



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

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Date: March 20, 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 09-101679 AD

GENERAL INFORMATION

Applicant: Juanita Peters and Jeffrey White
1609 SE 32nd Pl
Portland, OR 97214-5014

Site Address: 1609 SE 32ND PL

Legal Description: LOT 8 BLOCK 9, SOUTH SUNNYSIDE
Tax Account No.: R779702050
State ID No.: 1S1E01CA 02300
Quarter Section: 3233

Neighborhood: Richmond, contact Douglas Klotz at 503-233-9161.
Business District: Hawthorne Blvd. Bus. Assoc., contact Karin Edwards at 503-230-0087.
District Coalition: Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.

Zoning: R5, Single-dwelling Residential 5,000

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

Proposal:

The applicant is requesting two Adjustments to Zoning Code **Section 33.110.220** and **Table 110.3, Setbacks**, to legalize an existing shed and an existing pergola. The gambrel style shed is located in the northwest corner of the property, 3 feet from the rear property line and 1-foot, 8 inches from the north side property line. The shed is 16 feet wide by 12 feet deep, and is 13 feet, 8 inches in height. The pergola is located in the southwest corner of the property, 0 feet from the south side property line and 3 feet, 8 inches from the rear property line. The pergola is 10 feet, 1 inch deep by 12 feet, 10 inches long, and is 8 feet, 9 inches in height.

The R5 zone requires a 5-foot building setback from rear and side property lines. An exception under 33.110.250, Accessory Structures, allows covered accessory structures (the shed) that

are 6 feet or less in height to be located within side and rear setbacks. Another exception under 33.110.250, Accessory Structures, allows vertical accessory structures (the pergola) that are no larger than 3 feet in width, depth, or diameter and no taller than 8 feet to be located within side and rear setbacks. Both of these structures exceed the dimensional requirements of the exceptions. Therefore, the following two Adjustments to **Section 33.110.220, Setbacks**, and **Table 110.3**, are required:

1. To allow the 16 feet wide by 12 feet deep and 13 foot, 8 inch tall shed to remain in its existing location, which is 3 feet from the rear property line and 1 foot, 8 inches from the north side property line; and
2. To allow the 8 foot, 9 inch tall pergola that is 10 feet, 1 inch deep by 12 feet, 10 inches long, to remain in its existing location, which is 0 feet from the south side property line and 3 feet, 8 inches from the rear property line.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The 4,998 square foot site is located on the west side of SE 32nd Place, just north of SE Market Street. The site is developed with a two-story, single-dwelling home originally built in 1912. A detached shed is located in the northwest corner, and a detached pergola is located in the southwest corner of the lot. The home is located toward the front of the lot with minimal setbacks from the side property lines. The rear yard is generally open lawn, with shrubs planted along the rear and side property lines. The subject site is oriented such that it is bordered by 5 adjacent properties. Four of these properties are also developed with single-dwelling residences. The home on the adjacent property to the north was converted to a duplex. The rear yards of these 5 properties abut the rear yard of the subject site, and contain trees and shrubs along the side and rear property lines.

Within 200 feet to the south, east, west of the subject site, and within 4 blocks north of the subject site, development is residential, with predominantly two-story, single-dwelling homes and some multi-dwelling homes. The Edwards School is located 150 feet south of the site. Sewallcrest Community Garden is just over 200 feet to the southwest, and Sewallcrest Park is just over 300 feet to the south. SE Hawthorne Boulevard is located just over 250 feet to the north, and the sites along SE Hawthorne are developed with a variety of commercial retail sales and service and office properties. Residential development in the neighborhood is dense, particularly on this block. A number of primary and accessory structures are located within side and rear setbacks, and most lots contain a shed or garage in a rear corner of the lot.

SE 32nd Place is designated as a Local Service Street, and is developed with an 8-foot planting strip, a 6-foot sidewalk, and an additional 2-foot right-of-way behind the sidewalk.

Zoning: The site is zoned R5, Single-dwelling Residential, with a Comprehensive Plan Map designation of R2.5. 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 R5 zone is a high density single-dwelling zone. The R5 zone allows attached and detached single-dwelling structures and duplexes. The R5 zone requires side and rear building setbacks of 5 feet.

One site just two lots to the south is zoned R2.5 (Single-dwelling Residential 2,500). Lots on the north end of the block and along SE Hawthorne are zoned R1 (Multi-dwelling Residential 1,000). The area south of the site containing Sewallcrest Park is zoned OS, Open space.

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 February 24, 2009. The following Bureaus have responded with no issues or concerns (Exhibits E.1-E.4):

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

The following Bureaus have submitted additional comments:

- The **Site Development Section of BDS** (Exhibit E.5): Site Development has no objections to the requested Adjustments, and noted that, at the time of building permit review, the applicant must ensure that all downspouts from the shed discharge to approved stormwater facilities and are positioned to avoid adversely affecting existing development on the project site or on adjacent properties.
- The **Life Safety Bureau** (Exhibit E.6): Life Safety has no objections to the requested Adjustments. Life Safety noted that, because a Building Permit is not required for non-habitable one-story detached accessory structures provided the floor area does not exceed 200 square feet and a height of 10 feet measured from the finished floor level, to the average height of the roof surface, the pergola does not need a Building Permit but the shed does need a Building Permit.
- The **Bureau of Environmental Services** (Exhibit E.7): BES has no objection to the requested Adjustments. BES noted that, although no information was provided indicating where the stormwater from the shed is directed, it appears there is adequate space for onsite stormwater discharge even with the adjustment, if onsite if Site Development determines onsite infiltration is feasible. If onsite infiltration is not feasible the applicant will be able to direct the shed stormwater to the existing connection.

Neighborhood Review: A “Notice of Proposal in Your Neighborhood” was mailed on February 24, 2009. **No written responses have been 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 purpose of the regulation to be modified; and

Findings: The applicant is requesting an Adjustment to **Section 33.110.220, Setbacks**. The purpose statement for this regulation is as follows:

Purpose: *The building setback regulations serve several purposes:*

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of houses in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

The shed is 13 feet, 8 inches in height and 16 feet wide by 12 feet deep, and is located 3 feet from the west property line and 1.6 feet from the north property line. The pergola is 8 feet, 9 inches in height and 10 feet, 1 inch deep by 12 feet, 10 inches long, and is located in the southwest corner of the property, 0 feet from the south side property line and 3 feet, 8 inches from the rear property line. The pergola is an open structure. The rear yard of the subject site is surrounded by a 6-foot wooden fence, and a number of mature trees are located on adjacent properties near the shed and pergola locations. Homes on the adjacent properties are located toward the front of the lots, away from the structures, with rear yards adjacent to each other. Considering the location and height of the shed and pergola, and the existence of mature trees, the shadow cast by the shed onto adjacent properties to the north and west will not be significant. Both structures are located away from adjacent homes, and the pergola is an open structure, therefore air circulation is maintained.

The Fire Bureau and Life Safety Bureau have both reviewed the application and determined that the proposal poses no fire safety or access concerns. The shed is located approximately 6 feet from the nearest shed to the west, which is also within the rear setback, at least 35 feet from the nearest adjacent home, and almost 32 feet from the home on the subject site, thus adequate fire separation is provided. The shed retains a 3-foot open setback on the west side of the shed, and the pergola retains a 3 foot, 8 inches open setback on the west side of the pergola, and the remainder of the site is easily accessible. Therefore, fire access to the site is not compromised.

Residential sites on the subject block and nearby blocks commonly contain detached accessory structures located in a rear corner within side and/or rear setbacks. These structures vary in size, however, the detached structures on adjacent and nearby lots to the north and west appear to have larger footprints than the shed on the subject site. The subject shed and pergola are of a smaller footprint than and similar location as other detached, accessory structures in the surrounding neighborhood, and remain small in proportion to the larger, two-story homes characteristic of the neighborhood. The increased height of the shed and pergola above what is allowed by right does not throw them out of proportion with nearby homes. The size and location of the pergola and shed reflect the general building scale and placement of accessory structures in the neighborhood. Additionally, the shed remains significantly smaller in footprint and height than a detached garage allowed by right to be located within the setbacks, and generates less activity and noise than a garage.

As described above, the shed is located approximately 6 feet from the nearest shed to the west, and at least 35 feet from the nearest adjacent home, and adjacent properties have open rear yards adjacent to the NW corner of the subject site where the shed is located and the SW corner of the site where the pergola is located. The upper half of the shed and a portion of the pergola are visible above the fence. The pergola is an open structure, and the amount of physical structure visible above the fence is minimal. The shed is oriented such that the shorter façade has the lesser setback and the longer façade has the greater setback. This means that less of the structure is located along the smaller setback and more of the structure is located along the greater setback. The pergola is located over 20 feet from the nearest residence on the adjacent lot to the south. Therefore, a reasonable physical relationship between structures is maintained.

Privacy for neighboring properties is not negatively affected by the location of the shed or pergola. The structures do not include any living or work space, and any use and activity generated by and occurring around the structures will be limited. Additionally, new landscaping will be installed on the north and west sides of the shed and west side of the pergola which will reduce visibility of the structures from neighboring yards.

For these reasons, the purpose statement for setbacks is equally met, and this criterion is met.

B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area; and

Findings: The rear yard is surrounded by a wooden fence which obscures a large portion of the structures. The shed is constructed of an architectural style, color, and physical stature that is not significantly visually obtrusive in the overall context of the neighborhood. The location and size of the shed and pergola remain consistent with existing accessory structure development in the neighborhood. The shed is located in the northwest corner of the lot, and is partially obscured from the adjacent lot to the west by a detached accessory on that lot. Only a small portion of the physical structure of the pergola is visible above the fence. New landscaping will be located along the north and west of the shed and west of the pergola to further reduce their visibility from adjacent lots. The location of the structures will not significantly affect features of livability for adjacent lots, such as safety, privacy, and noise. For these reasons, 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 to the setback standard. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The request for an Adjustment to reduce the rear and side setbacks for the pergola and shed does not impede housing opportunities for either the subject site or adjacent sites. 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: The applicant proposes to install landscaping along the north and west side of the shed and the west side of the pergola in order to screen the structures from adjacent properties. The shed was constructed in the same location of the previous shed in order to reduce impacts to both the subject and adjacent sites, and is screened from immediately adjacent properties by an existing shed on the site to the west and existing landscaping on the subject and adjacent lots to the north and west. Any visual impacts resulting from the Adjustments are mitigated by the location of the shed and the landscaping behind the structures. There are no further 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 locate the shed and pergola within the side and rear setbacks does not significantly or negatively affect the appearance or livability of and remains in character with the surrounding neighborhood. All relevant approval criteria are met, and this Adjustment should be approved.

ADMINISTRATIVE DECISION

Approval of a two Adjustment to Zoning Code Section 33.110.220 and Table 110.3, Setbacks:

1. To allow the 16 feet wide by 12 feet deep and 13 foot, 8 inch tall shed to remain in its existing location, which is 3 feet from the rear property line and 1 foot, 8 inches from the north side property line; and
2. To allow the 8 foot, 9 inch tall pergola that is 10 feet, 1 inch deep by 12 feet, 10 inches long, to remain in its existing location, which is 0 feet from the south side property line and 3 feet, 8 inches from the rear property line;

per the approved site plans, Exhibits C-1 through C-3, signed and dated March 18, 2009, subject to the following condition:

- A. As part of the building permit application submittal for the shed, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-101679 AD. No field changes allowed."

Decision rendered by:  on March 18, 2009.

By authority of the Director of the Bureau of Development Services

Decision mailed: March 20, 2009

Staff Planner: Crystal Hitchings

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 12, 2009, and was determined to be complete on February 19, 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 January 12, 2009.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be

waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

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 3, 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 **April 6, 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:

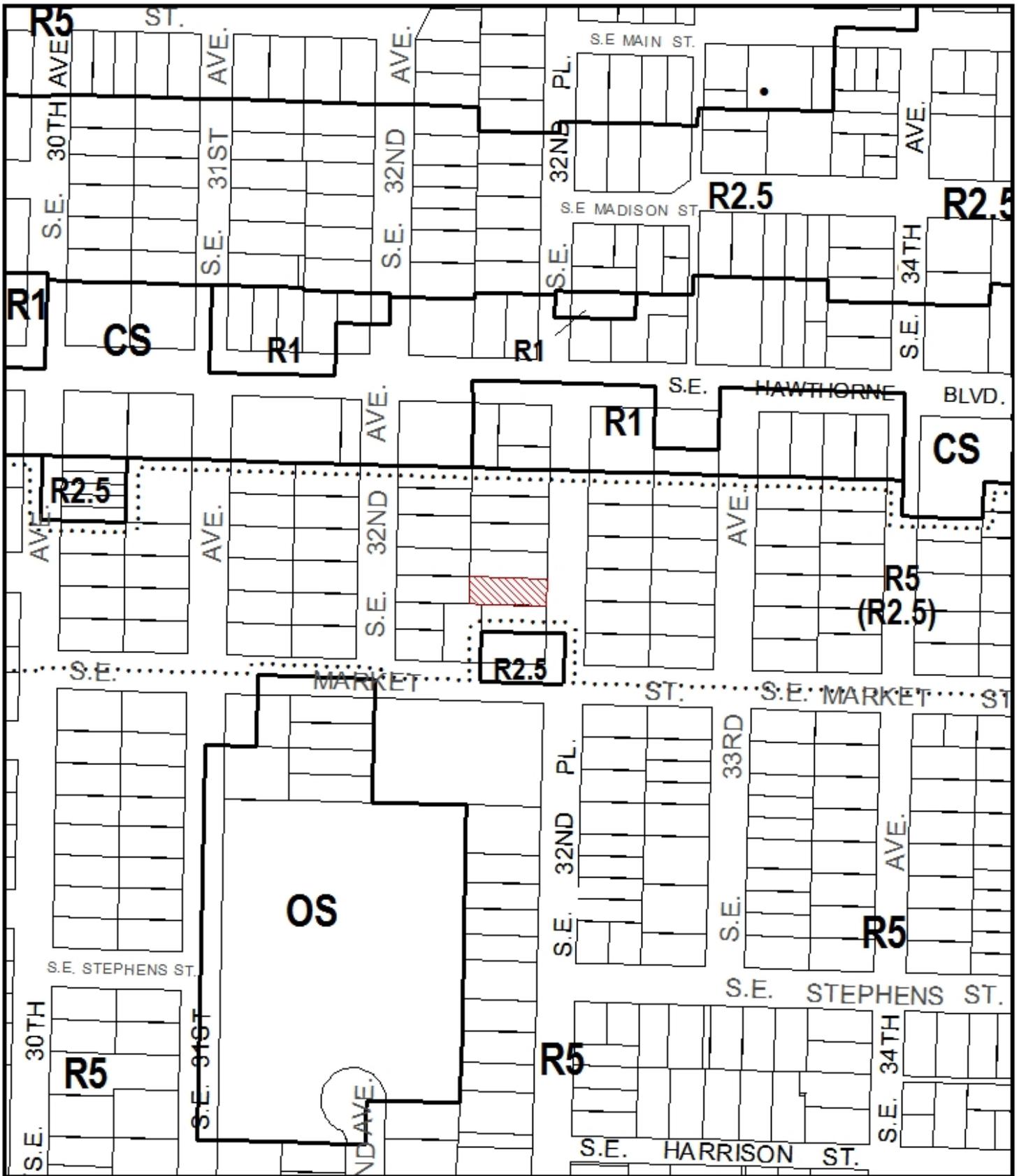
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. North elevation (attached)
 - 3. West elevation (attached)
 - 4. Site plan detail
 - 5. Previous and existing shed size comparison
 - 6. Adjacent structures
 - 7. Aerial photo
 - 8. Photo of shed
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Fire Bureau
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Bureau of Parks, Forestry Division
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Bureau
 - 7. Bureau of Environmental Services
- F. Correspondence:
 - None Received
- 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. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).

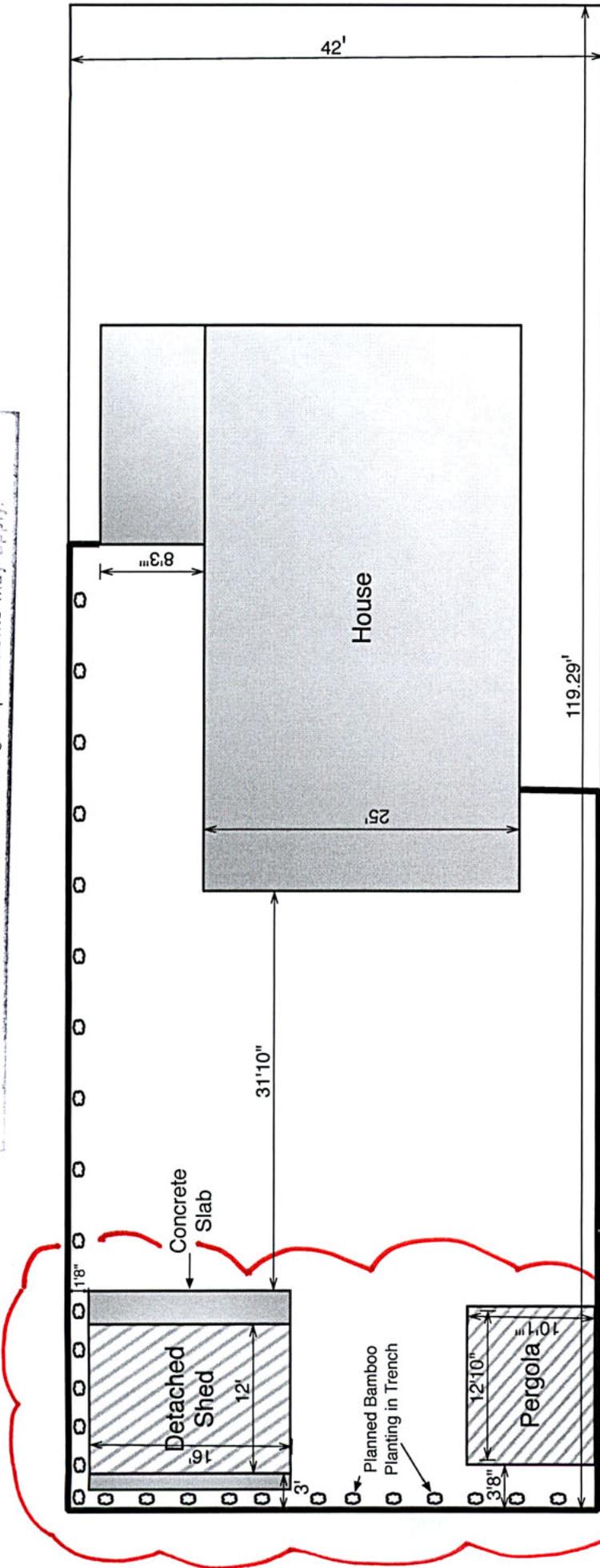


ZONING



File No. LU 09-101679 AD
 1/4 Section 3233
 Scale 1 inch = 200 feet
 State_Id 1S1E01CA 2300
 Exhibit B (Jan 12, 2009)

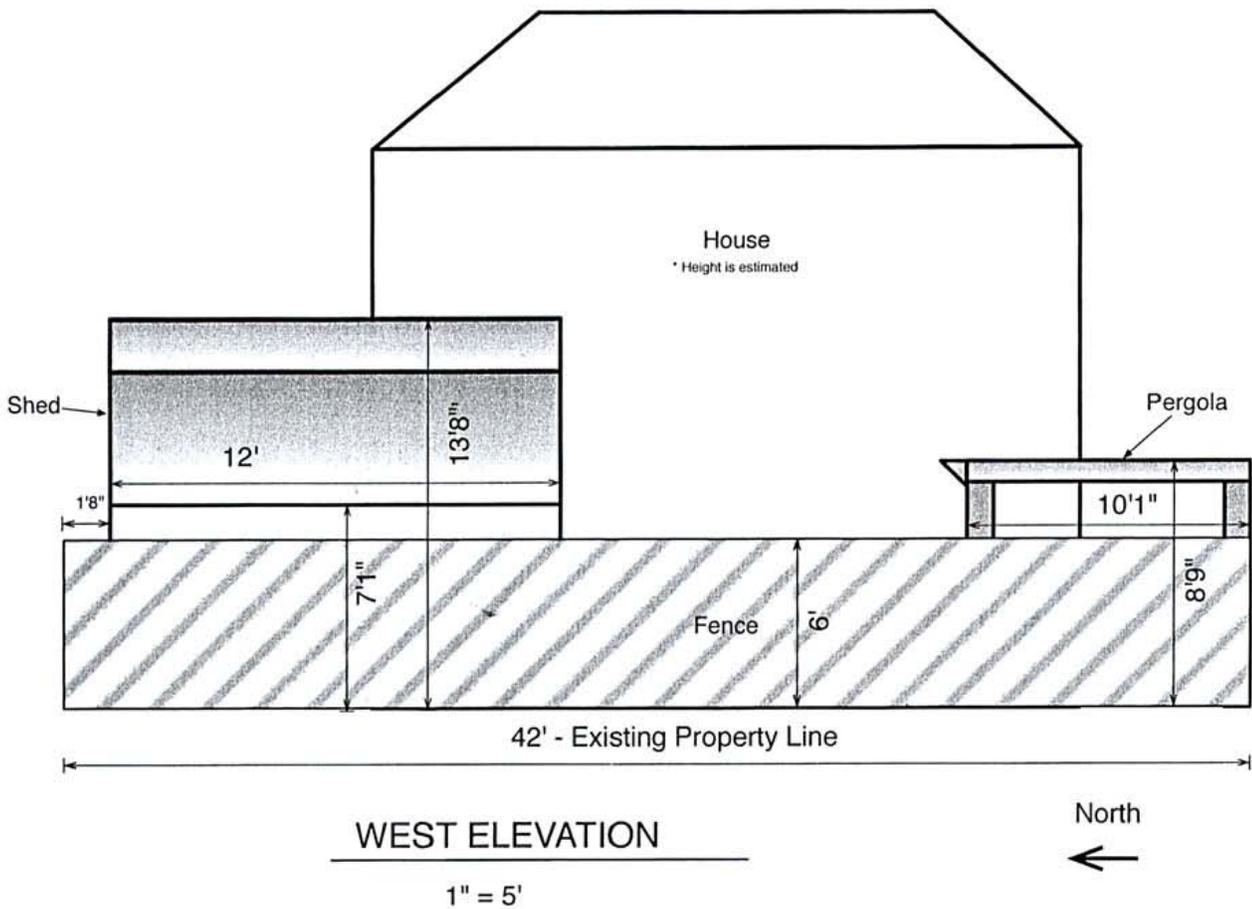
Approved
 City of Portland - Bureau of Development Services
 Planner Crystal Hitting Date 3-19-09
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



Approval to allow shed & pergola to remain in their current location, which is with the side & rear setbacks. Plantings at rear & north side are required as described in Exhibits A+C.1.

**SITE PLAN FULL LOT - SHED LOCATION
 IN REQUESTED ADJUSTMENT**

1609 SE 32nd Place 1" = 12'



1609 SE 32nd Place

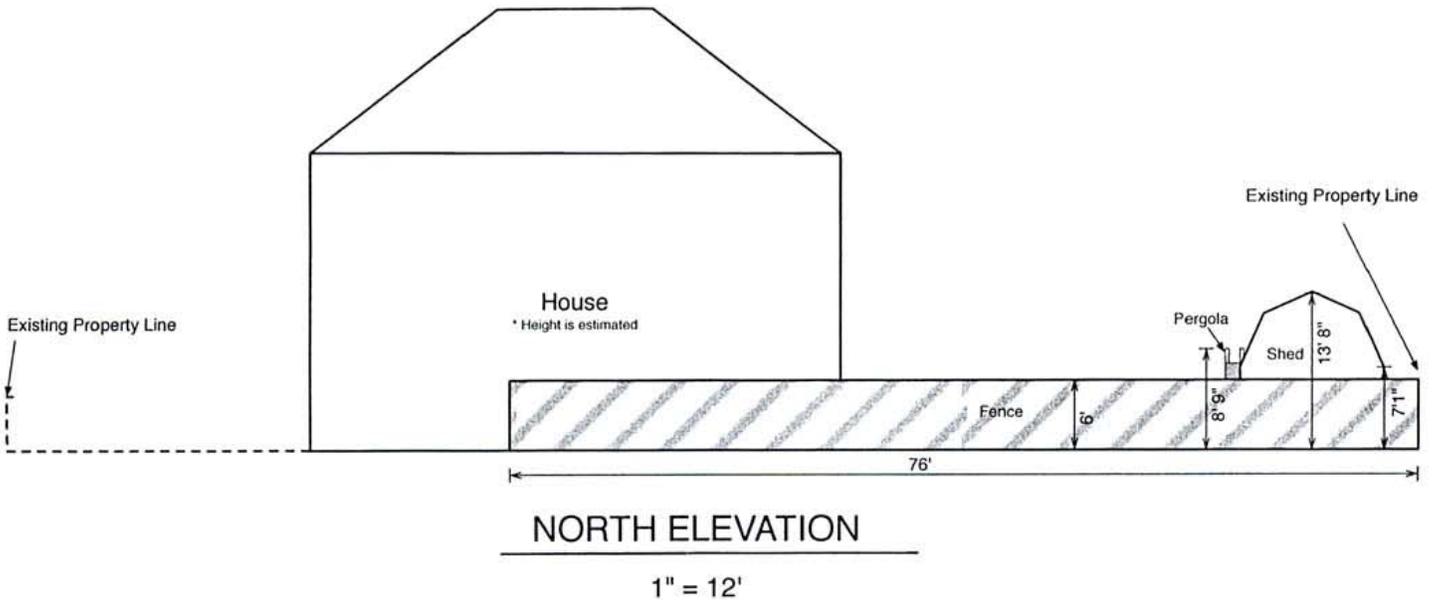
LU 09-101679 AD
Exhibit C.3

Approved

City of Portland - Bureau of Development Services

Planner Crystal Hitching Date 3-18-09

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



1609 SE 32nd Place

LU 09-101679 AD
Exhibit C.2