



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

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Date: March 12, 2010
To: Interested Person
From: Sheila Frugoli, Land Use Services
503-823-7817 / frugolis@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 10-106725 AD

GENERAL INFORMATION

Applicant: Gerald V. Cole, Contractor
160 SW Towle Ave
Gresham, OR 97080

Owners: Jason and Susan Myers
3614 NE Klickitat St
Portland, OR 97212

Site Address: 3614 NE KLICKITAT ST

Legal Description: EXC N 40' TKN FOR ST W 11.61' OF LOT 1 BLOCK 1 EXC N 40' TKN FOR ST E 42.39' OF LOT 2 BLOCK 1, MARYLAND HTS

Tax Account No.: R543000030

State ID No.: 1N1E25AB 10300

Quarter Section: 2734

Neighborhood: Beaumont-Wilshire, contact Michael Rounds at 503-936-0740.

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

Zoning: R5h, Single-Dwelling Residential 5,000 zone with the h, 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 to waive the required 5-foot building setback requirement along the side property line to replace the roof and construct a deck, with railing on top of an existing detached garage. The new deck will raise the height of the structure approximately 14 inches. A 3-foot tall rod iron railing will be installed along the south, east and north sides of the upper-deck as well as on the proposed stairway and 4-foot wide landing. To meet current building code requirements, the east wall of the garage will extend up approximately 3.5 feet above the

roof/deck and meet 2-hour fire wall requirements. The exterior wall will be finished with horizontal cedar lap siding that matches the other walls of the garage. Further, to meet structural requirements, the east and west walls of the garage will be reinforced. This will necessitate reducing the garage entrance (opening) from 16 feet to approximately 9.5 feet wide. A garage door will be installed.

This project will not alter the existing size of the garage or change its location. The garage entrance will continue to face south, with vehicle access from the 20-foot wide alley. The Portland Zoning Code allows detached garages to be constructed up to side and rear property lines. The setback Adjustment is required for the elevated deck on top of the garage.

NOTE: The Notice of Proposal, mailed on February 4, 2010, included an **error**. The notice stated that the proposal conflicted with the required rear setback. There is no rear setback requirement. Section 33.110.220.D.8 states, “No side, rear or garage entrance setback is required from a lot line abutting an alley.” The building setback Adjustment for adding a deck on top of the garage is needed because the garage is located within the side building setback.

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 subject property is developed with a single dwelling residence. The house and most other surrounding properties were constructed in the early 1900s. The site, as well as eight other lots on the block, abuts a 20-foot wide paved public alley. The subject house and other houses on the north side of the alley have frontage on NE Klickitat Street, while the homes on the south side of the alley have their main entrances facing NE Merges Drive. The topography of the block changes significantly from north to south. The slope is especially severe for the lots fronting NE Merges Drive. The homes, near the site, are located close to the alley and are elevated significantly from NE Merges Drive. There is elaborate landscaping and winding walkways leading up from the street to the entrance of the homes. The alley provides a more convenient access from parking areas to the homes. The subject site and adjacent homes are elevated above the alley. A continuous retaining wall, approximately 3.5 to 4 feet tall, separates the back yards of the homes on the north side, from the alley.

There are six homes on the block, including the subject site, with garages that abut the alley. Most of the rear yards are visually screened from the alley by tall solid wood fences or evergreen shrubs. The subject site affords a relatively open view into the back yard. A shorter fence with wide openings provides relatively unobstructed views. The subject site has a relatively flat back yard, with a paved patio and lawn area.

NE Klickitat Street is a designated local service street and city bikeway. It is fully improved with a narrow 2-lane roadway, curbs, 6-foot wide sidewalks, and on-street parking is available on both sides of the street. The public alley is paved.

Zoning: The site and surrounding properties are zoned R5h. The R5, Single-Dwelling Residential zone provides housing opportunities for individual households. This zone is generally developed with detached homes on individual lots at a density of one unit per 5,000 square feet. The h, Aircraft Landing overlay zone provides safer operating conditions for aircraft in the vicinity of the Portland International Airport by limiting the height of structures and vegetation. The height limit in the R5 zones is more restrictive than the height limit of 320 feet applied on this lot, through the “h” overlay zone.

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 **February 4, 2010**. The following Bureaus have responded with no issues or concerns:

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

The Site Development Section of BDS and the Bureau of Environmental Services responded that the proposed improvements must be designed to meet the requirements of the 2008 Stormwater Management Manual. The stormwater requirements will be reviewed during building permit review. Further, they note that the site may have a nonconforming party sewer. (Exhibits E.1. and E.2)

The Life Safety Plans Examiner Section of BDS responded that the plans submitted for building permit must meet building code requirements including the fire resistance, rated construction requirement for the building wall on the side property line. (Exhibit E.3)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on February 4, 2010. A total of three written responses have been received from notified property owners in response to the proposal (Exhibits F.1-F.3).

In summary, the letters identified the following concerns/objections:

- The proposed addition does not reflect the general building scale and placement. The deck on a garage with a fire escape-like staircase is not in-keeping with the general building scale of Alameda.
- There is no ordinance that puts limits on what a family can put on their deck.
- The proposal does not provide privacy for neighboring properties.
- The combination of wood (new fence) and the iron railing and staircase does not aesthetically track with the style or topography of the site.
- The proposal detracts from the livability and appearance of the area.
- The quaintness of the alley will be impacted.
- Use of the deck for parties will create noise and affect the livability of the neighbors.
- The deck will provide a bird’s eye view into at least four neighboring properties.
- There is no indication of any privacy screening such as an arbor or trellis.

Staff Response: *The neighbors’ objections that are relevant to the approval criteria are discussed in the findings, below.*

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 purpose of the setback regulations, per 33.110.220, is to:

- Maintain light, air, separation for fire protection, and access for fire fighting;
- Reflect the general building scale and placement of houses in the city’s neighborhoods;
- Promote a reasonable physical relationship between residences;
- Promote options for privacy for neighboring properties;

- Require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;
- 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
- 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 applicant intends to retain the existing detached garage but replace the flat roof with one that is raised approximately a foot higher and has a deck on top, with railing and a stairway. Because the roof will be accessible for outdoor use by the residents, the allowance for garages in the setback area does not apply. The Zoning Code allows only garages within the setback. Structures that serve other purposes, such as elevated balconies or decks, defined as uncovered horizontal structures (33.110.250.C.3.a), are not allowed within the setback. As stated above, there is no required building setback along property lines that abut an alley. Therefore, the applicant is requesting an Adjustment to the side setback.

The subject site has a relatively deep front yard area and relatively flat back yard with a covered patio and lawn area. The requested outdoor deck on the garage would supplement the outdoor space on the lot. It is not needed to address the R5 zone required 250 square foot outdoor area (33.110.235).

It is not anticipated that the new garage roof and deck will have any impact on light or air since the improvements on the existing garage will abut the 20 foot-wide alley and an existing accessory structure on the western abutting lot. This structure is located at least 10 feet from the Meyer's home and approximately 15 feet from southwest corner of the house at 3624 NE Klickitat. The applicant intends to comply with Building Code fire separation requirements for the east wall of the garage. Access for fire fighting is also not impacted since the development is proposed along the public alley. The Fire Bureau reviewed the proposal and responded with no concerns.

There are at least four other garages that abut the alley between NE Klickitat and NE Merges Drive. Detached garages, constructed to the rear and side property lines, are not unusual in this area and other inner-city neighborhoods. Detached garages maintain a reasonable relationship between residences. There are no nearby garages that provide an upper-story outdoor area. The BDS has approved setback Adjustments for decks on attached garages. However, most of the garages were in the front setback, on a standard size street and on garages that were at least partially submerged, i.e., cut into a sloped site. Generally, the decks served as an extension to the front porch area of the homes.

Three nearby neighbors submitted letters raising objections (Exhibits F.1-F.3). All three letters raised concerns that the deck would create significant negative impact on privacy. Although no photos were submitted that showed the extent of the viewing opportunities from the garage roof, staff anticipates that a platform on a 10-foot tall garage would provide new views into nearby neighbors' back yards and rear windows. There are sight-obscuring shrubs and fences along many of the rear yards that abut the alley. However, the shrubs and fences will likely not obstruct views from a 10-foot high elevated deck.

In order to maintain privacy, while allowing some outdoor use on the garage structure, a condition will require the deck, railing and stairway to be located at least 5 feet from the abutting (side and rear) property lines. A 5-foot deep separation from the upper deck and stairway to the property lines will minimize privacy impacts to nearby properties. The condition will result in a 192 square foot deck, smaller than the proposed 340 square feet. Through compliance with this condition, 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 one of the nearby property owners raised concern about the design of the improvements, the proposed iron railing on the deck and iron stairway are commonly found on Tudor-style, early century homes in the Alameda area. The proposed improvements to the garage will not significantly detract from the appearance of the residential area.

As discussed under Criterion A, concerns about livability impacts were raised by nearby neighbors. A deck is intended to provide an outdoor area for relaxation and gatherings. It is difficult to argue that its use will not generate noise. One can expect neighbors will be using their back yards--relaxing, gardening and entertaining at the same time the upper deck will be used. A loss in privacy and an increase in noise will likely occur. As noted by one of the opponents, once approved, use of the deck is not regulated. It can be furnished with outdoor furniture, umbrellas and children's play equipment. To minimize the privacy impacts and provide greater separation from nearby properties for noise impacts, a condition will require the deck and stairway to be set back at least 5 feet from the property lines.

Through compliance with the condition, the detrimental impact on livability will be minimized. 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 development standard--setbacks, is being adjusted. Therefore this criterion does not apply.

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

Findings: The site is not within a City-designated scenic resource area or a historic resource area. Therefore, this criterion does not apply

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

Findings: To satisfy approval criterion A and B, which address privacy and noise impacts, a condition will require the deck and associated railing and stairway be set back 5 feet from the adjacent property lines. The greater distance from the property lines will mitigate the impact of the horizontal structure on the garage. Through compliance with the condition, this criterion will also be 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. 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 Portland Zoning Code allows detached garages that meet specified size and height limits, to be constructed up to side and rear property lines. Further, the Zoning Code does not apply building setback requirements from property lines that abut an alley. Improvements to the existing garage structure are allowed outright. However, because the owners wish to construct a deck on top of the garage for the purpose of providing an accessible outdoor area for the residents of the house, an Adjustment is required. Garages are designed to provide shelter for vehicles. To add an additional function/use of the structure, the building setback requirement applies.

Nearby property owners raised concerns about impacts to privacy and an increase in noise. One can assume that an accessible outdoor area that is 10 feet tall and is constructed to property lines will create opportunities for new views from and to the structure. Further, without walls or screening, a space for seating, entertaining and children to play will at times generate noise. The application does not include evidence that would dispute this assumption.

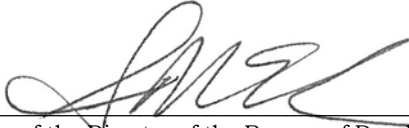
The addition of a horizontal structure on the garage can be approved; but only with a condition that pulls the deck and stairway (outdoor area) back 5 feet from the property lines. Based on the findings of this report, the approval criteria are met or will be met through compliance with conditions of approval. Therefore, this requested Adjustment should be approved.

ADMINISTRATIVE DECISION

Approval to waive the 5-foot side building setback (33.110.220.B) for the addition of a deck (uncovered horizontal structure) with stairway on a 10-foot tall detached garage, per the approved site plan, Exhibit C.1, signed and dated March 10, 2010, 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 10-106725 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Decking material, railing and stairway, including the stair landing, must be set back at least 5 feet from the side (east) and rear (south) property lines.

Staff Planner: Sheila Frugoli

Decision rendered by:  **on March 10, 2010**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 12, 2010

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 January 27, 2010, and was determined to be complete on February 2, 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 January 27, 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. Unless further extended by the applicant, **the 120 days will expire on June 2, 2010.**

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 March 26, 2010** 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 **March 29, 2010 – (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

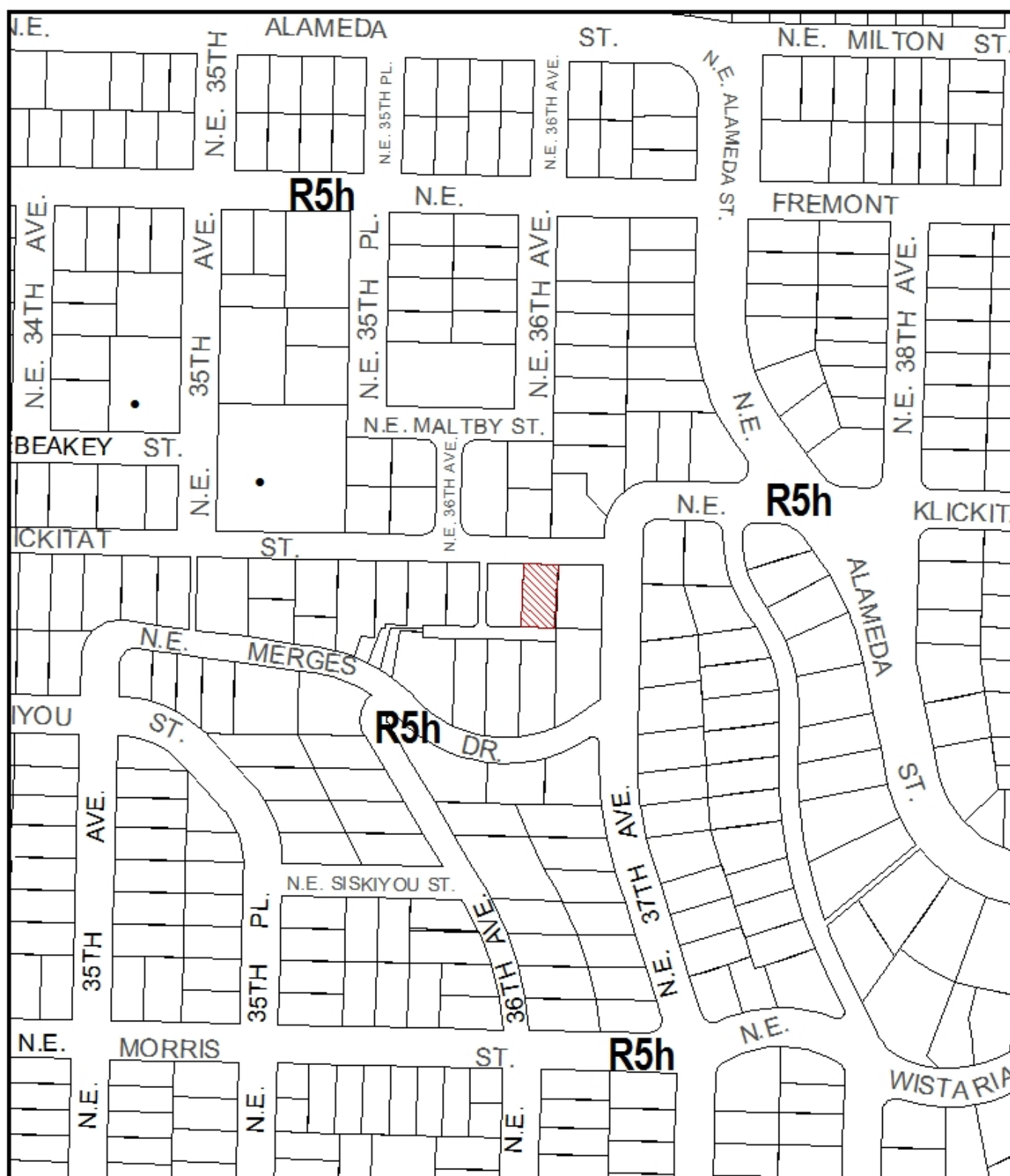
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Deck and Deck Framing Plan, West Elevation View of Stairs and Railing, South Elevation
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Site Development Review Section of BDS
 - 3. BDS, Life Safety Plans Reviewer
 - 4. TRACS Print-out showing no concerns from: Bureau of Transportation Engineering and Development Review, Water Bureau, Fire Bureau & Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. Jill Cuniff, February 22, 2010, opposes the request
 - 2. Janice and Ronald Beazely, February 24, 2010, opposes the request
 - 3. Lynn and Paul Kelly, February 25, 2010, raised concerns.
- 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. 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

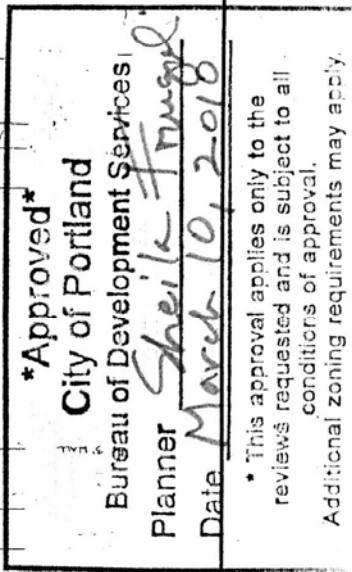
File No. LU 10-106725 AD

1/4 Section 2734

Scale 1 inch = 200 feet

State_Id 1N1E25AB 10300

Exhibit B (Jan 28, 2010)



Decking, railing
and stairs must
be set back 5 feet
from property line.