



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

FROM CONCEPT TO CONSTRUCTION

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Date: March 29, 1012
To: Interested Person
From: Kathy Harnden, Land Use Services
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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 12-110817 AD

GENERAL INFORMATION

Applicant: Kevin Partain
223 NE 56th Ave
Portland, OR 97213

Owner: Renaissance Custom Homes LLC
16771 Boones Ferry Rd
Lake Oswego, OR 97035-4213

Site Address: 820 SE LINN ST

Legal Description: BLOCK 22 LOT 1 TL 3700, SELLWOOD; BLOCK 22 LOT 1&8 TL 3701, SELLWOOD

Tax Account No.: R752701680, R752701670

State ID No.: 1S1E26BB 03700, 1S1E26BB 03701

Quarter Section: 3931

Neighborhood: Sellwood-Moreland, contact Ellen Burr at 503-234-2233.
Business District: Sellwood-Westmoreland, contact Chuck Martin at 503-230-9401.
District Coalition: Southeast Uplift, contact Leah Hyman at 503-232-0010.

Plan District: None
Other Designations: None

Zoning: R5 – Residential 5,000, high density, single dwelling residential
Case Type: AD – Adjustment
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: The applicant proposes to construct a 289 square foot, triangular-shaped deck along the west side of a house that is currently under construction. The deck will be adjacent to SE Grand Avenue, an undeveloped right of way that currently is covered in grass. The elevated, triangular shaped deck will intrude into the 10-foot-wide west setback by six feet, leaving 4 feet

of setback area between it and the property line. The deck will be elevated approximately 6 feet to match the height of the first floor of the house. A previous adjustment was granted for the house to allow the southwest corner of the house and a section of the outside stairway to be located almost 5 feet into the same setback. Note: Because the site is a corner lot, and because it's SE Grand frontage is shorter than the SE Linn frontage, SE Grand is considered the front property line for this corner lot. Therefore, a 10-foot setback is required; otherwise, the setback requirement would be 5 feet along SE Grand.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are 33.805.040, A.-F., Adjustment Approval Criteria

ANALYSIS

Site and Vicinity: The property is located in southeast Portland approximately 400 feet north of the City's south City Limits boundary with the City of Milwaukie. The Willamette River is about 630 feet west of the site. A rail line runs northwest to southeast approximately 150 feet east of the site. Existing development in the area is a mix of attached and detached single and multi-dwelling residences.

Zoning: The site is located in the R5 zone, which is intended to foster the development of single-dwelling residences on lots having a minimum area of 3,000 square feet. Newly created lots must have a minimum density of 1 lot per 5,000 square feet of site area. The provisions of the "a" overlay are not relevant to this proposal.

Land Use History: City records indicate that prior land use reviews include the following:

LU 11-142971 PR A lot consolidation and property line adjustment that helped create the current lot.

LU 11-166895 AD An adjustment to the front setback for positioning the southwest corner of the house and proposed outdoor staircase.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **February 27, 2012**. The following Bureaus have responded with no issues or concerns:

The Bureau of Environmental Services responded with general comments about stormwater: Exhibit E.1 contains additional details.

The Bureau of Transportation Engineering had no concerns.

The Water Bureau responded with general comments regarding water service at the site.

The Fire Bureau responded with no concerns.

The Site Development Section of BDS responded with no concerns.

Life Safety responded that a building permit is required for the proposal.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on February 27, 2012. A total of 3 written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal. Comments included suggestions for planting shrubs and trees along SE Grand next to the proposed deck to mitigate impacts of the wall that will enclose the underside of the deck.

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 applicant is requesting an Adjustment to **Section 33.110.220, Setbacks.**

There are several reasons for requiring setbacks from property lines: to maintain light and air between neighbors, separation for fire protection and access for fire fighting. The setback standards also reflect the general building scale and placement of development in the City's neighborhoods and promote a reasonable physical relationship between residences. They promote options for privacy among neighboring properties and provide adequate flexibility to site a building so that it can be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity. They also help to provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and enhance driver visibility when backing onto the street.

The proposed deck will be located along the vacant street frontage of SE Grand on the west side of the house. There is an apartment building which faces north/south located approximately 100 feet from the site, across the vacant street. The lot behind the site is developed on the east side, with the west side, behind the subject house, landscaped with grass and trees. Therefore, few neighbors would be directly impacted by any effects to light and air caused by the deck, and this open location would make access for fire fighting relatively easy. Because the deck will be located on the outside of a corner lot, along an undeveloped street frontage, it will have almost no impacts on neighboring privacy.

Further, the deck will be constructed at the same elevation as the first floor of the house, with a door that opens onto it. It will blend with the house and create an outdoor space that enhances the house, being of similar design and scale.

The garage entrance is located at the front of the house which faces SE Linn and the deck will have no impacts to visibility for car drivers entering or leaving the site.

Conclusions: Because of the site's location on a corner lot adjacent to an undeveloped right of way, the proposed deck will have minimal impacts on neighbor privacy. There will be adequate separation for fire protection and access for fire fighting as this structure is located on a corner lot with access from both SE Linn and SE Grand. The proposal will maintain the building's compatibility with the neighborhood and the existing architectural diversity of the area and will not impact remaining outdoor areas on the site

- 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: Because the lot is trapezoidal in shape and is small at 2,623 square feet, and the house is square, the area between the west side of the house and the property line shrinks from north to south, getting much narrower at the southwest corner. The front of the deck, facing SE Linn, will be 15 feet wide, whereas the rear end of the deck, at the staircase, will be only 4 feet wide, creating a triangularly shaped deck area.

The proposed deck will be elevated approximately 6 feet above grade to be adjacent to the first floor of the house, and the deck rail will add another 3½ feet to the overall height of the structure. The applicant also proposes to enclose the open area below the deck, installing

what will basically be a wall that will enclose the entire below-deck area. From SE Grand, this wall will be only four feet from the right of way, where a public sidewalk would typically be located. Three neighbors commented that shrubs and trees would help break up what they feel would be a tall and blank façade along SE Grand. The applicant has indicated a willingness to install landscaping along this façade.

Shrubs planted at ground level along the perimeter of the deck wall would help break up the solidity of the wall and provide visual interest along it. Otherwise, the wall, located so close to the right of way, could be overwhelming to neighbors walking or biking on SE Grand. In addition, one neighbor pointed out that the community is discussing the development of community gardens and orchards in the vicinity and requested that 2 to 3 fruit and/or nut trees be installed along SE Grand. The applicant has expressed a willingness to plant at least 2 fruit or nut trees.

Therefore, a minimum of 9 shrubs should be planted at ground level around that portion of the deck wall that lies within the setback, which will be approximately every 4 feet, with at least one shrub at the front and one at the rear ends of the deck. Shrubs should include a variety of heights between 3 and at least 6 feet to provide visual diversity. Trees should be installed within the setback along the SE Grand frontage at locations determined by the applicant, but not necessarily adjacent to the deck.

The site is not located within an OS, C, E, or I zone.

Conclusions: Based on the size and height of the proposed deck, and its location at 4 feet from the property line, some mitigation is required to lessen potential visual impacts on pedestrian and bicycle traffic adjacent to the site as well as the community at large. Therefore, at least 2 fruit and/or nut trees and at least 9 shrubs must be planted along the site's SE Grand frontage, at ground level along the entire perimeter of the deck, thereby improving the aesthetics of the walled in area and reducing visual impacts to the neighborhood. The required landscaping shall be graphically represented on the applicant's building permit plans.

- 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;

Findings: Only one adjustment is requested.

Conclusions: Because only one adjustment is requested, 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 site.

Conclusions: Because there are no scenic or historic resources on the site, this criterion does not apply.

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

Findings: The impacts from allowing a 6-foot intrusion into the 10-foot setback is that the six-foot high area below the deck will be enclosed by walls, creating an appearance of a solid wall located only four feet from the property line for most of its length. To break up the appearance of a solid wall, and improve both the appearance of the wall and the livability of the neighborhood, shrubs must be planted at ground level along the wall's perimeter, and at least 2 fruit and/or nut trees must be planted elsewhere in the SE Grand setback.

Conclusions: A minimum of 2 fruit and/or nut trees shall be planted in the setback along the site's SE Grand frontage. At least 9 shrubs with potential heights between 3 to 6 feet (or taller if the applicant desires) shall be planted at ground level along the entire perimeter of the walled-in deck.

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 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 demonstrated that the applicable approval criteria have been met with the provision that shrubs be planted at ground level around the perimeter of the enclosed deck and trees be planted elsewhere within the SE Grand setback. With this mitigation the proposal will not detract from the livability or appearance of the surrounding residential area and the approval criteria have been met.

ADMINISTRATIVE DECISION


Approval of the following Adjustments (33.110.220) to allow 6-foot high deck to intrude 6 feet into the 10-foot wide front setback.

- Reduce the required 10-foot front setback by 6 feet, to 4 feet, for construction of a deck;

per the approved plans, Exhibits C.1 and C.2, signed and dated March 26, 2012, and subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through C) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 12-110817 AD ." All required landscaping shall be graphically represented on the applicant's building permit plans and shall be labeled "REQUIRED."
- B. At least 9 shrubs with potential heights between 3 to 6 feet (or taller if the applicant desires) shall be planted in the setback at ground level along the entire perimeter of the walled-in deck, with at least one shrub at the front and rear ends of the deck.
- C. At least 2 fruit and/or nut trees shall be planted elsewhere within the setback along SE Grand.

Staff Planner: Kathy Harnden

Decision rendered by:  on **March 26, 2012**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 29, 2012

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 February 7, 2012, and was determined to be complete on **February 24, 2012**.

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 February 7, 2012.

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 extended by the applicant, **the 120 days will expire on: June 25, 2012**.

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 April 12, 2012** 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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 **April 13, 2012– (the first business 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;

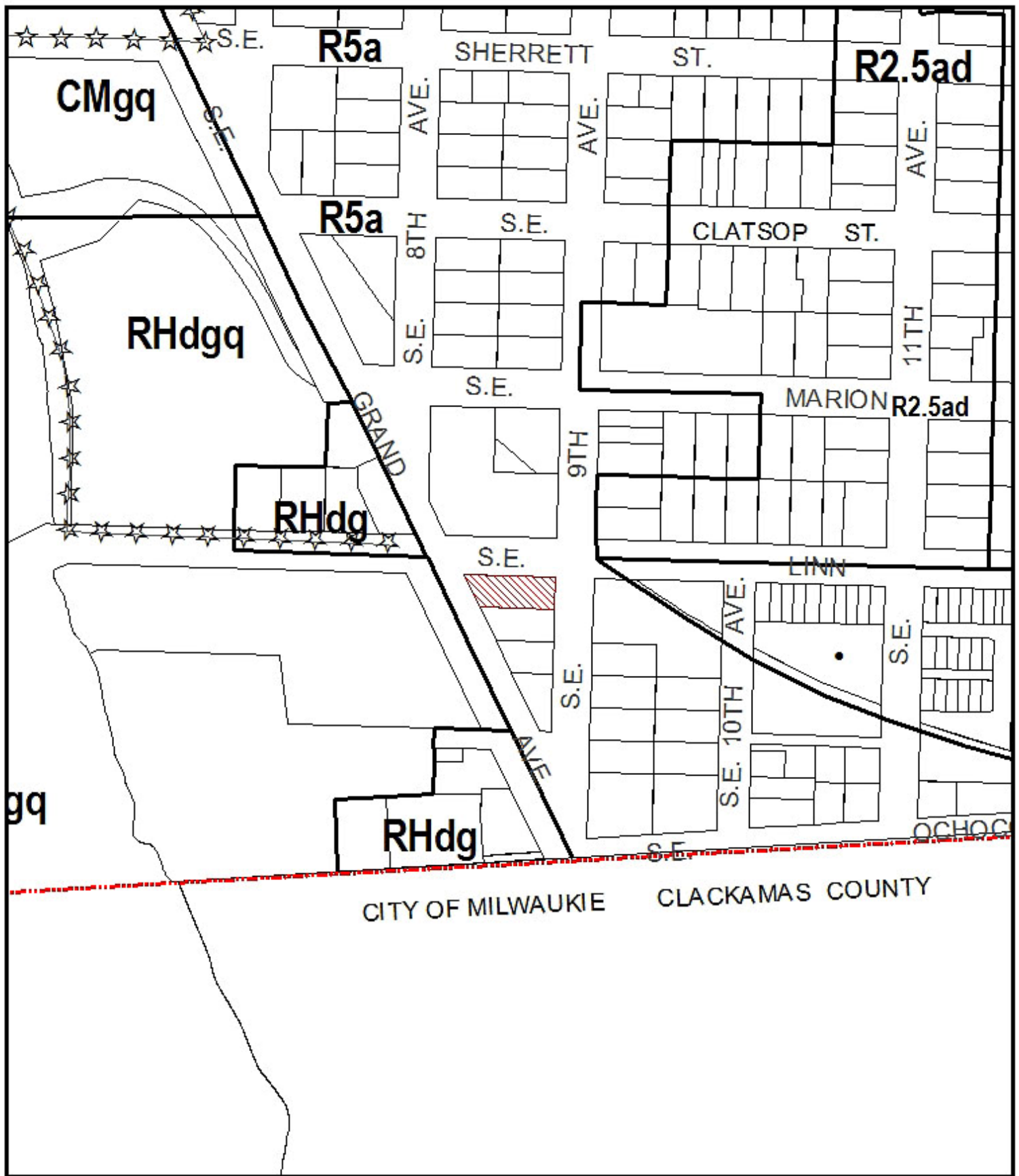
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Proposed Deck Elevations (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Water Bureau
 - 3. Life/Safety
- F. Correspondence:
 - 1. John Paisley, 3/1/2012, would like to see a "fence" (wall) with some aesthetic appeal
 - 2. Michael Hayes, 3/5/2012 would like to see fruit or nut trees planted along SE Grand
 - 3. Mat Millenbach, 3/19/2012, supports suggestions for landscaping along the deck
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete Letter

The Bureau of Development Services is committed to providing equal access to information and hearings. 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



Historic Landmark



NORTH

File No.	LU 12-110817 AD
1/4 Section	3931
Scale	1 inch = 200 feet
State_Id	1S1E26BB 3700
Exhibit	B (Feb 09,2012)

Proposed Deck Elevations

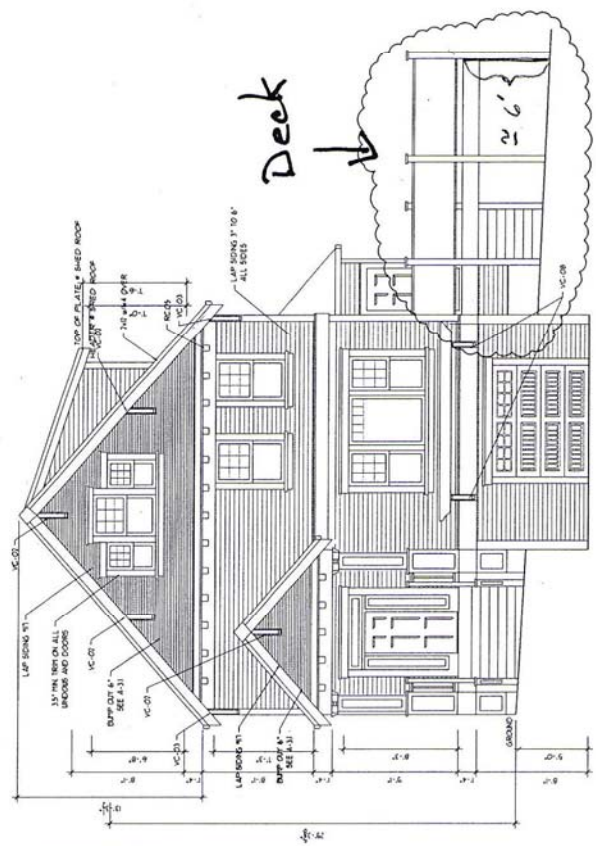
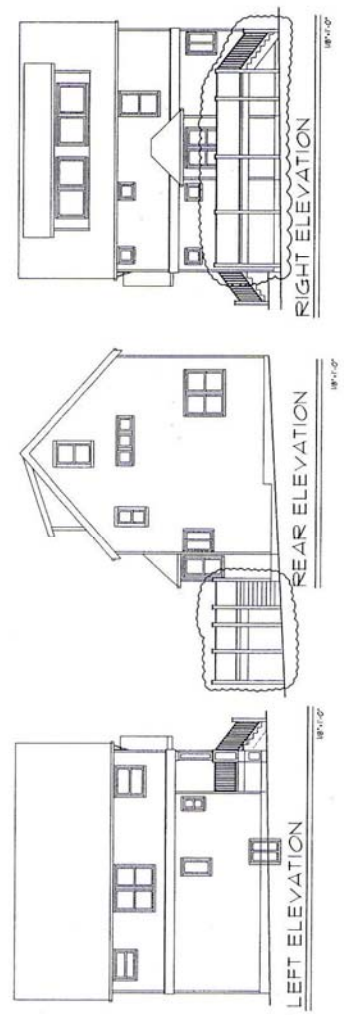
RENAISSANCE HOMES
 16771 Boones Ferry Rd
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FREMONT G-Right
DATE: 06-27-11
REVISIONS
NO. DESCRIPTION
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2
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10

Sheet: A-1.1
 Elevations



ROOF GENERAL NOTES:

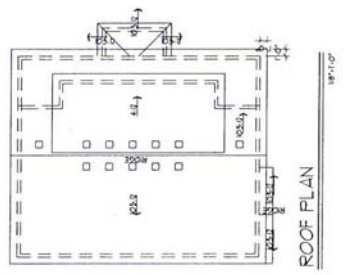
1. INSTALL COPPER FLASHING OVER ALL ROOFING FELT, UNLESS PER MANUFACTURER'S SPEC.
2. PROVIDE 1/2\"/>

VENTILATION CALCULATIONS

NET VENT AREA REQUIRED (ALL ROOF VENTS)
 HIGH VENT ROOF VENTS: 1,307 SQ. IN.
 LOW VENT ROOF VENTS: 11,184 SQ. IN.

NET ROOF AREA BASED ON 30 IN. OF VENTILATION
 (SEE 4.3.1)
 11,184 SQ. IN. / 144 SQ. IN. = 77.65 SQ. FT.

USE 1/2\"/>



FREMONT
 FRONT ELEVATION
 NORTH - HOUSE NUMBER TO BE VISIBLE FROM STREET

LU 12-110817 AD
 EX.C.2