



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: August 19, 2008
To: Interested Person
From: Nan Stark, Land Use Services
503-823-7828 / nstark@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 08-143342 AD

GENERAL INFORMATION

Applicant: Stefan Houff and Anne Cooke
3547 NE 46th Ave
Portland, OR 97213-1025

Site Address: 3547 NE 46TH AVE

Legal Description: TL 13400 0.12 ACRES, SECTION 19 1 N 2 E
Tax Account No.: R942191160
State ID No.: 1N2E19CC 13400
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.

Zoning: R5h, Residential 5,000 with 'h' Aircraft Landing Overlay Zone

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

Proposal:

The applicants are proposing to construct a second-story addition and single-story garage onto their existing single-story home, and to slightly expand the existing building footprint to the rear (west). The second-story addition will be constructed above the existing structure and new rear addition (see enclosed site plan for a graphical depiction of the proposal).

The R5 Zone requires a 5 foot side building setback, and allows eave projections up to 20% into the setback, which in this case would allow an eave at 4 feet from the side property line. The existing structure is 3 feet from the north side property line; the eave projects 1 foot beyond the wall, at 2 feet from the property line. The expansion of the building footprint along the north side of the existing structure will extend along this established building line toward the rear (west) for 3 feet, 7 inches. Due to exceptions given for established non-conforming building

lines, the first story of this expansion is exempt from meeting the 5-foot building setback as per Portland Zoning Code section 33.110.220.D.

Therefore, the applicant is requesting an Adjustment to this code standard to allow the proposed new second story to be located 3 feet from the north side property line, and the eave to be located at 2 feet from the north side property line. The attached garage will be on the south side of the house, and conforms to the setback standard, so is not subject to this review.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments.

ANALYSIS

Site and Vicinity: The site is a 5,000 square-foot lot developed with a single-story house and detached garage that is in the rear southwest corner of the property. The house and general layout on the lot is typical of the dwellings on this street, which was developed primarily in the 1920's with some later mid-century infill houses. A few of the nearby houses have been enlarged with second-story and dormer additions, including the abutting house to the north.

The neighborhood commercial area on Fremont Street is one-half block to the south, at the end of the subject block. To the north is single-dwelling residential area extending for several blocks. Rose City Cemetery is one block to the east, along 47th Avenue.

Zoning: The site is zoned R5h. The R5 zone is the high-density single-dwelling zone as identified by the City's Comprehensive Plan, typically found in the closer-in established single-dwelling neighborhoods. The subject lot reflects the typical platting for this zone of 50' x 100' lots. The 'h' overlay corresponds to the Aircraft Landing height overlay zone, which limits height in areas in closer proximity to Portland International Airport. The 'h' overlay standards do not affect the proposed addition.

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

Agency Review: A "Request for Response" was mailed **July 22, 2008**. The following Bureaus have responded with no issues or concerns (Exhibit E.1-E.4):

- Bureau of Environmental Services
- Fire Bureau
- Bureau of Transportation Engineering
- Site Development section of BDS
- Water Bureau
- Bureau of Parks, Forestry Division
- Plan Review section of BDS

Neighborhood Review: A "Notice of Proposal in Your Neighborhood" was mailed on **July 22, 2008**. No written responses were received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

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

Purpose: *The building setback regulations are intended to:*

- *Maintain light, air, separation for fire protection, and access for fire fighting;*
- *Reflect the general building scale and placement of houses in the City's neighborhoods;*
- *Promote a reasonable physical relationship between residences, and options for privacy for neighboring properties;*
- *Require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*

- *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*

Findings: The proposed second-story addition will be built flush with the established building line of the first floor, and proposed development will expand this line 3 feet, 7 inches to the west for both the first and second floors. A 3-foot setback remains between the north wall and the property line, and sufficient access is provided to the east, south, and west of the structure. Therefore, separation for fire protection and access for fire fighting will be maintained. The proposed second story addition is south of the home on the adjacent lot, and could have some affect on light for the adjacent lot to the north. However, that affect would not be much different than if the proposed second story were constructed at a 5-foot setback, as allowed by right. Therefore, the proposed development will not significantly affect light and air for the lot to the south.

The proposed second-story addition located 3 feet from the north side property line remains in character with surrounding development. As noted in the Site and Vicinity description above, there are several 2-story homes in the neighborhood, located adjacent to smaller, 1- or 1.5-story homes, and a number of main and accessory structures in the neighborhood are located within the side and rear setbacks. The proposed second story addition continues to reflect the general building scale and placement of houses in the neighborhood.

The proposed second story addition will be built flush with the established building line of the first story. The proposed expansion of the established building line, from the existing 18 feet, 4 inches to the proposed 21 feet, 11 inches, will not significantly affect the amount of building wall located within the setback and therefore does not significantly change the existing physical relationship between existing structures.

Two windows are located on the north façade of the proposed second story, but these appear to be slightly off-set from the windows on the south façade of the second floor of the home on the adjacent lot to the north. The second stories of the two homes are approximately 9 feet apart. Considering the dense development style and orientation of homes typical of the area (gable ends facing each other, with windows located in the gables), the proposal remains consistent and retains a reasonable amount of privacy for the adjacent lot. The south side yard of the lot to the north is very narrow and grown in with the dense shrub border. Private outdoor use is confined to the large rear yard, and is not affected by the proposed second story.

For the reasons mentioned above, the proposal equally meets the purpose statement for setbacks, and this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, 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 proposed second story addition will mirror the architectural style of the adjacent home to the north and will be of a similar style to other homes in the neighborhood, including houses across the street. The proposed addition will result in a two-story home that reflects the style, density, and scale of homes within the neighborhood and retains the residential appearance. Livability issues such as privacy, space, safety, light, physical relationship, and appearance are not significantly affected by the proposal. For these reasons, 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: There are no such resources present on this site; this criterion is not applicable.

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

Findings: The proposal fits the existing character and scale, and style of the residential neighborhood. No discernable impacts will result from the 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 or near an environmental zone; this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

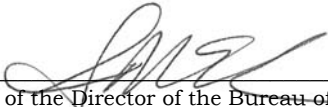
CONCLUSIONS

The proposal to reduce the north side building setback for the second story addition to 3 feet in order to construct the addition in line with the established building line of the first story, and to expand this building line 3 feet, 7 inches to the west, does not significantly affect the livability, safety, or residential appearance of the neighborhood. All relevant approval criteria are met. Therefore, the Adjustment should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to **Section 33.110.220, Setbacks**, to allow the proposed second story to be located 3 feet from the north side property line, which is the same location of the existing north wall of the single-story home, and the eave at 2 feet from the north side property line, and to expand the established building line 3 feet, 7 inches to the west, in substantial conformance with the approved plans, Exhibits C-1 and C-2, signed and dated August 15, 2008, subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 08-143342 AD."

Decision rendered by:  **on August 15, 2008.**

By authority of the Director of the Bureau of Development Services

Decision mailed: August 19, 2008.

Staff Planner: Nan Stark

About this Decision. This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. 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 July 7, 2008, and was determined to be complete on July 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 July 7, 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** September 2, 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 September 3, 2008.
- 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 503-823-7967.

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.

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.

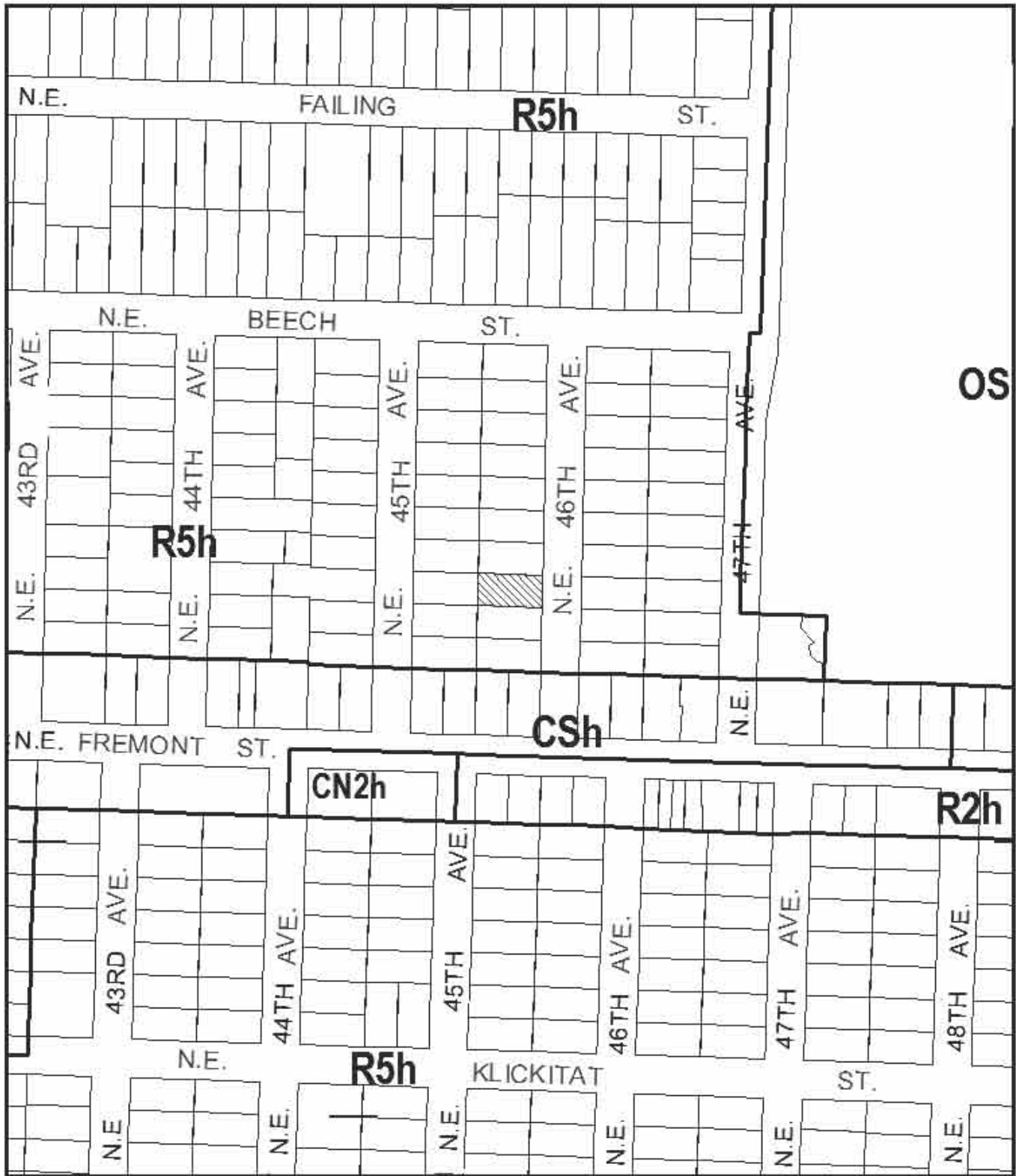
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Elevations (north and east attached)
 3. Photos
- D. Notification information:

1. Mailing list
 2. Mailed notice
- E. Agency Responses:
1. Fire Bureau
 2. Bureau of Transportation Engineering and Development Review
 3. Water Bureau
 4. Bureau of Parks, Forestry Division
 5. Site Development Review Section of BDS
 6. Life Safety Bureau
 7. Bureau of Environmental Services
- F. Correspondence:
- None received
- G. Other:
1. Original LU Application
 2. Site History Research
 3. Tax Map

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



File No. LU 08-143342 AD
 1/4 Section 2635
 Scale 1 inch = 200 feet
 State_Id 1N2E19CC 13400
 Exhibit B (Jul 08, 2008)

NORTH ELEVATION - SIDE OF REDUCED SETBACK

EXTENSION (NE 46th Ave)

Approved
 City of Portland
 Bureau of Development Services
 Planner X [Signature]
 Date Aug 5, 2008

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

SITE PLAN

LU 09-1433A-2AD
Exhibits C.1 and C.2

NE 46th Ave.

