



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: September 29, 2008
To: Interested Person
From: Mark Bello, Land Use Services
503-823-7810 / mark.bello@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 08-140351 AD

GENERAL INFORMATION

Applicant: John Shirkey
Scott Shirkey
1105 SE 50th Avenue
Portland, OR 97215-2605

Site Address: 1105 SE 50TH AVE

Legal Description: BLOCK 1 E 40' OF LOT 5 LOT 6, ALROY
Tax Account No.: R018400050
State ID No.: 1S2E06BD 04300
Quarter Section: 3135

Neighborhood: Mt. Tabor, contact Dave Hilts at 503-780-0826.
Business District: Belmont Business Association, contact Don Porth at 503-823-3615.
District Coalition: Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.

Zoning: R5 Residential 5,000

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

Proposal:

The applicant wishes to be able to create a building site to the west of the existing house on this site which is currently comprised of Lots 5 and 6. The house is developed over the property line that separates the two lots and in order to create a second building site, the property line must be confirmed and then moved to the west. **This will occur through a separate and distinct process (PR 08-126536) if this current land use review is approved.**

This land use review is to consider a request from the applicant to reduce the required side (west) building setback from 5' to 3.9' at the northwest corner of the existing house. The west building wall of the existing house will meet the required setback between the house and the reconfigured property line that is directly west (not north). The area of the reconfigured Tract 2 that will be within 5 feet of the northwest corner of the house is a polygon that extends approximately 15 inches north of the "right angle" of the line and about four feet west of the same "right angle". Measuring from the side property line toward the house, a 5-foot distance encroaches about 1.1 feet into the house. See Exhibit C-2 for a detailed illustration of this encroachment.

The area north and northwest of the house is currently undeveloped and the applicant will provide an easement that ensures that no development will take place within the area in the future. The rationale for the right-angle to the west property line is that the new lot will be 36 feet wide for a distance of 10 feet from the front property line adjacent to SE Taylor Street. It is at this point, at 10 feet back from the front property lines, that the northwest corner of the existing house is too close to the relocated property line. This request is intended to allow the northwest corner of the existing house to remain in its current location, without demolition of the building back to a point where it would meet the required 5-foot setback.

Relevant Approval Criteria:

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

ANALYSIS

Site and Vicinity: The applicant's site is a corner site at the southwest corner of SE Taylor Street and SE 50th Avenue. The site has 85 feet of frontage on SE Taylor Street and 84.44 feet of frontage along SE 50th Avenue. Total site area is 7,174 sq. ft.

The house is located on the east 52 feet of the site. A garage to the south of the house is accessed by a curb cut off SE 50th Avenue. There is currently a side yard to the west of the house, fenced off and screened by arbor vitae. There is a 13-inch deciduous tree in the yard. The site is relatively level but there is a low retaining wall about 10 feet west of the house.

The house is built in an eclectic Spanish style with false parapet exterior walls topped by hipped roofs that overhang beyond the building exterior. Houses to the west and east have a traditional architectural style.

Immediately to the west of the site is a 2,112 sq. ft. vacant lot, owned in conjunction with a 5,460 sq. ft. site with a house. Immediately to the south of the site is a 4,050 sq. ft. site developed with a house. Lots across SE Taylor and SE 50th Avenue are approximately 5,800 sq. ft. or larger. The neighborhood has a street grid of rectangular blocks with typical R5 development. There is little infill in the immediate vicinity.

The site is about 400 feet south of Belmont which has commercial zoning and development along this traditional streetcar street. Areas parallel to Belmont are zoned R2.5 or R2. The block north of the site is half apartments adjacent to Belmont and half single dwelling residential adjacent to SE Taylor Street.

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

R5 zone implements the Comprehensive Plan policies and designations for single-dwelling housing.

Land Use History: The applicant has applied for a Lot Confirmation/Property Line Adjustment that would create a new buildable site to the west of the existing property (PR 08-126536). The repositioned line would come within 3.9 feet of the existing house.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **July 15, 2008**. The following Bureaus have responded with no issues or concerns:

- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- The Bureau of Parks-Forestry Division

Site Development Services responded that stormwater management must be addressed. This includes the location of existing downspouts and potential changes. The Bureau of Environmental Services has similar issues. In addition the BES memo provides information regarding the new 2008 Storm Water Management Manual. These stormwater issues will be addressed as part of the Lot Confirmation/Property Line Adjustment.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on July 15, 2008. Nine written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal (several letters have additional signatures).

The Mt. Tabor Neighborhood Association notes that narrow lots don’t fit the character of the neighborhood, that the proposal doesn’t meet the purpose of the setback regulation, that new “skinny lot” development is a bad precedent. Twenty-three residents signed this letter.

The other eight letters raise the follow issues:

- objections to the code’s method of measuring lot width
- the applicant’s ability to choose to apply for an adjustment and property line adjustment (pla) circumvents the spirit of the code
- increased density in the neighborhood
- the new physical relationship among the new infill development and existing homes
- the impact on livability and privacy and neighbor historic character
- the creation of new property lines around the garage and the projection of eaves toward the new property lines
- the proposed “panhandle” configuration and irregular shape of Tract 2 that would be created by a future lot confirmation and property line adjustment (in effect a “de facto” flag lot)
- the potential future use of the front yard along SE Taylor (dog run?)
- inconsistency with the purpose statement
- fire safety

Staff note:

This report addresses applicable approval criteria and focuses on the specific adjustment request to reduce the side setback from 5’ to 3’9”. Issues related to narrow lots, measurement methodology, increased density in the neighborhood and the lot confirmation/property line adjustment (pla) process are not considered below.

The purpose of Adjustments, which is given directly below this section, is to allow options to property owners to request exceptions to the development standards of the Code. No reason for requesting an exception is required. If the owner finds that, for the particular property, he or she desires to do things in a different way than is provided in the Code, and if the proposal will still

meet the intent of the regulation being adjusted and the other approval criteria, the proposal can be approved through a discretionary review.

ZONING CODE APPROVAL CRITERIA

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.

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that either approval A. through F. below, have been met.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified (Section 33.110.220 A):

Findings. The setback regulations for buildings and garage entrances serve several purposes:

- *They maintain light, air, separation for fire protection, and access for fire fighting;*

The area adjacent to the setback adjustment proposal (within the reconfigured Tract 2) will remain open and undeveloped via a no-build easement so there will be no impact to light, air and physical separation. There will remain a 10-foot open space between the existing house and future development to the west. The Fire Bureau has responded and has no concern regarding this adjustment request.

- *They reflect the general building scale and placement of houses in the city's neighborhoods;*

It is common in older inner city neighborhoods to find setbacks less than 5 feet. That is true in this neighborhood. The small encroachment into a minimal percentage of the side property line will be consistent and compatible with surrounding properties.

In addition, the applicant has proposed putting a no-build easement on the area between the SE Taylor Street property line and the front yard building line on the future adjacent building site. The no-build area totals 60 square feet. This includes the approximately 4 square feet that lies within 5 feet of the existing house. The no-build easement will provide the same or larger yard setbacks found elsewhere on SE Taylor Street.

- *They promote a reasonable physical relationship between residences;*

There will be no impact to privacy because the adjustment is minimal and is adjacent to an area that will not be developed. To the west and at the point of the jog in the property line, the distance between the existing house and future development will be 10 feet, as required by the Zoning Code.

- *They promote options for privacy for neighboring properties;*

The minimal reduced setback will not impact privacy for future residents of Tract 2 because the existing house on Tract 1 will be no closer to future development than 10 feet.

- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*

This element is not applicable because the request is to reduce this side setback. The existing house maintains a setback of over 10 feet to the north and east.

- *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;*

There is an existing house on the site and the reduced setback will remain compatible with the neighborhood. The requested reduced setback will not affect the required outdoor area.

- *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.*

Parking is provided off SE 50th Avenue. This adjustment request does not affect parking.

For these reasons, this approval criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area,

Findings: The adjustment proposal is specific only to the small area within 5 feet of the northwest corner of the house. As a result of applying a no-build easement on Tract 2, within 10 feet of SE Taylor Street, no development will occur within the area specific to this proposal. Therefore, it will appear from the street as if the distance between the existing house and future development on Tract 2 complies with the 5' setback. In other words, the reduction is so minimal (and affects only a small percentage of the side property line) that it will not be discernable.

This approval 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;

Findings: Only one adjustment is requested. This criterion does not apply.

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

Findings: The site is neither designated scenic or historic. This criterion does not apply.

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

Findings: The administrative decision conditions this approval so that the future relationship of the existing house and new development in the area of the requested adjustment proposal will have no additional impacts. 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 not in an environmental zone. This criterion does not apply.

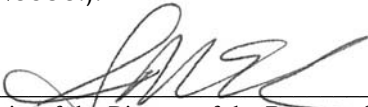
CONCLUSIONS

This adjustment request is to reduce the distance between the northwest corner of the existing house and the west side property line from 5 feet to 3.9 feet as shown on Exhibit C-1. This allows approximately 1.25 sq. ft. of house to encroach into the 5 foot setback area. With a condition imposing the no-build easement, the applicant can meet the specific adjustment approval criteria that were reviewed against this approval.

ADMINISTRATIVE DECISION

Approval of an adjustment to Section 33.110.220 of the Zoning Code to allow a reduction in the required side setback from 5 to 3.9 feet, per the approved site plan, Exhibits C-1 and C-2, signed and dated September 25, 2008 subject to the following condition:

- A. The applicant shall provide a no-build easement within the 6 foot by 10 foot area in the northeast corner of Tract 2 (shown on Exhibit C-2), as part of a future property line adjustment (PR 08-126536.).

Decision rendered by:  **on September 25, 2008**
By authority of the Director of the Bureau of Development Services

Decision mailed: September 29, 2008

Staff Planner: Mark Bello

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 June 24, 2008, and was determined to be complete on July 8, 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 June 24, 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 extended 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 October 13, 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 **October 14, 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 503-823-0625.

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.

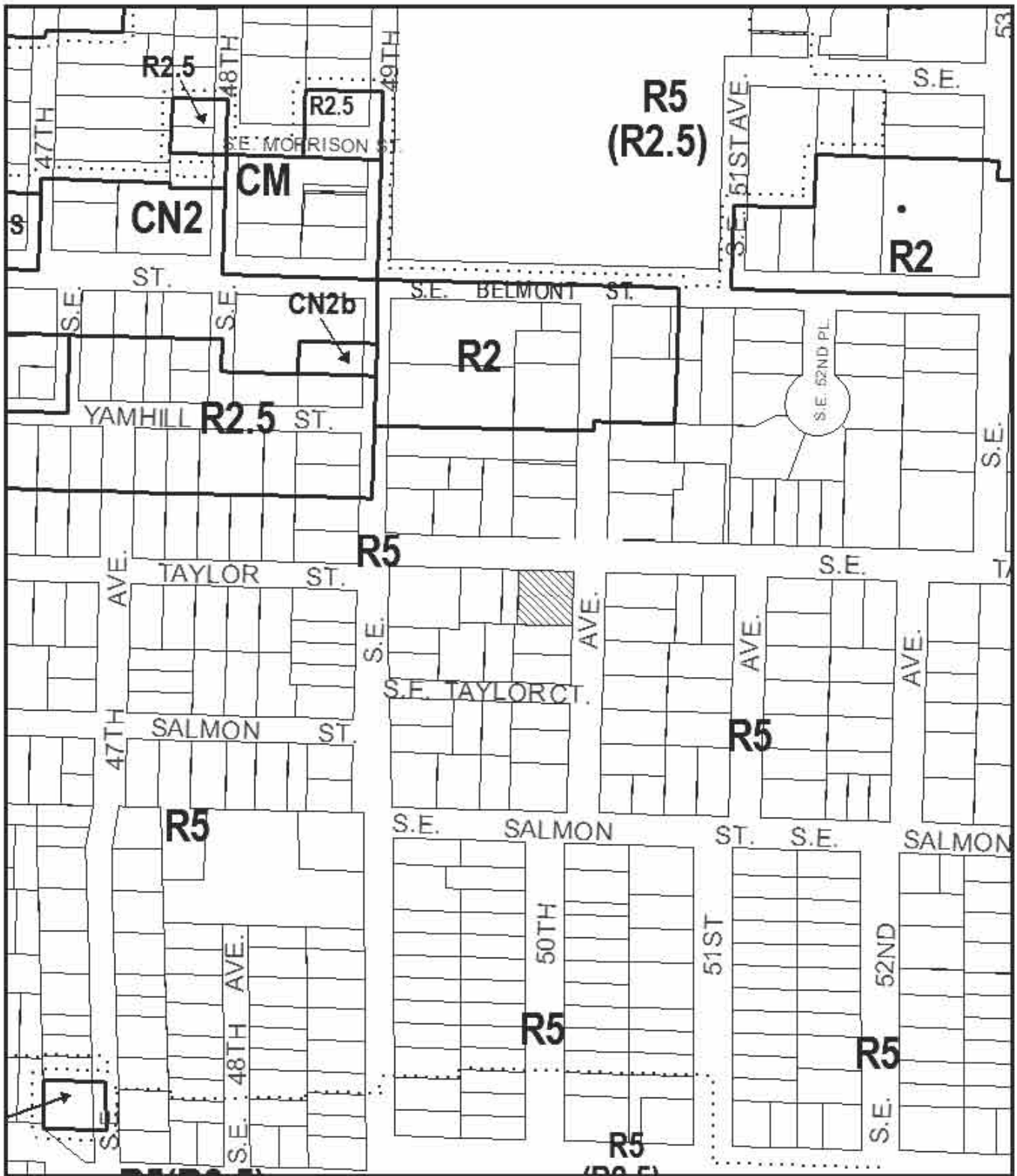
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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. Adjustment request (attached)
 - 2. Setback details (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Site Development Review Section of BDS
 - 3. Life Safety Section of BDS
- F. Correspondence:
 - 1. Mark Bartlett, July 25, 2008
 - 2. Stephanie Stewart, July 31, 2008
 - 3. Thomas Dolan, August 1, 2008
 - 4. Greg Snider, 7 signatures, August 3, 2008
 - 5. Cara Bolles, Received August 4, 2008
 - 6. Micah Hugh Hamley, August 4, 2008
 - 7. Houston Bolles, Received August 4, 2008
 - 8. Michael St. Clair,
 - 9. Mt. Tabor Neighborhood Association, 23 residents
- G. Other:
 - 1. Original LU application
 - 2. Site History Research
 - 3. Applicant extension of 120 day review period

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 08-140351 AD</u>
1/4 Section	<u>3135</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E06BD 4300</u>
Exhibit	<u>B (Jun 26, 2008)</u>

PROPOSED PROPERTY LINE ADJUSTMENT

EAST 40' OF LOT 5 & ALL OF LOT 6, BLOCK 1, ALROY
SITUATED IN THE NW 1/4 OF SECTION 6, T.1S, R.2E, W.M.
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON
DATE: APRIL 1, 2008

DATE FILED

* Approved REGISTER NUMBER

City of Portland

Bureau of Development Services

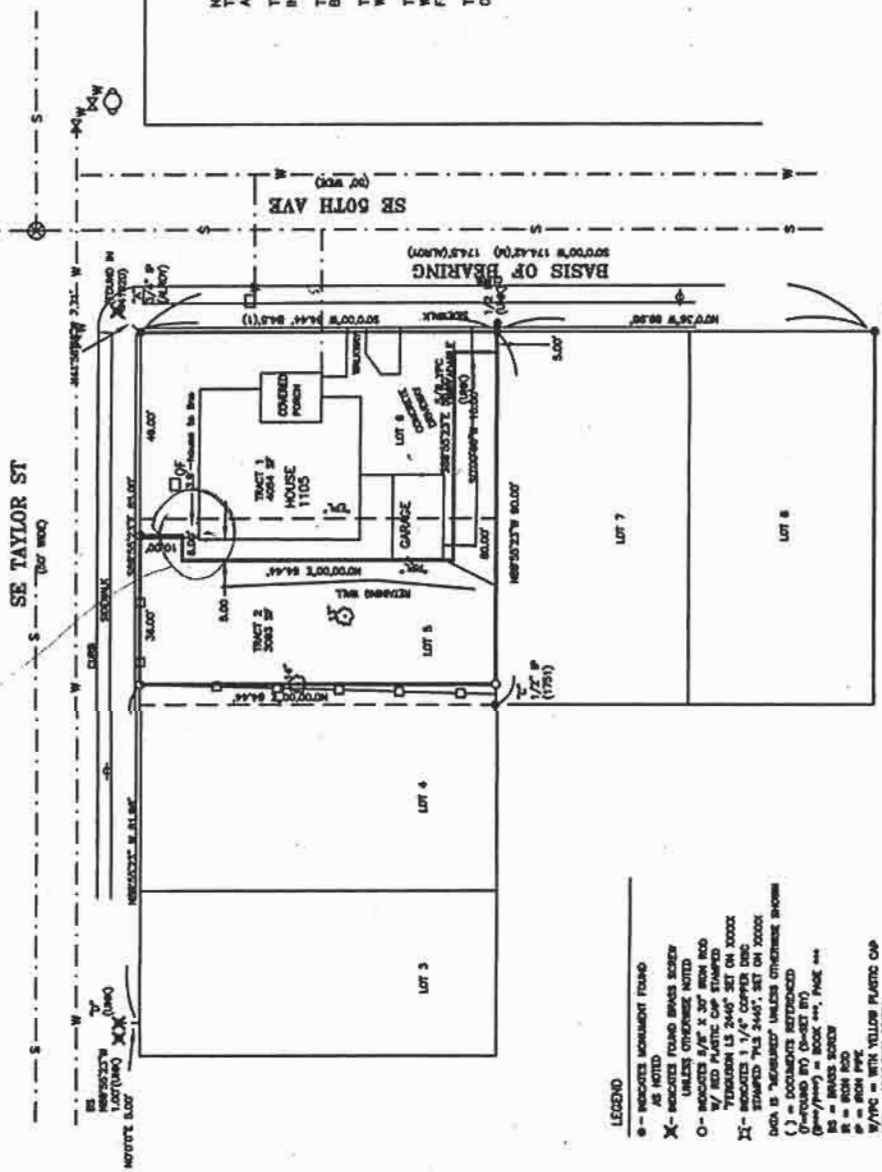
Planner JB

Date 9/25/08

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



ADJUSTMENT
APPROVED



NARRATIVE
THE PURPOSE OF THIS SURVEY IS TO ADJUST THE PROPERTY LINE BETWEEN LOTS 5 AND 6, BLOCK 1, "ALROY".
THE BASIS OF BEARING IS HELD BETWEEN FOUND MONUMENTS "X" AND "B" AND IS INFERRED FROM THE PLAT OF "ALROY".
THE WEST RIGHT OF WAY LINE OF SE 50TH AVE. (50' WIDE) IS HELD ALONG THE BASIS OF BEARING.
THE WEST LINE OF THE EAST 40.00' OF LOT 6, SAID BLOCK 1 IS HELD PARALLEL WITH THE BASIS OF BEARING AND 5.00' EASTERLY OF FOUND MONUMENT "C".
THE SOUTH RIGHT OF WAY LINE OF SE TAYLOR ST (50' WIDE) WAS HELD PARALLEL WITH A LINE FROM FOUND MONUMENT "X" THROUGH A POINT 5.00' SOUTHERLY OF FOUND MONUMENT "D".
THE SOUTH LINE OF LOTS 5 AND 6 WAS HELD PARALLEL WITH SAID SOUTH RIGHT OF WAY LINE AND THROUGH "C".

- LEGEND**
- - INDICATES MONUMENT FOUND AS NOTED
 - X - INDICATES FOUND BIVALS SCREW UNLESS OTHERWISE NOTED
 - O - INDICATES 5/8" X 3/4" IRON ROD BY RED PLASTIC CAP STAMPED "FERGUSON IS 7440" SET ON 30000 SQUARE INCHES PER LINE STAMPED "7-13-54" SET ON 30000
 - - INDICATES MONUMENT SHOWN DATA IS "FERGUSON" UNLESS OTHERWISE SHOWN
 - () - FOUND BIVALS SCREW (S=SET BY)
 - - FOUND BIVALS SCREW (S=SET BY)
 - - BIVALS SCREW "S" - IRON ROD
 - - IRON ROD
 - - IRON PIPE
 - - WITH YELLOW PLASTIC CAP
 - - ALUMINUM BIVALS SCREW
 - - SQUARE FEET
 - SH - SURVEY MARKER, MULTNOMAH COUNTY SURVEY RECORDS
 - "PP" - PROPOSED PROPERTY LINE
 - "EX" - EXISTING PROPERTY LINE

REGISTERED PROFESSIONAL LAND SURVEYOR

[Signature]
JOE H. FERGUSON
REGISTERED DATE 12/31/08

CASE NO. 08-140357AD
EXHIBIT C-1

1 COUNTY THAT THIS MAP WAS PROVIDED USING HP PRODUCT #21440A ON MAP-1024 FILM

CLIENT: Scott Shirley
1105 SE 50th Ave
Portland, OR 97215

Ferguson Land Surveying, Inc.
646 SE 106TH AVE. PORTLAND, OR 97215
Phone (503) 488-0801 Fax (503) 488-0605

SHEET NO. 1 OF 1
JOB NO. 08-034 PLA
DRAFTED 4/1/2008

1408-140357AD

Illustration of Setback Encroachment

SE Taylor St.

No Build
Easement
Area

Encroachment
Area

Existing House

SE
50th
Ave.

West
Property
Line

Tract 1

Tract 2

CASE NO. 08-142357
EXHIBIT CL