



City of Portland
Bureau of Development Services
Land Use Services Division

1900 SW Fourth Ave. Suite 5000
Portland, Oregon 97201
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www.portlandonline.com/bds

Date: July 10, 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 08-133030 AD

GENERAL INFORMATION

Applicant: Jonathon Zilka
Zilka Design
2421 SE Ash St.
Portland, OR 97214

Owner: Mark R Heizer & Ariel K Smits
1332 SE Flavel St
Portland, OR 97202-6028

Site Address: 1332 SE FLAVEL ST

Legal Description: LOT 12 BLOCK 20, CITY VIEW PK ADD & NO 2
Tax Account No.: R158903460
State ID No.: 1S1E23BD 09400
Quarter Section: 3731
Neighborhood: Sellwood-Moreland, contact Reid Kells at 503-484-7343.
Business District: None
District Coalition: Southeast Uplift, contact Gary Berger at 503-232-0010.
Plan District: None
Zoning: R5a (Single-Dwelling Residential 5,000, with Alternative Design Density Overlay Zone)

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

Proposal:

The property owner is planning to install a dormer at the attic level of the east side of the house. The dormer will be approximately 11 feet, 8 inches wide and will contain two east-facing windows with a total width of approximately 4 feet, 6 inches and a height of approximately 4 feet.

The east wall of the dormer is proposed to be located approximately 4 feet, 4 inches from the east (side) property line. The east eave of the dormer, and the dormer's roof brackets, are proposed to be located approximately 2 feet, 8 inches and 2 feet, 4 inches, respectively, from the east (side) property line. However, Zoning Code Section 33.110.220 and Table 110-3

require a minimum side building setback of 5 feet for the east wall of the dormer. Zoning Code Section 33.110.220 and Table 110-3 also require minor building projections such as eaves to project no more than 20 percent into required side building setbacks (which requires minor building projections to be set back at least 4 feet from a side property line).

The property owners request an Adjustment to Section 33.110.220 and Table 110-3, to allow the dormer's east wall, east eave, and roof brackets to be located approximately 4 feet, 4 inches, 2 feet, 8 inches, and 2 feet, 4 inches, respectively, from the east (side) property line.

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 south side of SE Flavel Street, between SE 13th Avenue and SE 14th Avenue, and is approximately 4,000 square feet in size. The site is developed with a single-dwelling residence, built in 1926. The properties to the north, east and south of the site are zoned R5a, while the properties to the east are zoned R5a and R2.5ad. All of the surrounding properties are developed with single-dwelling residences, with the typical lot sizes ranging from approximately 3,800 square feet to approximately 5,000 square feet.

Zoning: The site is zoned R5a (Single-Dwelling Residential 5,000, with Alternative Design Density Overlay Zone). 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 purpose of the Alternative Design Density Overlay Zone (designated with a lowercase 'a') is to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements. For sites that are zoned R5, the Alternative Design Density Overlay Zone allows attached houses on vacant lots, subject to specific requirements. However, the site is not vacant and attached housing is not proposed, so the Alternative Design Density Overlay Zone standards are not applicable to this Adjustment request.

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 **June 16, 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
- Bureau of Environmental Services

The Life Safety Plan Review Section of BDS responded that based on the information provided, there appears to be no conflicts between this proposal and applicable building codes. A separate building permit is required when a non-exempt building is located as described below:

- Exterior walls less than three feet to a property line shall be one-hour fire-rated construction with no openings allowed;
- Eaves less than three feet to a property line must be protected on the underside as required for one-hour fire-rated construction;
- Roofs and eaves may project not closer than two feet to a property line.

(Exhibit E-1)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 16, 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: An Adjustment is requested to allow the proposed second-story dormer's east wall, east eave, and roof brackets to be located approximately 4 feet, 4 inches, 2 feet, 8 inches, and 2 feet, 4 inches, respectively, from the east (side) property line.

The purpose of the Setbacks regulation, as stated in Section 33.110.220.A, is 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 applicant's site plan shows that the east wall of the dormer will be set back 4 feet, 4 inches to the west of the east property line, whereas that the residence on the abutting property to the east is set back approximately 9 feet, 5 inches from that property line. Therefore, there will be a separation distance of approximately 13 feet, 9 inches between the east wall of the proposed dormer and the closest portion of the residence on the abutting property to the east. This separation distance is not likely to decrease, as the driveway to the garage at the rear of the abutting property is located within the separation area. In addition, the proposed dormer is no higher than the

present ridgeline of the house on the site, and its east-west orientation minimizes the shadow effects of the dormer onto the abutting property. As a result, the proposed dormer will maintain light, air, separation for fire protection, and access for fire fighting, and will promote a reasonable physical relationship between residences.

The proposed dormer will have two windows facing east toward the second story of the abutting residence to the east, and the abutting residence to the east has two west-facing windows on its second story. However, the proposed dormer and its windows will be located at the horizontal midpoint of the east side of the roof. According to GIS aerial photo information and the applicant's photographs, the second-floor windows on the abutting residence to the east are located a few feet further south of the horizontal midpoint of the east side of the roof on the site. Therefore, the proposed dormer's windows will be offset a few feet to the north of the west-facing windows on the abutting residence's second story. In addition, the applicant notes that the windows within the dormer will be small, mainly to provide more wall space on the interior, but in turn the small window size serves to maximize privacy for the owners of the site and the owners of the abutting property to the east. Lastly, as noted in the paragraph above, there will be a separation distance of approximately 13 feet, 9 inches between the east wall of the proposed dormer and the nearest portion of the abutting residence to the east. Based on the windows' offset and relatively small size, as well as the separation distance of the dormer from the residence to the east, the proposed dormer will not adversely impact the privacy of the abutting residence to the east.

In addition, the proposed dormer's location relative to the east (side) property line does not appear to be out of character with the general building scale and placement of houses in this neighborhood, based on GIS aerial photo information and Staff's observations on a site visit. Staff noted that at least two other residences, on the north side of SE Flavel Street across from the site, appeared to have second-floor dormer windows that were set back less than 5 feet from side property lines.

Based on the above information, the proposal will equally meet the purpose of the setbacks regulation. 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 proposal is within a residential zone. The applicant notes that the proposed dormer is designed to harmonize with the architecture of the residence and the architecture of the surrounding residences. The applicant notes also that many homes within the block have dormers of similar or larger size, and has included photographs of the residences surrounding the site to illustrate that the proposed dormer is similar in design to existing dormers on surrounding residences. In addition, the scope of the Adjustment is relatively small, as the east wall of the proposed dormer is proposed to be only 8 inches closer to the east property line than allowed by the Zoning Code standards. Thus, the fact that the dormer is closer to the east property line than specified by the Zoning Code standards is not likely to be perceptible to passersby.

Based on the above information, the proposal will not significantly 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: Only one adjustment is being requested, therefore this criterion is not applicable.

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

Findings: The site does not contain any city-designated scenic or historic resources, 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, therefore no mitigation is warranted. 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, 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.

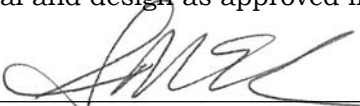
CONCLUSIONS

The applicant has requested an Adjustment to allow the proposed dormer's east wall, east eave, and roof brackets to be located approximately 4 feet, 4 inches, 2 feet, 8 inches, and 2 feet, 4 inches, respectively, from the east (side) property line. The applicant has provided information to demonstrate that this adjustment will comply with the Adjustment Approval Criteria, and therefore the adjustment can be approved, per the plans 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 Zoning Code Section 33.110.220 and Table 110-3, to allow the dormer's east wall, east eave, and roof brackets to be located approximately 4 feet, 4 inches, 2 feet, 8 inches, and 2 feet, 4 inches, respectively, from the east (side) property line, per the approved plans, Exhibits C-1 through C-2, signed and dated July 8, 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 Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 08-133030 AD."

Decision rendered by:  **on July 8, 2008.**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 10, 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 May 30, 2008, and was determined to be complete on June 12, 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 May 30, 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 July 24, 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. 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 **July 25, 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:

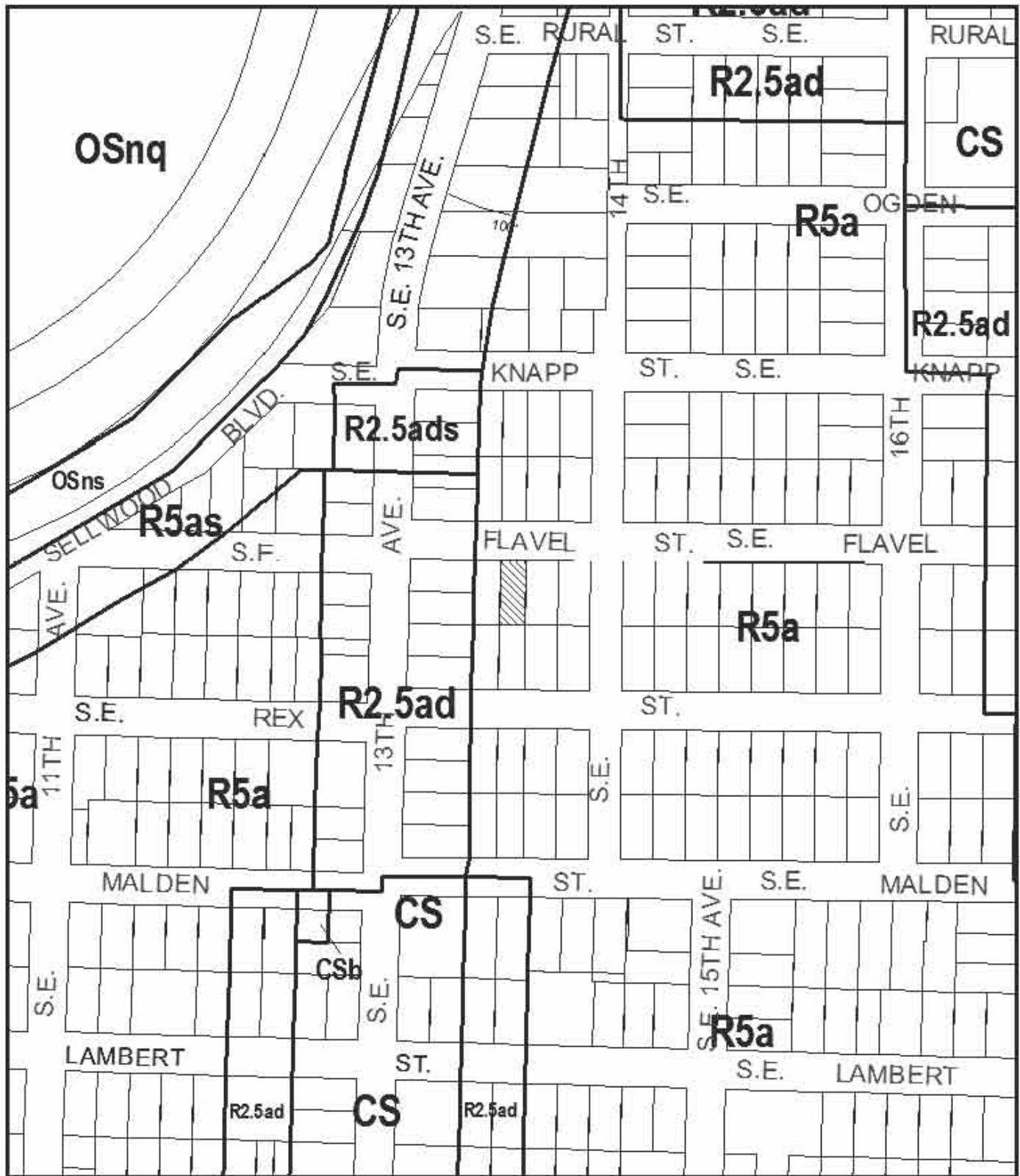
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations 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. Life Safety Plan Review Section of BDS
 - 2. "No concerns" responses from Bureau of Environmental Services, Bureau of Transportation Engineering and Development Review, Water Bureau, Fire Bureau, Site Development Review Section of BDS, Bureau of Parks - Forestry Division
- F. Correspondence:
 - 1. No correspondence submitted.
- 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).



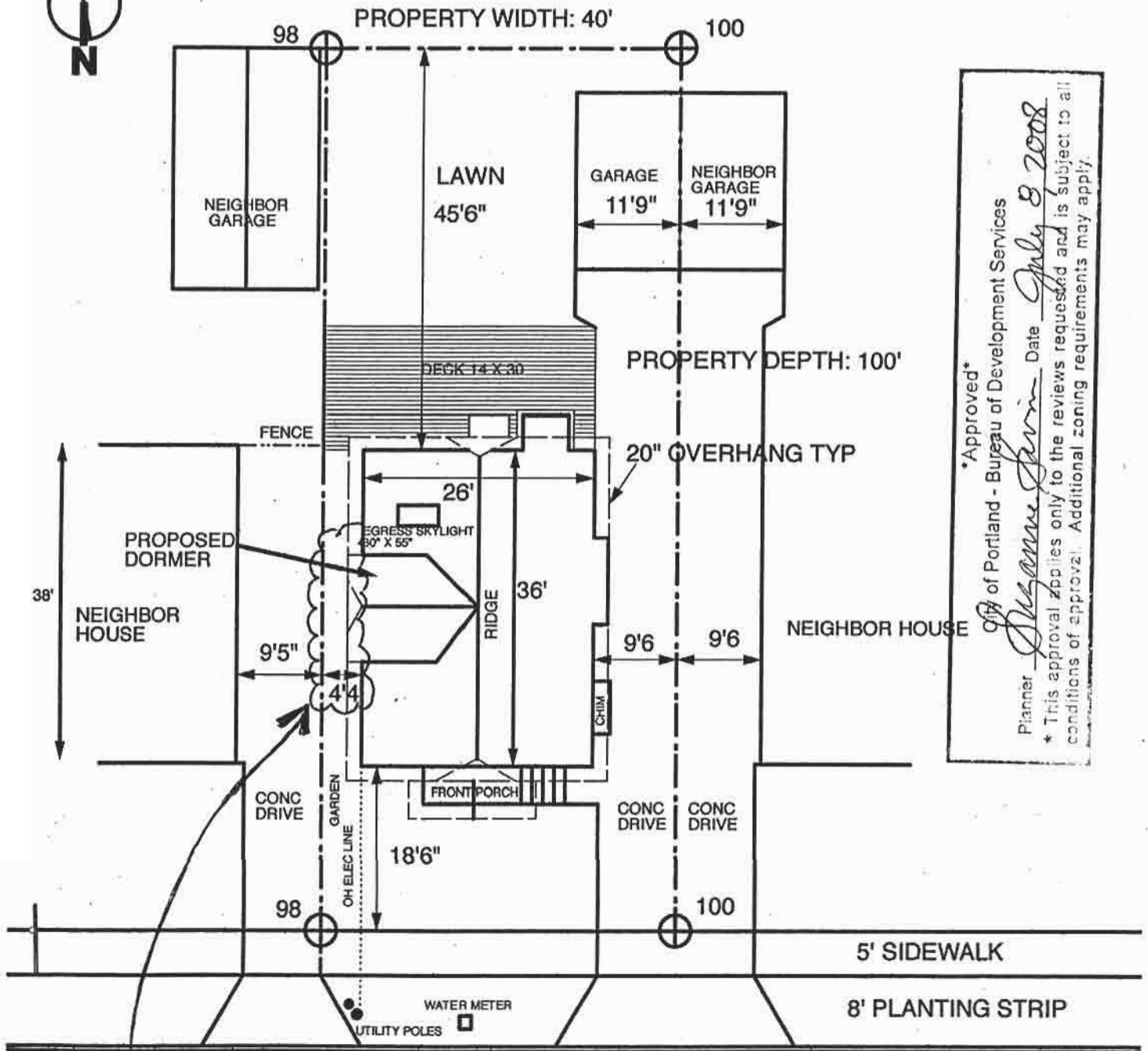
ZONING

 Site



File No.	<u>LU 08-133030 AD</u>
1/4 Section	<u>3731</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E23BD 9400</u>
Exhibit	<u>B (Jun 03,2008)</u>

1332 SE FLAVEL 97202
 LOT SIZE: 4000 SF
 LOT COVERAGE: 1275
 LEGAL: CITY VIEW PK
 ADD NO. 2 LOT 12 BLOCK 20
 ID: R134692 ST. 1S1E23BD 9400



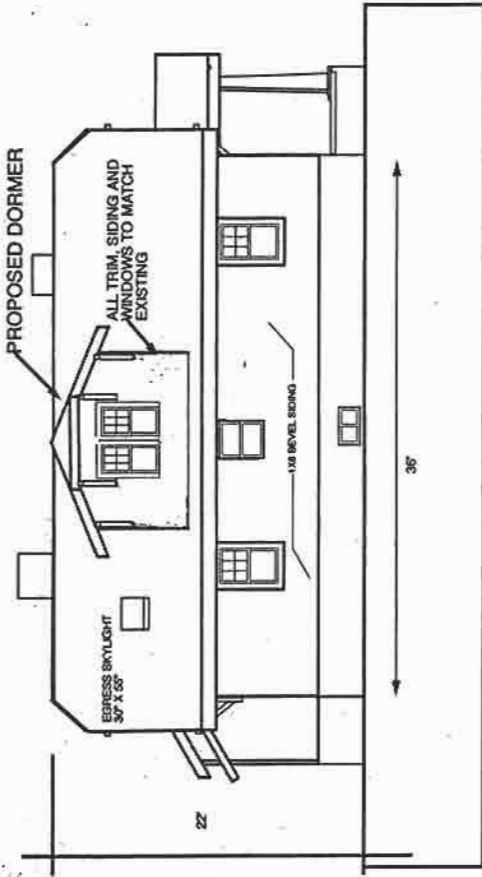
Approved
 City of Portland - Bureau of Development Services
 Planner *Suzanne Levin* Date *July 8 2008*
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

Area of Adjustment
 within Bubble
 Outline

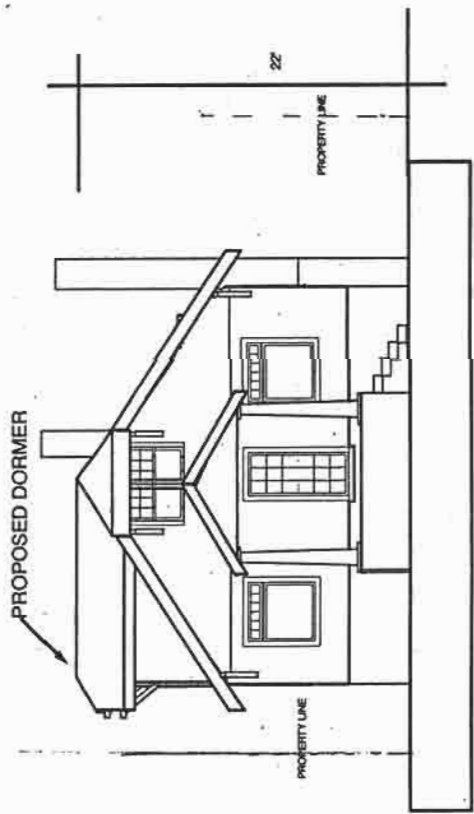
SE FLAVEL STREET

SITE PLAN

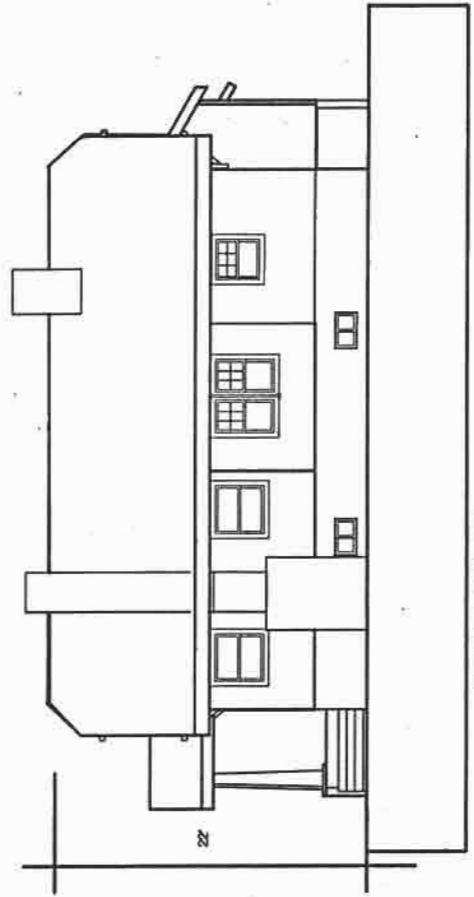
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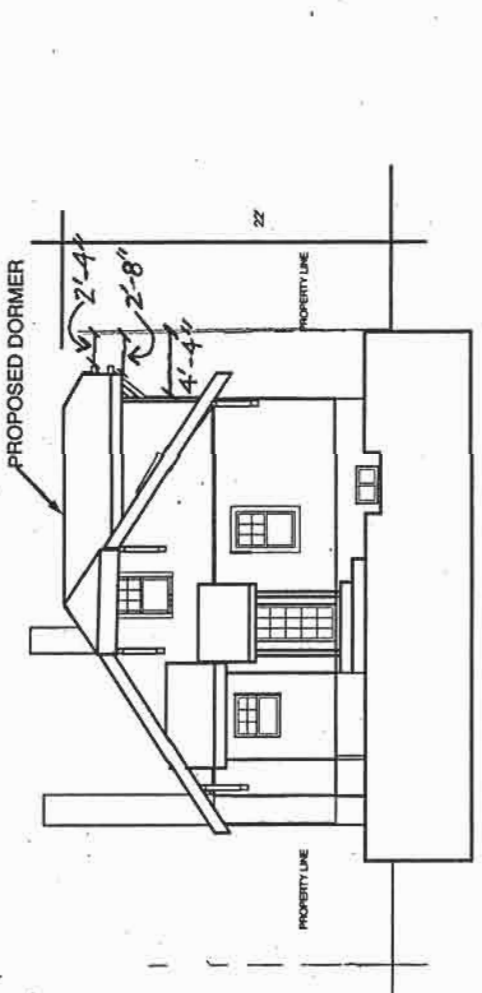
SOUTH ELEVATION
 SMITS HEIZER RESIDENCE
 1332 SE FLAVEL
 SCALE 1/8" = 1'-0"
 5/27/08



NORTH ELEVATION
 SMITS HEIZER RESIDENCE
 1332 SE FLAVEL
 SCALE 1/8" = 1'-0"
 5/27/08



EAST ELEVATION
 SMITS HEIZER RESIDENCE
 1332 SE FLAVEL
 SCALE 1/8" = 1'-0"
 5/27/08



WEST ELEVATION
 SMITS HEIZER RESIDENCE
 1332 SE FLAVEL
 SCALE 1/8" = 1'-0"
 5/27/08

Approved
 City of Portland - Bureau of Development Services
 Planner *Stephanie Savin* Date *July 8, 2008*
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

LU 08-133030 AD

ELEVATIONS