



**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](http://www.portlandonline.com/bds)

**Date:** May 18, 2009  
**To:** Interested Person  
**From:** Ronda Fast, Land Use Services  
(503) 823-7839 / [ronda.fast@ci.portland.or.us](mailto:ronda.fast@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 09-117278 AD**

#### **GENERAL INFORMATION**

**Applicant:** Stephen Williams, Rainbow Valley Design & Construction Inc.  
4234 SE 30th Ave  
Portland, OR 97202

**Owners:** John & Sarah Brehmer  
5238 SW Idaho St  
Portland, OR 97221

**Site Address:** 5238 SW IDAHO ST  
**Legal Description:** TL 10200 LOT 9&10 BLOCK 5, VERMONT HILLS  
**Tax Account No.:** R860201460  
**State ID No.:** 1S1E18DC 10200  
**Quarter Section:** 3624  
**Neighborhood:** Hayhurst, Lillie Fitzpatrick at 503-892-9921.  
**District Coalition:** Southwest Neighborhoods Inc., Leonard Gard at 503-823-4592.  
**Zoning:** R10 and R10p - Residential 10,000 base zone with a small area of Environmental Protection overlay zoning

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

#### **Proposal:**

In order to construct a two-story addition on the back of an existing house at this site, the applicants request an **Adjustment to reduce the 10-foot side setback (33.110.220, Setbacks) to 5 feet for the building wall and 3 feet for the eaves**. The addition will add 267 square feet to the footprint of the house – 23 square feet of that addition is proposed to extend into the required side setback at the southwest corner of the house.

#### **Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A-F of the Portland Zoning Code.

## ANALYSIS

**Site and Vicinity:** The site is an 11,100 square foot lot on the south side of SW Idaho Street. The east (side) property line abuts an unimproved alley. The lot is irregularly shaped and most of the lots in this area are rectangular-shaped. Additionally, like many homes in this area, the house is oriented at an angle on the lot, following the curval-linear street pattern.

Most of the homes in this area were developed in the 1950's and are on similarly sized lots, ranging from 10,000 square feet to 12,000 square feet in site size. The topography on the site slopes down from the street slightly towards the south.

**Zoning:** The zoning on the site is R10, Single-Dwelling Residential 10,000. Single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households.

A small portion of the lot in the southwest corner is within the Environmental Protection "p" overlay zone. The environmental protection zones are intended to place the highest level of protection to the most important resources and functional values. No development is proposed in the environmental zone.

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

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **April 10, 2009**. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering
- Fire Bureau
- Bureau of Parks-Forestry Division

The Bureau of Environmental Services (BES) and the Site Development Section of the Bureau of Development Services (BDS) responded with comments related to permit review. Both Sections state that existing utility locations, including stormwater facilities, must be shown on the building permit plans along with a proposed method of stormwater management for new addition that conforms to the Stormwater Management Manual. Both groups also commented that the existing public storm easement must be shown on the site plans. (Exhibits E-1 and E-2)

The Water Bureau responded with advisory comments related to permit review. Specifically, they stated that if new fixtures are being added, the applicant will need to fill out a Fixture Unit Count worksheet to ensure that the existing meter is large enough. (Exhibit E-3)

The Life Safety/Plan Review Section of BDS responded with comments stating that the proposal must be designed to meet all applicable building codes and ordinances. (Exhibit E-4)

**Neighborhood Review:** A Notice of Proposal was mailed on April 10, 2009. One written response has been received from adjoining property owners to the south in response to the proposal. The response stated that the criteria A through F would be met with no negative impact on the neighborhood and that the proposal should be approved.

## 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 to provide certainty and rapid processing for land use applications.

### **33.805.040 Adjustment Approval Criteria**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated 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 Zoning Code Section 33.110.220 to allow the home addition to be 5 feet to the side (west) property line, with eaves to 3 feet, rather than the required 10 feet. The purpose of setback regulations, as stated in Zoning Code Section 33.110.220.A, is:

The setback regulations for buildings and garage entrances 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.

The proposed addition does not impact the front yard, nor the relationship between the parking at the garage and the street, nor visibility when driving a car onto the site. Therefore, the 5<sup>th</sup> and 7<sup>th</sup> bullet points above are not applicable.

The immediate properties surrounding the site are similarly sized with spacious yards. Many of the homes on the south side of SW Idaho Street have larger rear setbacks and reduced front setbacks due to the environmental zoning in the immediate area.

The lot is irregularly shaped. At the front of the building, in the northwest corner of the existing home, a 14 foot side setback will be maintained along the front building line. Even after the addition, from the street, the side setback will likely appear to be more than adequate along the front building line.

The proposed addition will expand the building footprint on the back of the existing home. The area proposed to extend into the side setback is nearly 35 feet from the front building line of the home. The setback at the rear of the home, at the southwest corner of the home, is proposed to be 5 feet, with the eave to 3 feet, but is not generally visible from the street.

The applicant notes that the portion of the addition that would encroach into the side setback is a very small proportion of the existing footprint and the footprint of the addition. The applicant also states that there is still generous separation between the closest corner of the proposed addition and the property line for the purposes of maintaining light, air, access for fire fighting and fire protection. A generous separation, nearly 30 feet, is also maintained between the neighboring home to the west and the proposed setback adjustment area.

The applicant states that the home was originally constructed to best take advantage of the topography on the site. This addition was designed to best respond to the existing topography as well. Existing mature vegetation exists between the structures, a reasonable distance is maintained between residences, and the proposed adjustment will allow for flexibility to fit the topography of the site.

For the reasons stated above, 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 requested reduction in setbacks for the small intrusion into the setback for a building addition on an irregularly shaped lot is not expected to have detrimental impact on the livability or appearance of the surrounding residential area. The amount of intrusion into the setback is small, not generally visible from the street, and maintains a reasonable distance between nearby residences. Therefore, 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, therefore, this criterion does not apply.

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

**Findings:** The site does not contain city-designated scenic or historic resources. Therefore, this criterion is not applicable.

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

**Findings:** No impacts are anticipated to result from the adjustment, therefore, no mitigation is warranted. This criterion is not applicable

- 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:** No development is proposed within the environmental zone. Therefore, 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**

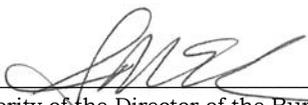
The applicant is requesting approval of an Adjustment to reduce the 10-foot side setback to 5 feet for the building wall and 3 feet for the eaves. A 267 square foot addition will extend into the required setback. Although reduced, there is ample separation between the addition and the adjacent residences. The applicant has submitted information that addresses all the relevant approval criteria. Based upon the above findings, the requested Adjustment meets the applicable approval criteria and should therefore be approved.

**ADMINISTRATIVE DECISION**

Approval of an Adjustment to reduce the 10-foot side setback (33.110.220, Setbacks) to 5 feet for the building wall and 3 feet for the eaves, per the approved site plans, Exhibits C-1 through C-4, signed and dated May 18, 2009, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 through C-4. The sheets on which this information appears must be labeled "Proposal and design as approved by Case File # LU 09-117278 AD".

**Staff Planner: Ronda Fast**

**Decision rendered by:**  **on May 18, 2009**

By authority of the Director of the Bureau of Development Services

**Decision mailed: May 18, 2009**

**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 March 27, 2009, and was determined to be complete on April 10, 2009.

*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 March 27, 2009.

*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. Unless further extended by the applicant, **the 120 days will expire on: August 8, 2009.**

**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 June 1, 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 June 2, 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:

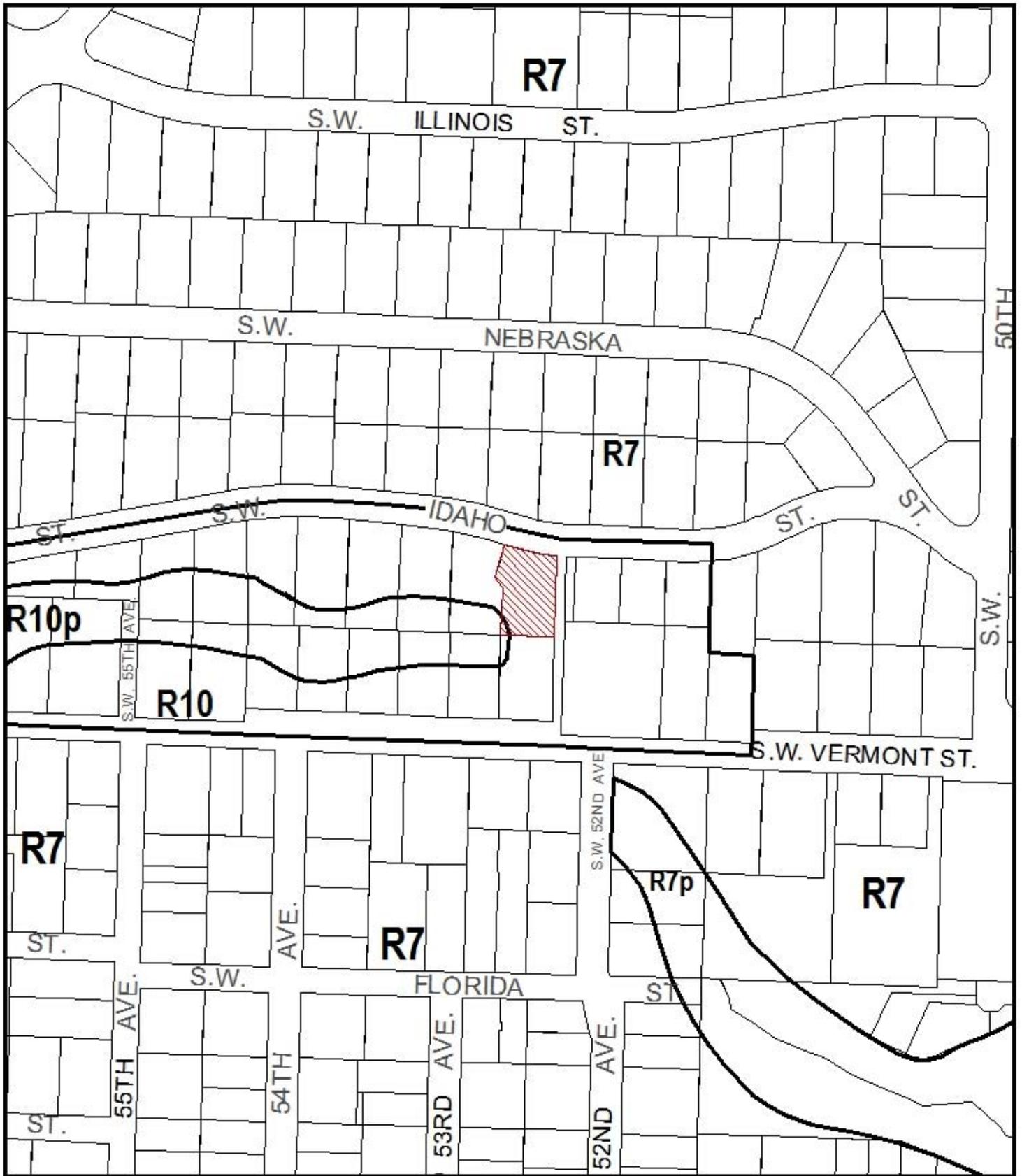
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Proposed Site Plan (attached)
  - 2. Proposed North Elevation (attached)
  - 3. Proposed West Elevation (attached)
  - 4. Proposed South Elevation (attached)
  - 5. Proposed East Elevation
  - 6. Existing Site Plan
  - 7. Existing Elevations (all facades)
  - 8. Existing and Proposed Floor Plans
- 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. Water Bureau
  - 4. Life Safety/Plan Review Section of BDS
- F. Correspondence:
  - 1. Phyllis Broughton, April 27, 2009, comments in support of proposal
- 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 503-823-7300 (TTY 503-823-6868).**



# ZONING

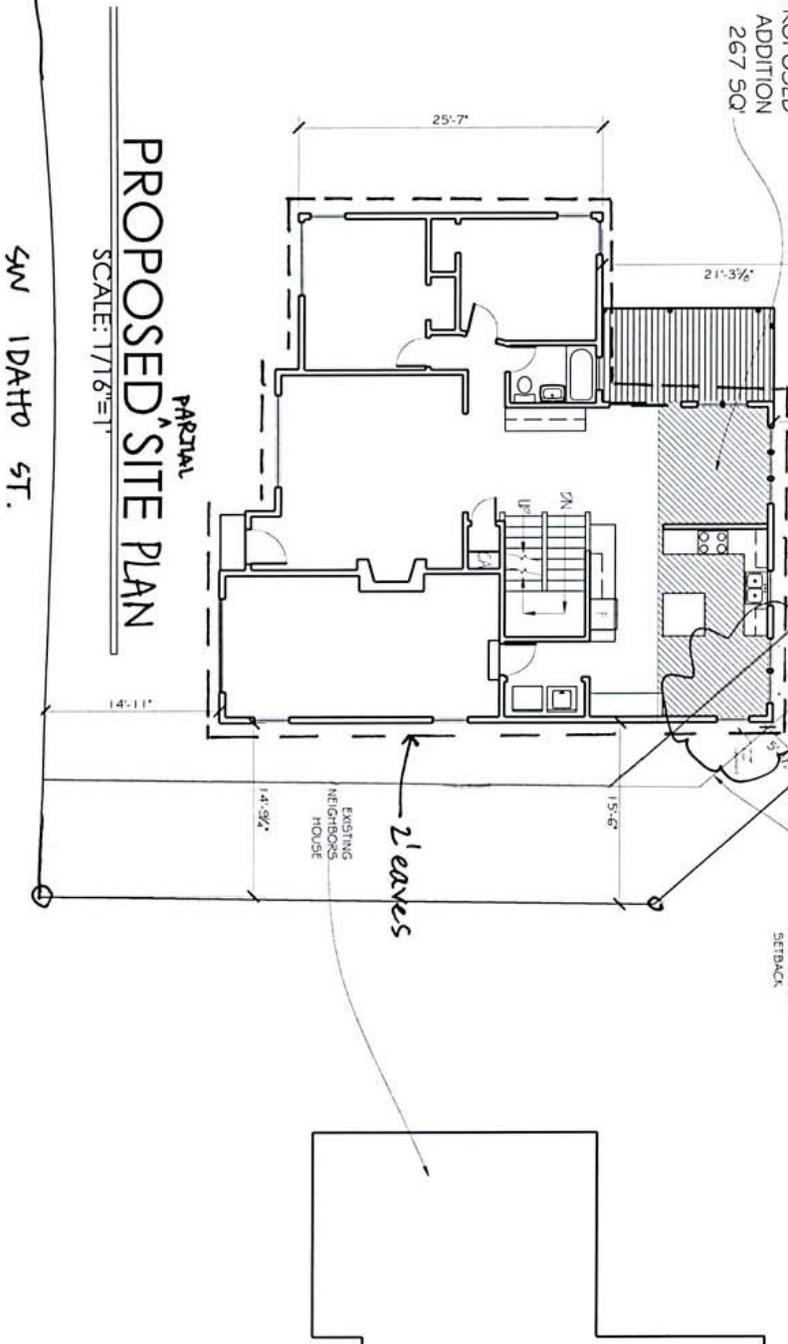
 Site



|             |                   |
|-------------|-------------------|
| File No.    | LU 09-117278 AD   |
| 1/4 Section | 3624              |
| Scale       | 1 inch = 200 feet |
| State Id    | 1S1E18DC 10200    |
| Exhibit     | B (Apr 02,2009)   |

LOT COVERAGE:  
 LOT AREA: 11,800 SQ FT.  
 EXISTING COVERAGE: 1643 (14%)  
 PROPOSED COVERAGE: 1288 SQ FT (12%)

ALLEY



PARTIAL  
**PROPOSED SITE PLAN**

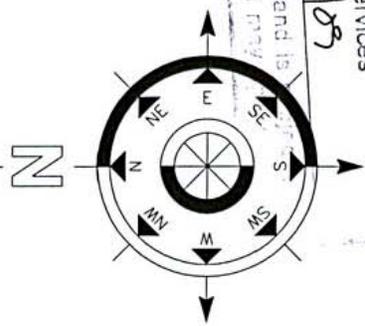
SCALE: 1/16"=1'

SW IDAHO ST.

Planner  
 City of Portland - Bureau of Development Services  
 Approved\*  
 Date 5/18/09

\*This approval applies only to the reviews requested and its terms of approval. Additional zoning requirements may apply.

area of proposed setback reduced from 10' to 5' (3' to five eaves)

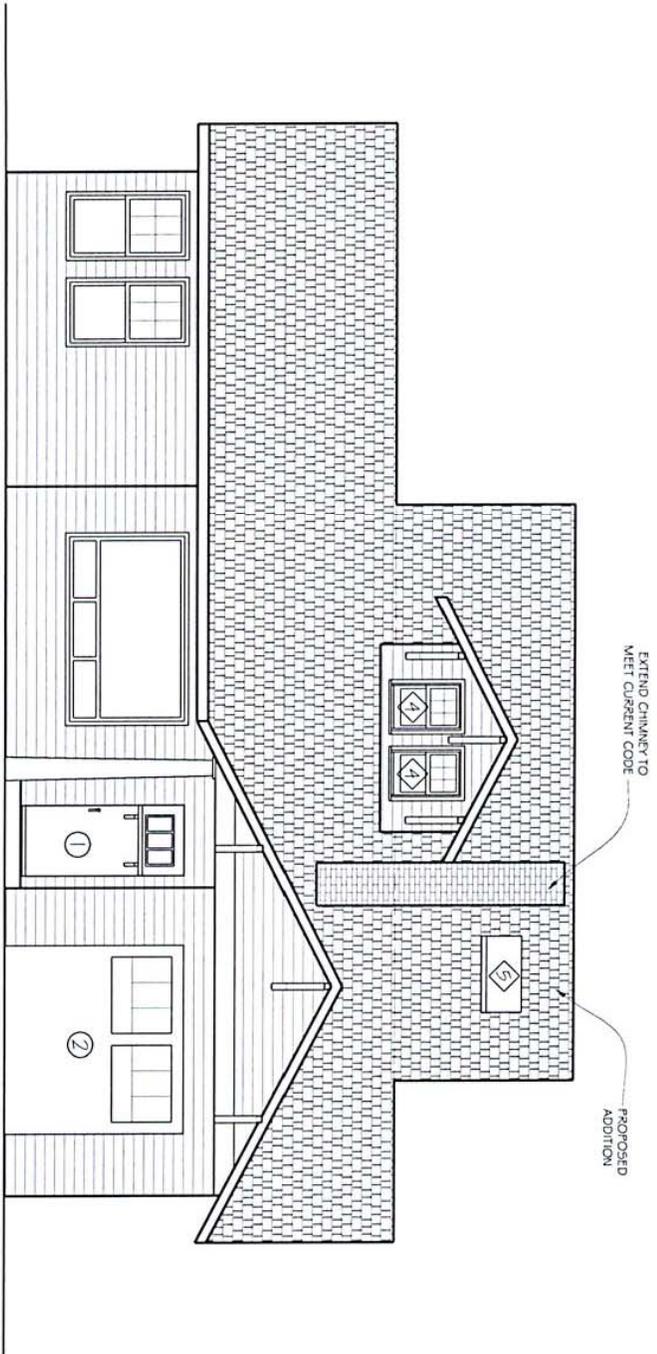


|                       |   |                               |   |  |
|-----------------------|---|-------------------------------|---|--|
| SHEET<br>1<br>OF<br>9 | 5238 SW IDAHO ST.<br>PORTLAND, OR 97214 | REVISIONS<br>DATE: 05-23-2009 | DES: SW<br>DRF: CW<br>DATE: 2009<br>MAR. 18TH | <p>232 SE OAK ST.<br/>PORTLAND, OR 97214<br/>PHONE: 503.239.5958<br/>FAX: 503.239.5958</p> |
|                       | Brehmer                                 |                               |   |  |

\*Approved\*

City of Portland - Bureau of Development Services

Designer: Kenley Ford Date: 5/18/09  
 This approval applies only to the reviews requested and is subject to all applicable codes and regulations. Additional zoning requirements may apply.

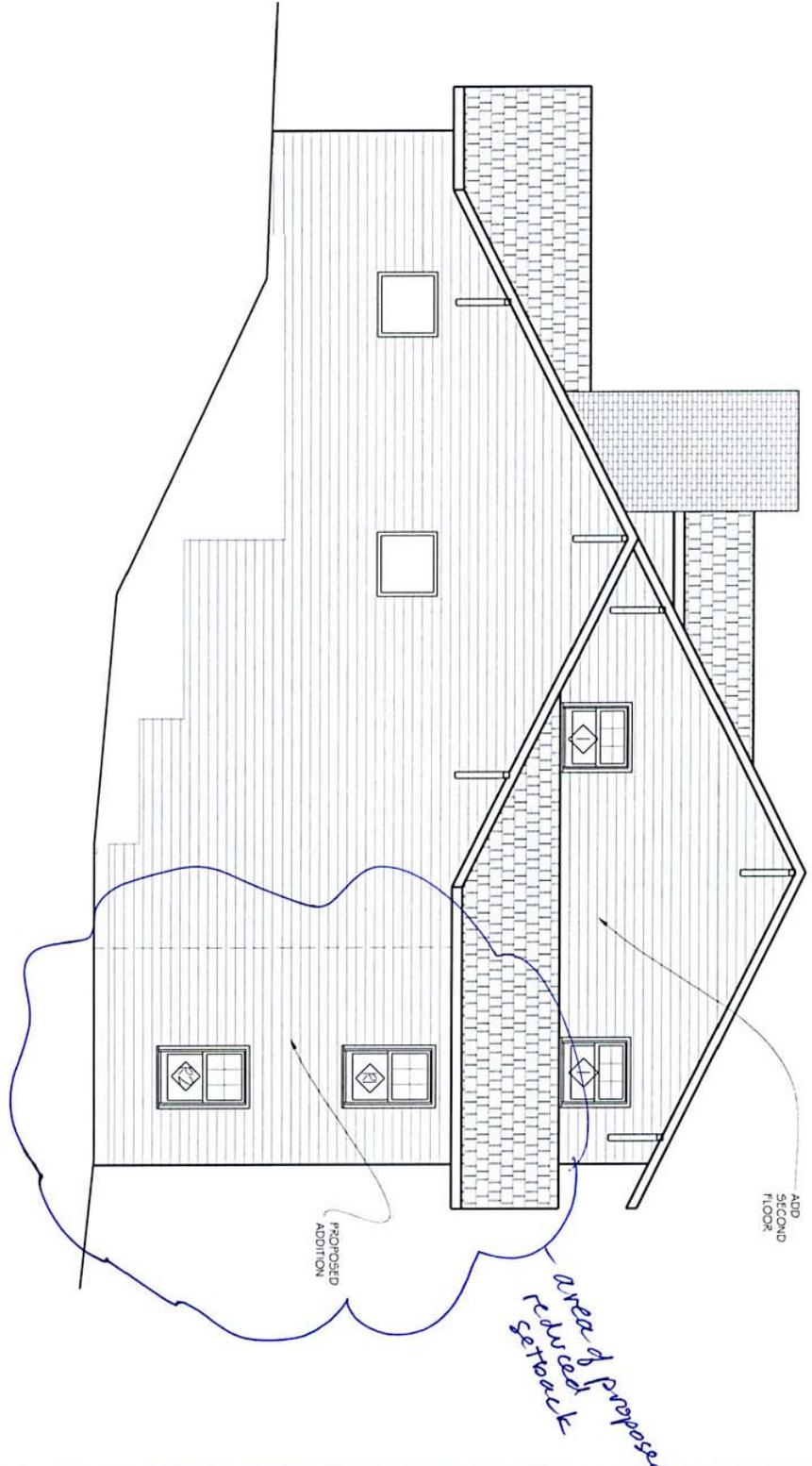


SW IDAHO ST.  
PROPOSED NORTH ELEVATION

SCALE: 1/8"=1'

|                                     |   |                                  |  |  |
|-------------------------------------|---|----------------------------------|--|--|
| SHEET<br><b>8</b><br>OF<br><b>9</b> | 5238 SW IDAHO ST.<br>PORTLAND, OR 97221<br><hr/> <i>Brehmer</i> | REVISIONS<br>DATE:<br>03-25-2009 | DES: <u>SW</u><br>DRF: <u>CW</u><br>DATE: <u>2009</u><br>MAR. 18TH | <br>232 SE OAK ST.<br>PORTLAND, OR 97214<br>PHONE: 503.239.5958<br>FAX: 503.239.5958 |
|-------------------------------------|---|----------------------------------|--|--|

\*Approved\*  
 City of Portland - Bureau of Development Services  
*Paula Ford*  
 Date 5/18/09  
 Additional zoning requirements may apply.



PROPOSED WEST ELEVATION (side)

SCALE: 1/8"=1'

LU 09-117278 AD

|                               |  |                               |   |  |
|-------------------------------|--|-------------------------------|---|--|
| SHEET<br><b>9</b> OF <b>9</b> | 5238 SW IDAHO ST.<br>PORTLAND, OR 97221<br><hr/> Brehmer | REVISIONS<br>DATE: 03-25-2009 | DES: SW<br>DRF: CW<br>DATE: 2009<br>MAR. 18TH | <br>232 SE OAK ST.<br>PORTLAND, OR 97214<br>PHONE: 503.239.5958<br>FAX: 503.239.5958 |
|-------------------------------|--|-------------------------------|---|--|



PROPOSED SOUTH ELEVATION (year)

SCALE: 1/8"=1'

\*Approved\*  
 City of Portland - Bureau of Development Services  
 Planner Paula Ford Date 5/18/09  
 The approval applies only to the reviews requested and is subject to  
 change of approval. Additional zoning requirements may apply.

SHEET  
 7 OF  
 9

5238 SW IDAHO ST.  
 PORTLAND, OR 97221  
 Brehmer

REVISIONS  
 DATE: 05-25-2009

DES: SW  
 DRF: CW  
 DATE: 2009  
 MAR, 18TH

**RAINBOW VALLEY**  
 DESIGN AND CONSTRUCTION

232 SE OAK ST.  
 PORTLAND, OR 97214  
 PHONE: 503.239.5958  
 FAX: 503.239.5958