



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

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Portland, Oregon 97201  
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TTY 503-823-6868  
[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** January 12, 2009  
**To:** Interested Person  
**From:** Crystal Hitchings, Land Use Services  
503-823-7583 / [Crystal.Hitchings@ci.portland.or.us](mailto:Crystal.Hitchings@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 08-180193 AD**

#### **GENERAL INFORMATION**

**Applicant:** John Brehm  
Forming Architecture  
3255 NE 75th Ave  
Portland OR 97213

**Property Owner:** Martin Frey  
5510 SW Menefee Dr  
Portland, OR 97239-2718

**Site Address:** 5510 SW MENEFEE DR

**Legal Description:** LOT 9 BLOCK 4, TERWILLIGER HTS  
**Tax Account No.:** R825500750  
**State ID No.:** 1S1E16AD 01400  
**Quarter Section:** 3528

**Neighborhood:** Hillsdale, contact Duane Hunting at 503-417-4409.  
**District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.

**Zoning:** R7, Single-dwelling Residential 7,000

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

#### **Proposal:**

The applicant is requesting an Adjustment to Zoning Code Section 33.110.225, to increase the maximum allowed amount of building coverage. The proposal includes the following:

- removing and replacing an existing lower deck, approximately 40 square feet of which is more than 6 feet above grade;
- adding 252 square feet of new deck area to the existing upper deck; and

- adding a new roof over the existing 228 square foot upper deck.

The subject site is 6,000 square feet in size, and the maximum allowed building coverage for this site is 2,400 square feet. Including the home and decks more than 6 feet above grade, existing building coverage on the site is 2,369 square feet. With the proposed deck addition, the building coverage would be 2,611 square feet, which is 211 square feet more than is allowed. Therefore, an Adjustment is required to allow the proposed additional 211 square feet of building coverage.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. 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 6,000 square foot site is located on the east side of SW Menafee Drive, just west of SW Terwilliger Boulevard and south of Keller Woodland. The site is developed with a single-dwelling home originally built in 1973. The site slopes down 20% or greater away from the street to the northeast. The site is characterized by dense vegetation along the property lines. The attached garage is visible from the street but the house is hidden behind a high, dense shrub border.

The site is located within a larger area of 20% or greater slope, and is within a large potential landslide hazard area. Approximately 350 feet east of the site is an area designated as having preliminary rapidly moving landslides. Adjacent and nearby sites to the northeast and down slope from the site are currently undeveloped and densely vegetated. Within 200 feet of the site to the northwest, south, west, and southeast, development is single-dwelling residential, and homes are typically larger, relatively new homes on steeply sloping, irregularly-shaped lots. On steeper lots, homes are situated adjacent to the street and outdoor areas are located on the slopes at the rear of the lots.

**Zoning:** The subject site and surrounding area is designated R7. Some sites to the north, southwest, and east, and southeast of the site are also within environmental and/or design overlay zones. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The R7 zone is a medium density single-dwelling zone. The R7 Zone allows attached and detached single-dwelling structures and duplexes.

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

**Agency Review:** A "Request for Response" was mailed on December 16, 2008. The following Bureaus have responded with no issues or concerns (Exhibits E.1-E.3):

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

The following Bureaus have submitted additional comments:

- The **Life Safety Bureau** (Exhibit E.4): submitted information intended to provide the applicant with preliminary Building Codes information and expressed no concerns with the requested Adjustment.
- The **Bureau of Environmental Services** (Exhibit E.5): gave no objection to the requested Adjustment and noted that the Storm Water Management Manual pollution reduction and flow control requirements are not triggered by the proposal.

- The **Bureau of Transportation Engineering** (Exhibit E.6): has no objections provided no work or encroachment occurs in the public ROW.

**Neighborhood Review:** A “Notice of Proposal in Your Neighborhood” was mailed on December 16, 2008. No written responses were received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### 33.805.010 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 applicant is requesting an Adjustment to **Section 33.110.225, Building Coverage**. The purpose statement for this regulation is as follows:

*The building coverage standards, together with the height and setback standards, control the overall bulk of structures. They are intended to assure that taller buildings will not have such a large footprint that their total bulk will overwhelm adjacent houses. Additionally, the standards help define the character of the different zones by limiting the amount of buildings allowed on a site.*

The residential structure on the site has a 2,091 square foot building footprint including an attached garage and which contains a number of structural jogs. These jogs lend depth and definition to each façade of the home, thereby breaking up the total bulk of the structure from various perspectives.

Accessory development on the site currently includes a lower deck and an upper deck, both of which extend across the majority of the rear façade of the home. The floor of the upper deck is approximately 10 feet above the floor of the lower deck. The majority of the floor of the lower deck is less than 6 feet above grade, except for approximately 40 square feet along the eastern edge. The lower deck is currently located about 7 feet northeast of the upper deck. Both the upper and lower decks are supported with 4x4 wooden posts which are stained the same color as the rest of the deck material. The existing and proposed deck railing is 36 inches tall and consists of wire cables set 4 inches apart and vertical support posts set approximately 5 feet apart. The proposal includes expanding an existing roofline to provide a cover for the existing upper deck, and an extension of the floor area of the upper deck, which would not be covered. The area of existing upper deck to be covered would not be enclosed. The proposed upper deck would extend to approximately 1 foot northeast of the lower deck.

Along the north façade of the decks, looking from the adjacent property, the extent of visible new development would be an additional 4x4 post, the 6-foot expansion of the deck floor joist, and the 6-foot long expansion of deck railing. Along the south façade of the decks, looking from the

adjacent property, the extent of visible new development would be an additional 4x4 post, the 6-foot expanse of floor joist, the 6-foot long expanse of deck railing, and the leading edge of the expanded roof (which would be 26 feet closer to the south side property line, but which would not extend beyond the footprint of the existing home).

Along the east façade of the decks, looking from the adjacent property, the extent of new development would be the expanded roofline. From the property to the east, which is currently undeveloped, the east façade of the home would lose some of its jogged definition, and could appear slightly larger than it currently does. However, the bulk and scale of the existing home is consistent with other homes in the neighborhood and other homes adjacent to and visible from the property to the east. The roof of the proposed covered deck would be located 24 feet from the rear property line, 6 feet from the south side property line, and 5 feet from the north property line. From site photos and aerial photos it appears that a reasonable physical distance occurs between development on the subject site and adjacent sites to the north and south, minimizing the potential for the proposed development to overwhelm any adjacent properties. Substantial vegetation exists along the side property lines, minimizing visibility between sites. Additionally, the nature of decks, including covered decks, as having horizontal rather than vertical structural bulk and open sides minimizes the overall perceived bulk of decks.

The expansion of the roofline to cover the existing upper deck and an uncovered expansion of the upper deck will not add significant bulk to the overall structures and will not overwhelm adjacent properties. 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; and

**Findings:** The proposed development is at the rear of the home and is not visible to the neighborhood from the street. The property to the rear is currently undeveloped. The properties to the north and south sides of the subject site are the most affected by this proposal. Tall, dense vegetation occurs along the side property lines, obscuring much of the visibility between the sites. The structural bulk of the proposed additions to the existing decks are mainly horizontal, and a reasonable physical separation between developments on adjacent properties minimizes the potential visual and physical impact of the decks on adjacent properties. The proposed deck additions, taken together with the overall existing structure, remain compatible with the character of development in the neighborhood.

The proposal will not significantly detract from the livability or appearance of the residential area. This criterion is met.

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

**Findings:** Only one adjustment is requested. This criterion is not applicable.

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

**Findings:** City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

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

**Findings:** Expansions are proposed to existing horizontal structures, and new development would be minimally more visible than existing development. Physical and visual separation mitigate for any potential impacts that would result from granting the requested adjustment. BES and Site Development have expressed no concerns with stormwater management. 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 expansion of the roofline to cover the existing upper deck and an uncovered expansion of the upper deck will not add significant bulk to the overall structures and will not overwhelm adjacent properties. The proposal will not significantly detract from the livability or appearance of the residential area. All approval criteria are met and this proposal should be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.225, to increase the maximum allowed amount of building coverage from 2,400 square feet to 2,611 square feet, to allow the addition of 252 square feet of new deck area to the existing upper deck, in substantial compliance with the approved plans, Exhibits C-1 through C-4, signed and dated January 8, 2009, 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.4. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 08-180193 AD."

**Decision rendered by:**  **on January 8, 2009**

By authority of the Director of the Bureau of Development Services

**Decision mailed: January 12, 2009**

**Staff Planner: Crystal Hitchings**

**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 November 25, 2008, and was determined to be complete on December 12, 2008.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on November 25, 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 January 26, 2009** 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 **January 27, 2009 – (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:

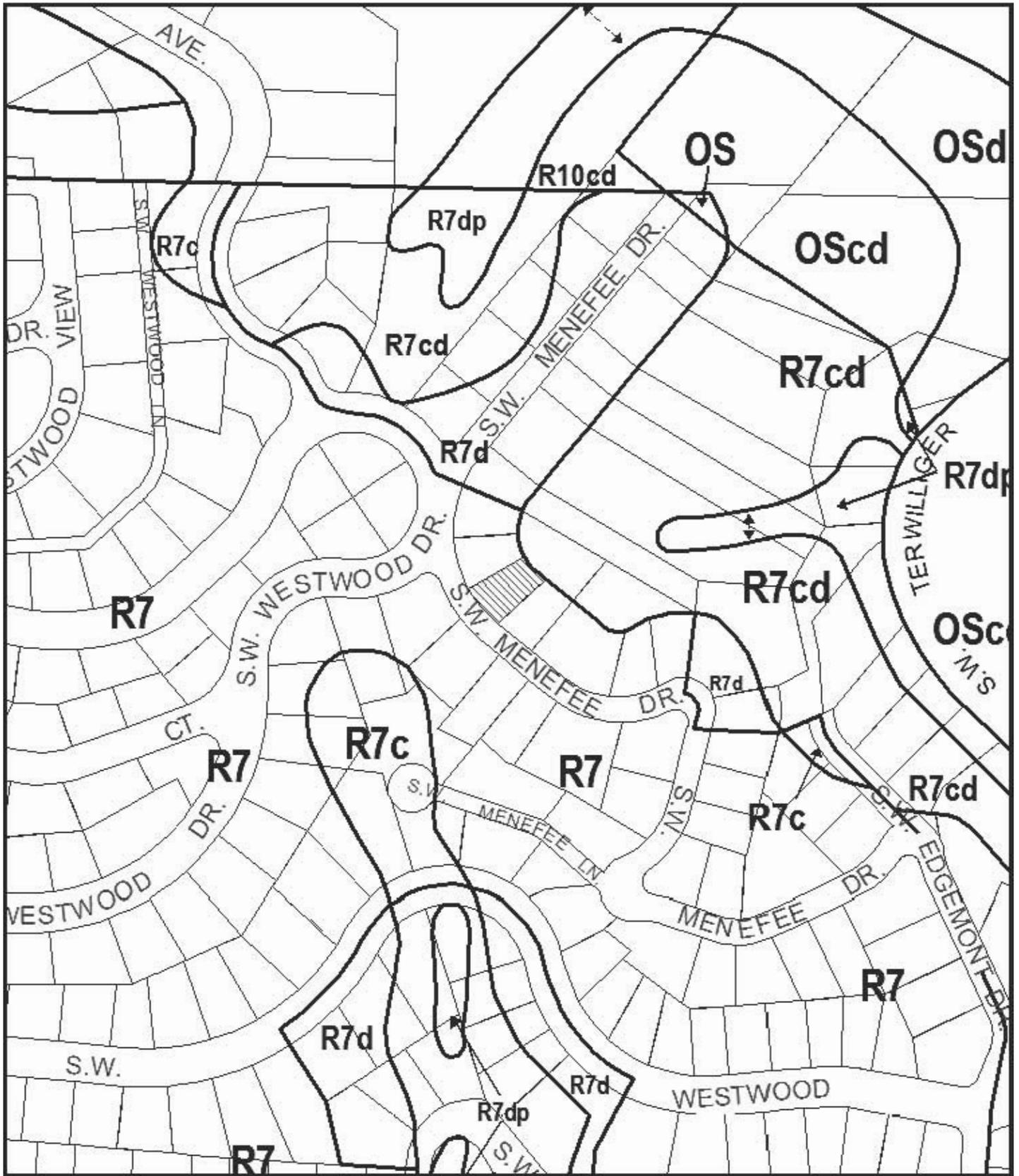
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Rear elevation (attached)
  - 3. South elevation (attached)
  - 4. North elevation (attached)
  - 5. Site photos
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Site Development Review Section of BDS
  - 2. Fire Bureau
  - 3. Bureau of Parks, Forestry Division
  - 4. Life Safety Bureau
  - 5. Bureau of Environmental Services
  - 6. Bureau of Transportation Engineering and Development Review
- F. Correspondence:
  - None Received
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Incomplete letter

**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).**

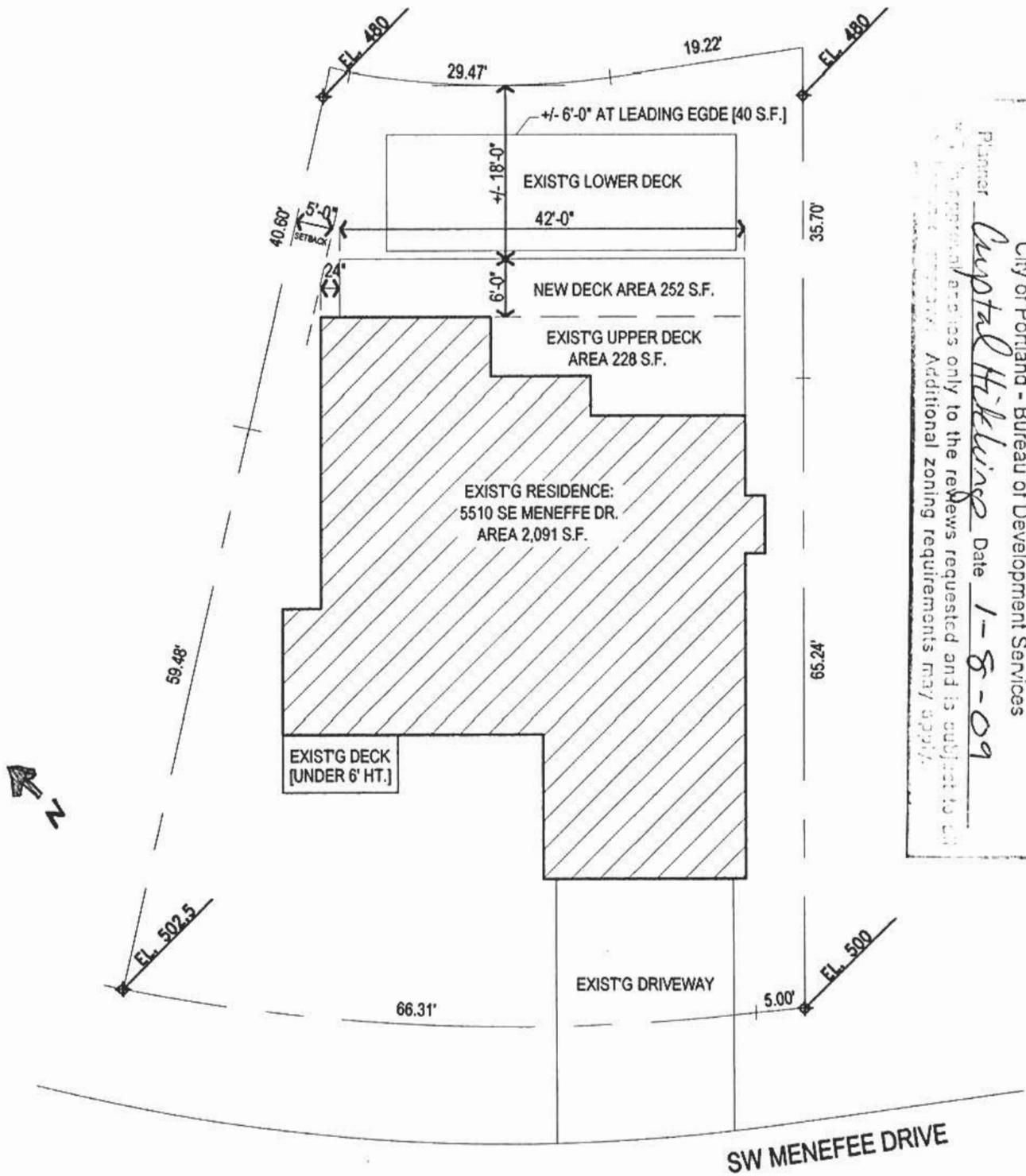


# ZONING

 Site



File No. LU 08-180193 AD  
 1/4 Section 3528  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E16AD 1400  
 Exhibit B (Dec 01, 2008)



\*Approved\*

City of Portland - Bureau of Development Services

Planner Crystal Hillking Date 1-8-09

This approval applies only to the reviews requested and is subject to all applicable codes and regulations. Additional zoning requirements may apply.

**BUILDING COVERAGE**

EXIST'G HOUSE COVERAGE:	2,091 S.F.
EXIST'G UPPER DECK COVERAGE:	228 S.F.
EXIST'G LOWER DECK AREA:	40 S.F.
<b>TOTAL EXIST'G COVERAGE:</b>	<b>2,359 S.F.</b>

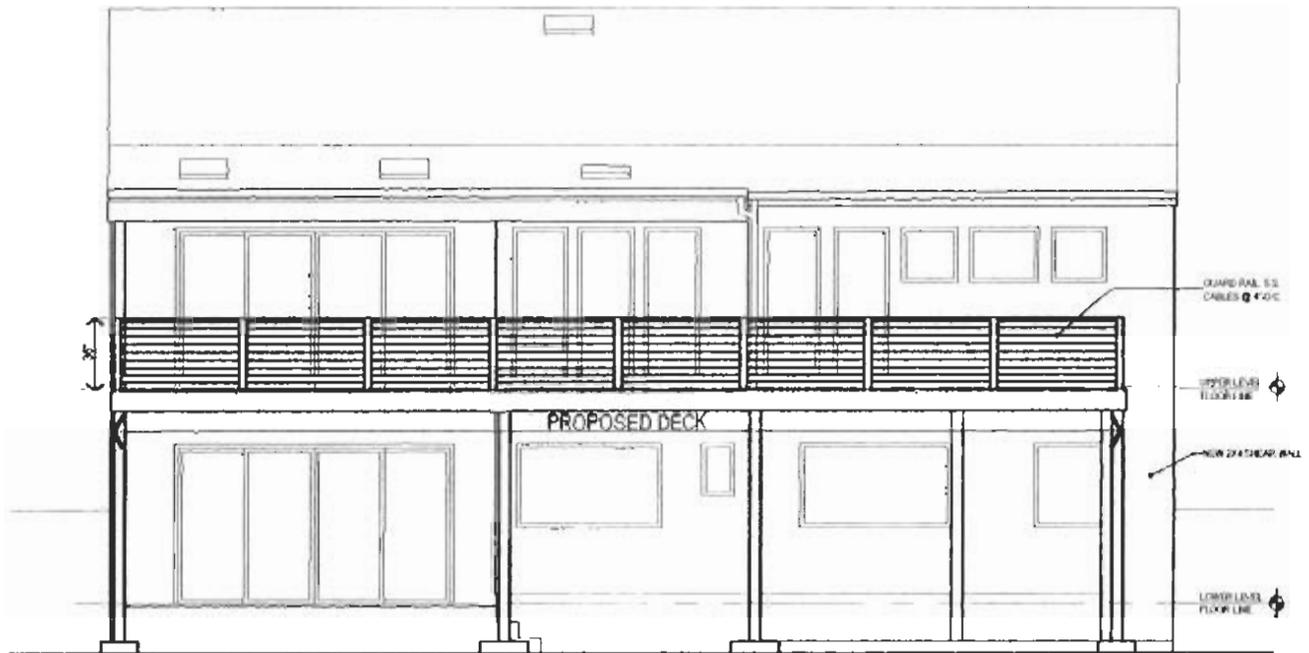
  

PROPOSED DECK EXPANSION:	252 S.F.
<b>TOTAL PROPOSED BLDG. COVERAGE:</b>	<b>2,611 S.F.</b>
<b>MAX. ALLOWABLE COVERAGE:</b>	<b>2,400 S.F.</b>
<b>OVER ALLOWABLE COVERAGE:</b>	<b>211 S.F.</b>

*Exhibit C.1*  
**LU08-180193 AD**

**SITE PLAN** SCALE: 1/16"=1'-0"

<b>EXTERIOR DECK REMODEL</b> 5510 SW MENEFFEE DR. PORTLAND, OR 97239	<b>FORMING ARCHITECTURE LLC</b> <small>WWW.FORMINGARCHITECTURE.COM          3255 NE 75th AVE PORTLAND, OR 97213 503/516.3970</small>	<b>S1</b> NOV. 25, 2008
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REAR ELEVATION at DECK SCALE: 1/8"=1'-0"

City of Portland  
 Bureau of Development Control  
 Planner Capital Hitting  
 Date 1-8-09  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval.  
 Additional zoning requirements apply.

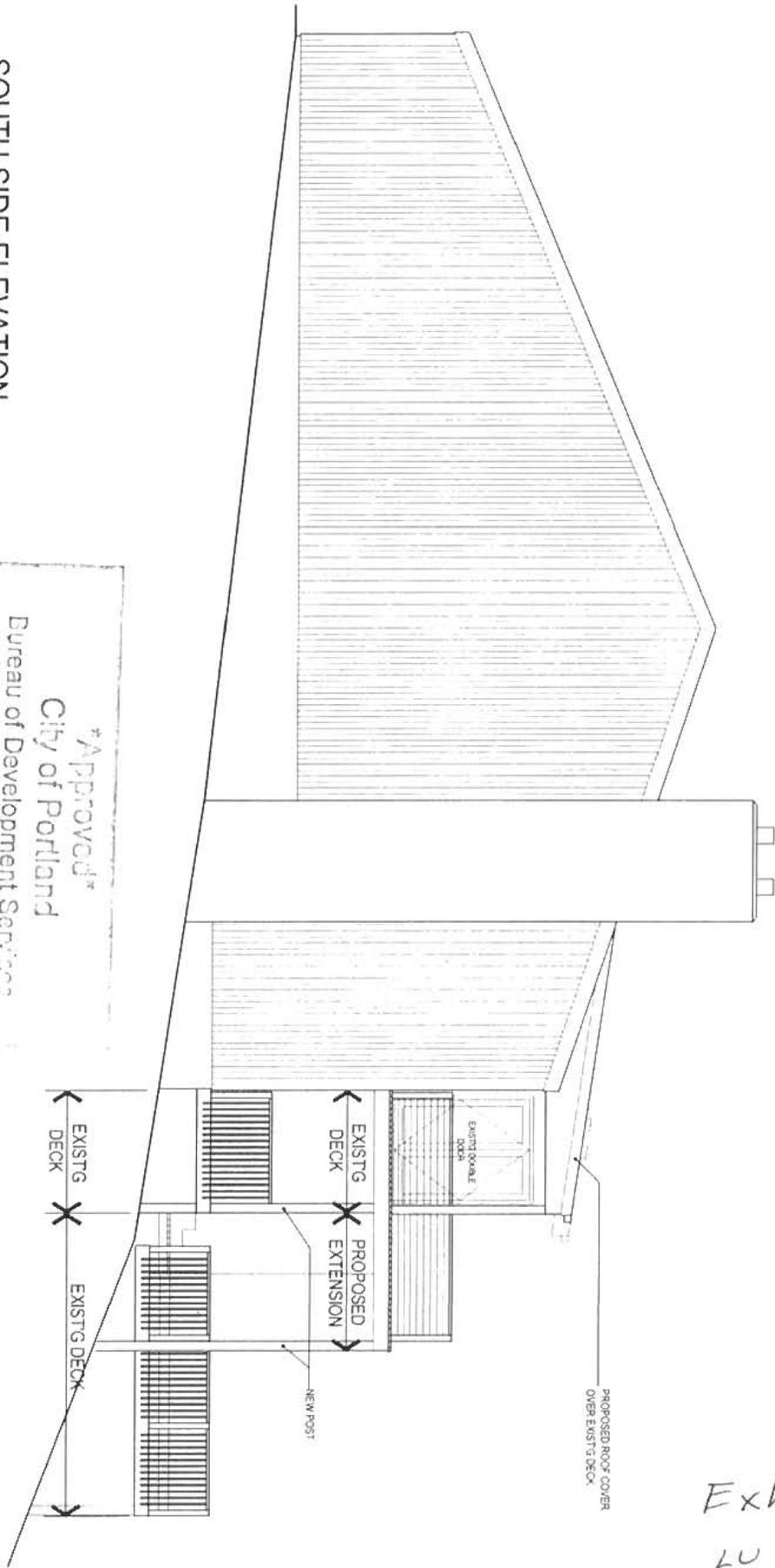
Exhibit C.2  
 LU 08-14/19.3 AN

<p>EXTERIOR DECK REMODEL          5510 SW MENEFFEE DR. PORTLAND, OR 97239</p>	<p>FORMINGARCHITECTURE LLC          WWW.FORMINGARCHITECTURE.COM          3256 NE 75th AVE PORTLAND, OR 97213 503.516.3970</p>	<p>E1          NOV. 25, 2008</p>
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SOUTH SIDE ELEVATION SCALE: 1/8"=1'-0"

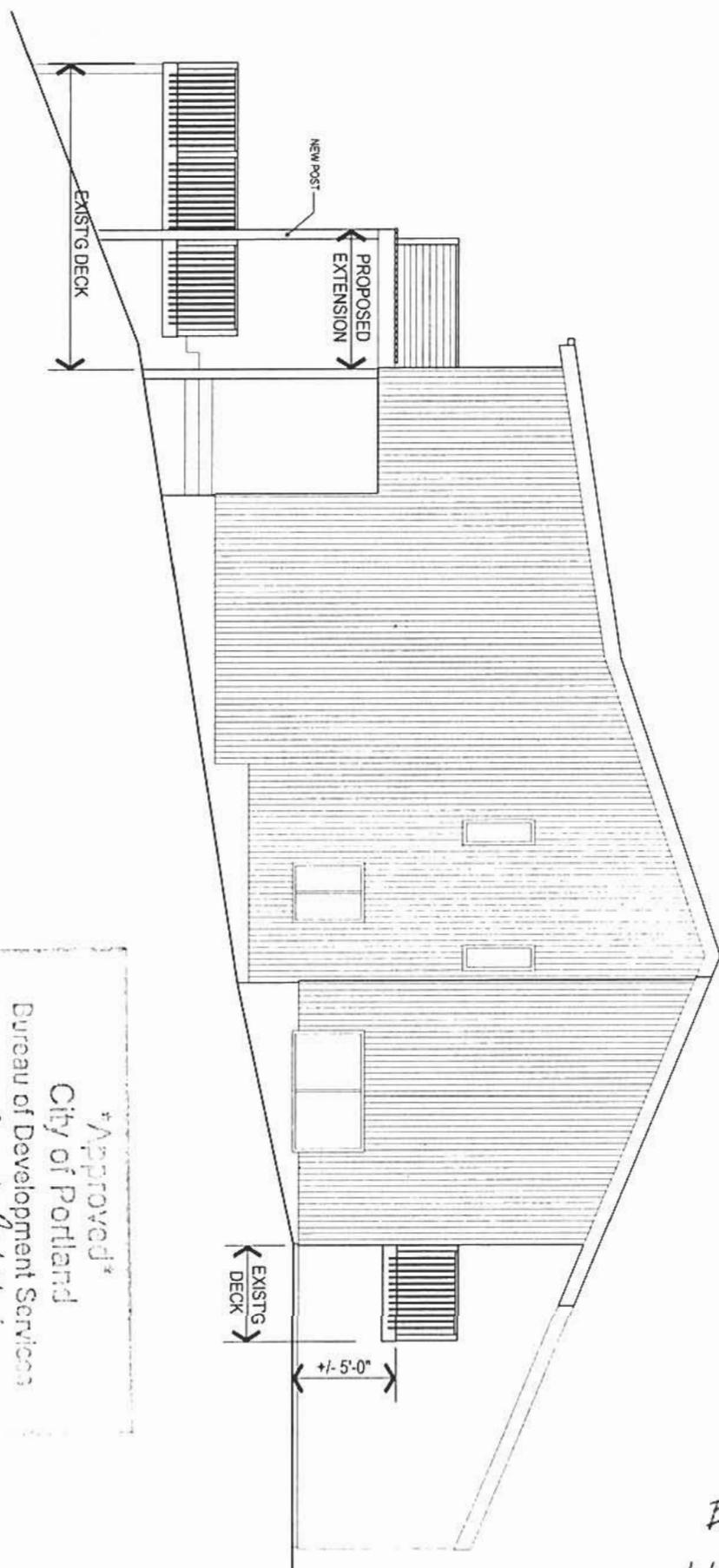
\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner *Leaphyl Hildebrand*  
 Date *1-8-09*

\* This approval applies only to the reviews requested and is subject to all conditions of approval.  
 All vertical zoning requirements are hereby waived.



*Exhibit C-3*  
*LU 08-180193*

EXTERIOR DECK REMODEL 5510 SW MENEFFEE DR. PORTLAND, OR 97239	LU 08-180193	<b>E2</b> DEC. 11, 2008
	FORMING ARCHITECTURE LLC WWW.FORMINGARCHITECTURE.COM 3255 NE 75th AVE PORTLAND, OR 97213 503/516 3970	



NORTH SIDE ELEVATION SCALE: 1/8"=1'-0"

\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner *Lupe Hittinger*  
 Date 1-8-09

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

*Exhibit C-4  
 LU 08-180193*

<p><b>EXTERIOR DECK REMODEL</b>          5510 SW MENEFFEE DR. PORTLAND, OR 97239</p>	<p>LU 08-180193</p>	<p><b>E3</b>          DEC. 11, 2008</p>
	<p>FORMINGARCHITECTURE LLC          WWW.FORMINGARCHITECTURE.COM          3255 NE 75th AVE PORTLAND, OR 97213 503/516.3970</p>	