



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

1900 SW 4th Avenue, Suite 5000 Portland, Oregon 97201 503-823-7300 Fax 503-823-5630 TTY 503-823-6868 www.portlandonline.com/bds

Date: June 3, 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 09-116764 AD

GENERAL INFORMATION

Applicant: Heidemarie Kahl

6827 NE Wygant St

Portland, OR 97218-3455

Site Address: 6827 NE WYGANT ST

Legal Description: LOT 9 BLOCK 5, ECKELMAN AC

Tax Account No.: R234500950 **State ID No.:** R234500950 1N2E20BD 09500

Ouarter Section: 2537

Neighborhood: Cully, contact Steve Yett at 503-282-3251.

District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

Zoning: R7h, Single-dwelling Residential 7,000 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 Adjustments to two development standards in order to rebuild a home that was recently destroyed by fire. The home will be reconstructed to be essentially the same as the destroyed home, and portions of the existing home will be retained when possible. The request allows for approximately 200 additional square feet of floor area in the master bedroom and master bath, creates a garage out of what was the previous carport area, and adds a new carport. The new garage is attached to the house, and the garage roof extends to form the new carport. The existing detached garage, located behind the proposed garage, is accessed via a second garage door on the rear façade of the new garage. A new, 6-foot high metal fence, with a gate across the driveway, is also being proposed to be located along the front property line and portions of the side property lines.

Zoning Code **Section 33.110.225, Building Coverage, and Table 110.4** allow 3,363 square feet of building coverage in residential zones for a site this size. The proposed new home has a building coverage footprint of approximately 3,745 square feet, which is 382 square feet over what is allowed for this site. Therefore, approval of an Adjustment to this standard is required to allow 3,745 square feet of building coverage.

Zoning Code **Section 33.110.255, Fences**, allows fences of up to 3.5 feet in height within the front setback, which in this case is 10 feet from the front property line. The applicant proposes to construct a 6-foot tall, 3-rail style aluminum fence along the front property line and extending back into the site along the east and west side property lines. The fence includes a two panel swinging vehicle gate that is also 6 feet in height, and two decorative brick columns on either side of the driveway that are 6 feet in height. Therefore, approval of an Adjustment to this standard is required to allow the proposed 6-foot high fence and gate to be located along the front property line and along the first 10 feet of the side property lines.

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 12,420 square foot site is located on the north side of NE Wygant Street, between NE 68th and NE 70th. The site is developed with a single-dwelling ranch style home, originally built in 1960, with an attached garage and carport, and a detached garage. The home and attached structures was recently burned, and will be replaced with similar structures. Undamaged portions of the existing structure will be retained if possible. The site is characterized by a larger, open rear yard, a smaller, open front yard, and landscaping along all property lines. The detached garage is located in the northwest corner and the primary structure stretches across the front of the site. Development within 200 feet of the subject site is predominantly single-dwelling residential. In this location, NE Wygant Street is designated as a local service access street, and is not improved with sidewalks or curbs.

Zoning: The site and surrounding area is within the R7, Single-dwelling Residential 7,000 zone. The single-dwelling zones are intended to preserve land for housing and provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. The R7 zone is a medium density single-dwelling zone. The R7 Zone allows attached and detached single-dwelling structures and duplexes.

The site and surrounding area also is within an Aircraft Landing ("h") Overlay Zone. The "h" overlay 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 R7 zone (maximum height of 30 feet) are more restrictive than the Aircraft Landing zone height limit, so the R7 zone height limit controls. The structure that is the subject of this Adjustment request does not exceed the maximum height limit of the R7 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 May 4, 2009. The following Bureaus have responded with no issues or concerns (Exhibits E.1-E.5):

- Life Safety Bureau
- Fire Bureau

- Water Bureau
- Bureau of Parks-Forestry Division

The following Bureaus have submitted additional comments:

- The **Bureau of Environmental Services** (Exhibit E.5): has no objections to the requested Adjustments, and submitted additional information related to sanitary sewer and stormwater management requirements to assist with the permitting process. A detailed site utility plan will be required at the time of building permit review.
- the **Bureau of Transportation Engineering** (Exhibit E.6): has not objections to the requested Adjustment, provided the gate is designed to <u>not</u> swing into the public right-of-way.
- The **Site Development Section of BDS** (Exhibit E.7): has no objections to the requested Adjustments, and submitted additional information related to sanitary sewer and stormwater management requirements to assist with the permitting process. In addition to a site utility plan, a video scope of the existing sewer line(s) may be required at the time of building permit review.

Neighborhood Review: A "Notice of Proposal in Your Neighborhood" was mailed on May 4, 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 <u>purpose</u> of the regulation to be modified; and

Findings: The applicant is requesting two Adjustments.

<u>Adjustment 1</u>: Request for an additional 381 square feet of building coverage. The <u>purpose</u> statement for Zoning Code **Section 33.110.225**, **Building Coverage**, is as follows:

<u>Purpose</u>: The building coverage standards, together with the height and setback standards control the overall bulk of structures. They are intended to assure that taller buildings will not have such a large footprint that their total bulk will overwhelm adjacent houses. Additionally, the standards help define the character of the different zones by limiting the amount of buildings allowed on a site.

The proposed reconstructed home is similar to the existing home in size and appearance. Two major changes are the addition of approximately 200 additional square feet of living area, conversion of what was an existing carport into a garage, and addition of a new carport. The

carport consists of an extension of the new garage roof about 7 feet beyond the house, which will be supported on posts and which will not extend out from the house beyond the covered front porch.

The proposed home is 1.5 stories in height with a daylight basement, and is about 18 feet tall at the midpoint of the highest gable. Only two buildings are located on the site—the primary home with attached garage and carport, and a detached garage in the rear. The proposed reconstructed home with deck, porches, and attached garage and carport constitutes a total of approximately 2,945 square feet of building coverage, which is 418 square feet less than is allowed on the site. The detached garage, located toward the rear of the lot, constitutes 800 square feet of building coverage. The carport, rear deck, and front and rear porches are all open sided, roofed accessory structures. The rear deck does not have a roof but is located more than 6 feet above grade, and so counts toward building coverage. These open, attached accessory structures constitute about 824 square feet of the proposed building coverage, and will not contribute as greatly to the perceived bulk of the overall building as do the attached garage and primary structure. No changes are proposed to the existing detached garage, which is a one-story structure located in the northwest corner of the site, adjacent to two rear yards that are somewhat densely vegetated and adjacent to one detached garage. The detached garage is approximately 85 feet from the front property line, is approximately 20 feet behind the house, and will not be visible from the street once the new garage and carport are constructed. Due to the location and layout of the structures, less structure will be visible from each adjacent lot and from the street than actually exists on the site, thereby lessening the perception of the actual building coverage.

The R7 zone requires 5-foot side and rear setbacks, and a 15-foot front building setback. The subject home is located 10 feet from the east and west side property lines, about 70 feet from the rear property line, and about 19 feet from the front property line. The adjacent home to the west is located at least 45 feet and the adjacent home to the east is located at least 55 feet from the subject home. Between the subject home and the adjacent home to the west is a relatively wide side yard with mature trees, shrubs, and other vegetation. Between the subject home and the adjacent home to the east is a relatively wide side yard with open lawn, dense vegetation and a wooden fence along the common side property line, and an approximately 20-foot wide driveway. Along the front property line, a tall screen of existing vegetation somewhat obscures visibility of the home from the street.

Changes to the primary home and attached accessory structures will constitute 245 square feet of additional building coverage than is allowed by right. The proposed home is 1.5 story in height from the street grade, and 2.5 stories in height from the rear, and offers a significantly larger than required rear building setback, double the required side building setbacks, and a nearly 1/3 greater than required front building setback. Only two structures are located on the site. Nearby structures are located at least 45 feet from the subject structure. The proposed home will not be significantly different in size or appearance from its existing conditions. For these reasons, the proposal to allow 382 additional square feet of building coverage will not result in a structure that overwhelms adjacent homes, nor will it result in more than two structures being located on the site, and the purpose statement for Building Coverage is equally met.

<u>Adjustment 2</u>: Request to allow a 6-foot fence in the front building setback. The <u>purpose</u> statement for Zoning Code Section **33.110.255**, **Fences**, is as follows:

33.110.255 Fences

<u>Purpose</u>: The fence standards promote the positive benefits of fences without negatively impacting the community or endangering the public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These

standards are intended to promote the positive aspects of fences and to limit the negative ones.

The proposed fence is a 6-foot high aluminum rail style with approximately 4" openings between each rail. The proposed fence is intended to enhance the appearance of the property and neighborhood while providing security for the applicant's property. The open nature of the fence does not create a street wall effect, allows community interaction between the street and the home, and allows continued police and community surveillance. The style of fence chosen is decorative and attractive, and the applicant has submitted photographs to show that similar fences are already located in the neighborhood. The proposed gate is of the same style as the fence. Brick columns are proposed on either side of the driveway. No portion of the fence, gate, or columns is proposed to exceed 6 feet in height. Existing trees, shrubs, and grasses planted along the front property line and in the public right-of-way, between the driveway and the east side property line, create a fairly dense screen along the front of the site. Vegetation also extends along the east side of the site. The fence will be located just behind this screen of vegetation, and portions of the fence will be somewhat obscured behind the vegetation.

The fence is of an open, decorative style that will not obscure views into the property, and will enhance the appearance of the site without creating a street wall or inhibiting community interaction, and therefore the purpose statement for fences is equally met.

Transportation has reviewed the proposal and stated there are no issues with the proposed fence and gate location along the NE Wygant property line provided that the gate is designed to swing onto private property. PDOT does not allow gates to swing into public right-of-way. As currently designed with the gate swinging out into the public right-of-way a vehicle would have to block the street while waiting for the gate to be opened. In addition, the gate swinging into the public right-of-way could conflict with a future sidewalk if NE Wygant is improved with curbs and/or sidewalks in the future. Therefore, a condition of approval is warranted to require that the proposed gate must be designed to swing inward, into the property, or to slide sideways, and may not swing outward, into the right of way. With this condition, the purpose statement for fences is equally met.

Both purpose statements are equally met, and 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; and

Findings: The additional building coverage will result in a home that is 1.5 stories in height from the street façade, with a daylight basement at the rear facade, with attached accessory structures (including deck, porches, carport, and garage) and one detached accessory structure. The home will be very similar in appearance to the existing home. Most of the attached accessory structures do not have walls, allowing views through them and minimizing the perceived bulk of the structure. Landscape screens and along the front and side property lines, and fencing around the property, minimizes views of the structures on the site. Larger than required setbacks and reasonable physical distance between structures on the site and on adjacent sites also helps to reduce the perception of the bulk of the two buildings. The proposed fencing in the front setback is of an open, decorative style similar to other fences in the neighborhood, and will allow views between the private and public realm. The requested Adjustments will not significantly detract from the livability or appearance of the residential area. 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: The applicant is requesting two Adjustments for a site which is located in a single-dwelling zone. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. The R7 zone is a

medium density single-dwelling zone. The R7 zone allows attached and detached single-dwelling structures and duplexes. The proposal to allow an additional building coverage of 382 square feet for two single-story structures and to allow a 6-foot, open decorative fence along the front property line will result in a development that provides housing for individuals and does not impede the housing opportunities of adjacent properties. This criterion is met.

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 Adjustments. 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 382 additional square feet of building coverage and to allow a 6-foot, open rail fence to be located within the front setback results in a development that is consistent with the purpose statements for building coverage and for fences, and, with a condition of approval (condition B) that requires the gate to swing inward only, meets all applicable review criteria. This Adjustment request should be approved.

ADMINISTRATIVE DECISION

Approval of the following two Adjustments:

- 1. An Adjustment to **Section 33.110.225**, **Building Coverage**, **and Table 110.4**, to allow an additional 382 square feet of building coverage, for a total of **3,745** square feet; and
- 2. An Adjustment to **Section 33.110.255, Fences**, to allow the proposed 6-foot high open style rail fence and gate, and the two proposed 6-foot high brick columns, to be located along the front property line and along the first 10 feet of each of the side property lines;

in significant conformance with the approved site plans, Exhibits C-1 through C-5, signed and dated June 1, 2009, subject to the following conditions:

A. As part of the building permit application submittal, the following development-related condition (B) 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 09-116764 AD." All requirements must be

graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

B. The gate across the driveway must be constructed to swing inward into the property or to slide sideways, and may not swing outward into the right-of-way.

Staff Planner: Crystal Hitchings

Decision rendered by: ______ on June 1, 2009.

By authority of the Director of the Bureau of Development Services

Decision mailed: June 3, 2009

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on March 25, 2009, and was determined to be complete on April 29, 2009.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on March 25, 2009.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: August 25, 2009.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on June 17, 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 June 18, 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

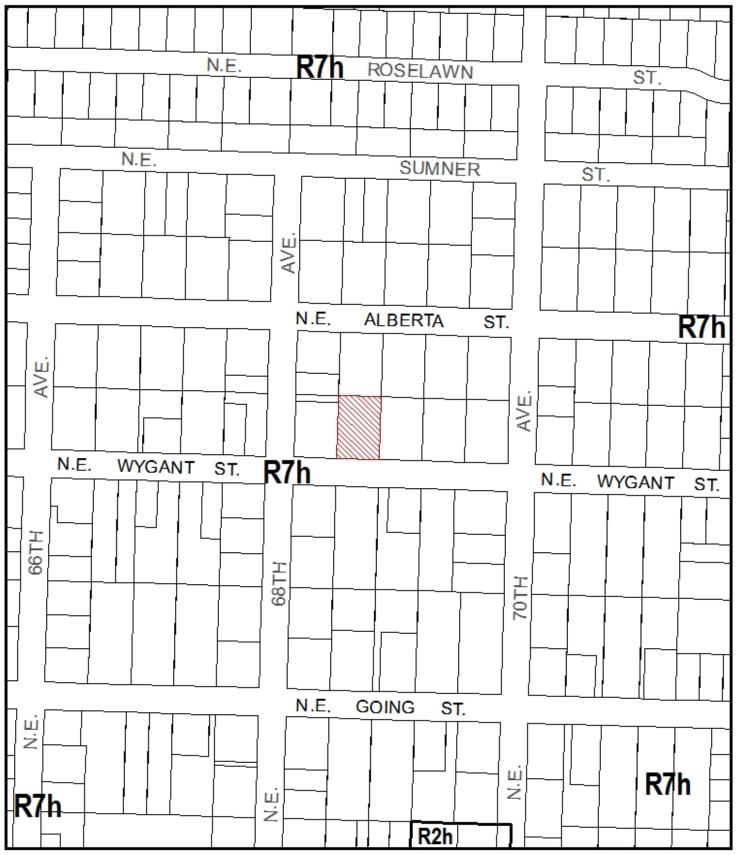
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Front elevation (with fence) and west elevation (attached)
 - 3. Rear and east elevations (attached)
 - 4. Fence section detail
 - 5. Fence section detail and front elevation w/fence
 - 6. Front (w/out fence) and left elevations
 - 7. Fence Specifications from Home Depot
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Life Safety Bureau
 - 2. Fire Bureau
 - 3. Water Bureau
 - 4. Bureau of Parks, Forestry Division
 - 5. Bureau of Environmental Services
 - 6. Bureau of Transportation Engineering and Development Review
 - 7. Site Development Review Section of BDS
- F. Correspondence:

None Received

- G. Other:
 - 1. Original LU Application
 - 2. Site History Research—no prior history
 - 3. Incomplete Letter

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).

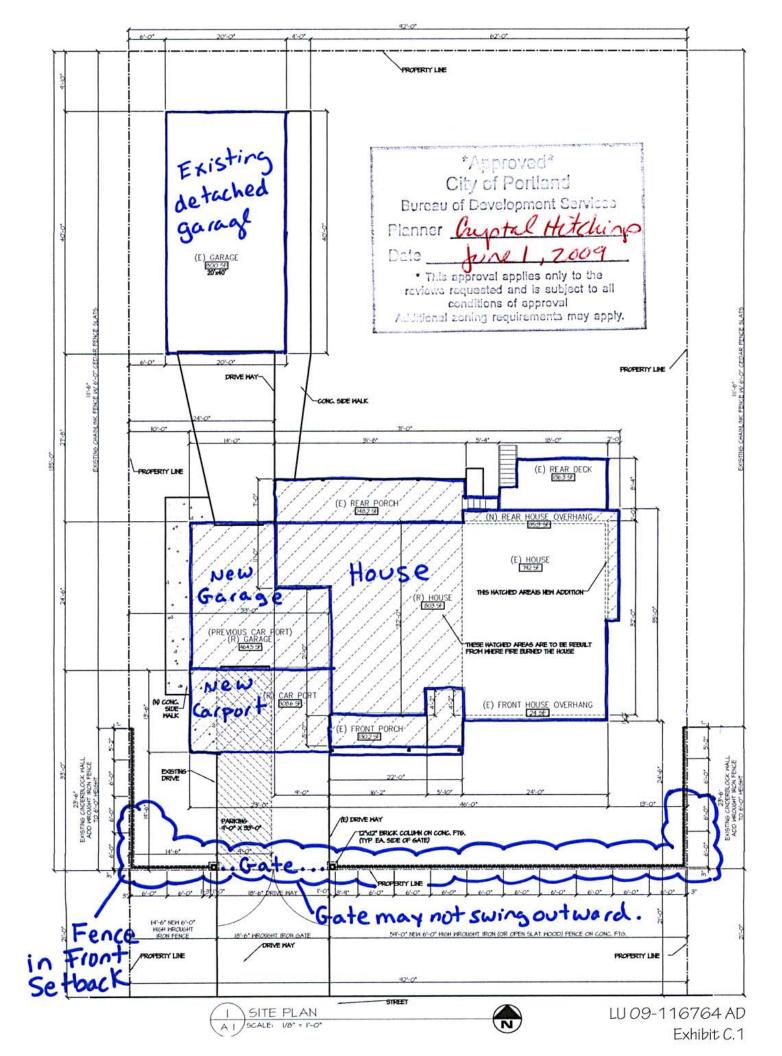


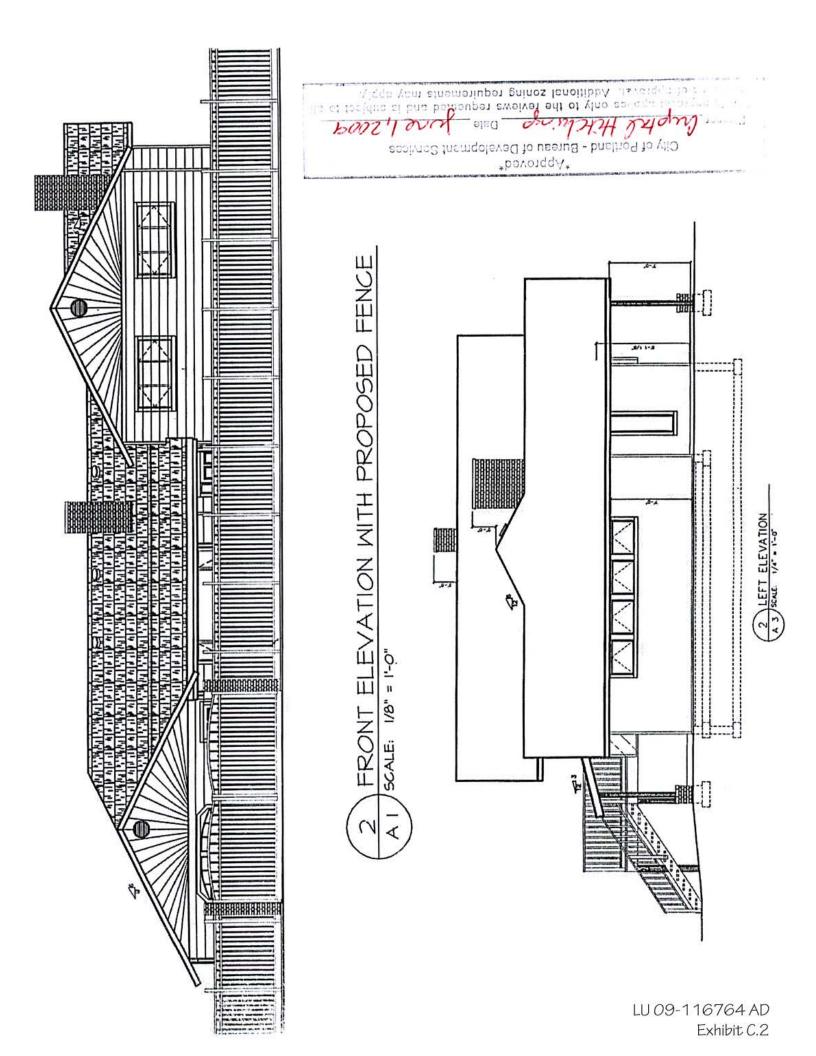
ZONING Site

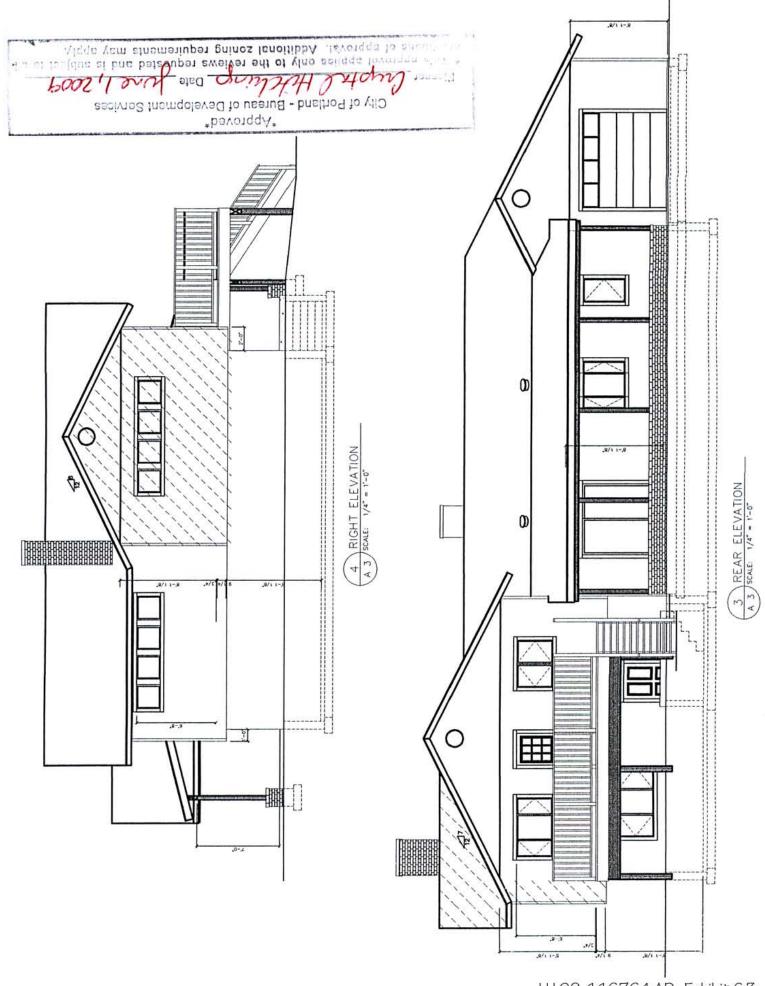


File No. __LU 09-116764 AD 2537 1/4 Section. 1 inch = 200 feet Scale 1N2E20BD 9500 State_Id В (Mar 31,2009) Exhibit.









LU 09-116764 AD Exhibit C.3