



City of Portland
Bureau of Development Services
Land Use Services Division

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Portland, Oregon 97201
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www.portlandonline.com/bds

Date: April 16, 2008
To: Interested Person
From: Suzanne Savin, Land Use Services
503-823-5888 / Suzanne.Savin@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 08-111998 AD

GENERAL INFORMATION

Applicant: Marc Castelnovo-Tedesco
1920 SE 35th Place
Portland, OR 97214

Owner: Frances L Barnes
2731 SW Old ORchard Rd
Portland, OR 97201-1636

Site Address: 2731 SW OLD ORCHARD RD

Legal Description: LOT 4 BLOCK 2 N 1/2 OF LOT 5 BLOCK 2, OLD ORCHARD RD ADD
Tax Account No.: R625500420
State ID No.: 1S1E08AA 15000
Quarter Section: 3326
Neighborhood: Southwest Hills Residential League, contact Nancy Seton at 503-224-3840.

Business District: None
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.
Plan District: None
Zoning: R5 (Single-Dwelling Residential 5,000)
Case Type: AD (Adjustment Review)
Procedure: Type II, administrative decision with appeal to Adjustment Committee.

Proposal:

The property owner is planning to construct a 2-story addition on the west side of the house. The west wall of the addition will be 5 feet from the west (rear) property line, in compliance with the minimum 5-foot building setback requirement. However, the west eave of the addition will be 3 feet from the west property line, and the gutter along the west eave will be 2 feet, 8 inches from the west property line.

Zoning Code Section 33.110.220.C.1 states that minor features of a building, such as eaves, may extend into a required building setback up to 20 percent of the depth of the setback. However, in no case may they be less than three feet from a lot line. In the case of a required

5-foot building setback, the allowed 20 percent eave extension would be 1 foot into the setback, which would be 4 feet from the property line.

The applicant is requesting an Adjustment to Section 33.110.220.C.1, to allow the west eave of the addition, and the gutter along the west eave, to be set back 3 feet and 2 feet, 8 inches, respectively, from the west property line, rather than 4 feet as required.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are the Adjustment Approval Criteria of Section 33.805.040.A – F.

ANALYSIS

Site and Vicinity: The site is located on the west side of SW Old Orchard Road, approximately 185 feet south of the intersection of SW Old Orchard Road and SW Patton Road, and is approximately 7,350 square feet in size. The site contains a single-dwelling residence, built in 1925.

To the north, east, south, and west of the site are R5-zoned properties that are developed with single-dwelling residences, on lots varying in size from approximately 48,000 square feet to approximately 4,900 square feet.

Zoning: The site is zoned R5, Single-Dwelling Residential 5,000. 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.

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 **March 21, 2008**. The following Bureaus have responded with no issues or concerns:

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

The Bureau of Environmental Services (BES) responded that BES does not object to the requested adjustment. The applicant should be aware that the proposed development will be subject to BES standards and requirements at the time of permit review. The applicant may contact BES staff with any questions. (Exhibit E-1)

The Life/Safety Plan Review Section of BDS responded that based on the information provided, there appears to be no conflicts between the proposal and applicable building codes. Eaves less than three feet to a property line must be protected on the underside as required for one-hour fire-rated construction. (Exhibit E-2)

The Site Development Review Section of BDS responded that the proposed addition is roughly a combined 1,400 square feet in area, therefore water quality and flow control of the runoff for this new impervious area must be achieved. The soils in this area, combined with the slope of the property and the limited pervious area that would remain, all require a flow-through planter, approximately 75 square feet in area, to be installed. For the planter to be installed, the condition and capacity of the existing stormwater pipes will need assessment. The plumbing records show that 3” terra cotta pipes were installed in 1925 as rain drains running around the perimeter of the building. Terra cotta piping is not an approved pipe material to be under or within 2 feet of any building or structure per the Oregon Plumbing Specialty Code. Replacing a portion of this piping with Schedule 40 grade ABS or PVC piping or cast iron piping will be required prior to building permit approval. In addition, 3-inch pipes are only used for

1500 square feet or less of impervious area and the house with addition will exceed this, thus requiring an increase to at least 4-inch diameter piping for all piping with anticipated additions of stormwater. Furthermore, the proposed roof lines will direct stormwater to the north, where the only connection to the sewer is on the NE corner and was no longer visible at a recent site visit. Site Development will require an approvable stormwater management plan, and evidence that stormwater can be run from this side of the addition(s) and will likely require new rain drain piping on the entire north side. (Exhibit E-3)

Staff: Staff discussed the above response with Site Development. Site Development staff clarified that the applicant will be required to address the concerns and issues described in Site Development's response prior to issuance of a building permit for the proposed addition.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on March 21, 2008. 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 of 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 purpose of the building setback regulations, per Section 33.110.220.A, is:

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 applicant is requesting an adjustment to the setback regulations to allow the west eave of the proposed residential addition, and the gutter along the west eave, to be set

back 3 feet and 2 feet, 8 inches, respectively, from the west property line, rather than 4 feet as required.

The applicant states that the adjustment will equally meet the purpose of the setback regulation for the following reasons:

- The height of the proposed addition (approximately 20 feet, 8 inches) is well below the allowable 30-foot maximum, to make it compatible with the existing context of the neighborhood and to minimize impacts to the neighbors. We have used a compact floor system for the first floor, and we have used a low plate height (7'-9") in combination with a vaulted ceiling on the second level to make the building as low as possible. Thus, light and air have been maintained, the physical relationship between the proposed addition and other residences is reasonable, and the addition reflects the general building scale and placement of houses in the neighborhood.
- The closest residential structure to the west is more than 50 feet southwest of the proposed addition. Due to the large separation distance, the proposed location of the west eave will maintain light, air, and a reasonable physical relationship with the closest residential structure to the west.
- The building's west eave location, at 3 feet from the property line, will allow fire safety to be maintained.
- Access for fire-fighting has not been compromised, as the full 5-foot building setbacks (for the addition's walls) have been met or exceeded on all sides of the addition.
- To promote privacy and minimize impacts to the neighbors to the north and west, primary living spaces in the proposed addition have been grouped toward the south of the addition, and primary window exposures overlook the owner's own garden.

Staff concurs with the applicant's findings. 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 within a residential zone. The applicant states that the adjustment will not significantly detract from the livability or appearance of the residential area for the following reasons:

- The scale of the house on the site, with the proposed addition, is consistent with the scale of dwellings on surrounding properties.
- The site abuts a single, 1.1-acre property to the west. The dwelling on that abutting property is offset to the south, and is located on a slope well above the site. The distance between the proposed addition and the dwelling on the abutting property to the west exceeds 50 feet, so the increased 1-foot eave extension on the west side of the addition will not affect the property to the west significantly.
- The proposed addition is sympathetic to the existing topography of the site.

Staff concurs with the applicant's findings and notes further that the proposed addition's west eave and west wall will not be visible from SW Old Orchard Road. 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 being requested. Therefore, this criterion is not applicable.

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

Findings: There are no city-designated scenic or historic resources on the site. Therefore, this criterion is not applicable.

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

Findings: No impacts are expected to result from the adjustment, so no mitigation is warranted. This criterion is not applicable.

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 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 has requested an adjustment to allow the west eave of a proposed residential addition, and the gutter along the west eave, to be set back 3 feet and 2 feet, 8 inches, respectively, from the west property line. The applicant has submitted information to demonstrate that the adjustment request complies with the Adjustment Approval Criteria. Therefore, this adjustment can be approved, per the submitted site plan and elevations. Approval of building permits is still required, after the decision is final and has been recorded with Multnomah County.

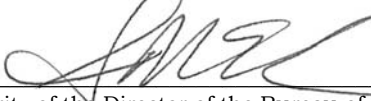
ADMINISTRATIVE DECISION

Approval of:

An Adjustment to Section 33.110.220.C.1, to allow the west eave of the proposed residential addition, and the gutter along the west eave, to be set back 3 feet and 2 feet, 8 inches, respectively, from the west property line,

per the approved site plan, Exhibits C-1, signed and dated April 14, 2008, subject to the following conditions:

- 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 Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 08-111998 AD."

Decision rendered by:  **on April 14, 2008.**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 16, 2008

Staff Planner: Suzanne Savin

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 February 28, 2008, and was determined to be complete on March 18, 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 February 28, 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 April 30, 2008** 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. Recognized neighborhood associations are not subject to the appeal fee. 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 1, 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;

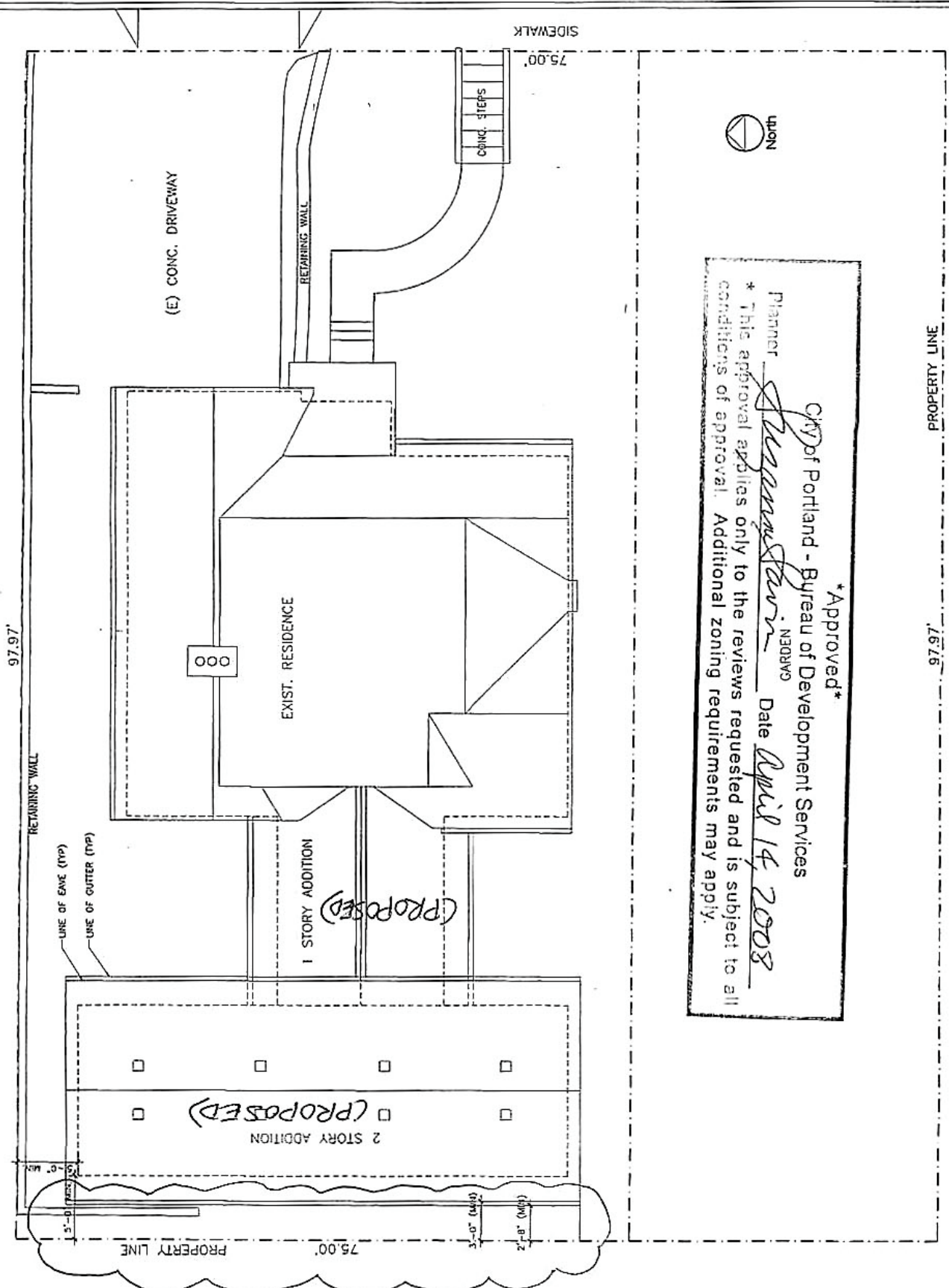
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Life/Safety Plan Review Section of BDS
 - 3. Site Development Section of BDS
 - 4. "No concerns" responses from Bureau of Transportation Engineering and Development Review, Water Bureau, Fire Bureau, Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. No correspondence received
- 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. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).

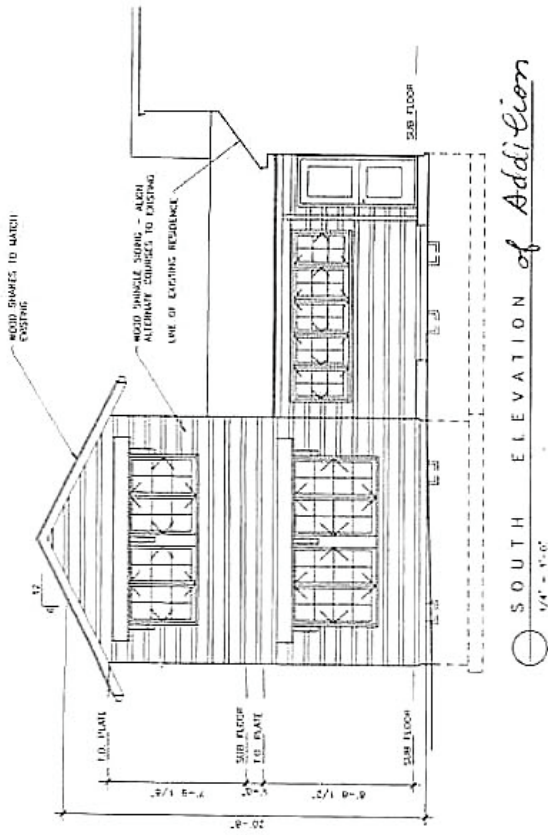


* Approved *
 City of Portland - Bureau of Development Services
 Planner *Stammstein* NERBYG
 Date *April 14, 2008*
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

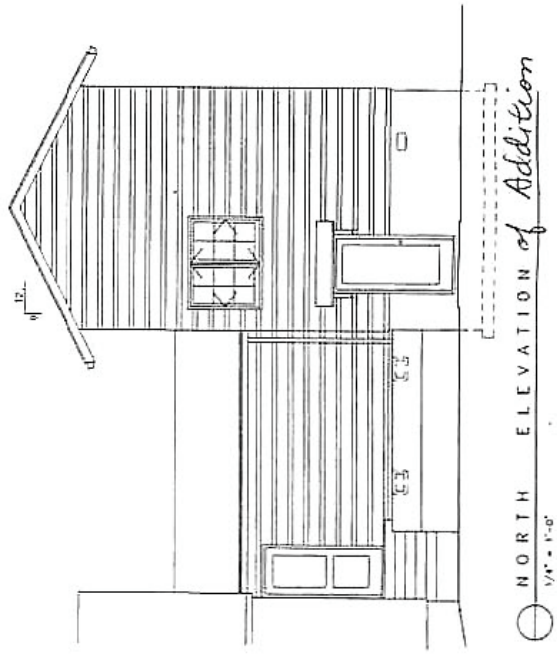
Area of requested Adjustment: Eave at 3 feet + gutter at 2'-8" from west (rear) property line.

SITE PLAN

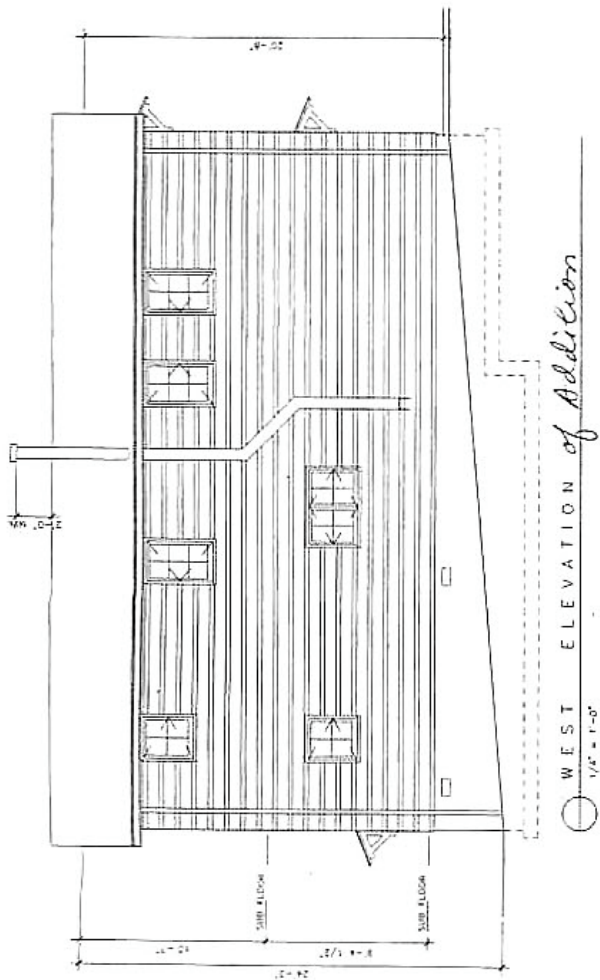
EX C-1
 LW08-111998 AD



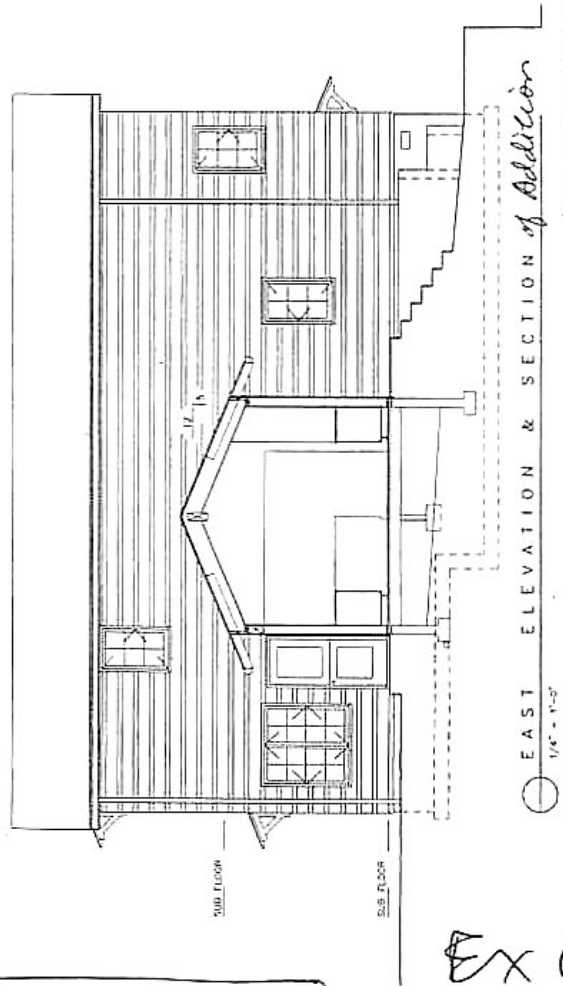
○ SOUTH ELEVATION of Addition
1/4" = 1'-0"



○ NORTH ELEVATION of Addition
1/4" = 1'-0"



○ WEST ELEVATION of Addition
1/4" = 1'-0"



○ EAST ELEVATION & SECTION of Addition
1/4" = 1'-0"

LU 08-111998 AD

Elevations

EX C-2

LU08-111998 AD