



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

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
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www.portlandonline.com/bds

Date: February 3, 2011
To: Interested Person
From: Sheila Frugoli, Land Use Services
503-823-7817 / Sheila.Frugoli@portlandoregon.gov

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 10-198511 AD

GENERAL INFORMATION

Owners/Applicants: Michael Francioch & Danielle Centoni
1824 NE 37th Ave
Portland, OR 97212-5210

Site Address: 1824 NE 37TH AVE

Legal Description: BLOCK 11 LOT 2, HANCOCK ST ADD
Tax Account No.: R356601690
State ID No.: 1N1E25DD 06300
Quarter Section: 2834

Neighborhood: Hollywood, contact Doug Hamilton at 503-249-5839.
Business District: Hollywood Boosters, contact Jan Tolman at 503-281-5497.
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

Plan District: Hollywood - Subdistrict B
Zoning: R2, Multi-Dwelling Residential 2,000

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

Proposal: The applicants are requesting an Adjustment to reduce the required building setback from 5 feet to approximately 3 inches on the side (south) property line and from 5 feet to approximately 2 feet, 3 inches on the rear (east) property line for an elevated children's playhouse structure. The 80 square foot structure is approximately 13.5 feet tall, measured from the ground to the peak of the roof. The structure is accessed via a ladder and open deck.

In response to a complaint, the Bureau of Development Services has cited the newly-built structure as a Zoning Code and Building Code violation (10-175520 VI). The setback Adjustment must be approved in order for the applicants to obtain a Building Permit for the structure.

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 lot is developed with a two-story single dwelling residence with an attached garage that provides on-site parking. A detached play structure, over 10 feet in height with a large landing/deck and small enclosure with openings, is located in the southeast corner of the site, under a large mature deciduous tree. The structure extends above the wood fences that line the side and rear property lines.

The home and other homes in the immediate area were constructed in the early 1900's and reflect the architectural design and quality of construction in that era. The residential area is walkable and is well served with a full array of commercial uses nearby. The site is approximately one block west and one block north of the Sandy/Broadway commercial strip and the Hollywood commercial district.

Zoning: The site is zoned R2, Multi-Dwelling Residential 2,000 and is located within the Hollywood Plan District, Subdistrict B.

The R2 zone is a low-density multi-dwelling zone. It allows approximately 21.8 dwelling units per acre. Allowed housing is characterized by one to three story buildings. The major types of new development will be duplexes, townhouses, rowhouses and garden apartments. These housing types are intended to be compatible with adjacent houses. Generally, R2 zoning is applied near Major City Traffic Streets, Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets. There are no development standards in the Hollywood Subdistrict B that apply to single-dwelling residential development.

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

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed January 6, 2011. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.4)
- Bureau of Transportation Engineering (Exhibit E.2)
- Water Bureau (Exhibit E.3)
- Fire Bureau (Exhibit E.4)
- Site Development Section of BDS (Exhibit E.4)
- Bureau of Parks-Forestry Division (Exhibit E.4)

The **BDS Life Safety Plans Examiner Section** submitted the following comments: A building permit is required for this structure because the height from the ground to the midpoint of the roof exceeds 10'. It is required to meet all applicable building codes, which would include structural requirements for gravity and lateral (wind and seismic) loads and fire rated walls without openings along the side and rear property lines.

Alternatively, if the structure can be reduced in height so that the distance between the ground and midpoint of the room is 10' maximum, no building code review would be required. Please note that being exempt from Building Code requirements would not waive Zoning Code requirements.

More information regarding building code requirements can be obtained by visiting the Bureau of Development Services Development Services Center - 1900 SW 4th Ave, 1st floor, or online at: <http://www.portlandonline.com/bds/>, or by calling (503) 823-1456.(Exhibit E.1)

Neighborhood Review: A “Notice of Proposal in Your Neighborhood” was mailed on January 6, 2011. Two written response has been received. Nearby neighbors submitted letters of support for the Adjustment stating:

- The children’s structure is welcomed in the neighborhood.
- The “tree house” is charming.(Exhibit F.1 and F.2)

ZONING CODE APPROVAL CRITERIA

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 relevant purpose of building setbacks, per Section 33.110.220.A are to:

- maintain light, air, separation for fire protection, and access for fire fighting;
- reflect the general building scale and placement of development in the City’s neighborhoods and promote a reasonable physical relationship between residences;
- promote options for privacy for neighboring properties, and
- 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.

The development standards in the R2 zone require detached structures such as sheds, shops, artist studios and play structures that are taller than 6 feet in height to be set back a minimum of five feet from side and rear property lines. The applicants are requesting approval of an Adjustment to reduce the required setbacks, in order to allow a recently constructed children’s play structure to remain in its current location.

The structure is comprised of an elevated 32 square foot deck or platform and a 40 square foot, A-frame type enclosure. The enclosure has opening on its west and east sides. The deck is approximately 7 feet from ground level. The height of the structure is 13.5 feet tall. Given its height, relative location to the property lines, the structure is relatively prominent. The structure can be seen from both NE 37th and NE 38th Avenues as well the adjacent properties. The deck and opening on the east side of the building provide views from the structure into the rear yards of the homes at 1816 NE 37th Avenue and 1823 NE 38th Avenue. There could be a loss of privacy; however, no comments were submitted by the property owners who would be most impacted. Two letters of support from nearby property owners were submitted. Staff expects that if the play structure was creating impacts to adjacent privacy property owners would have raised the issue.

There will be no change in access for fire fighting, which is seen as adequate by the Fire Bureau. As constructed, the structure requires a Building Permit. According to the submitted exterior elevations, from the ground to the mid-point of the structure, the structure is approximately 10 feet, 3 inches tall. The Building Code requirements apply when detached accessory structures are over 10 feet tall. In order to retain, as constructed, the applicants must obtain a Building Permit. Structural and fire separation requirements will apply. An issued, inspected and finalized Building Permit will satisfy the city’s life safety requirements. *Note: The applicants could modify the structure to reduce its height so that the building code requirements would not apply. An inspection of the modified structure could be completed under an issued Zoning Permit.*

There is negligible impact on light and air for the adjoining properties. The structure is relatively small. Further, it is located under a large deciduous tree which has a greater affect on sunlight.

For the reasons stated above, reducing the required setbacks for the play structure will still equally meet the purpose of the regulation. Therefore, 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: Even though the structure is visible from the adjacent properties, the proposal to reduce the required setbacks from the south and east property lines will not create significant negative impact on the appearance of the residential neighborhood. The subject site is developed with a 2-story home and adjacent lots are developed with homes of comparable scale. The play structure does not dominate the larger homes. The support structure, deck, and railing are constructed with wood and the enclosure is finished with wood shingles. The scale of the structure and materials are compatible with the character of the residential area.

An elevated structure with opening could create a situation where children's activities, noise and presence would impact the abutting sites. Children's presence is joyful for some and bothersome to others. Given that staff did not receive any comments stating objections to the structure and/or use of the structure for play, staff must conclude that the structure does not create livability impacts. 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 standard—setbacks is under Adjustment review. Therefore, this criterion does not apply.

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

Findings: There are no scenic or historic resources on the. Therefore, this criterion does not apply.

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

Findings: No impacts from the proposal have been identified. Therefore, this criterion does not apply.

- 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 located in an environmental zone. Therefore, this criterion does not apply.

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

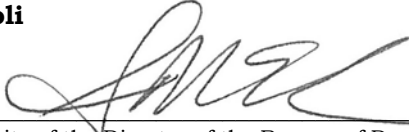
The applicant has provided information to demonstrate that the adjustment will comply with the Adjustment Approval Criteria, and therefore can be approved, per the plans and elevations. Approval of building permits is still required.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the required building setback (33.110.220) from 5 feet to approximately 3 inches on the side (south) property line and from 5 feet to approximately 2 feet, 3 inches on the rear (east) property line for an elevated children's playhouse structure. per the approved plans, Exhibits C.1 and C.2, signed and dated January 31, 2011, subject to the following condition:

- A. To retain as constructed, a Building Permit is required. If the structure is modified to reduce its height and make it exempt from Building Permit requirements, a Zoning Permit is required to verify compliance with this review. As part of the Building or Zoning 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 and C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 10-198511 AD."

Staff Planner: Sheila Frugoli

Decision rendered by:  **on January 31, 2011**
By authority of the Director of the Bureau of Development Services

Decision mailed: February 3, 2011

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 December 7, 2010, and was determined to be complete on December 30, 2010.

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 December 7, 2010.

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 February 17, 2011** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, 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 call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, 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 **February 18, 2011 – (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. Exterior Elevations (attached)
 3. Photos of the Play Structure
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Life Safety Plan Review Section of BDS
 2. Bureau of Transportation Engineering and Development Review
 3. Water Bureau
 4. TRACS Print-out – "No Concerns" from Fire Bureau, Site Development Review Section of BDS, and Bureau of Environmental Services
- F. Correspondence:

1. Dick Ragland and Linda Tester, January 10, 2011, letter supporting the Adjustment request.

2. Chad Gilless and Sunny Simpkins, January 27, 2011, e-mailed letter supporting the request.

G. Other:

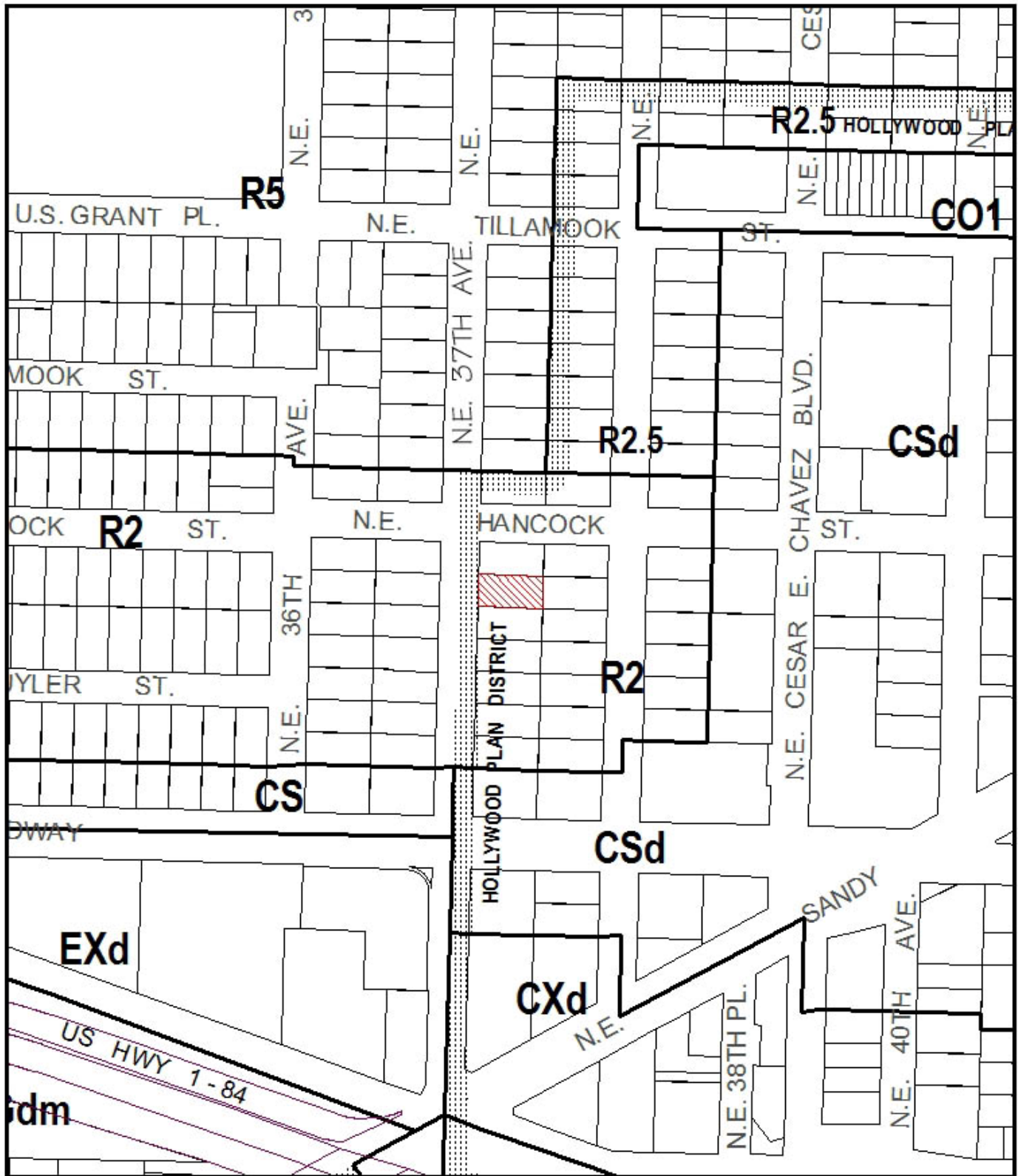
1. Original LU Application

2. Site History Research

3. BDS Notice of Zoning and Building Violations Letter to Applicant, Oct. 1, 2010

4. Code Compliance photos of structures

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



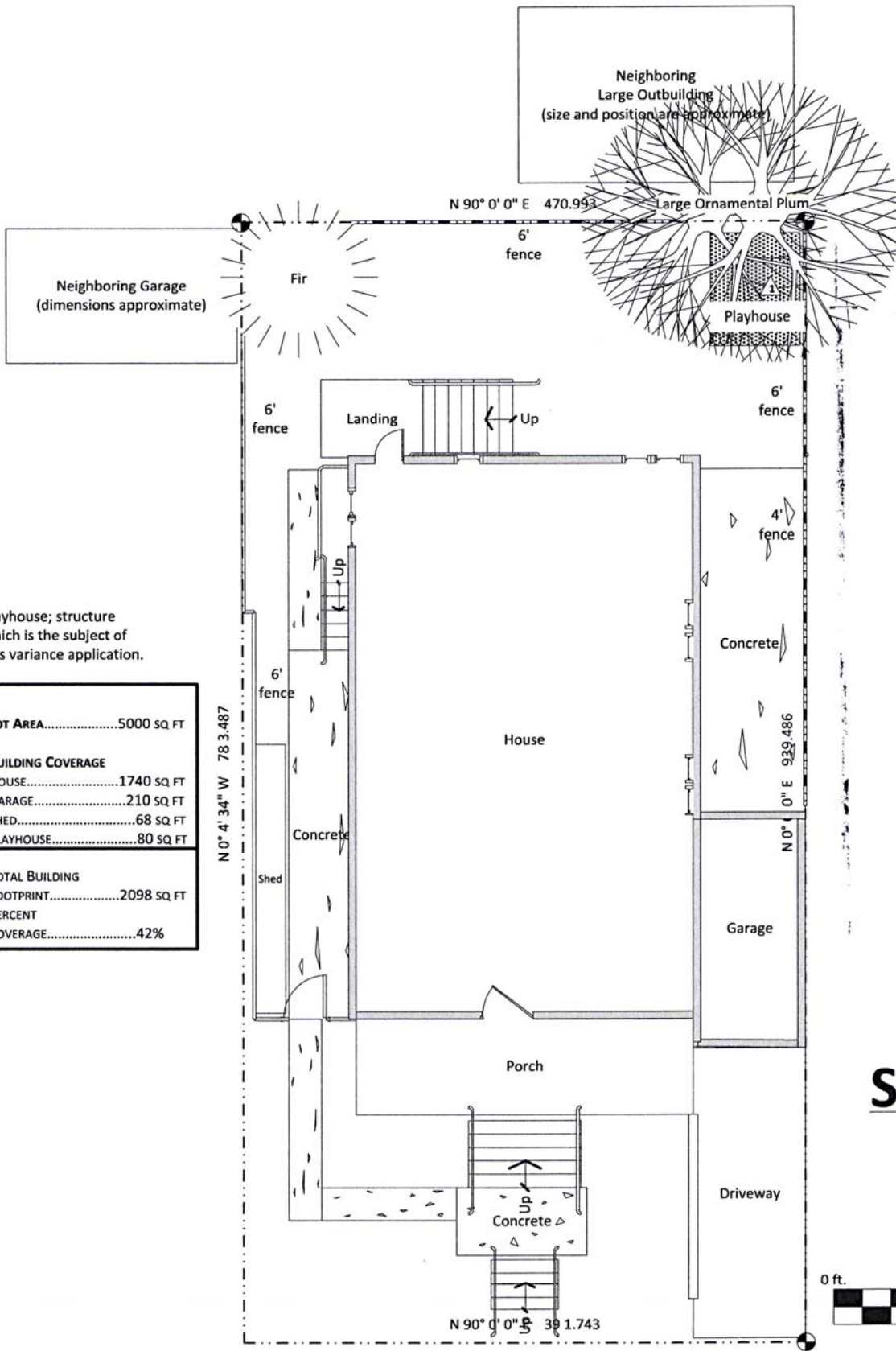
ZONING

 Site



This site lies within the:
HOLLYWOOD PLAN DISTRICT

File No.	LU 10-198511 AD
1/4 Section	2834
Scale	1 inch = 200 feet
State_Id	1N1E25DD 6300
Exhibit	B (Dec 08, 2010)



⚠ Playhouse; structure which is the subject of this variance application.

LOT AREA.....	5000 SQ FT
BUILDING COVERAGE	
HOUSE.....	1740 SQ FT
GARAGE.....	210 SQ FT
SHED.....	68 SQ FT
+ PLAYHOUSE.....	80 SQ FT
<hr/>	
TOTAL BUILDING FOOTPRINT.....	2098 SQ FT
PERCENT COVERAGE.....	42%

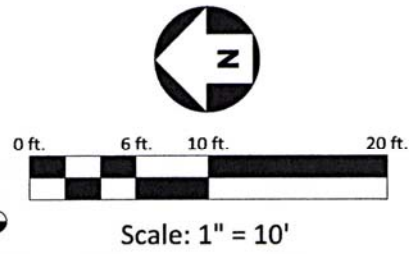
Approved

City of Portland - Bureau of Development Services

Planner Shirley Ferguson Date 1/31/11

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

SITE PLAN



Project Address
 1824 NE 37th Avenue
 Portland, OR 97212

Legal Description
 Hancock St. Addition,
 Block 11, Lot 2
 R175520

LU10-198511 AD

IMPERVIOUS AREA

DRIVEWAY _____

PATIO _____

WALK _____

ROOF AREA
(INCL. OVERHANG) _____

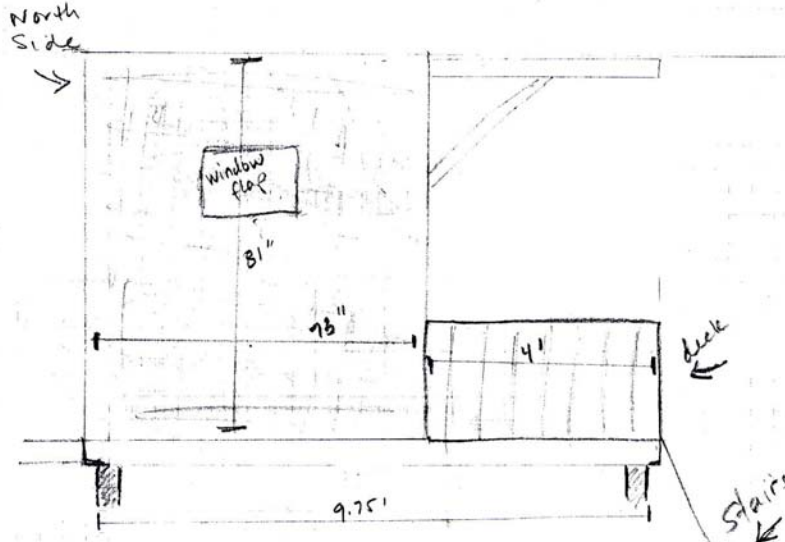
TOTAL _____

BUILDING COVERAGE

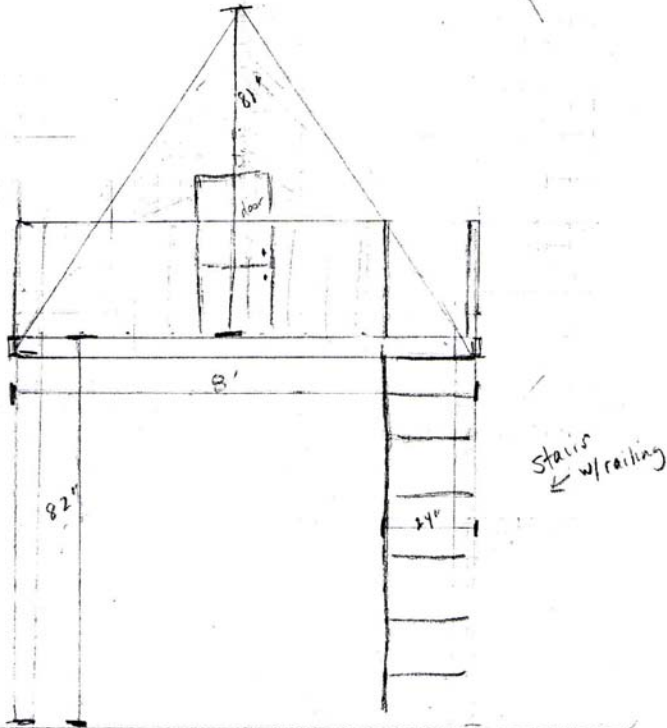
BUILDING FOOTPRINT 80 sq Ft

LOT AREA

5000 Sq. Ft



Front



City of Portland - Bureau of Development Services
 Planner Shirley Krugel Date 1/31/11
 * This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

Approved

PROJECT LEGAL

Hancock St. Addition
Block 11, lot 2
R175520

PROJECT ADDRESS

1824 NE 37th Ave
Portland, OR
97212

SITE PLAN

Scale
1" = 2'

LU10-198311 AD

