



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

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Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

Date: August 17, 2010
To: Interested Person
From: Kathleen Stokes, Land Use Services
503-823-7843 / kstokes@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 10-136419 AD

GENERAL INFORMATION

Applicant: Uyen and Huong To Vuong Duong
4320 SE 136th Ave
Portland, OR 97236

Vicki Nguyen
15958 NW Wismer Dr
Portland OR 97229

Site Address: 4320 SE 136TH AVE

Legal Description: TL 3100 0.93 ACRES, SECTION 11 1S 2E
Tax Account No.: R992115790
State ID No.: 1S2E11DC 03100
Quarter Section: 3444

Neighborhood: Powellhurst-Gilbert, Mark White at 503-761-0222.
Business District: Midway, Bill Dayton at 503-252-2017.
District Coalition: East Portland Neighborhood Office, Richard Bixby at 503-823-4550.
Plan District: Johnson Creek Basin
Zoning: R10 (R10,000, Low Density Single-Dwelling Residential)
Case Type: Adjustment Review
Procedure: Type II, administrative decision with appeal to Adjustment Committee.

Proposal: The applicants are proposing construction of a 1,779 square foot addition to the existing residence on this site. The proposed addition would be located to the north of the primary residential structure, connecting the house to the building that was previously used as a detached accessory structure. The current existing building coverage that will remain on the site is 5,342 square feet. With the proposed addition, the building coverage would increase to 7,121 square feet.

In the single dwelling zones, the maximum building coverage that is allowed by the development standards of the zoning code is based on the size of the lot. In this case, the site has an area of 40,510 square feet, allowing a maximum building coverage of 6,038.25 square feet. Exceptions to the maximum allowance for building coverage are approved through Adjustment Review, if all of the relevant approval criteria are met or can be met through

conditions of approval. Therefore, the applicants are requesting approval of an Adjustment to Code Section 33.110.225 Building Coverage, to increase the maximum allowed coverage from 6,038.25 square feet to 7,121 square feet, in order to construct the proposed addition.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

ANALYSIS

Site and Vicinity: The applicants' site is a 40,510 square-foot property that is located on the northeast corner of the intersection of SE 136th Avenue and SE Mall Street. The site is developed with a single-dwelling residence and an accessory structure that appears to have originally been constructed as a detached garage. A concrete patio that appears to be about 1.5 to 2 feet above grade level is located to the rear of the accessory building. Vehicular access to the site is available in two places, where gates in the decorative iron fence open to allow drivers access to paved areas at the front of the lot. Much of the eastern portion of the property has been covered with gravel. (The applicants were informed in 2006 that this area could not be legally used to park automobiles and no cars were present on this portion of the property, when staff conducted a site visit, on a Sunday in the late afternoon).

The area around the site is comprised of a variety of development types, corresponding to the various base zone designations. A two-story structure, which appears to be a single-dwelling residence is located adjacent to the site, to the north. To the south there is a large undeveloped tract of land. To the southwest, there is a development that consists of several row houses. Due west of the property, there is a cluster of single-dwelling structures. A vacant parcel is located immediately to the north west of the site and larger buildings that comprise low density multi-dwelling development are further to the north, on the west side of SE 136th.

Zoning: The zoning for this site is R10, Low Density Single-dwelling Residential. This zone is intended for areas that have public services, but that are subject to significant development constraints. Single-dwelling residential is the primary use, with an average maximum density of about 4.4 units per acre, or one unit per 10,000 square-foot lot.

The site is located within the boundaries of the Johnson Creek Basin Plan District. This plan district provides for the safe, orderly, and efficient development of lands that may be subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services. At certain locations, the density of development is limited by applying special regulations to new land division proposals. In addition, restrictions are placed on all new land uses and activities to reduce stormwater runoff, provide ground water recharge, reduce erosion, enhance water quality, and retain and enhance native vegetation throughout the plan district. At other locations, development is encouraged and mechanisms are included that provide relief from environmental restrictions.

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 **July 13, 2010**. The following Bureaus have responded with no issues or concerns. Agencies that provided written documents, with comments regarding building permit requirements, are noted with exhibit numbers:

- Bureau of Environmental Services provided information on the existing sewer system and requirements for new connections. Information was also provided on requirements for storm water management. Generally, the response stated that there is no existing public "storm-only" sewer at this location. There are two public underground injection control systems in the vicinity. All development and redevelopment proposals are subject to the requirements of the City of Portland Stormwater Management Manual (SWMM). Storm water runoff from the roof of the proposed addition must be infiltrated on site, according to the SWMM. Due to the high ground water level in this area, it is possible that an infiltration swale may be required, in order

to provide the minimum required 5-foot separation distance from the groundwater. Results of infiltration testing and a depth to groundwater investigation will be required at the time of building permit submittal (Exhibit E-1).

- Transportation Engineering provided the following comments, electronically: “The applicant is advised that at time of Building Permit review, in lieu of frontage improvements, completed and executed Street and Storm Sewer Waivers of Resmonstrance will be required to be submitted for participation in any future Local Improvement District that may be established.”
- Water Bureau provided information on the existing water service for the site and indicated that a review for fixture count will be required at the time of submittal of the building permit, to determine appropriate service and meter size (Exhibit E-2).
- Fire Bureau noted that verification must be obtained from the Water Bureau that the existing fire flow that is available for the site can meet the requirements detailed in Appendix B of the City’s Fire Code (Exhibit E-3).
- Site Development Section of BDS provided the following electronic comment: “City records do not show that the septic system on the site was decommissioned at the time the house was connected to the public sewer system, or in conjunction with subsequent building permits. It is the responsibility of the applicant to locate the septic system and obtain final approval of a decommissioning permit. Please direct questions regarding this requirement to Erin Mick, (503) 823-75471.”
- Life Safety Plan Review Section of BDS noted that a building permit is required and that the work proposed must be designed to meet all applicable building codes and ordinances (Exhibit E-4).
- Parks-Forestry Division provided information on the requirements for protection of trees that are in the City right-of-way and the regulations that apply to trees on private property (Exhibit E-5).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on July 13, 2010. One written response has been received from the public, in response to the proposal. The neighbor requested that the loss of impervious surface caused by the addition be mitigated by requiring that the entire site be required to meet the current stormwater Management Manual regulations for both the new and existing impervious surfaces. It was further suggested that there would be a potential increase in site usage that would trigger a requirement for signs that indicated, “no parking,” to be installed across the entire 136th Avenue street frontage. (Exhibit F-1).

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of 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 to provide certainty and rapid processing for land use applications.

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.

- Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: *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.

Definition: *Building coverage is the area that is covered by buildings or other roofed structures. A roofed structure includes any structure more than 6 feet above grade at any point, and that provides an impervious cover over what is below. Building coverage also includes uncovered horizontal structures such as decks, stairways and entry bridges that are more than 6 feet above grade. Eaves are not included in building coverage.*

The site currently has two single-story structures that are subject to the maximum building coverage standard. The proposed addition is one-story structure and would be located toward the front of the lot, forward of another smaller accessory structure that will be linked to the addition and the primary residence. The surrounding area includes a mixture of single-dwelling structures, undeveloped land and multi-dwelling development. The single-dwelling structures vary in size and include both one and two-story buildings. Adequate setbacks and open area will be retained on the site with the applicants' proposal, so that the addition will not overwhelm the adjacent residences with the combined footprint of the development or the height or bulk of the structures. Therefore, the proposal equally meets the purpose of the regulation 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, 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: The proposed addition will be located directly in front of an existing accessory structure and will be attached to the primary residential structure and the accessory structure. The development will still meet all of the required building setbacks and will be only one story, making it compatible in scale with other development on the site and other single-dwelling residences in that area. On-site parking will be preserved. Therefore, approval of the requested Adjustment is not expected to significantly detract from the livability or appearance of the residential area and 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
- D.** City-designated scenic resources and historic resources are preserved; and

Findings: Only one adjustment has been requested. There are no scenic or historic resources on the site. Therefore, these criteria do not apply.

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

Findings: The building coverage standard is intended to ensure that taller structures will not have such a large footprint that their total bulk will overwhelm adjacent houses and also to help define the character of the different zones by limiting the amount of buildings allowed on a site. The impacts that can be considered are those that are related to the requested exception to the building coverage standard. As explained in the findings for Criteria A and B, above, approval of the amount of building coverage that is proposed and the configuration of the proposed addition will not result in impacts that would require mitigation.

The letter of opposition that was received from an interested neighbor stated that mitigation should be required. The proposed mitigation included applying stormwater regulations to all of the development on the entire site and also requiring that there be no parking on the SE 136th Avenue frontage. The Bureau of Environmental Services has indicated that the regulations of the Storm Water Management Manual must be met for the proposed development. Because the building coverage standard does not regulate impervious surfaces, there is no nexus to require any further storm water treatment than the

management requirements that are triggered by the proposed development. Further, this proposal is for a use that has been recognized by the City as meeting the definition of a household. The City's Bureau of Transportation has indicated that there are no parking or other right-of-way issues that are related to this proposal and the approval criteria do not address transportation-related issues, other than generally, as consideration of impacts on appearance and livability. As long as the one required on-site parking space is retained and that space meets the development standards of 33.266.120, for parking for houses, there is no nexus to restrict parking on SE 136th Avenue in response to this proposal.

Because there are no identified impacts from the requested increase in the allowed building coverage that are related to the approval criteria for Adjustments, the City does not have the authority to require mitigation and 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 located in an environmental zone. Therefore, this criterion does not apply.

DEVELOPMENT STANDARDS

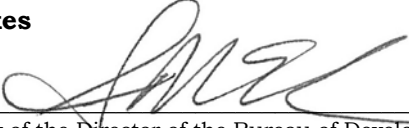
Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.110.225 to increase the maximum allowed building coverage for this site, from 6,038.25 square feet to 7,121 square feet, in order to construct the proposed addition, in general compliance with the approved site plan and elevation drawings, Exhibits C-1 through C-3 signed and dated August 13, 2010, subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 10-136419 AD."

Staff Planner: Kathleen Stokes

Decision rendered by:  **on August 13, 2010**
By authority of the Director of the Bureau of Development Services

Decision mailed: August 17, 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 May 11, 2010, and was determined to be complete on July 9, 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 May 11, 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 extended by the applicant, **the 120 days will expire on: November 6, 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 August 31, 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 **September 1, 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.

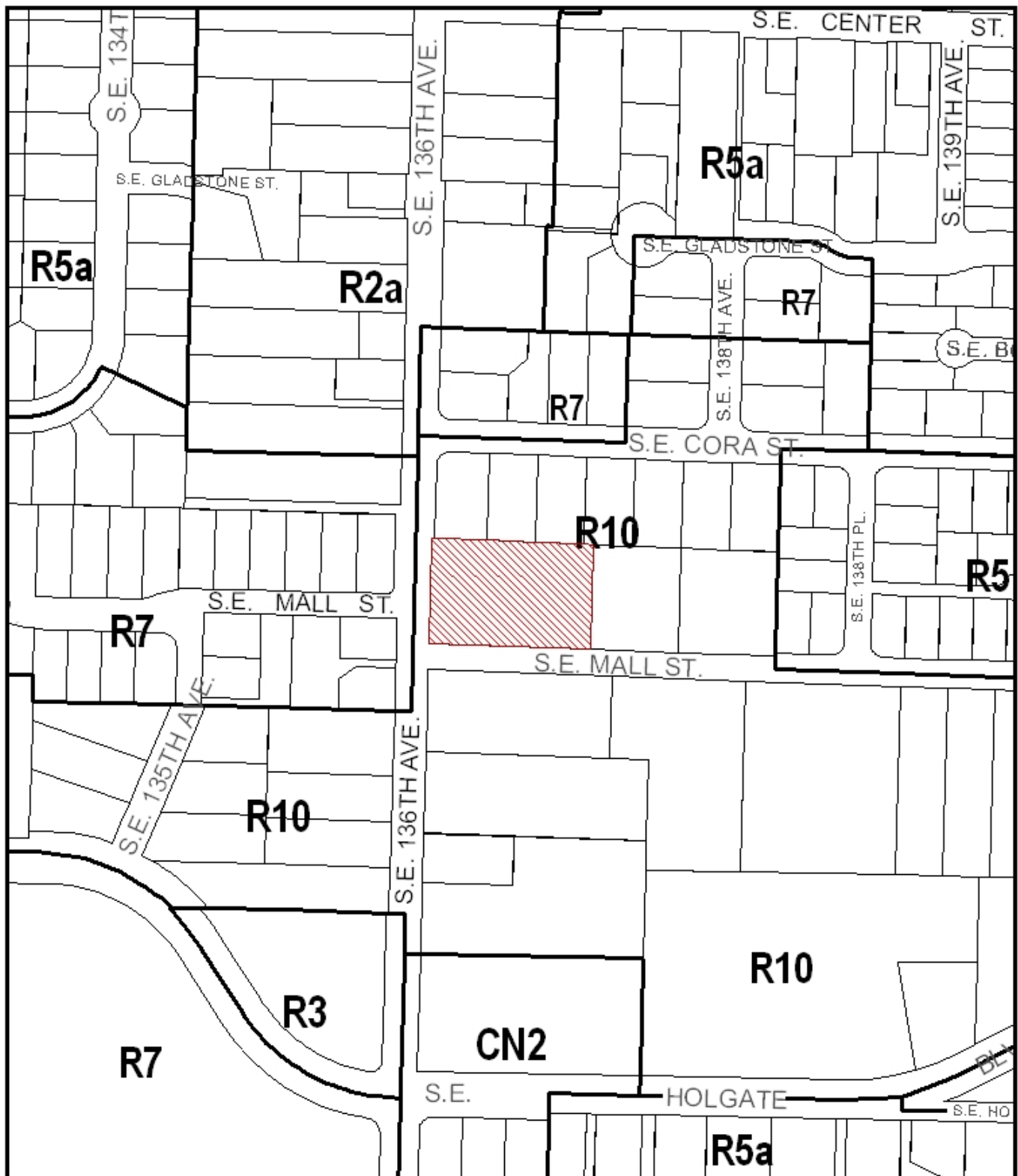
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)

2. Legend for Site Plan (attached)
3. Elevation Drawing
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Water Bureau
 3. Fire Bureau
 4. Site Development Review Section of BDS
 5. Bureau of Parks, Forestry Division
 6. Summary of electronic responses from City service agencies
- F. Correspondence:
 1. Linda Bauer
- G. Other:
 1. Letter from Kathleen Stokes to Vicki Nguyen, May 25, 2010

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

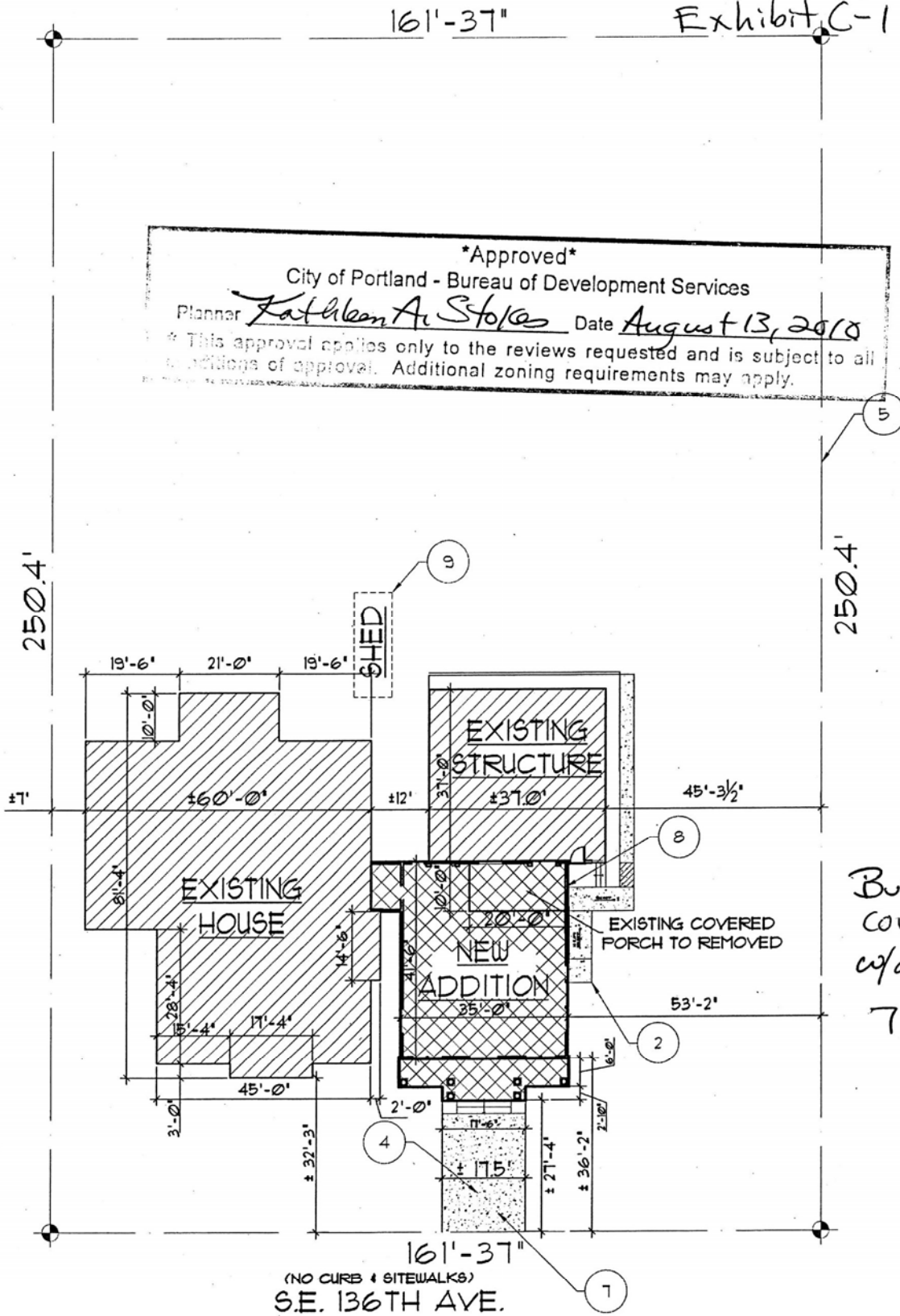


NORTH

This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	LU 10-136419 AD
1/4 Section	3444
Scale	1 inch = 200 feet
State_Id	1S2E11DC 3100
Exhibit	B (May 12, 2010)

LU10-136419 AD
Exhibit C-1

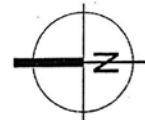


Building
Coverage
w/ addition:
7,121
sq. ft.

1
A1

EXISTING & NEW SITE PLAN

SCALE 20' = 1'-0"



A1

KEY NOTES

1 NOT IN USE

2 NEW CONCRETE RAMP TO COMPLY ADA

3 NOT IN USE

4 EXISTING CONC. DRIVEWAY & WALK WAY City of Portland - Bureau of Development Services

5 Planner Kathleen A. Stokes Date August 13, 2010

6 PROPERTY LINES SILT FENCE FOR EROSION CONTROL Additional zoning requirements may apply.

7 PROVIDE 20'-0" CONSTRUCTION ENTRANCE

8 PROPOSED REMOVE EXISTING 20' W x 10' DEEP COVERED PORCH

9 REMOVED BY OWNER PRIOR TO THIS SUBMITAL

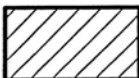
GENERAL NOTES

1 CONTRACTOR TO SPECIFY EXACT LOCATIONS OF UTILITY STUBS.

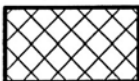
CONSTRUCTION NOTES:

1. STABILIZED CONSTRUCTION ENTRANCE SHALL BE INSTALLED AS THE FIRST SITE ACTIVITY.
2. MULCH SHALL BE PUNCHED IN ON ALL SOILS EXPOSED FOR MORE THAN 24 HRS.
3. ALL ESC FACILITIES SHALL BE INSPECTED AND MAINTAINED A MINIMUM OF ONCE A MONTHS OR WITHIN 24 HRS FOLLOWING A STORM EVENT.

WALL LEGEND



EXISTING BUILDING TO REMAIN



NEW ADDITION ATTACH TO EXISTING BUILDING

BUILDING COVERAGE:

ZONE: R10

EXISTING BUILDING COVERAGE:

EXISTING MAIN HOUSE:
EXISTING STRUCTURE:
EXISTING COVERED PORCH:
EXISTING SHED (THIS STRUCTURE WAS REMOVED BY OWNER PRIOR TO THIS SUBMITAL). THIS SHED ORIGINAL LOCATED AT NORTHEAST SIDE OF EXIST'G 31'X31' STRUCTURE.

+3,972.51 SF

+1,369.00 SF

-1200 SF

(to be removed)

5341.51

or

5342 SF

PROPOSED WORK:

NEW ADDITION:
NEW COVERED PORCH:
DEMOLITION EXISTING COVERED PORCH

1516.13 SF

262.49 SF

-200 SF

(to be removed)

1778.62

or

1779 SF

TOTAL BUILDING COVERAGE (EXISTING & NEW):

7320.13 SF

ALLOWABLE:

6038.25 SF

proposed: 7120.13 SF

or 7,121

EXISTING & NEW
SITE PLAN

A2

Approved

City of Portland - Bureau of Development Services

Planner *Kathleen M. Spoke*

Date *Aug 15/13/2010*

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

SOUTH SIDE ELEVATION

SCALE: 1/4" = 1'-0"

A4.1

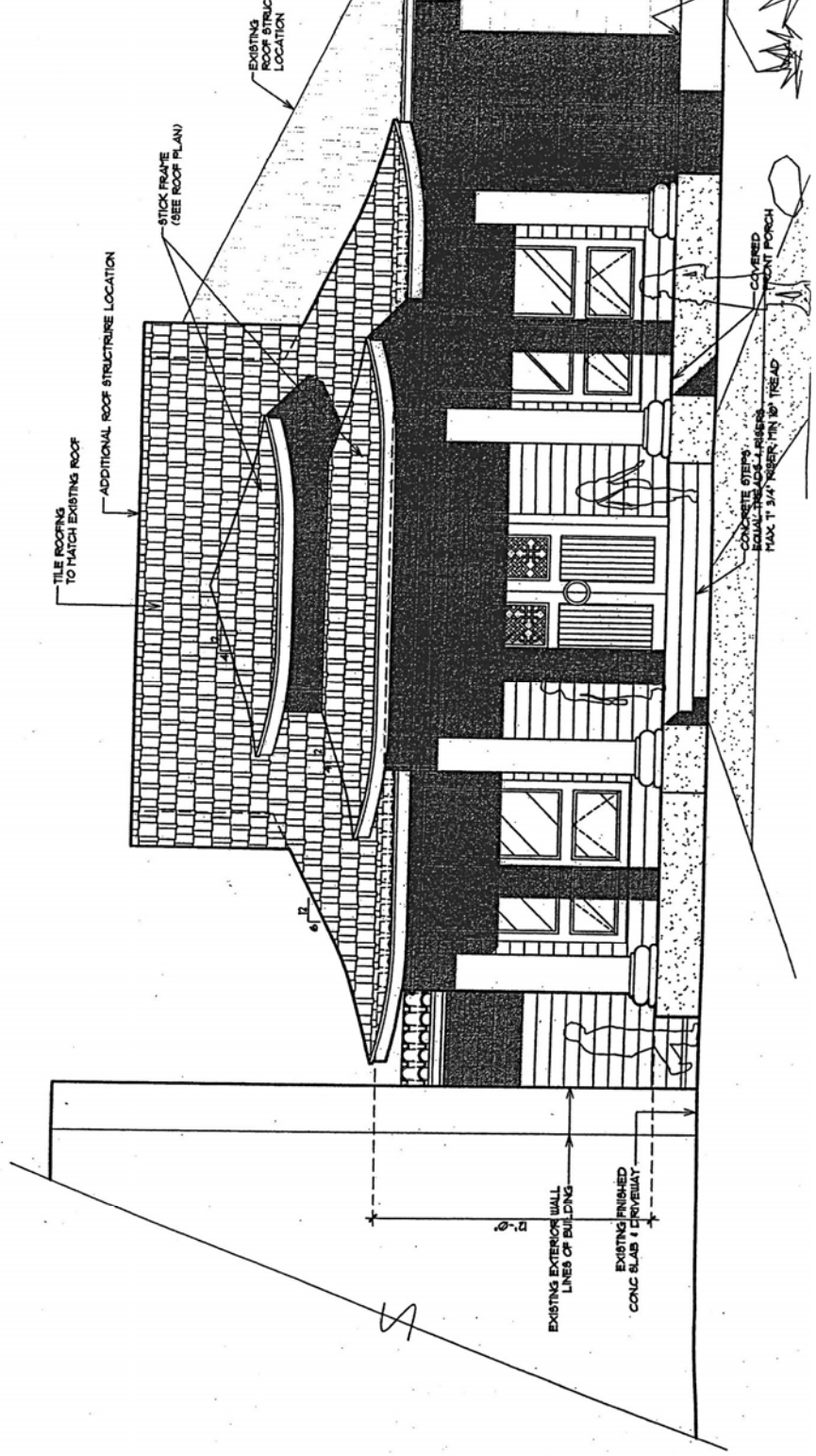


Exhibit C-3
LU10-136419 AD