



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

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Portland, Oregon 97201  
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FAX: 503-823-5630  
[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** July 15, 2008  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
503-823-7612 / [sean.williams@ci.portland.or.us](mailto:sean.williams@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 08-129716 AD**

#### **GENERAL INFORMATION**

**Applicant:** Kathryn C Kucinski  
3723 NE 47th Avenue  
Portland, OR 97213

**Representative:** Daniel Milligan  
Green & Milligan Design  
1833 NE 48th Avenue  
Portland, OR 97213

**Site Address:** 3723 NE 47<sup>th</sup> Avenue

**Legal Description:** EXC E 20' IN E 47TH ST N 40' OF S 121.8' OF LOT 15 BLOCK 1, CALMAN  
**Tax Account No.:** R128401070  
**State ID No.:** 1N2E19CC 10100  
**Quarter Section:** 2635  
**Neighborhood:** Beaumont-Wilshire, contact David Whitaker at 503-281-2176.  
**Business District:** Beaumont Business Association, contact Yvonne Townsend at 503-493-1390.  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.  
**Plan District:** None  
**Zoning:** Residential 5,000 (R5) w/ Aircraft Landing Zone Overlay (h)  
**Case Type:** Adjustment (AD)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The owner wishes to construct a single-story addition to the rear of the existing house. The proposed addition meets applicable development standards for setbacks, height and lot coverage. However, the owners request an adjustment to zoning code standard 33.110.235, Required Outdoor Areas, because the minimum dimensions of 12' x 12' cannot be met with the proposed addition. An outdoor area dimension of 9' x 30' is proposed in the southwest corner of the lot.

**Relevant Approval Criteria:**

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

**ANALYSIS**

**Site and Vicinity:** The subject property is 3,200 square feet in size and is improved with a one story house located on the eastern half of the site. Building coverage for the existing house is approximately 768 square feet. A small deck and moderately sized deciduous tree are located in the southwest corner of the property. A 6-foot tall fence is located around the perimeter of the site. Access to the site is accomplished via a driveway along the southern property boundary. The surrounding neighborhood is predominately developed with detached residential housing with Single-Dwelling zoning. A large Open Space tract is located directly east of the site which contains a cemetery.

**Zoning:** The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

**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 3, 2008**. The Water Bureau, Fire Bureau, Bureau of Transportation and Urban Forestry all have no concerns regarding the adjustment proposal (Exhibit E-1). The following Bureaus have responded with comments:

Site Development Section of BDS: Responded with no objection to the proposal. At the time of building permit review the plans must show proposed downspout and splash block locations or another acceptable method of on-site stormwater infiltration (Exhibit E-2).

Bureau of Environmental Services: Responded with no objection to the proposal. General comments were provided relating to stormwater management requirements associated with the addition of new impervious area (Exhibit E-3).

Life Safety Plans Examiner: No concerns regarding the proposal with comments relating to building permit requirements at the time of development (Exhibit E-4).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on June 3, 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****APPROVAL CRITERIA FOR ADJUSTMENTS****33.805.010 Purpose**

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.

**33.805.40 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

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

**Findings:** The applicant requests one adjustment to reduce the minimum width for the required outdoor area from 12 feet to 9 feet. The purpose of the required outdoor areas standard is listed below:

***Purpose 33.110.235 Required Outdoor Areas***

*The required outdoor areas standards assure opportunities in the single-dwelling zones for outdoor relaxation or recreation. The standards work with the maximum building coverage standards to ensure that some of the land not covered by buildings is of an adequate size and shape to be usable for outdoor recreation or relaxation. The location requirements provide options for private and semiprivate areas. The requirement of a required outdoor area serves in lieu of a large rear setback requirement and is an important aspect in addressing the livability of a residential structure.*

The required outdoor areas standards in the Single-Dwelling Zones requires each dwelling unit to have a minimum area (250 square feet) and minimum dimension (12' x 12'). The purpose of the dimensional standard is to ensure that a usable space will be located within the required outdoor area. In addition, the outdoor area is not allowed within the required front building setback. The resultant contiguous outdoor area on the site, after the proposed new addition to the existing residence, equates to 870 square feet, which is approximately 3.5 times the requirement for the zone. However, the largest dimension within this area is 9-feet by 30-feet and located in the southwest corner of the site. This area, although 3-feet less than the required width, is of adequate size to accommodate both active and passive activities and is connected to the rear and north side yard providing a continuous area for outdoor recreational use. The presence of a 6-foot tall fence around the perimeter of the site provides adequate separation from adjacent properties and allows for private outdoor space for residents of the house. In addition, a new entrance and side deck is proposed adjacent to this area which provides convenient access and is also conducive to private use.

The maximum allowed building coverage for a 3,200 square foot lot is 1,575 square feet and the resultant building coverage after the proposed addition will be approximately 1,343 square feet. Because the house will cover considerably less area than the maximum building coverage allowed for the site, the request to reduce the dimension of the required outdoor areas cannot be viewed as an indirect attempt to overly maximize the building coverage on the site. Because the proposed addition will be maintaining the character of the existing structure through the continuation of current building lines, which are 9-feet from the southern property line and 7-feet from the northern property line, the area on the property to reasonably expand becomes constrained considering the required outdoor area dimensional standard.

Although the required width dimension is not met, the outdoor area for the site resulting from the proposed addition upholds the purpose of required outdoor area standards. Therefore, 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 will not detract from the livability or appearance of the residential area. Despite the reduced width, the outdoor areas will be much larger than the minimum size required in the R5 zone. The outdoor area will also be adequately separated from the neighboring properties by a 6-foot tall wooden fence which will maintain privacy for the residents of the house as well as neighbors. The proposed space to meet the outdoor area dimension requirement will not be altered in appearance from the street as a result of the addition and will therefore not impact the residential area. Based on this information, 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:** The site does not contain any scenic or historic resource designations. This criterion is not applicable.

**E. Any impacts resulting from the adjustments are mitigated to the extent practical;**

**Findings:** As addressed in the findings above, 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 overlay zone. This criterion does not apply.

## **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**

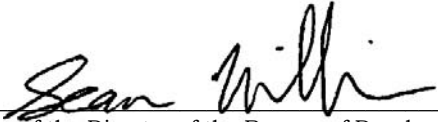
The applicant proposes one adjustment associated with plans to construct an addition to the existing residence. As noted in this report, the proposal to reduce the minimum dimensions for the required outdoor area is able to meet the adjustment approval criteria based on substantial conformance with applicable standards and established situations on the site and in the surrounding neighborhood. With approval requiring that the permit drawings substantially conform with the site plan attached, the request meets the applicable criteria and should be approved.

## **ADMINISTRATIVE DECISION**

Approval of an Adjustment to 33.110.235.B to reduce the minimum required depth of the outdoor area from 12 feet to 9 feet, per the approved site plans, Exhibit C-1, signed and dated July 11, 2007, 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 sheet on which this information appears must be labeled "Proposal and design approved in Case File LU 08-129716 AD."

Decision rendered by:  on July 11, 2008  
By authority of the Director of the Bureau of Development Services

**Decision mailed: July 15, 2008**

**Staff Planner: Sean Williams**

**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 16, 2008, and was determined to be complete on May 30, 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 16, 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 29, 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](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 **July 30, 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:

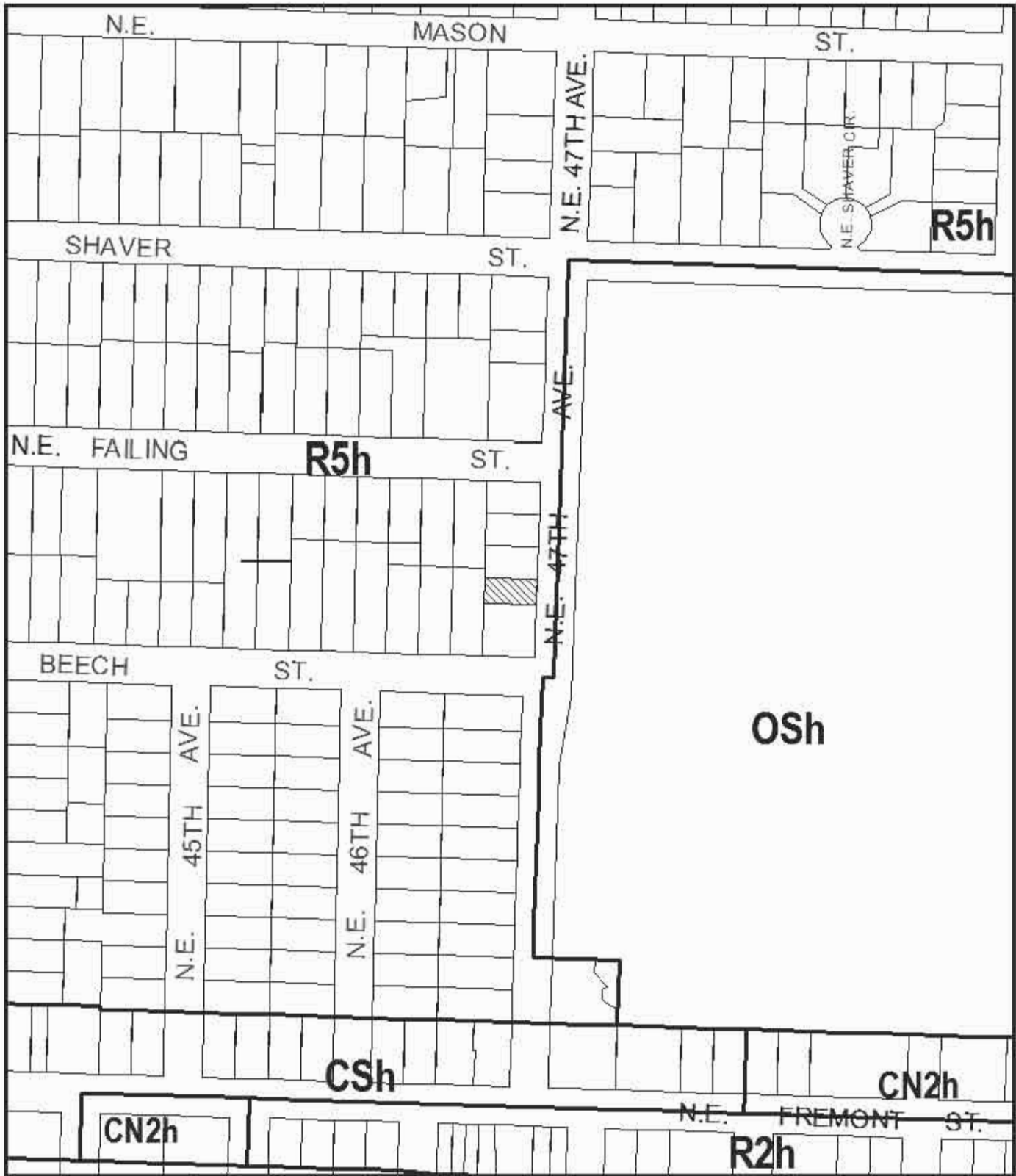
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevation Drawing (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Transportation Engineering and Development Review; Water Bureau; Fire Bureau; Bureau of Parks, Forestry Division
  - 2. Site Development Review Section of BDS
  - 3. Bureau of Environmental Services
  - 4. Life Safety Plans Examiner
- F. Correspondence: none
- 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 503-823-0625 (TTY 503-823-6868).**



# ZONING

 Site



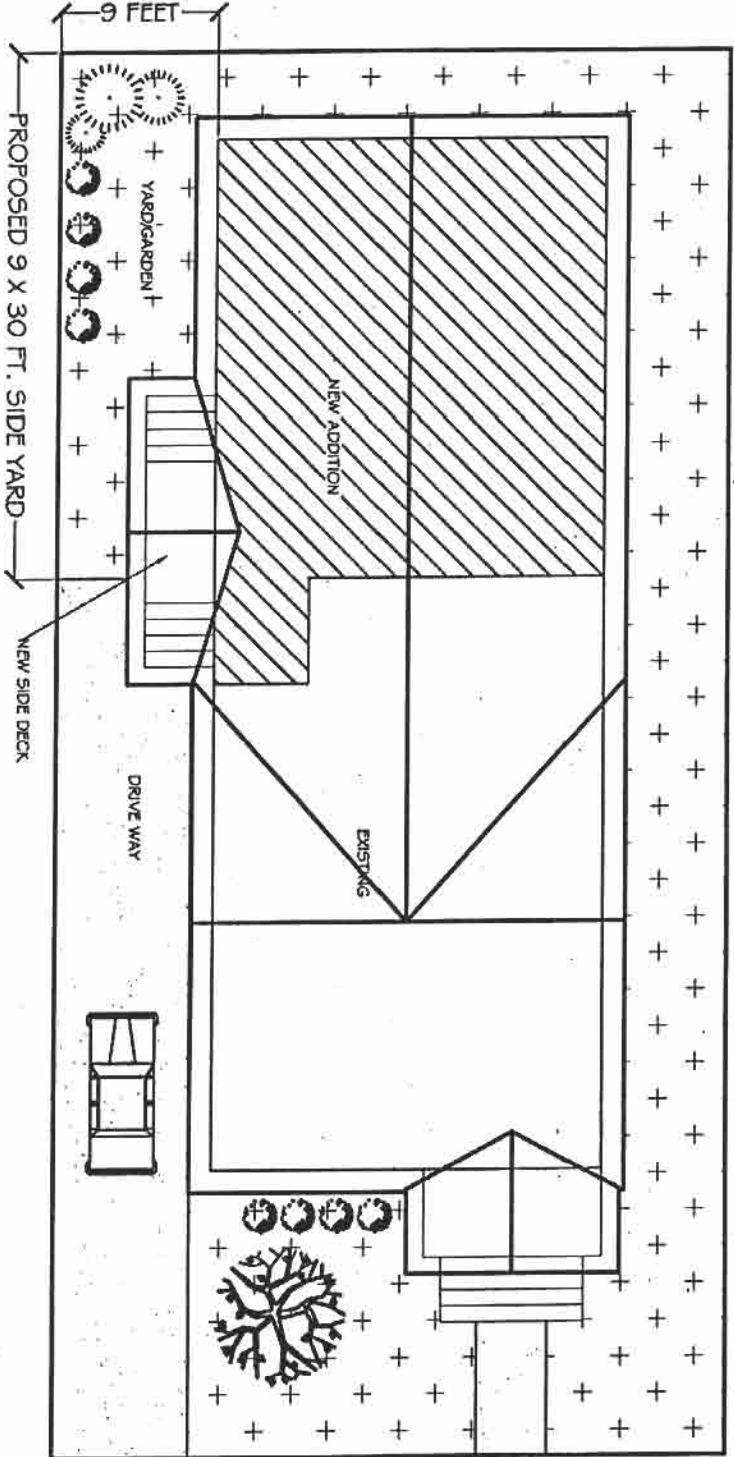
|             |                          |
|-------------|--------------------------|
| File No.    | <u>LU 08-129716 AD</u>   |
| 1/4 Section | <u>2635</u>              |
| Scale       | <u>1 inch = 200 feet</u> |
| State_Id    | <u>1N2E19CC 10100</u>    |
| Exhibit     | <u>B (May 22,2008)</u>   |



LA 08-129716 AD

|           |          |
|-----------|----------|
| REVISIONS | 0        |
| SITE PLAN | \$/13/08 |
|           | 0        |

**\*Approved\***  
 City of Portland - Bureau of Development Services  
 Planner SMM Date 7/11/08  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

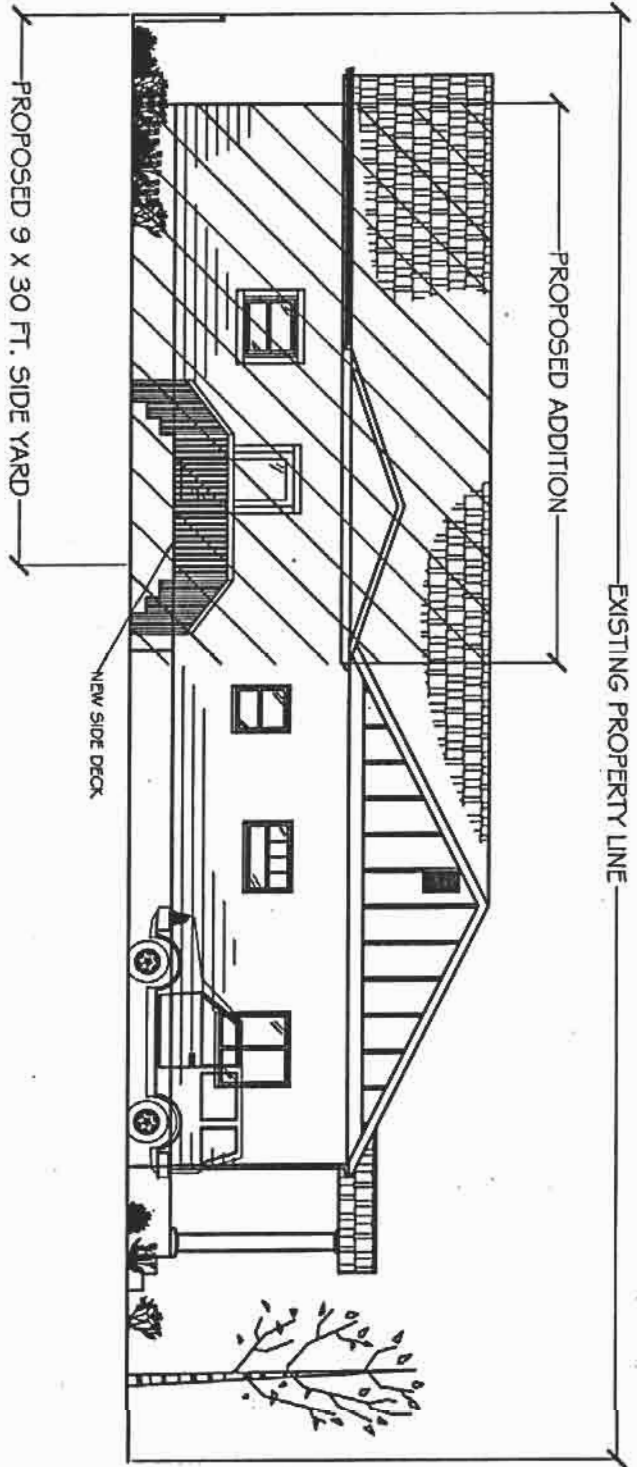


CASE NO. 08-129716  
 EXHIBIT C-1

|  |  |                             |
|--|--|-----------------------------|
| OREGON CODE 177504<br><b>GREEN MILLIGAN</b><br><small>SUSTAINABLE DESIGN   SUSTAINABLE REMODEL</small> |  | <b>KUCINSKI</b><br>ADDITION |
| 3723 NE 47TH AVE<br>PORTLAND, OR 97213   |  |                             |

REVISIONS  
 0 SITE ELEVATION 5/13/08 0

**\*Approved\***  
 City of Portland - Bureau of Development Services  
 Planner SMW Date 7/11/08  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



CASE NO. 08-129716  
 EXHIBIT C-2

|   |  |                 |  |
|---|--|-----------------|--|
|  <p>OREGON OCC# 177904<br/>         SUSTAINABLE DESIGN   SUSTAINABLE REMODEL</p> |  | <p>KUCINSKI</p> |  |
| <p>GREEN MILLIGAN</p>   |  | <p>ADDITION</p> |  |
| <p>3723 NE 47TH AVE</p>   |  |                 |  |
| <p>PORTLAND, OR 97213</p>   |  |                 |  |