



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

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Portland, Oregon 97201
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Date: July 21, 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 09-135704 AD

GENERAL INFORMATION

Applicant: Kevin Fischer
4803 NE 32nd Avenue
Portland, OR 97211-7021

Property Owner: Jennifer Morrissey
2724 NE Bryce Street
Portland, OR 97212-1638

Site Address: 2724 NE BRYCE ST

Legal Description: LOT 13 BLOCK 19, ALAMEDA PK
Tax Account No.: R007602480
State ID No.: 1N1E24CB 20800
Quarter Section: 2633

Neighborhood: Alameda, contact Kenneth Bailey at 503-287-1685.
Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321.
District Coalition: Northeast Coalition of Neighborhoods, contact Lauren McCartney at 503-823-4135.

Zoning: R5h, Single-Dwelling Residential with an Aircraft Landing Overlay Zone

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 33.110.220 and Table 33.110-3, Setbacks**, in order to allow the construction of a 30-inch eave overhang on the new second story addition on an existing single story residential structure. The new second story will be located 5-feet from the west side property line, which is the required minimum side setback. The eave will extend 30-inches or 2.5 feet from the house, and will not extend beyond the existing overhang of a bay window on the first floor.

The single-dwelling zones allow eave projections to extend into the setback up to 20% of the setback, or, in this case, 1 foot. Therefore, approval of an Adjustment to **Section 33.110.220 and Table 33.110-3, Setbacks** is required in order to allow the eave to extend 2.5 feet into the setback and be located 2.5 feet from the west side 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 5,000 square foot site is located on the south side of NE Bryce Street, just west of NE 28th Avenue. The site is developed with a 1.5 story, single-dwelling residential structure originally built in 1923, and a detached garage. The home is situated closer to the front of the site than to the rear, and closer to the west side property line than the east. The house is located 5 feet from the west side property line. A driveway extends along the east property line to the detached garage at the rear of the site. The site size, and the location, size, and orientation of the home on the site is typical of development in the larger neighborhood. Development within 200 feet of the subject site is single-dwelling residential, and consists of 1-, 1.5-, 2-, and 2.5-story homes, several of which appear to be located within side setbacks. NE Bryce is designated as a Local Service Access Street, and is developed with an 8-foot planting strip, a 6-foot sidewalk, and an additional 2-foot right-of-way behind the sidewalk.

Zoning: The site and surrounding vicinity is zoned R5h, Single-Dwelling Residential with an Aircraft Landing Overlay Zone. The R5 zone is a high density single-dwelling zone and allows attached and detached single-dwelling structures and duplexes. Minimum required side setbacks are 5 feet.

The Aircraft Landing (h) Overlay Zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. Structures and vegetation within the Aircraft Landing zone are subject to the height limits shown on the Aircraft Landing Zone map. However, the height limits for structures in the R5 zone (maximum height of 30 feet) are more restrictive than the Aircraft Landing zone height limit, so the R5 zone height limit controls. The structure that is the subject of this Adjustment request does not exceed the maximum height limit of the R5 zone. Therefore, the standards of the Aircraft Landing Zone Overlay are not relevant to this Adjustment request.

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 June 25, 2009. The following Bureaus have responded with no issues or concerns (Exhibits E.1-E.5):

- Life Safety Bureau
- Fire Bureau
- Bureau of Transportation Engineering
- Water Bureau
- Bureau of Parks-Forestry Division

The following Bureaus submitted information to assist with the building permit process:

- The **Site Development Section** (Exhibit E.6): requested that proposed gutter/downspout/stormwater discharge information be included on plans submitted for building permit review.
- The **Bureau of Environmental Services** (Exhibit E.7): requested that proposed gutter/downspout/stormwater discharge information be included on plans submitted for building permit review.

Neighborhood Review: A “Notice of Proposal in Your Neighborhood” was mailed on June 25, 2009. One written response was received from a notified property owner in response to the proposal. The respondent requested that a rain gutter be installed on the west eave so as to prevent water runoff from pouring onto them as they access their vehicles.

Staff Response: The proposed eave is located 2.5 feet from the common side property line, and does not extend beyond the existing bay window overhang. As noted above, both Site Development and the Bureau of Environmental Services have requested that gutter and downspouts be shown on the site utility plan submitted for the building permit application. The project will be required to meet the standards of the Stormwater Management Manual.

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 portion of the structure proposed to extend into the setback is the eave overhang on the new second story roof. Because by nature the overhang is a narrow, linear structure attached to the roof, it will not cause additional reduction of light or air flow to the adjacent properties beyond what would occur from construction of the second story itself (which will meet development standards). As well, the eave overhang is located two stories off the ground and will not impede physical access for fire fighting. The adjacent home to the west is 1.5 stories in height, while the proposed subject home is 2 stories in height. The eave will be located 2.5 feet from the property line, and the adjacent house to the west is located approximately 9-10 feet from the common side property line. Considering the vertical and horizontal separation, adequate physical separation remains for fire protection. For these same reasons, a reasonable physical relationship is maintained between the subject eave and the adjacent home.

The neighborhood is characterized by a mix of architectural styles and house sizes. The proposed home reflects a conversion of a smaller bungalow commonly found in the area to a larger bungalow commonly found in the area. Some houses nearby are smaller than the proposed home, while some are larger. The second floor addition remains within the footprint of the existing home, which meets setback requirements. The proposed larger eave reflects proportionally the increased height of the home, and reflects the general building scale and placement of eaves found on other similar homes in the area.

Constructing an eave that matches the new proportions of a house that has extended upward rather than outward allows for development that is compatible with the neighborhood, contributes to the architectural diversity of the neighborhood, and does not remove existing outdoor areas.

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; and

Findings: The proposed eave matches the new proportions of the home, and is consistent with existing development in the neighborhood. The proposed eave will improve the appearance of the new structure compared to a smaller eave that is allowed by right but not in proportion with the height of the house. Fire safety is upheld and therefore livability is maintained. This approval criterion is met.

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

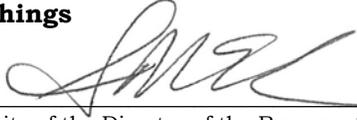
The request to allow the proposed eave to extend an additional 1.5 feet into the side setback in order to match the proportions of the proposed 2-story home meets the applicable approval criteria, and this Adjustment should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to zoning code **Section 33.110.220 and Table 33.110-3, Setbacks**, in order to allow the construction of a 30-inch eave overhang on the new second story addition, to be located 2.5 feet from the west side property line, in significant conformance with the approved plans, Exhibits C.1 through C.3, signed and dated July 17, 2009, subject to the following conditions:

1. 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.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-135704 AD."

Staff Planner: Crystal Hitchings

Decision rendered by:  **on July 17, 2009.**
By authority of the Director of the Bureau of Development Services

Decision mailed: July 21, 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 June 12, 2009, and was determined to be complete on June 23rd, 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 June 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: October 21, 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 August 4, 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 **August 5, 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:

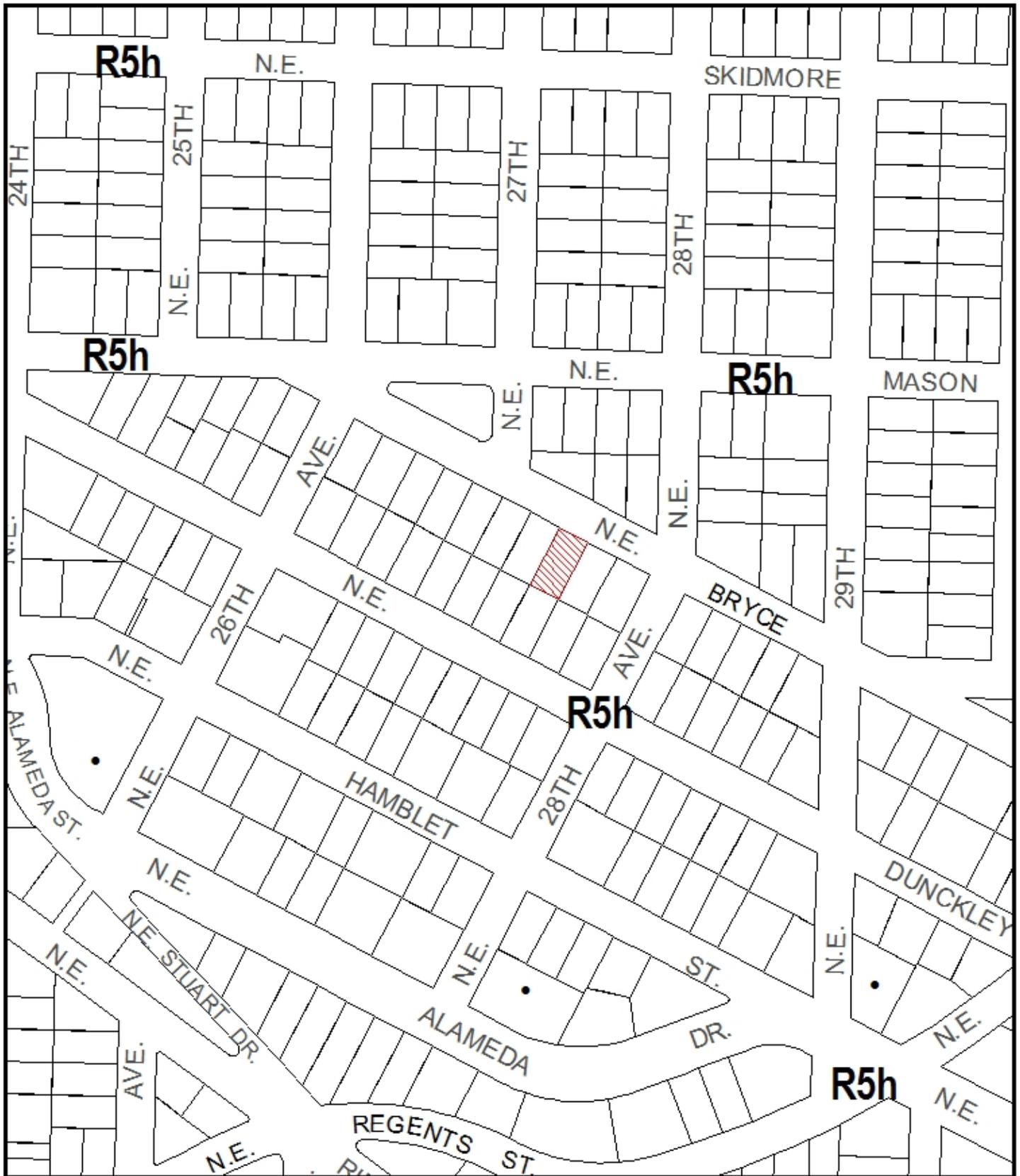
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Proposed Street Elevation (attached)
 - 3. Proposed West Elevation (attached)
 - 4. Existing West Elevation
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Life Safety Bureau
 - 2. Fire Bureau
 - 3. Bureau of Transportation Engineering and Development Review
 - 4. Water Bureau
 - 5. Bureau of Parks, Forestry Division
 - 6. Site Development Review Section of BDS
 - 7. Bureau of Environmental Services
- F. Correspondence:
 - J. Michael Schultz and Shirley Losech; July 16, 2009; concern/comment regarding stormwater runoff
- 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).



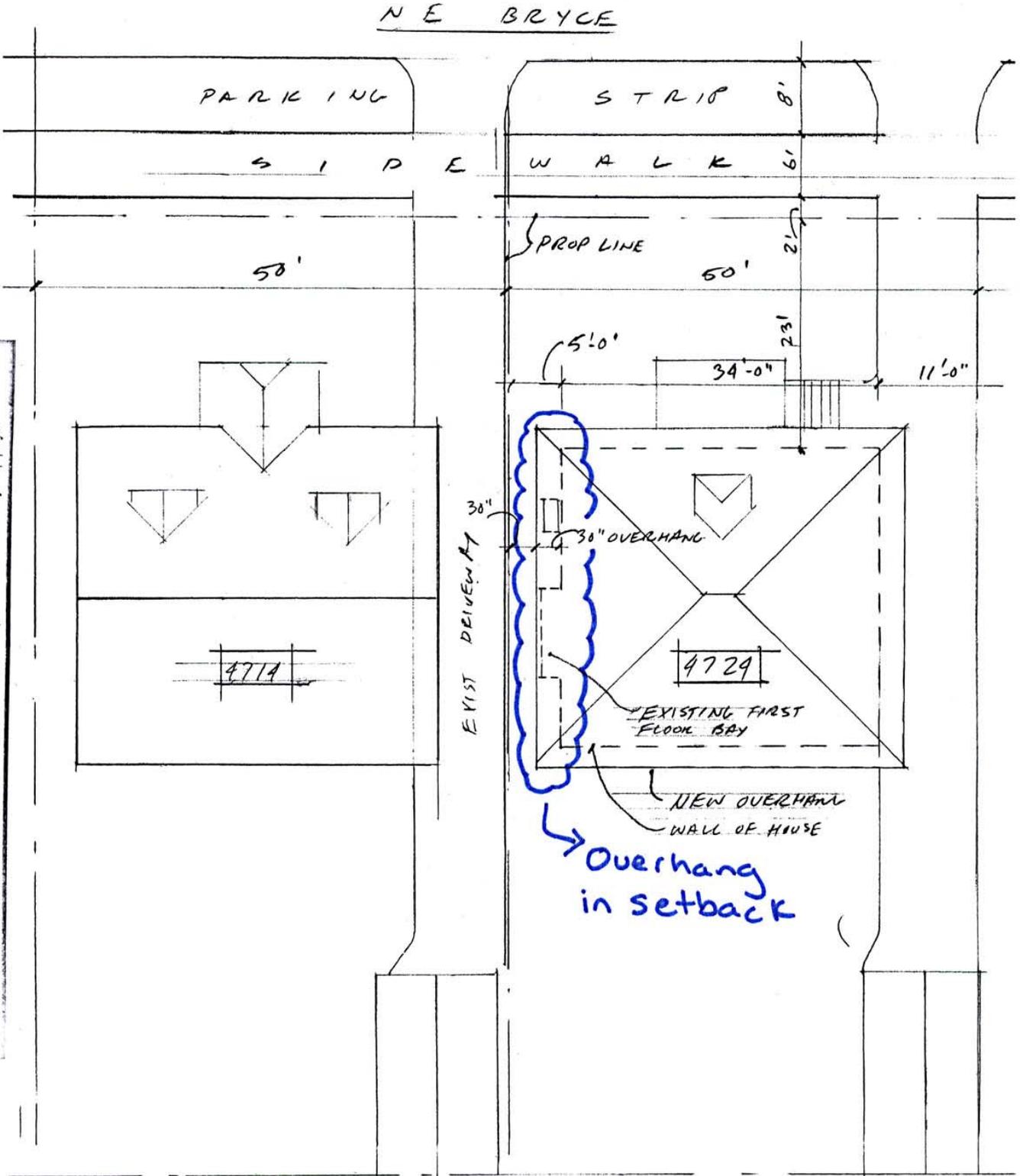
ZONING

 Site



File No.	<u>LU 09-135704 AD</u>
1/4 Section	<u>2633</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N1E24CB 20800</u>
Exhibit	<u>B</u> (Jun 16,2009)

Approved
 City of Portland - Bureau of Development Services
 Planner Cristal Hitchings Date July 17, 2009
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



N
 SITE PLAN 2724 NE BRYCE
 1" = 10'-0"
 LU09-135704 AD Exhibit C.1

Approved
 City of Portland - Bureau of Development Services
 Planner Cristal Hitchings Date July 17, 2009
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



PROPOSED WEST - 2724 NE BRYCE
 Exhibit C.3

Overhang in
 Side Setback



STREET ELEVATION - 2724 NE BRYCE
 Exhibit C.2