



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

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**Date:** January 20, 2010  
**To:** Interested Person  
**From:** Sheila Frugoli, Land Use Services  
503-823-7817 / [frugolis@ci.portland.or.us](mailto:frugolis@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 09-176101 AD**

#### **GENERAL INFORMATION**

**Applicant/Owner:** David W Fedyk  
5237 NE 50th Ave  
Portland, OR 97211

**Site Address:** 5237 NE 30TH AVE

**Legal Description:** LOT 5 BLOCK 6, FOXCHASE ADD  
**Tax Account No.:** R295300920  
**State ID No.:** 1N1E24BA 08100  
**Quarter Section:** 2533

**Neighborhood:** Concordia, contact George Bruender at 503-287-4787.  
**Business District:** North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321.  
**District Coalition:** Northeast Coalition of Neighborhoods, contact Lauren McCartney at 503-823-4135.

**Zoning:** R2.5ah, Single-Dwelling Residential 2,500 zone with the a, Alternative Design Density overlay zone and h, Aircraft Landing overlay zone

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

**Proposal:** The applicant wishes to construct a 192 square foot, and approximately 10 feet tall, artist studio/shed within 1 foot of the rear (west) and side (south) property lines. The roof will project 6 inches from the north building wall and provide an overhang on the east and south sides of the building. The applicant is requesting an Adjustment to reduce the required side and rear building setback from 5 feet to 1 foot and to allow the roof to project within 6 inches of the property line. A gutter will be attached on the north side of the roof and the stormwater will be directed to an on-site french drain system.

#### **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 developed with a house. The lot has a driveway which provides on-site parking in front of the house. Many of the other homes on the block have detached garages and/or detached accessory structures such as garden sheds that are located up to side and rear property lines. An unimproved alley, which is impassable, abuts the rear property line of the lots on the block.

**Zoning:** The site is zoned R2.5ah. The R2.5 Single-Dwelling Residential 2,500 zone allows attached and detached homes at a density of one dwelling per 2,500 square feet. The site is also located with the a, Alternative Design Density Overlay and the h, Aircraft Landing Overlay zones. The “a” overlay zone provides for additional density. The applicant is not utilizing the provisions of this overlay zone. The “h” overlay zone applies height limits on areas located near the Portland International Airport. The height limit of the R2.5 zone is more restrictive and therefore the provisions of the h overlay do not apply.

**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 **December 17, 2009**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Fire Bureau
- Bureau of Parks-Forestry Division (Exhibit E.5)
- Water Bureau (Exhibit E.4)

The Bureau of Transportation Engineering responded with the following comment: The proposed studio/shed will be constructed next to a 10-foot alley right-of-way. This alley is currently unimproved and is not accessible to auto traffic. Therefore, transportation does not have any concerns with the proposed development. Transportation will not require any frontage improvements. (Exhibit E.1)

The Site Development Section of BDS responded with the following comment: To address on-site stormwater (roof drainage), a FloWell drywell, Eastside soakage trench or splash blocks will be suitable for this project. (Exhibit E.2)

The Life Safety Plans Review Section of BDS responded with the following comment: If the shed is 200 square feet or less and is 10 feet tall or less, a building permit is not required. If larger, the building permit will require one hour fire-rated walls with no openings for the walls that are located less than 3 feet to a property line and eaves may project no closer than 2.5 feet from property lines. (Exhibit E.3.a and E.3.b)

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on December 17, 2009. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### 33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if

the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide 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 applicants have requested an Adjustment to reduce the required side and rear building setback from 5 feet to 1 foot and to allow the roof to project within 6 inches of the property line.

Section 33.110.220.A describes the purpose of the setback regulations as follows:

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 proposed artist studio/shed will not have a significant detrimental impact on light or air to neighboring properties. The building is separated from lots to the west by a 10-foot wide public alley. The shed will be built near the north property line adjacent to a fence that follows the property line. A shed, with a height of 10 feet, will not significantly impact the northern abutting lot.

BDS Life Safety (Building Code) Plans Review staff submitted comments explaining that building permits are not required for sheds if the structure is 200 square feet or less and the structure is 10 feet or less in height. If larger, permits and firewall separation requirements will apply. To avoid the need for a building permit, the applicant intends to design and build the structure that is within the size and height limits. Further, access to the proposed accessory structure for fire fighting is available from NE 30<sup>th</sup> Avenue. The Fire Bureau has responded with no objections to the request.

The proposed new structure will provide a reasonable physical relationship between residences and accessory structures. The site is located in an established northeast Portland neighborhood, with existing detached structures built up to or near side and rear property lines. The scale of the structure will be modest. The structure will be 192 square feet in area and a height of 10 feet (measured at the mid-point of the roof).

The submitted building elevations show windows or doors on three sides of the building. No openings are proposed on the north wall. The doorway on the west

elevation abuts the unimproved alley. The reduced setback will not impact the privacy of the adjacent residential lots.

For all the reasons state 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; and

**Findings:** There are numerous detached garages and shed on nearby properties. The modest detached structure will not be visible from the street. There will be no windows or openings on the north side of the building. The west wall is separated from the residential lot to the west by an alley. Therefore, the reduced setbacks will not detract from the livability or appearance of the residential area. 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:** The applicant is requesting to vary from only one Zoning Code development standard. Therefore, 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. There are no such resources present on 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 impacts that require mitigation. Therefore, this criterion does not apply.

- 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

Based on the findings of this report, the proposed shed meets the approval criteria. And therefore should be approved.

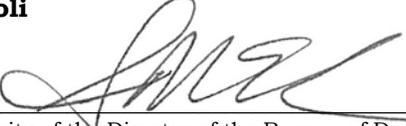
## ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce, from 5 feet to 1 foot, the required building setback along the rear and side (north) property lines and allow an eave to extend to within 6 inches of the north property line, for a shed, approximately 192 square feet in area, per the approved site plan (Exhibits C.1), signed and dated January 19, 2010, subject to the following condition:

- A. To verify compliance, a Zoning Permit is required. The permit application submittal must include the following note, "Proposal approved under Case File # LU 09-176101 AD."

**NOTE: If the height of the shed structure is taller than 10 feet, as initially proposed (Exhibits C.2 and C.3), a Building Permit is required.**

**Staff Planner: Sheila Frugoli**

**Decision rendered by:**  **on January 19, 2010**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: January 20, 2010**

**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 9, 2009, and was determined to be complete on December 15, 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 December 9, 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: April 13, 2010.**

**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 February 3, 2010** 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. 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 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](http://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 **February 4, 2010 – (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:

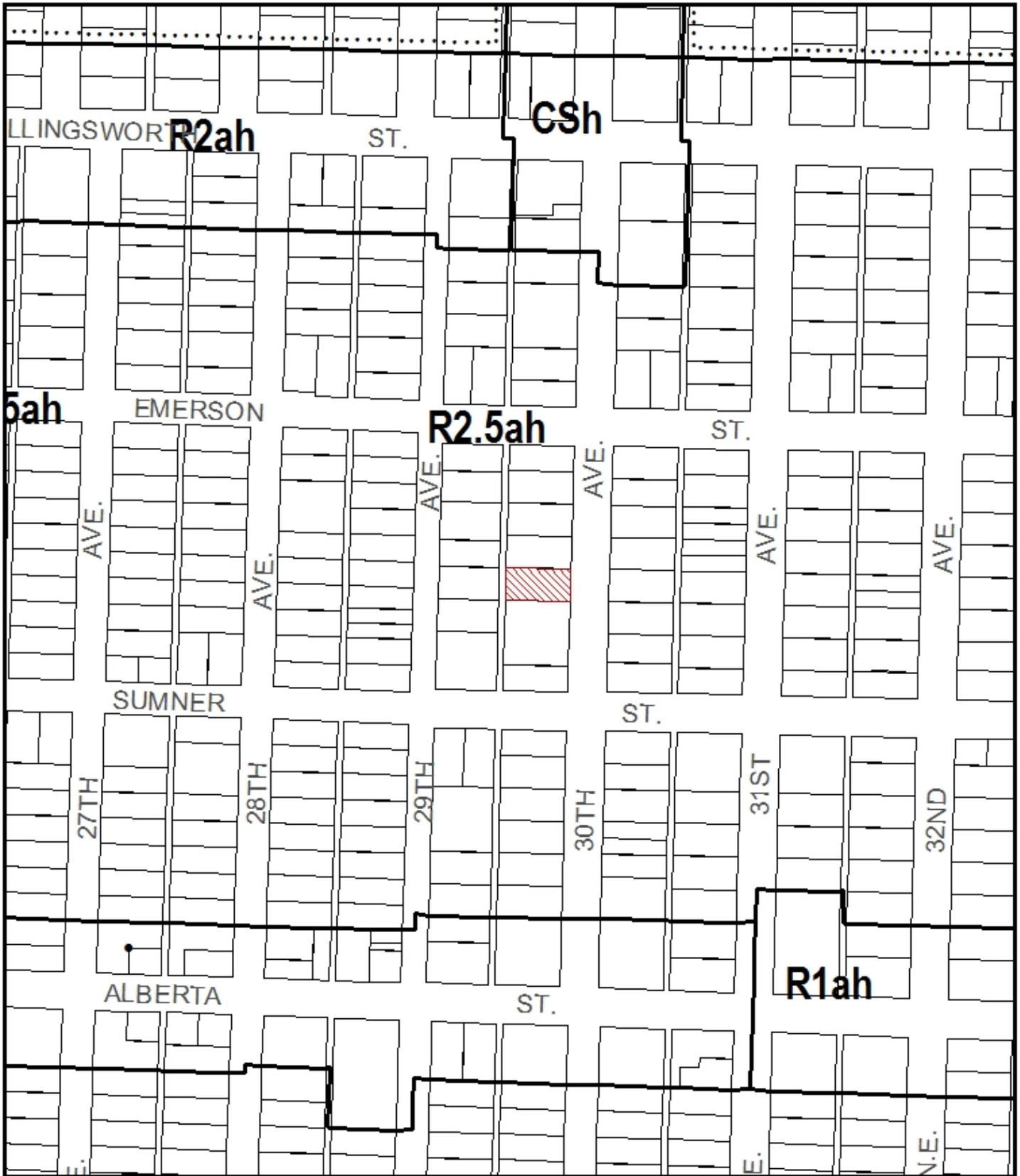
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. North and West Elevation
  - 3. South and East Elevation
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Transportation Engineering and Development Review
  - 2. Site Development Review Section of BDS
  - 3. Life Safety Plan Review Section of BDS
    - a. Comments from Katherine Heeb
    - b. Follow-up comments from Jerry Engelhardt
  - 4. Water Bureau
  - 5. TRACS Print-out showing "no concern" from Fire Bureau, Bureau of Environmental Services, and Bureau of Parks, Forestry Division
- F. Correspondence: NONE
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research

**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).**

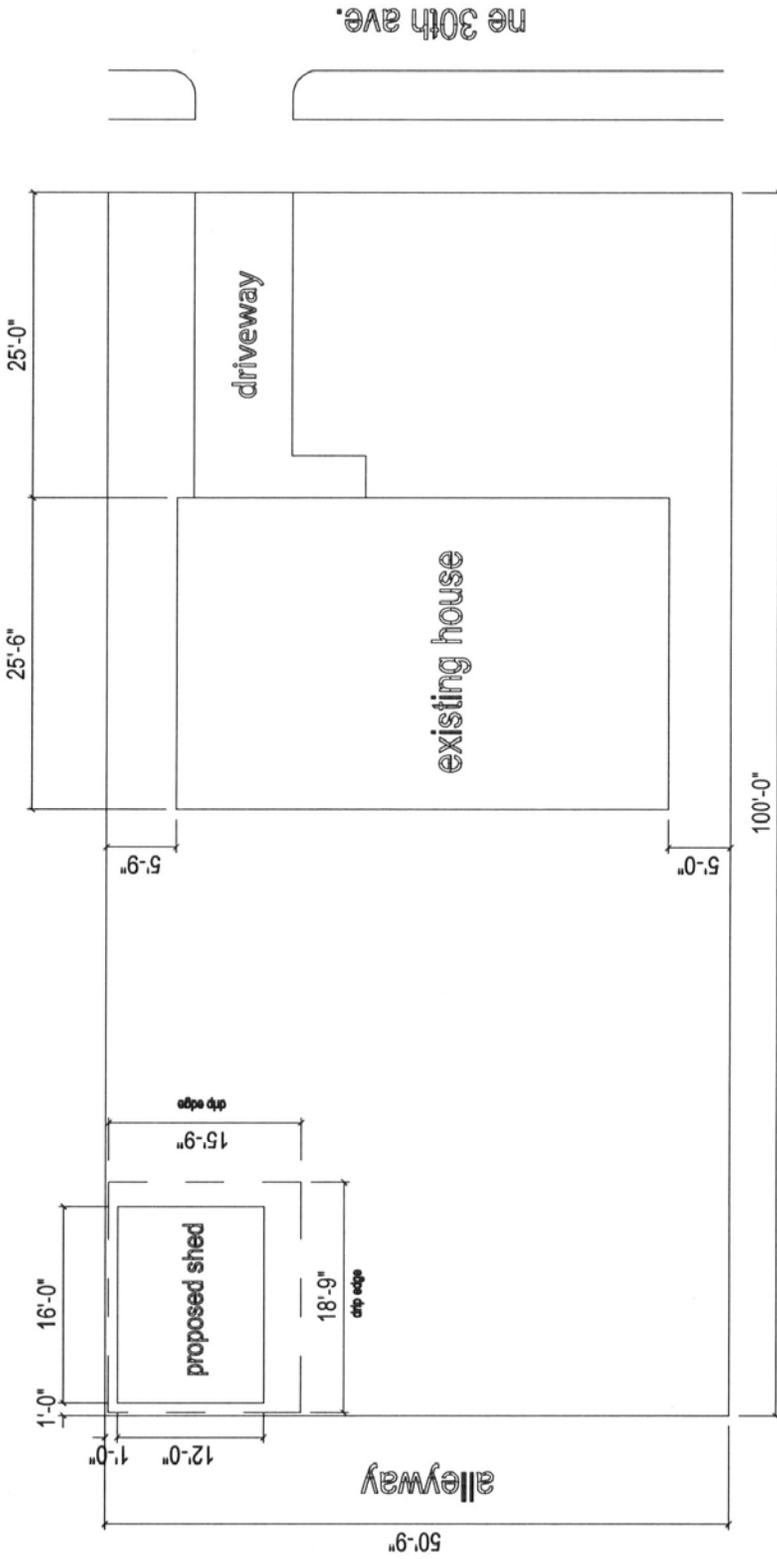


# ZONING

 Site



File No. LU 09-176101 AD  
 1/4 Section 2533  
 Scale 1 inch = 200 feet  
 State\_Id 1N1E24BA 8100  
 Exhibit B (Dec 14, 2009)



LU09-176101 AD  
 Exhibit C.1

\* Approved\*  
 City of Portland - Bureau of Development Services  
 Planner *Sheila Fringo*, Date *1/17/10*  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

david fedyk  
 5237 ne 30th ave.  
 portland, or 97211

site plan

scale 1/16" = 1'

