



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

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Date: June 17, 2009
To: Interested Person
From: Crystal Hitchings, Land Use Services
503-823-7583 / 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 09-127985 AD

GENERAL INFORMATION

Applicant: Leslie and Wind Lothamer
1212 SE 35th Ave
Portland, OR 97214-4234

Site Address: 1212 SE 35TH AVE

Legal Description: S 32' OF LOT 5 BLOCK 47, SUNNYSIDE & PLAT 2 & 3
Tax Account No.: R810411600
State ID No.: 1S1E01AC 08900
Quarter Section: 3134

Neighborhood: Sunnyside, contact Tim Brooks at 503-295-1699.
District Coalition: Southeast Uplift, contact Leah Hyman at 503-232-0010.

Zoning: R2.5, Single-dwelling Residential 2,500

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 the south side setback in order to construct new dormer additions on the second level of an existing 1.5 story home. One dormer will extend across both the north and south facades of the house, and one dormer will be located on the rear (east) façade of the house. The south wall of the north/south dormer will be located 3 feet from the south property line, and the associated eave will be located 2 feet from the south property line. This new second story dormer and eave will be slightly stepped-back from the line of the existing first story wall and eave. The proposed height of the home, measured to the midpoint of the gable of the new dormer, will be approximately 24 feet. The dormer addition itself will extend approximately 4.5 feet higher than the peak of the existing roof and will be approximately 13.5 feet wide at its widest point along the south facade.

The R2.5 zone requires a minimum side building setback of 5 feet. Therefore, approval of an Adjustment to zoning code **Section 33.110.220 and Table 110-3** is required in order to allow the proposed dormer to be located 3 feet from the south property line, and in order to allow the associated eave to be located 2 feet from the south property line.

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 3,200 square foot site is located on the east side of SE 35th Avenue, just south of SE Salmon Street. The site is developed with a 1.5-story single-dwelling home originally built in 1909. The site is 32-feet wide, and the home is located toward the front of the lot with minimal front and side yards, and a larger rear yard. The rear yard contains fruit trees and open lawn, and is surrounded by an existing wood fence, with trees and other vegetation located along the common side and rear property lines. Most nearby lots within 200 feet of the subject site are similarly sized and predominantly developed with single-dwelling residential homes. Development consists of homes built in a variety of styles and a variety of sizes.

The Sunnyside Elementary School is located about 100 feet to the northwest, and the Portland Mennonite Church is located about 200 feet to the south. In this location, SE Salmon Street is designated as a Local Service Access Street, and is developed with a curb, planting strip and sidewalk. The site is 3 blocks north of SE Hawthorne Boulevard, and 4 blocks west of SE 39th Avenue. Beyond 200 feet from the site, development closer to these streets consists of a mixture of multi-dwelling residential and commercial as well as single-dwelling residential.

Zoning: The site and surrounding area to the north, south, east, and southwest is zoned R2.5, Single-dwelling Residential 5,000. Immediately to the west, sites are zoned R5, Single-dwelling Residential 5,000. To the northwest, the Sunnyside School property is zoned OS, Open Space. The single-dwelling zones require side building setbacks of 5 feet.

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 May 20, 2009. The following Bureaus have responded with no issues or concerns (Exhibits E.1-E.7):

- Site Development Section of BDS
- Life Safety Bureau
- Fire Bureau
- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Bureau of Parks-Forestry Division

Neighborhood Review: A “Notice of Proposal in Your Neighborhood” was mailed on May 20, 2009. 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 33.110.220, Setbacks**. The purpose statement for this regulation 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.*

The existing 1.5 story home is approximately 18 feet in height, as measured to the midpoint of the gable. With the new dormer additions, the height will be approximately 24 feet, measured to the midpoint of the dormer gable. The south façade of the new dormer located within the side setback is approximately 12 feet tall (measured to the highest peak) and approximately 13.5 feet wide at its widest point across the dormer roof and about 10 feet wide across the dormer wall, and has about 133 square feet of south-facing wall area. Because the largest new dormer runs north and south across the extent of the roof, the home will appear to be a full two stories in height when looking at the front and rear of the home. From the sides, the home will retain its 1.5-story appearance, and only the 133-square foot dormer facade will be visible at the second story level.

The proposed new dormer within the setback is at the second floor level, and remains within the footprint of the existing structure. There will be no change to the location of the first level. Therefore, separation for fire protection and access for fire fighting will not change from the existing conditions, which are adequate. The proposed additional building height and dormer area will generally maintain existing conditions of light and air for the adjacent lot.

The neighborhood contains a mix of one, one and a half, two, and two and a half story homes. Homes are constructed in a variety of architectural styles, using a variety of decorative embellishments and siding materials. The homes on the adjacent lots to the sides are both one and a half stories in height, and the homes to the rear of and across the street from the subject site are two stories in height. Most homes in the area, including all of those immediately adjacent to the rear and sides of the subject site, have upper-story dormers. Homes with dormers are of various heights and dormers are of various sizes and face in all directions. The proposal to raise the height of the second level of the existing home by adding a 12-foot tall by 10- to 13.5-foot wide dormer results in a home that reflects the scale of existing residential structures in the area, and which continues the mixture of structure heights and architectural styles. The neighborhood is

densely developed with many relatively narrow lots that are just over 30 feet wide. Homes are commonly located within side building setbacks. The proposal to add a second story dormer within the existing footprint and 3 feet from the south side property line is consistent with existing development and reflects the general building scale and location of houses in the neighborhood. The home on the adjacent lot to the rear is approximately 65 feet from the location of the proposed south-facing dormer, and the home directly adjacent to the south is currently located approximately 4-5 feet from the subject house, which appears to be a common physical horizontal separation within the nearby neighborhood. The new dormer will be located above the roof level of that home, preserving the characteristic variation in physical vertical relationships between structures within the nearby neighborhood. Therefore, a reasonable physical relationship between structures is retained.

The home on the immediately adjacent lot to the south is slightly lower in height than the subject home. The windows in the new dormer will look directly out over the roof of the adjacent home and will not be oriented toward any windows on that home, and will not be visible from inside the upper level of the adjacent home. The rear yard of that adjacent lot is nearly 30 feet west of and at a steep angle from the dormer window, in line with the back yard of the subject house, and views from the window to the rear yard of the adjacent site will be limited. Therefore, options for privacy for the adjacent lot to the west will be maintained. The home on the adjacent lot to the rear is approximately 65 feet from the location of the proposed south-facing dormer, with trees and other vegetation separating the rear yards of the adjacent site from the subject site. Additionally, the angle of visibility from the new south-facing dormer to the adjacent lot to the rear is very steep. Therefore, options for privacy for the adjacent site to the rear will be maintained.

The proposal allows adequate flexibility to increase living area in an existing home without reducing outdoor areas or increasing building coverage while remaining compatible with surrounding residences and contributing to the diversity of architectural styles found in the neighborhood.

For these reasons, the purpose statement for setbacks is equally met, and this criterion is met.

B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The nearby residential area is characterized by a mixture of one- to two-plus-story homes of varying architectural styles, several of which appear to be located within the side setbacks, and most of which appear to have upper level dormers of varying sizes and shapes. The proposal to add a new rooftop dormer within the existing footprint of the 1.5-story home within this particular neighborhood context does not detract from the appearance of the residential area. The proposal does not result in any conditions which negatively affect livability of nearby lots. 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. 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: The proposed additional height and wall area of the south-facing façade of the new dormer structure does not add significant bulk to the existing home, and all portions of the dormer will be constructed within the existing footprint. The general scale of the home is maintained and the proposed structure is compatible with other homes in the area. The dormer fits within the existing architectural diversity of the neighborhood, and does not affect privacy, safety, and there are no discernible impacts that would result from granting the 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 proposal to add a new roof-top dormer that is approximately 12 feet tall and from 10 to 13.5 feet in width, within the existing footprint of the home, equally meets the purpose statement for setbacks and meets all other applicable review criteria. This Adjustment request should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to zoning code **Section 33.110.220 and Table 110-3, Setbacks**, in order to allow the proposed dormer on the south side of the existing home to be located 3 feet from the south property line, and in order to allow the associated eave to be located 2 feet from the south property line, in significant conformance with the approved site plans, Exhibits C.1 through C.2, signed and dated **June 15, 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-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-127985 AD."

Staff Planner: Crystal Hitchings

Decision rendered by:  **on June 15, 2009.**

By authority of the Director of the Bureau of Development Services

Decision mailed: June 17, 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 May 12, 2009, and was determined to be complete on May 18, 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 May 12, 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: September 15, 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 July 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.

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 **July 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:

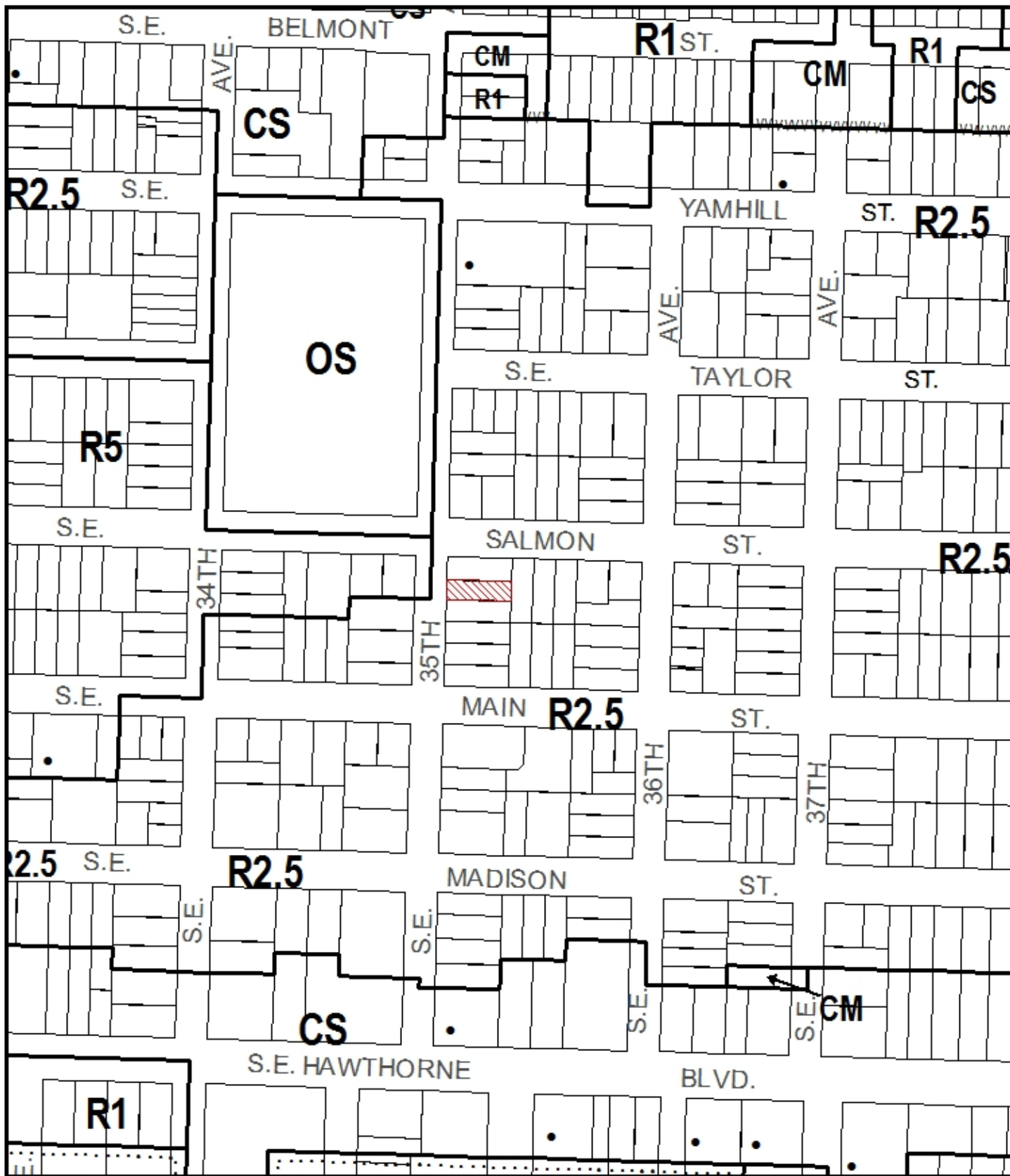
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations (south & rear) (attached)
 - 3. Rear elevation
 - 4. Elevations (all)
 - 5. Site Photos
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
- F. Correspondence:
 - None Received
- 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



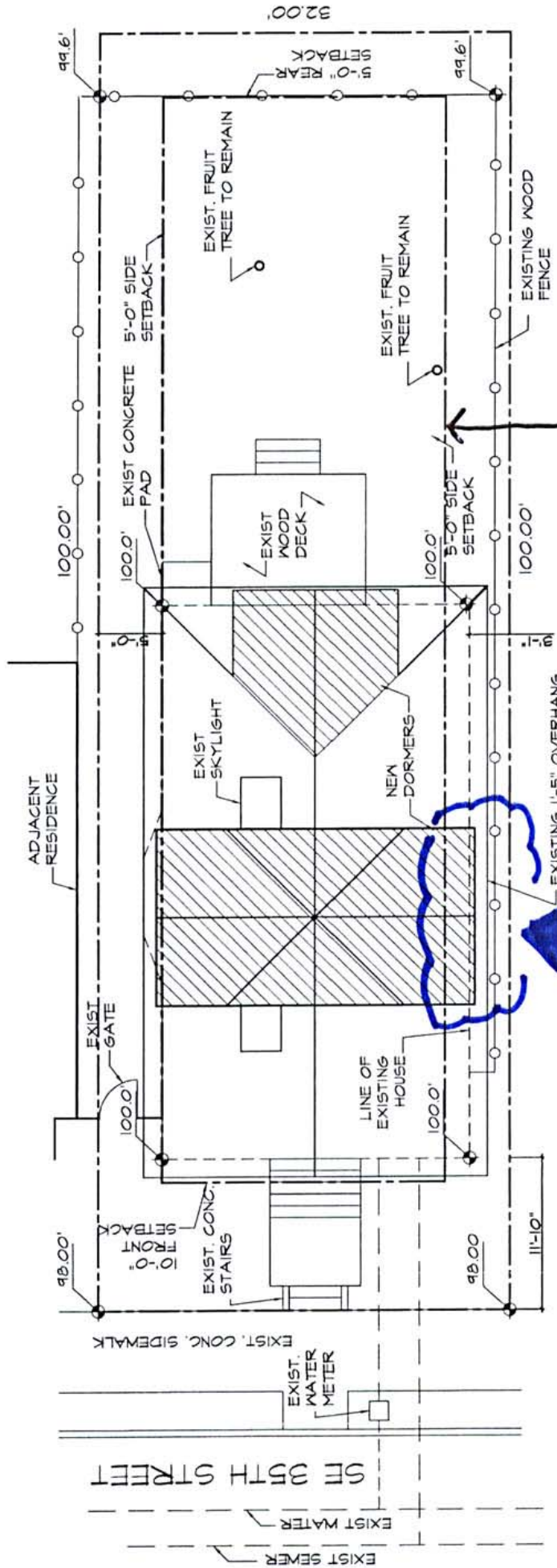
File No. LU 09-127985 AD
 1/4 Section 3134
 Scale 1 inch = 200 feet
 State_Id 1S1E01AC 8900
 Exhibit B (May 13,2009)

Approved

City of Portland - Bureau of Development Services

Planner *Crystal Hixling* Date *6-15-09*

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

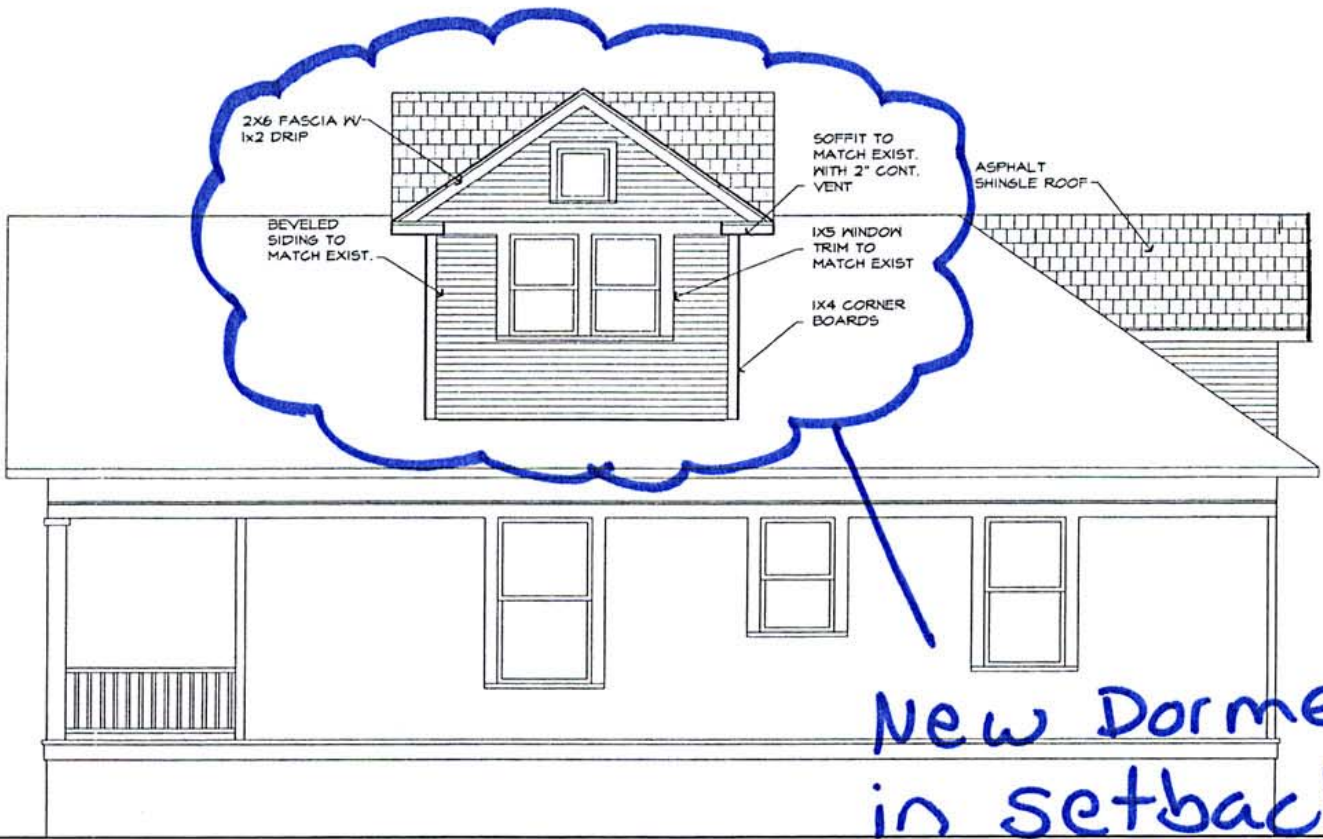


SITE PLAN - 1212 SE 35TH STREET

SCALE: 1" = 10'-0"

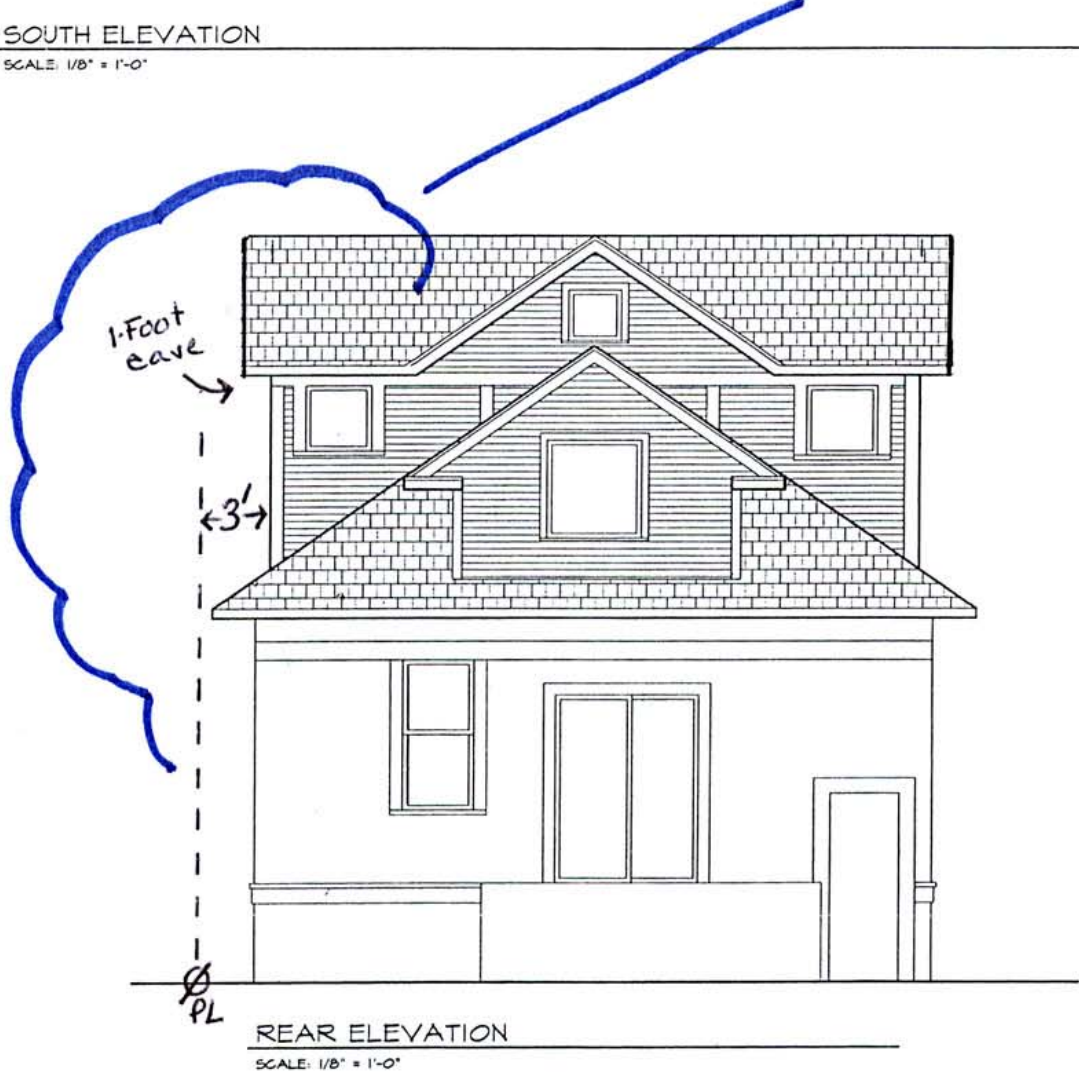
5' Setback

Area of new dormer in setback



*New Dormer
in setback*

SOUTH ELEVATION
SCALE: 1/8" = 1'-0"



REAR ELEVATION
SCALE: 1/8" = 1'-0"

* Approved*

City of Portland - Bureau of Development Services

Crystal H. Hawkins Planner
Approval Date *6-15-09*

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