eaves per ORSC R302.1.

Neighborhood Review: A “Notice of Proposal in Your Neighborhood” was mailed on April 9, 2009. Two written responses have been received from the Neighborhood Association and notified property owners in response to the proposal. One response was from the Sellwood Moreland Improvement League, and stated that there were no objections to the proposal. The second response was from an adjacent neighbor, who expressed concern that the property line may not actually be 3 feet from the existing house, but may actually be 0-feet from the existing house.

Staff note: The applicant was informed of the property line question and has met with the adjacent neighbor to discuss this issue. City records and aerial photos indicate that the applicant’s presumption that the home is actually located 3-feet from the property line may be accurate. However, property line disputes are civil matters best resolved through obtaining a survey. The City does not oversee property line disputes nor are they related to the Adjustment review criteria. The applicant has been informed that, if a survey is conducted and the home is actually located less than 3 feet from the property line, a new Adjustment review would be required in order to reduce the setback to less than 3 feet.

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.

- 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 **Section 33.110.220, Setbacks**. The purpose statement for this regulation is as follows:

Purpose: The building setback regulations 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 height of the west wall of the existing home is 14 feet from the ground level, and the total height to the peak of the roof is 25 feet. The height of the existing dormer on the west wall is 21 feet (measured from the ground to the top of the dormer wall). The dormer is the highest gable of the structure. Height of a structure is measured at the midpoint of the highest gable (midpoint between the top of the wall and the peak of the roof). Therefore, the height of the existing home is 23 feet. The proposed new west wall height is about 20 feet from the ground, the proposed new dormer height is about 23.5 feet from the ground, and the proposed overall height of the home is 29.3 feet from ground level, with a height at the midpoint of the highest gable (the dormer) of 26.4 feet. The proposed changes result in 6 feet of added wall height, 2.5 feet of added dormer wall height, 4.3 feet of additional overall height (to the peak of the roof), and an added actual height (to midpoint of the highest peak) of 3.4 feet.

The proposed changes are at the second floor level, and remain within the footprint of the existing structure. There will be no change to the location of the first level. Therefore, separation for fire protection and access for fire fighting will not change from the existing conditions, which are adequate. The proposed additional 3.4 feet of building height will generally maintain existing conditions of light and air for the adjacent lots.

The neighborhood contains a mix of one, one and a half, and two story homes. The home on the adjacent lot to the west is one story in height. The home on the adjacent lot to the east is two stories in height. The home on the adjacent lot to the rear is 1.5 stories in height. The proposal to raise the height of the second level of the existing home to a full second story results in a home that reflects the scale of two-story structures in the area, and which continues the mixture of structure heights. The proposed second story will remain within the existing footprint of the first story. Many homes in the neighborhood are located toward the center of the lots. However, a number of them are also located toward the side. Some of these homes located toward the side appear to be within the side building setbacks. The proposal to raise the structure by 3.4 feet within the existing footprint in order to construct a two-story home 3 feet from the west side property line reflects the general building scale and location of houses in the neighborhood, and does not significantly change the physical relationship between structures from existing conditions.

The home on the adjacent lot to the west is located on the west side of that lot, with an attached garage located between the living area of the adjacent home and the home on the subject site. The west façade of the first floor of the existing home and the existing second floor dormer both have two windows facing the adjacent one-story home. The proposed changes include removing one window from the first floor, and raising the height and reducing the size of the windows in the dormer. Therefore, privacy for the adjacent lot to the west may actually be increased.

The proposal allows adequate flexibility to increase living area in an existing home, without reducing outdoor areas or increasing building coverage, and while remaining compatible with surrounding residences and retaining the architectural style of the existing home.

For these reasons, the purpose statement for setbacks is equally met, 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; and

Findings: The proposal to raise the height of the second level of the existing 1.5-story home by approximately 3.4 feet to create a two-story home, while retaining the existing architectural style of the home, does not detract from the appearance of the residential area. The nearby residential area is characterized by a mixture of one- and two-story homes, some of which appear to be located within the side setbacks. The proposal does not result in any conditions which negatively affect livability. 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 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. There are no such resources present on the site. This criterion is not applicable.

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

Findings: The proposed additional height of the structure is not significantly greater than the existing height, and all portions of the addition will be constructed within the existing footprint. The general scale and architectural appearance of the home is maintained and is compatible with other homes in the area. 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. 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 proposal to increase the height of the second level of the existing 1.5-story home by 3.4 feet in order to create a full 2-story home, within the existing footprint of the home, equally meets the purpose statement for setbacks and meets all other applicable review criteria. This Adjustment request should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to **Section 33.110.220, Setbacks**, and **Table 110-3**, to allow the two-story home to be located 3 feet from the west side property line, in significant conformance with the approved site plans, Exhibits C-1 through C-2, signed and dated May 6, 2009, 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-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-118606 AD."

Staff Planner: Crystal Hitchings

Decision rendered by:  **on May 6, 2009.**
By authority of the Director of the Bureau of Development Services

Decision mailed: May 8, 2009

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 April 2, 2009, and was determined to be complete on April 7, 2009.

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 April 2, 2009.

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: August 5, 2009.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on May 22, 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 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 **May 26, 2009 – (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:

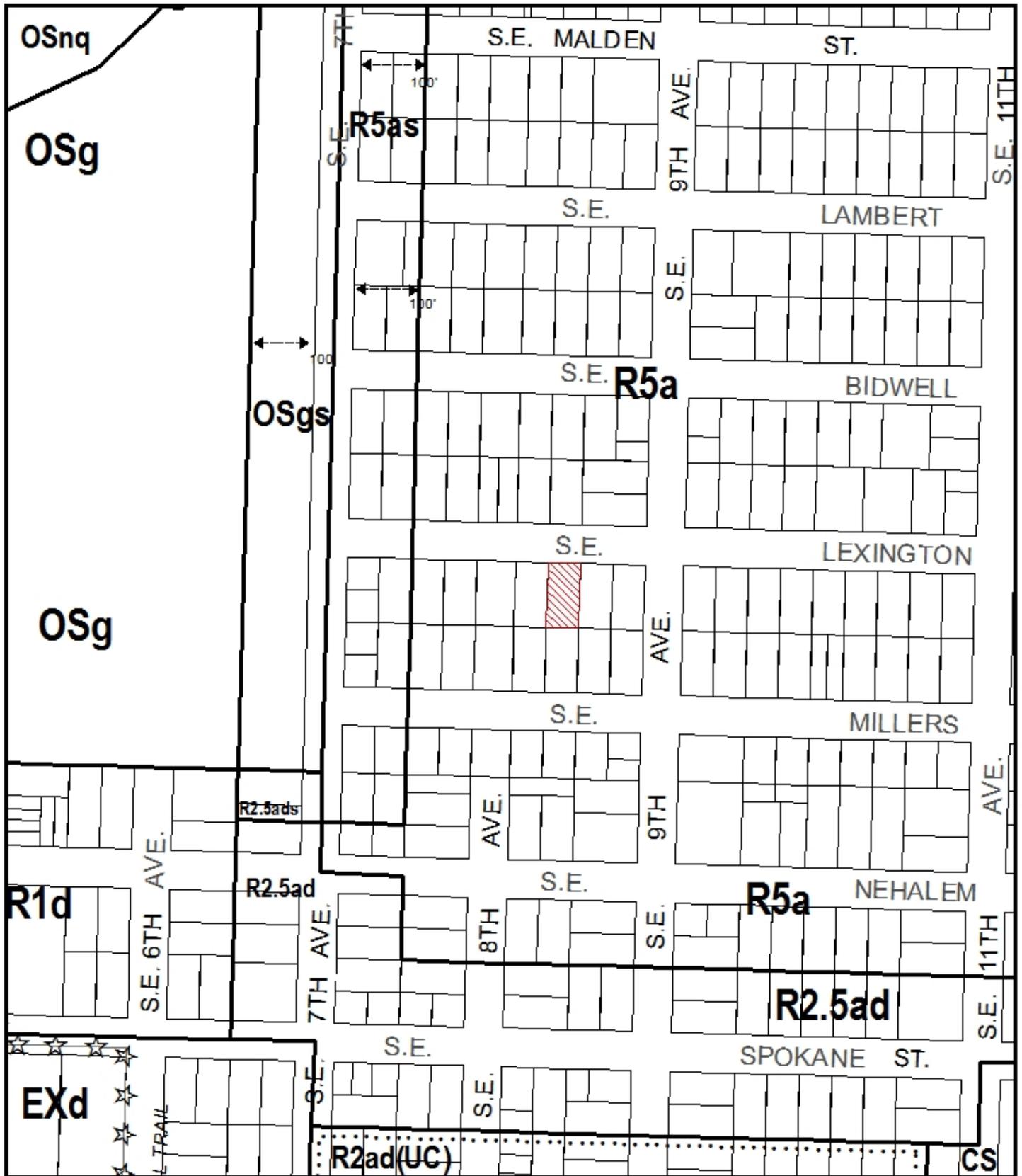
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. West Elevation (attached)
 - 3. Front Elevation (attached)
 - 4. East Elevation
 - 5. Rear Elevation
 - 6. Original site plan and elevations (without rear covered porch)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Fire Bureau
 - 2. Bureau of Environmental Services
 - 3. Bureau of Transportation Engineering and Development Review
 - 4. Water Bureau
 - 5. Bureau of Parks, Forestry Division
 - 6. Site Development Review Section of BDS
 - 7. Life Safety Bureau
- F. Correspondence:
 - 1. Matt Millenbach, Sellwood Moreland Improvement League; April 29, 2009; no concerns
 - 2. William and Michelle Hjelseth; April 30, 2009; concern that home may actually be 0-feet from the west side property line, not 3-feet.
- G. Other:
 - 1. Original LU Application

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-7300 (TTY 503-823-6868).

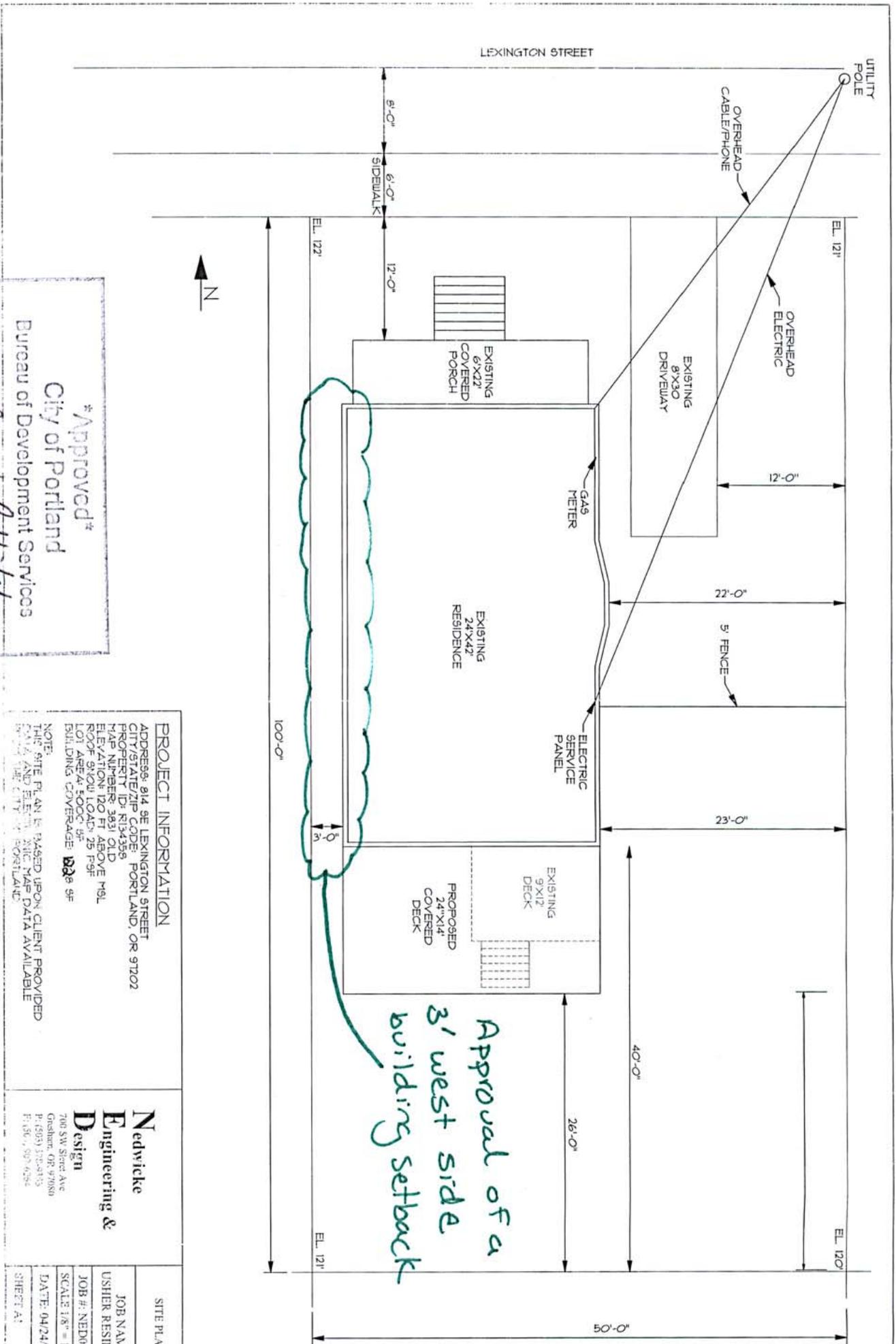


ZONING

 Site



File No.	<u>LU 09-118606 AD</u>
1/4 Section	<u>3831</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E23CB 5500</u>
Exhibit	<u>B (Apr 06,2009)</u>



*Approval of a
3' west side
building setback*

Approved
 Bureau of Development Services
 City of Portland
 Planner *Supriya H. H. King*
 Date *5-6-09*

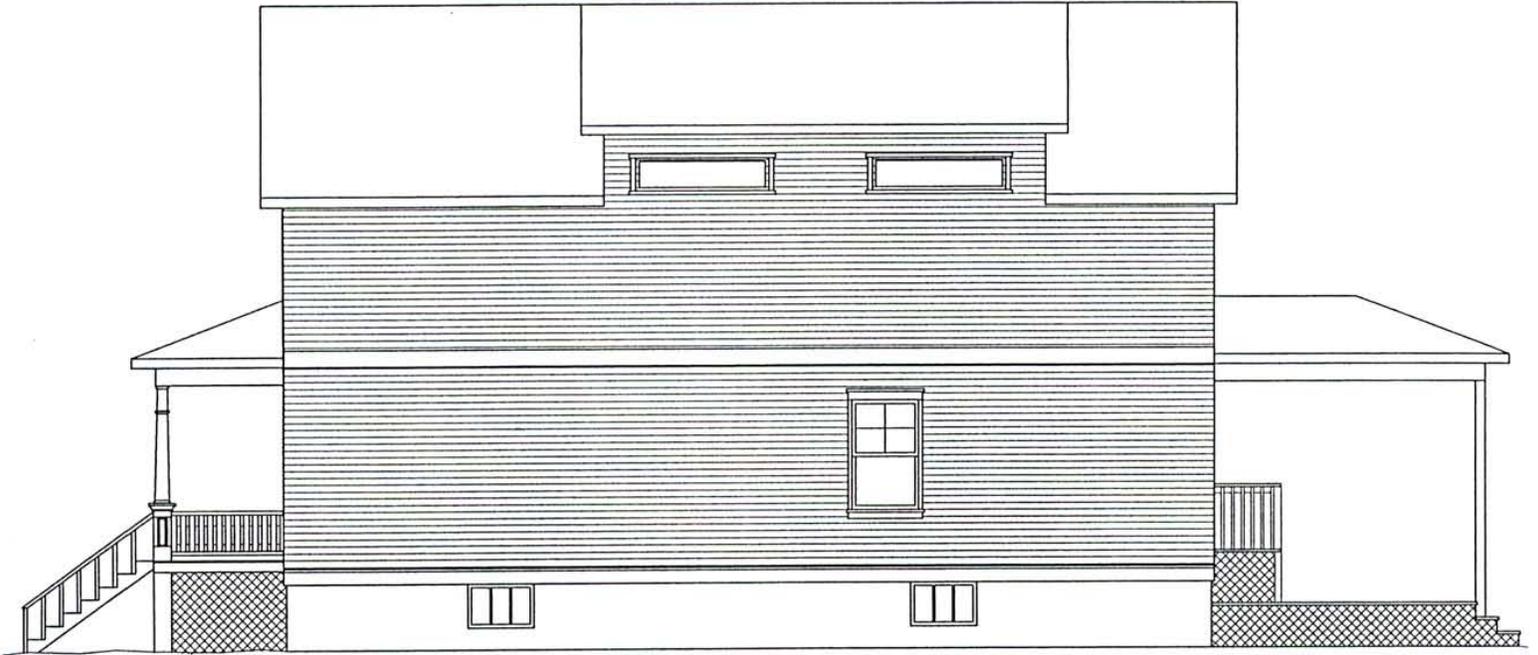
* This approval applies only to the reviews requested and is subject to all conditions of approval
 Additional zoning requirements may apply.

PROJECT INFORMATION
 ADDRESS: 814 SE LEXINGTON STREET
 CITY/STATE/ZIP CODE: PORTLAND, OR 97202
 PROPERTY ID: R154356
 MAP NUMBER: 3831 OLD
 ELEVATION: 120 FT ABOVE MSL
 ROOF SNOW LOAD: 25 PSF
 LOT AREA: 5000 SF
 BUILDING COVERAGE: 32% SF

NOTE:
 THIS SITE PLAN IS BASED UPON CLIENT PROVIDED DATA AND EXISTING AERIAL MAP DATA AVAILABLE TO THE CITY OF PORTLAND.

Nedwicke
Engineering &
Design
 706 SW Street, Ave
 Gresham, OR 97030
 P: (503) 538-8455
 F: (503) 507-4284

SITE PLAN
 JOB NAME: USHER RESIDENCE
 JOB #: NED0906-01
 SCALE: 1/8" = 1'-0"
 DATE: 04/24/2009
 SHEET: A1



PROPOSED RIGHT ELEVATION
 LU 09-118606 AD Exhibit C.2



PROPOSED FRONT ELEVATION
 LU 09-118606 AD Exhibit C.3

←3'→
 Setback
 (west side)

Approved
 City of Portland - Bureau of Development Services
 Project: *Crystal Hilding* date *5-6-09*
 This approval applies only to the reviews requested and is subject to all
 other applicable codes and regulations. Additional zoning requirements may apply.