



City of Portland, Oregon
Bureau of Development Services
Land Use Services

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

Date: December 16, 2008
To: Interested Person
From: Nizar Slim, Land Use Services
503-823-7848 / nizars@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 08-174206 AD

GENERAL INFORMATION

Applicant: Morgan Curtis
Po Box 11062
Oakland, CA 94611-1062

Representative: Michelle Jeresek
Departure
2032 SE Clinton Street
Portland, OR 97202

Site Address: 2605 SE 16TH AVE

Legal Description: BLOCK 11 LOT 5, TIBBETTS ADD
Tax Account No.: R834300440
State ID No.: 1S1E11AB 06000 **Quarter Section:** 3332

Neighborhood: Hosford-Abernethy, contact Kina Voelz at 971-207-9243.
Business District: Division-Clinton Business Association, contact Katherine Cosgrove at 503-234-8585.
District Coalition: Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.

Zoning: R2 – Residential 2000 (Multi-Family, Residential)
Case Type: AD - Adjustment review.
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant has submitted an application for a building permit (08-155545 RS) to construct a three-story single-family house on the west half of a lot with an existing residence. In order to be approved, the proposed structure is subject to building and planning codes as well as other agency requirements. In the course of development review, Portland Department of Transportation determined that a dedication of 4 feet along SE Ivon St. is required to accommodate improvements within the public right of way (SE Ivon) as part of building permit approval. The proposed house would meet the setbacks standards after the street dedication or

make necessary plan revisions to meet those standards as needed. However, since the dedication affects the entire length of the property along SE Ivon, it also reduces the side yard setback for the existing home by 4 feet causing it to fall out of conformance with respect to the north side yard setback.

Portland Zoning Code section 33.120.220 (Multi-dwelling) requires a side building setback of 5 feet to the adjacent property line when the subject building wall plane is under 1,000 sq. ft. In this case, the existing setback would be reduced from 7 feet 10 inches to 3 feet 10 inches (a standard reduction of 1 foot 2 inches). Eaves are allowed to extend into the setback up to 20% of the setback depth, which in this case would be 6 inches (or 3 feet-4 inches from the property line).

Therefore, one Adjustment to Section 33.120.220, Setbacks, for the reduction of the northern side setback for the wall from 5 feet to 3'-10" (and 3'-4" for the eaves) is necessary to legalize the non-conforming status of the existing house with respect to the northern side setback.

Relevant Approval Criteria:

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The site is located on the corner of SE 16th Avenue and Ivon Street. The 5,000 square-foot lot is developed with a house built around the turn of the century. The two-story house sits tightly against northeast corner leaving the western part of the lot as open yard space. Currently, there are no changes being proposed to the existing structure. An additional house is being proposed in the western portion of the yard under permit 08-155545 RS.

The surrounding area has been developed with a wide variety of uses and building types, ranging from small-scale commercial businesses with parking lots to a spectrum of residential housing including multi-dwelling apartments and single-family houses. SE Division Street is the major arterial that provides access to the neighborhood.

Zoning: The R2 designation is one of the City's multi-dwelling zones which is intended to create and maintain higher density residential neighborhoods. This zone allows a variety of developments and housing types ranging from medium to higher density, multi-dwelling apartment structures to attached or detached single-dwelling residential structures. The zone implements the comprehensive plan policies and designations for multi-dwelling housing.

The standard for side setbacks within this zone depends on the type of structure, its situation on the site and size of walls relative to the setback being considered. As stated in the proposal section of this report, the required setback in this case is 5 feet from the adjacent property line.

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 **November 10, 2008**. The following Bureaus have responded with no issues or concerns; (some bureaus acknowledged residential permit 08-155545RS):

- Water Bureau
- Fire Bureau
- Urban Forestry
- Bureau of Transportation Engineering
- Bureau of Environmental Services
- Site Development Section

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **November 10, 2008**. One written response has been received from a notified property owner in response to the proposal. Below is the main concern along with staff response:

Concern Noted: A general objection to the proposed house being built on the western portion of the lot and its associated traffic. In addition, the architectural character of the new structure does not fit the neighboring architectural examples; and, a larger tree is being removed to make way for the building site.

Staff Response: *All the above concerns are directed at the proposed new house that is under permit review, case number 08-155545 RS. All issues surrounding that building's design are dealt with as part of that permit review process. This Adjustment review is only for the existing house and does not extend beyond the setback related to the current house. The new single-family dwelling being proposed needs to meet all zoning and building codes as well as other bureau standards in order to be permitted for building.*

Although, architectural character and tree removal are valid concerns among others noted, they are limited to the review standards set forth by the permit process. Further, it is beyond the scope of this Adjustment review to consider such issues.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (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 providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

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

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

Findings: The application is for an Adjustment to the northern side setback, for the existing house. The purpose statement of Section 33.120.220 Setbacks is as follows:

Purpose: *The building setback regulations 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.*

2605 SE 16th Ave.(Existing House): No physical changes are being proposed to the house. The north wall and its elements are not being altered and would not need an adjustment to the side setback if it was not for a dedication of property being requested by Portland Office of Transportation. This requirement is driven by the permitting process for an additional house being proposed on the western portion of the lot under permit review number 08-155545 RS. As part of that process, a dedication to SE Ivon is needed for improvements that need to be in place in order to accommodate the additional dwelling unit sought. In actuality, it is the R.O.W boundary that is moving closer to an existing structure. This relocation of the property line and potential sidewalk improvement would not result in any apparent change to the appearance of the house or its relationship to the SE Ivon Street, other than its proximity to the sidewalk and planting strip (which would appear as a side-yard).

North Side Setback: The existing side setback measured from the furthest north façade of the existing house to the adjacent property line is 7 feet, 10 inches. The standard requires only 5 feet. The adjustment being sought is for 3 feet 10 inches, a difference of 1 foot 2 inches. Typically, there would be an adjacent private lot separated by the mentioned property line. The setback would ensure that the above purposes remain relatively intact by “separating” the development potential of both properties. However, this is a corner lot and the adjacent property in this case is the public Right-of-Way (SE Ivon). Since, SE Ivon is maintained by the City as a viable, functioning pedestrian and vehicular corridor, it is highly unlikely that a structure would reside anywhere near the neighboring lot. Thus the need for a setback becomes less necessary as the physical relationships between residences, privacy, light and air or access for fire fighting remains unchanged.

As demonstrated above, the purpose of setbacks is upheld; this criterion is therefore 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 adjusted side setback is not uncommon in the neighborhood, since there is such a wide variety of development. Further, the reduced setback does not affect the spatial relationship or appearance of neighboring residential structures since the setback in question is adjacent to a public Right-of-Way (SE Ivon). This criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one Adjustment is being requested. Therefore, this criterion is not applicable.

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

Findings: There are no such resources present on the site. This criterion is not applicable.

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

Findings: There are no discernible impacts that would result from granting the single 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 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 reduced side setback does not affect any other private property and is only the result of a street dedication and not any physical modifications to existing or proposed structures. Therefore, no negative impact can be determined. All approval criteria are met, and therefore this proposal is approved.

ADMINISTRATIVE DECISION

Approval of one Adjustment to Section 33.120.220, Setbacks, to allow a portion of the north wall of the existing house located at 2605 SE 16th Ave. to be located 3 feet, 10 inches from the north property line adjacent to SE Ivon St. (eaves would be allowed an additional 6 inches or 3 feet, 4 inches), in significant conformance with the approved plans, Exhibits C-1 through C-3, signed and dated December 11, 2008.

Decision rendered by:  on December 11, 2008.

By authority of the Director of the Bureau of Development Services

Decision mailed: December 16, 2008

Staff Planner: Nizar Slim

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 October 29, 2008, and was determined to be complete on November 4, 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 October 29, 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 Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on December 30, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. 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 Hearings Officer 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 Hearings Officer 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 **December 31, 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.

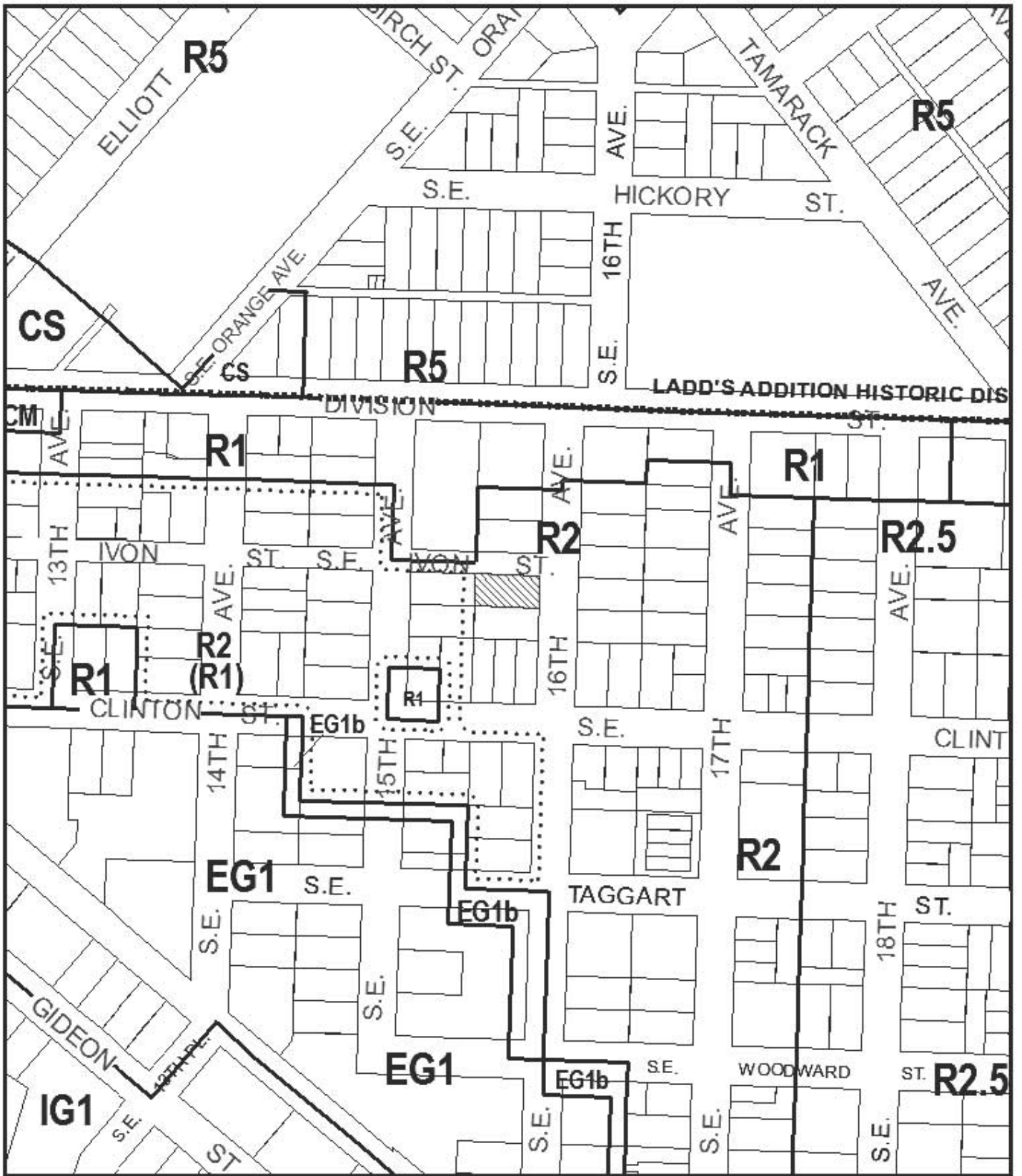
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)

- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. North Elevation
 - 3. East Elevation
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. List of all Bureaus
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Bureau of Environmental Services
 - 4. Site Development Review Section of BDS
 - 5. Life Safety
- F. Correspondence:
 - 1. "residents", 12-1-08, objection to new house
- 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

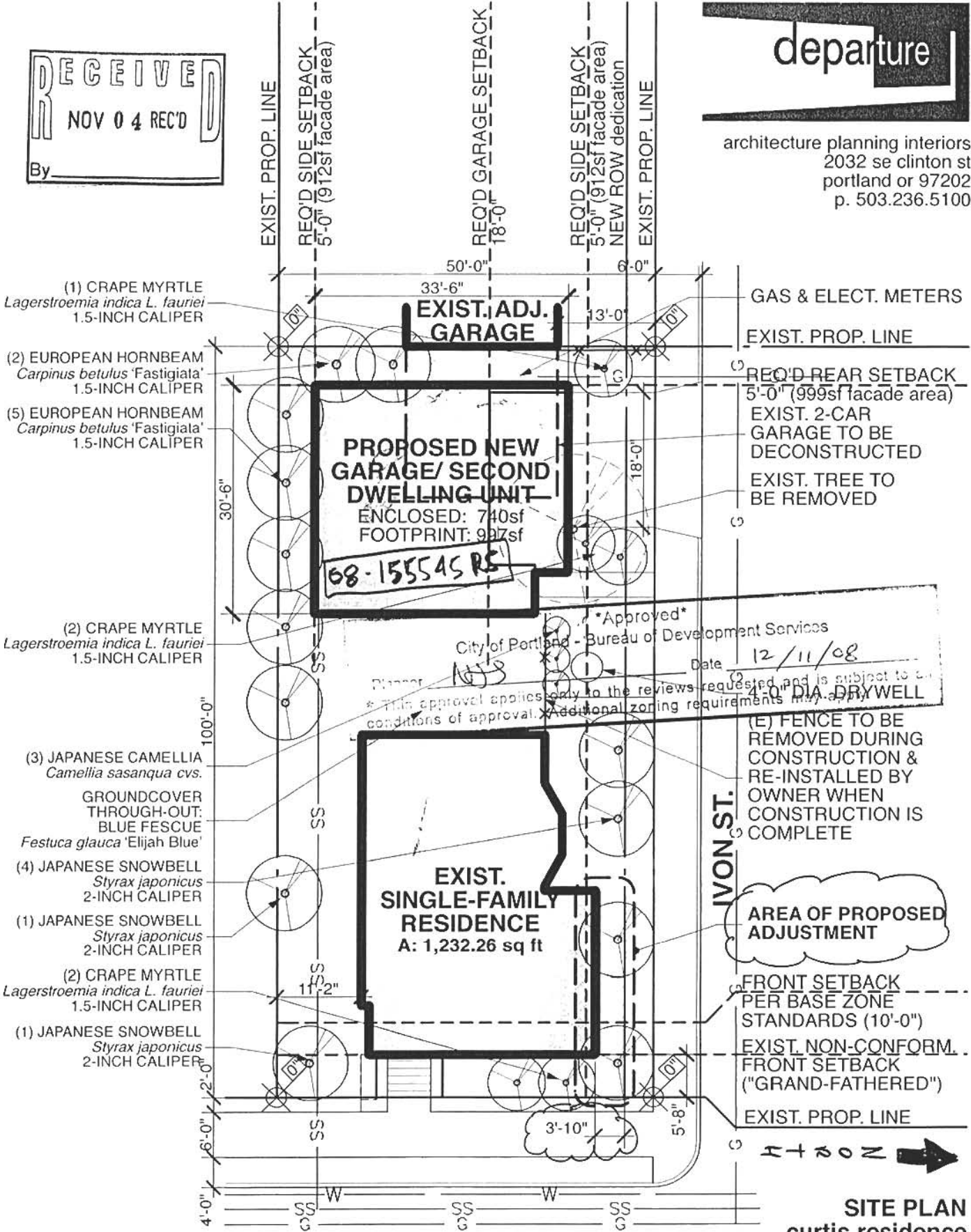


File No.	LU 08-174206 AD
1/4 Section	3332
Scale	1 inch = 200 feet
State_Id	1S1E11AB 6000
Exhibit	B (Oct 30, 2008)

RECEIVED
 NOV 04 REC'D
 By _____



architecture planning interiors
 2032 se clinton st
 portland or 97202
 p. 503.236.5100



08-15545 RS

Approved
 City of Portland - Bureau of Development Services
 Planner: [Signature]
 Date: 12/11/08
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

(E) FENCE TO BE REMOVED DURING CONSTRUCTION & RE-INSTALLED BY OWNER WHEN CONSTRUCTION IS COMPLETE

AREA OF PROPOSED ADJUSTMENT

FRONT SETBACK PER BASE ZONE STANDARDS (10'-0")
 EXIST. NON-CONFORM. FRONT SETBACK ("GRAND-FATHERED")
 EXIST. PROP. LINE

16th AVE.

SITE PLAN
 curtis residence

CASE NO. 08-174206 AD 11.04.08

EXHIBIT C-1

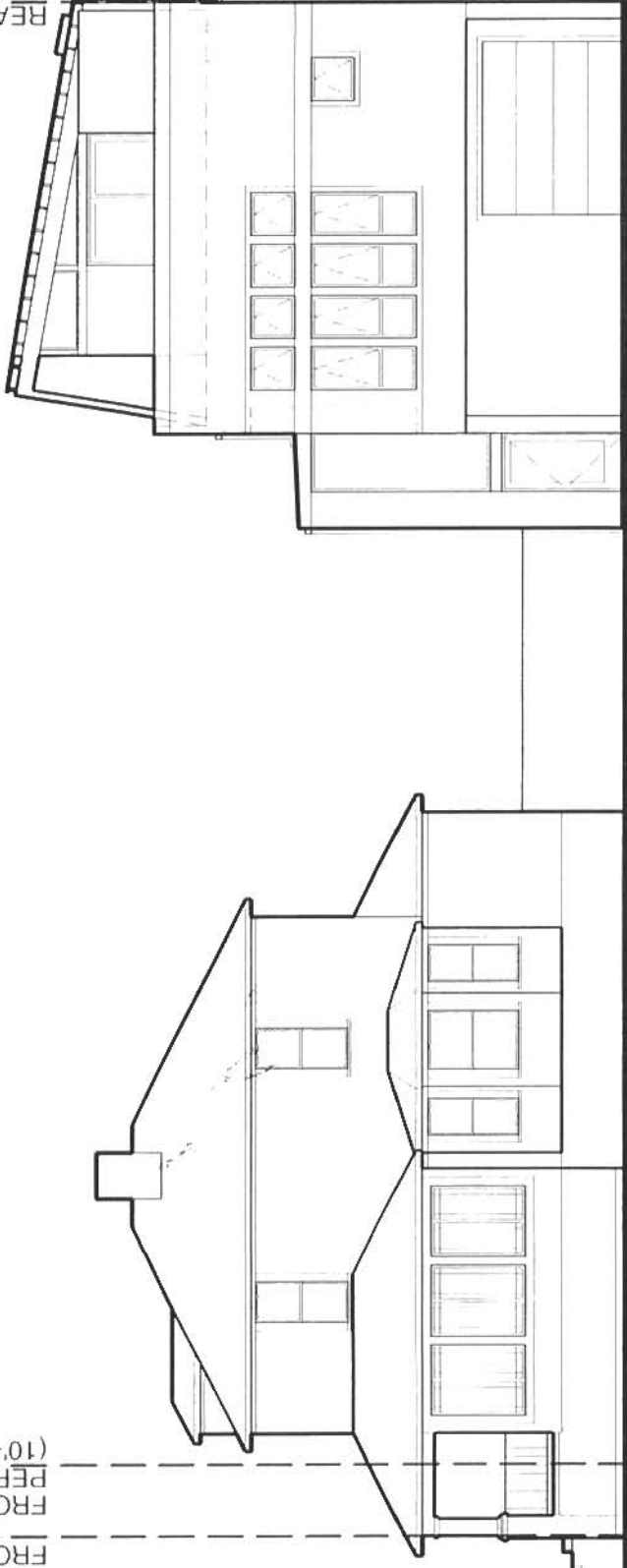


architecture planning interiors
2032 se clinton st
portland or 97202
p. 503.236.5100

City of Portland - Bureau of Development Services
Planner [Signature] Date 12-11-08
This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

FRONT PROP. LINE
EXIST. NON-CONFORMING FRONT SETBACK ("GRANDFATHERED")
FRONT SETBACK PER BASE ZONE STANDARDS (10'-0")

REAR/SIDE PROP. LINE
REAR/SIDE SETBACK 5'-0"



5'-8 1/2"
EXIST. RESIDENCE (UNCHANGED)
EXIST. FENCE TO REMAIN
NEW RESIDENCE (SEE APPLICATION #08-155545-RS)

CASE NO. 08-174206 AD
EXHIBIT C-2

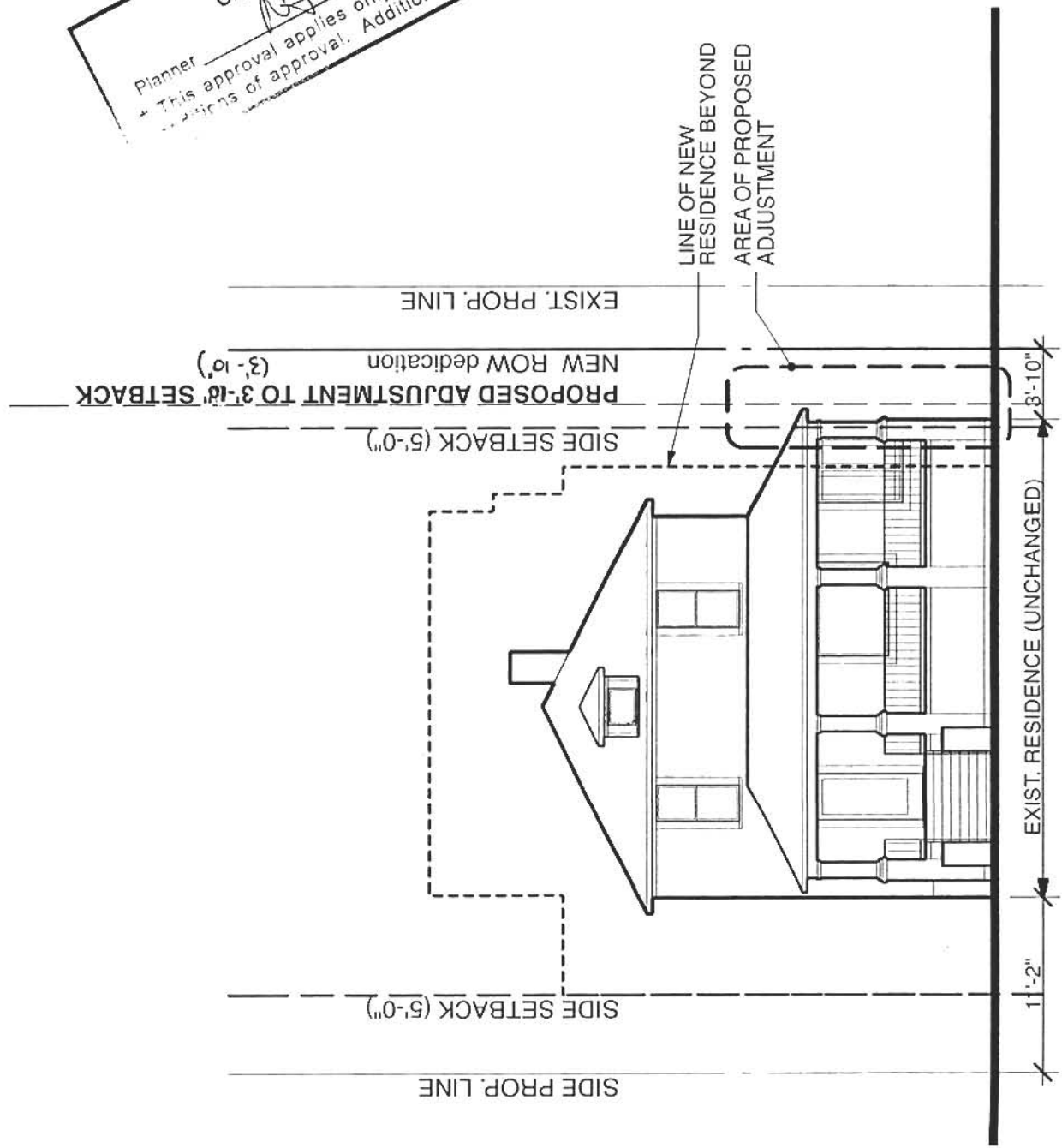
NORTH ELEVATION
curtis residence
11.04.08



architecture planning interiors
 2032 se clinton st
 portland or 97202
 p. 503.236.5100

City of Portland - Bureau of Development Services
 Approved
 Planner MS Date 12-11-08
 This approval applies only to the reviews requested and is subject to the conditions of approval. Additional zoning requirements may apply.

EAST ELEVATION
 curtis residence
 11.04.08



CASE NO. 08-174206 AD
 EXHIBIT C-3