



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** March 28, 2016  
**To:** Interested Person  
**From:** Matt Wickstrom, Land Use Services  
503-823-6825 / [Matt.Wickstrom@portlandoregon.gov](mailto:Matt.Wickstrom@portlandoregon.gov)

## **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 mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 16-101577 AD**

#### **GENERAL INFORMATION**

**Applicant:** Fred G Fleener  
7403 SE 65th Ave  
Portland, OR 97206

**Site Address:** 7403 SE 65TH AVE

**Legal Description:** BLOCK 22 S 2' OF LOT 3 N 50' OF LOT 4, BRENTWOOD & SUB  
**Tax Account No.:** R099910890  
**State ID No.:** 1S2E20BC 13100  
**Quarter Section:** 3737

**Neighborhood:** Brentwood-Darlington, contact David Messenheimer at [trimess@hotmail.com](mailto:trimess@hotmail.com)

**Business District:** Eighty-Second Ave of Roses Business Association, contact Richard Kiely at 503-504-2273

**District Coalition:** Southeast Uplift, contact Anne Dufay at 503-232-0010

**Zoning:** R5a (Residential 5,000 with an Alternative Design Density Overlay Zone)

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

#### **Proposal:**

The existing house and garage on this site were constructed in 1947. Permit history is vague, but at some point in time (perhaps 1963), an addition was constructed that attached the garage to the house and added square footage to the rear of the house. The addition is located 3 feet from the south property line and the garage is located 19 inches from the north property line. The applicant received approval in 2008 to reduce the required 5-foot side setbacks to 2 feet from the north property line and 3 feet to the south property line. However, permits were not

completed and the 2008 approval has now expired. Since then, the applicant received a permit to demolish a carport that was attached to the house and approved through the 2008 land use review. Also since then, the neighbor to the north completed a survey which showed the north wall of the garage to be 19 inches from the property line. In order to obtain permits for the addition, the applicant has requested a new land use review to reduce the north side setback for the existing garage attached to the house from 5 feet to 19 inches and reduce the south side setback for an addition to the rear of the home from 5 feet to 3 feet.

**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 site is located on the west side of SE 65<sup>th</sup> Avenue, between SE Flavel and SE Ogden Street. The 5,200 square foot lot is developed with a single story home built in 1947. An addition attaches the house to a formerly detached garage. The north wall of the garage is 19 inches from the property line. A carport was previously located in front of the garage was demolished.

The lot to the south of the site is developed with a home and attached garage. The north wall of the house on the lot to the south is approximately 23 feet from the south wall of the house on the site. The adjacent lot to the north of the site is developed with a home and a detached garage. The garage separates the home on the lot to the north from the house on the site. The south wall of the garage on the lot to the north is approximately 15 feet from the property line shared with the site.

Development in the surrounding vicinity is predominately single-dwelling residential.

**Zoning:** The site is zoned R5a (Residential 5,000 with an Alternative Design Density Overlay Zone). The R5 zone is a single-dwelling zone. These zones are intended to preserve land for housing and to provide housing opportunities for individual households. The “a” overlay does not apply to the proposal.

**Land Use History:** City records indicate one prior land use review:

LU 08-147515 AD – 2008 approval with conditions of an Adjustment Review to reduce the north and south side setbacks from 5 feet to 2 feet and 3 feet respectively.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **January 29, 2016**. The following Bureaus have responded:

- The Water Bureau provided information on water service and stated no concerns with the proposal (Exhibit E-1).
- The Life Safety Section of the Bureau of Development Services (BDS) responded with information regarding obtaining a building permit and fire-rating requirements. The response encourages the applicant to visit the Development Services Center (Exhibit E-2).
- The Bureau of Environmental Services responded that the project does not trigger requirements of the Stormwater Management Manual; however, a stormwater disposal location that does not impact adjacent properties must be shown on building permit drawings. The responses states no objections to the Adjustment request (Exhibit E-3).
- The Site Development Section of BDS, the Fire Bureau, the Portland Bureau of Transportation and the Parks Bureau responded with no concerns (Exhibit E-4).

**Neighborhood Review:** One written response has been received from a notified property owner in response to the Notice of Proposal.

The neighbor to the north of the site wrote with background information pertaining to the Adjustment request. The neighbor mentions conditions of approval that were included in the 2008 review and states that the attached garage has undergone changes in the last 4 years. The neighbor states that there has been some disagreement between the two neighbors over the location of the property line. She states that a survey has been requested and asks for the decision on the Adjustment Review to be delayed until it is completed. The neighbor states that she will not object to a reduced setback that is less than was approved in 2008, but doesn't want to lose a portion of her backyard.

*Staff response: The applicant agreed to delay the decision until the survey was completed. The setback mentioned in this decision is reflective of information contained in the survey.*

## **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 requests one adjustment to reduce the side setbacks from 5 feet to 19 inches on the north side of the site for an attached garage and to 3 feet on the south side for an addition to the rear of the existing house.

The purpose for the setback regulations for single-dwelling zones is found in 33.110.220, which states:

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.*

### North Side Setback

The applicant requests to reduce the north side setback for the attached garage from 5 feet to 19 inches. The Portland Zoning Code allows detached garages and other accessory structures up to 24 feet by 24 feet in size to be located in the side setback. The existing garage is approximately 22 feet by 30 feet and could not take advantage of that exception even if it were not attached to the house by the addition; however, the overall concept is similar. The existing garage is relatively small in size and scale due to its 1-story height and its location in the setback maintains light and air for adjacent lots. Access for firefighting is considered to be maintained due to the Fire Bureau's response of "no concerns". Separation for fire protection will be addressed through Building Code requirements that apply at time of building permit.

The garage itself is only 6 feet longer than the 24-foot limit of garages that are allowed by right in the setback and therefore it reflects the general building scale of development in the City's neighborhoods. The addition attaching the garage to the existing house follows the existing north building wall of the home and therefore is not located in the setback, maintains the general building scale of the neighborhood and maintains a reasonable distance between residences. Privacy for the neighbor to the north is not impacted by the Adjustment request because the portion of the structure located within the setback is a garage, not living area. In order to ensure the existing garage continues to be compatible with the neighborhood and not further encroach into the setback (and to maintain consistency with the 2008 land use review), a condition of approval is necessary. The condition states that no structures shall be constructed in a manner that obstructs the 19-inch setback from the north wall of the garage to the north property line. This setback must be maintained so that it could provide passageway. The garage entrance is set back 30 feet from the street property line which provides ample room to park a car in the driveway without overhanging the sidewalk or street.

#### South Side Setback

The applicant requests to reduce the south side setback for the addition to the existing house from 5 feet to 3 feet. The addition which was constructed onto the rear of the house is 1-story in height and therefore will not block light and air for the home to the south of the site. Access for firefighting is considered to be maintained due to the Fire Bureau's response of "no concerns". Separation for fire protection will be addressed through Building Code requirements that apply at time of building permit. In order to ensure the addition continues to be compatible with the neighborhood and further encroachments into the setback do not occur, a condition of approval is necessary. Like the previous condition, this condition states that no structures shall be constructed in a manner that obstructs the 3-foot setback from the south wall of the addition and existing house to the south property line. This setback must be maintained so that it can provide passageway.

The addition follows a portion of the south wall of the existing home constructed in 1947 and therefore can be considered to be consistent with the general building scale and placement of houses in the City's neighborhoods. The addition is also approximately 23 feet from the existing home on the lot to the south which is a reasonable physical distance between residences which maintains privacy. The south wall of the addition extends the established building wall of the home by 14 feet. An exception in the Portland Zoning Code would have allowed the extension of this wall by right (without approval through an Adjustment Review) had the existing portion of the wall within the setback been 60% or more of the entire south facing façade of the existing home. However, the portion of the existing wall within the setback is 55.5% of the entire south facing facade. Nonetheless, the proposal is close to the exception which would allow it by right. Several examples of primary structures located within side building setbacks can be found in the area. The addition is only 1-story in height and follows the roofline of the existing home. The addition also does not change the appearance of the home from SE 65<sup>th</sup> Avenue.

With the conditions of approval requiring no further encroachment of structures into the north and south setbacks, the proposal meets the purpose of the setback requirements 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, 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:** Structures within the side setbacks are not uncommon in the surrounding neighborhood. The addition extends established building walls and are fully integrated into the architecture of the home. Because of this, the additions are not readily visible from the street. For these reasons, and those described in detail above, the proposal does 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:** Two Adjustments have been requested. The overall purpose of the single-dwelling zones is to preserve land for housing and to provide housing opportunities for individual households. The proposal to legalize an addition to the existing house does not preclude the site or structure from providing land for housing or housing opportunities. The requested Adjustments maintain consistency with the purpose of the single-dwelling development standards which is to preserve the character of neighborhoods. This criterion is met.

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

**Findings:** No City-designated scenic or historic resources are located on this site, therefore, this criterion is not applicable.

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

**Findings:** With conditions of approval described above, there will be no discernible impacts resulting from the Adjustment. 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

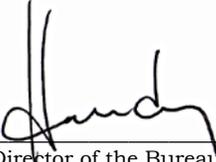
The applicant proposes two Adjustments to reduce the north and south side setbacks for the existing garage and an addition to the existing home. With conditions of approval requiring no further encroachments into the setback and considering that the additions follow the existing building walls, the proposal meets the applicable approval criteria and should be approved.

## ADMINISTRATIVE DECISION

Approval of two Adjustments to reduce the north side setback from 5 feet to 19 inches for the existing garage and to reduce the south side setback from 5 feet to 2 feet for the addition to the home (33.110.220.B), per the approved site plans, Exhibits C-1 through C-2, signed and dated March 24, 2016, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through C) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 16-101577 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. No structures shall be constructed in a manner that obstructs the 19-inch setback from the north wall of the garage to the north property line. This setback must be maintained so that it can provide passageway.
- C. No structures shall be constructed in a manner that obstructs the 3-foot setback from the south wall of the addition and existing house to the south property line. This setback must be maintained so that it can provide passageway.

**Staff Planner: Matt Wickstrom**

**Decision rendered by:**  **on March 24, 2016**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: March 28, 2016**

**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 7, 2016, and was determined to be complete on January 21, 2016.

*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 7, 2016.

*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 requested that the 120-day review period be extended 3 weeks, as stated in Exhibit #A-1. Unless further extended by the applicant, **the 120 days will expire on: June 10, 2016.**

**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 11, 2016** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 12, 2016 – (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.

**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:

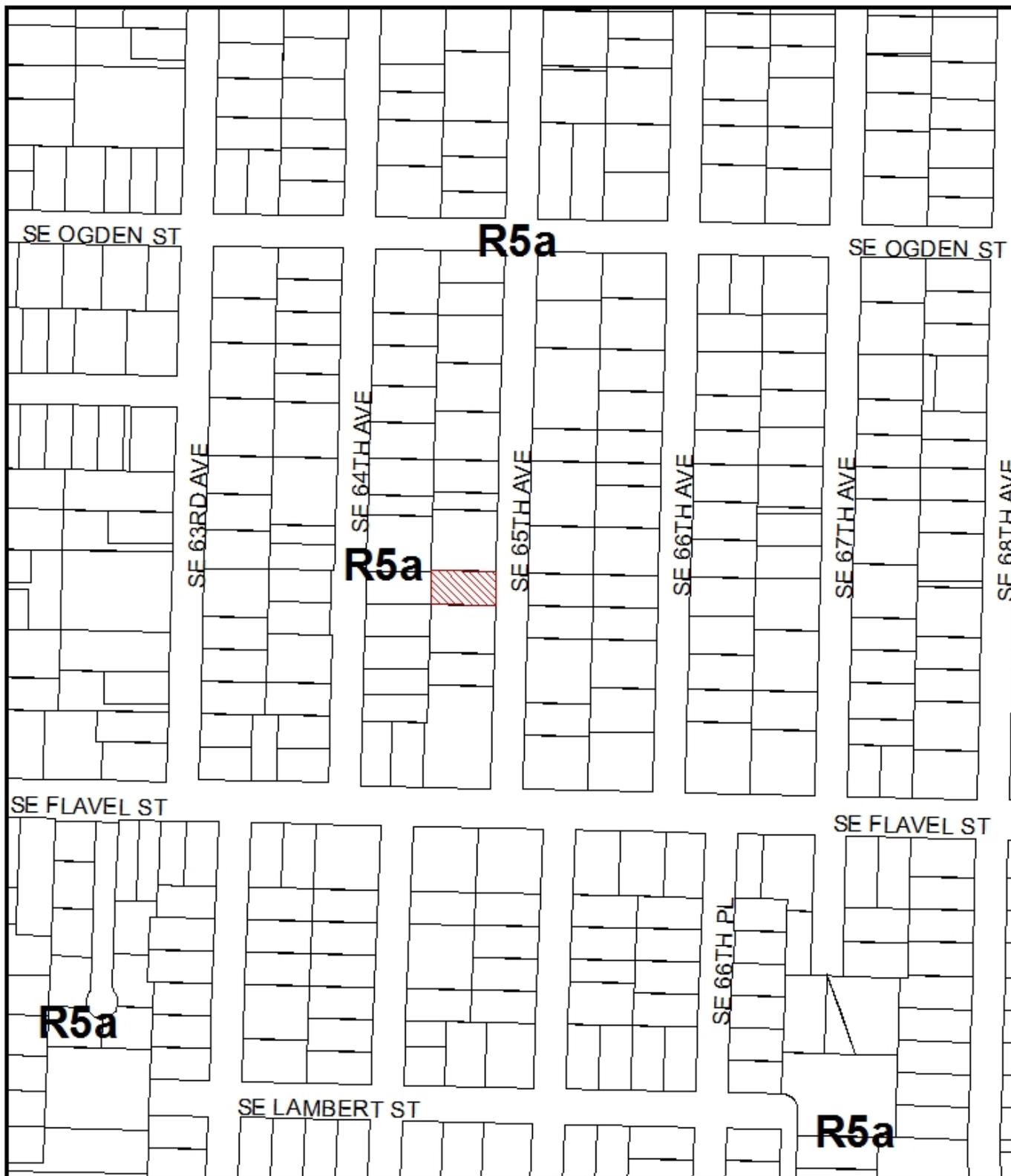
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
  - 1. Email from Fred Fleener extending decision deadline by 3 weeks
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. South Elevation Drawing (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Water Bureau
  - 2. Life Safety Section of BDS
  - 3. Bureau of Environmental Services
  - 4. Summary of Bureau responses
- F. Correspondence:
  - 1. Catherine Walsh, February 18, 2016, background information and request to delay decision until survey is completed

**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

File No. LU 16-101577 AD  
 1/4 Section 3737  
 Scale 1 inch = 200 feet  
 State\_Id 1S2E20BC 13100  
 Exhibit B (Jan 11, 2016)

Lot Area 5200 S.F.

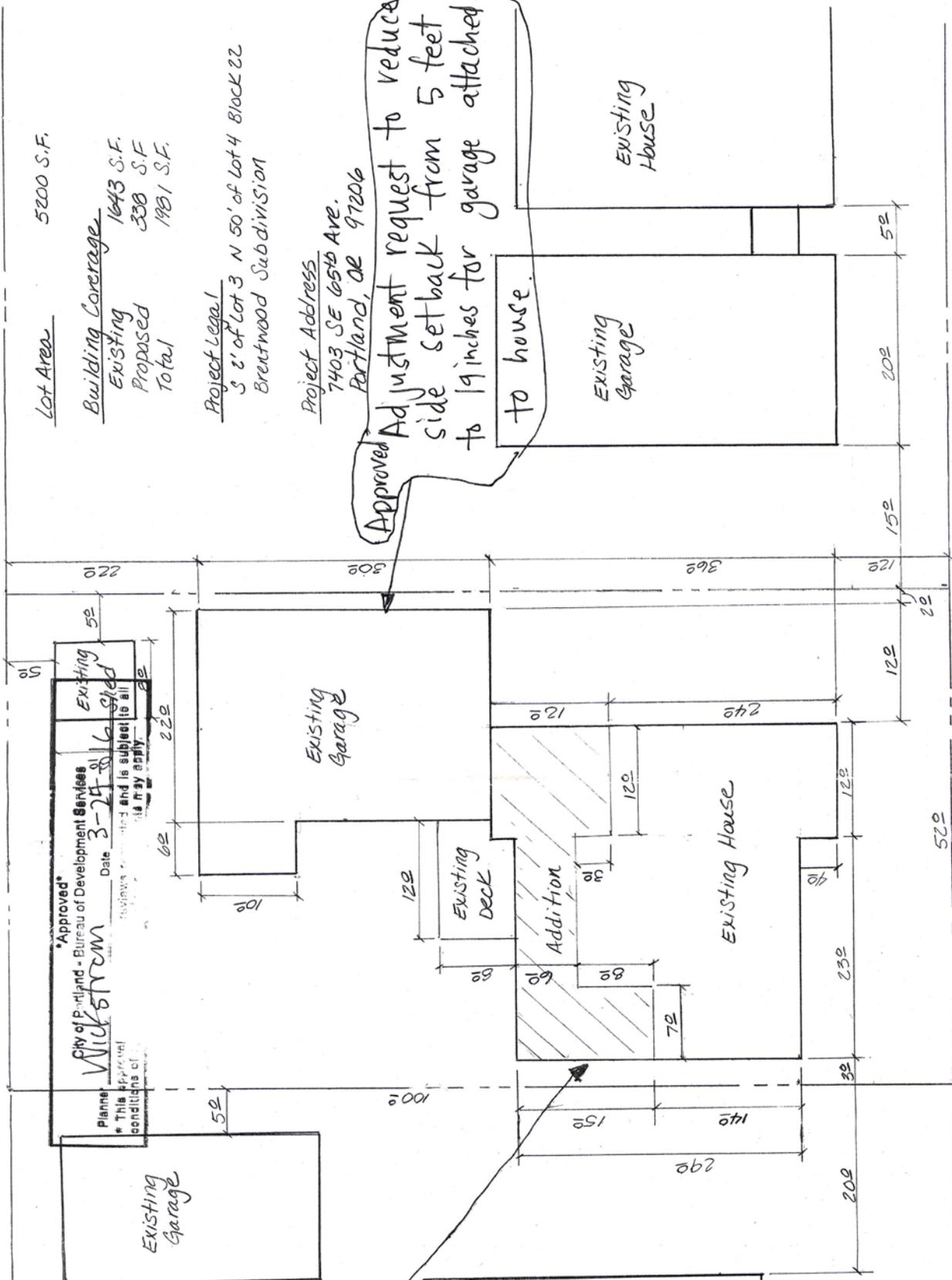
Building Coverage  
Existing 1643 S.F.  
Proposed 338 S.F.  
Total 1981 S.F.

Project Legal  
3' of Lot 3 N 50' of Lot 4 Block 22  
Brentwood Subdivision

Project Address  
7403 SE 65th Ave.  
Portland, OR 97206

Approved Adjustment request to reduce side setback from 5 feet to 19 inches for garage attached to house.

Approved Adjustment request to reduce side setback from 5 feet to 3 feet for addition



Approved\*  
City of Portland - Bureau of Development Services  
Nickstrom Date 3-24-16  
This approval is subject to all conditions of the Ordinance and is subject to all rules and regulations that may apply.

16-101577 AD  
Final Plat

120' To Edge of Pavement

Property/ Right of Way Line  
525'

N

Site Plan  
Scale 1" = 10'

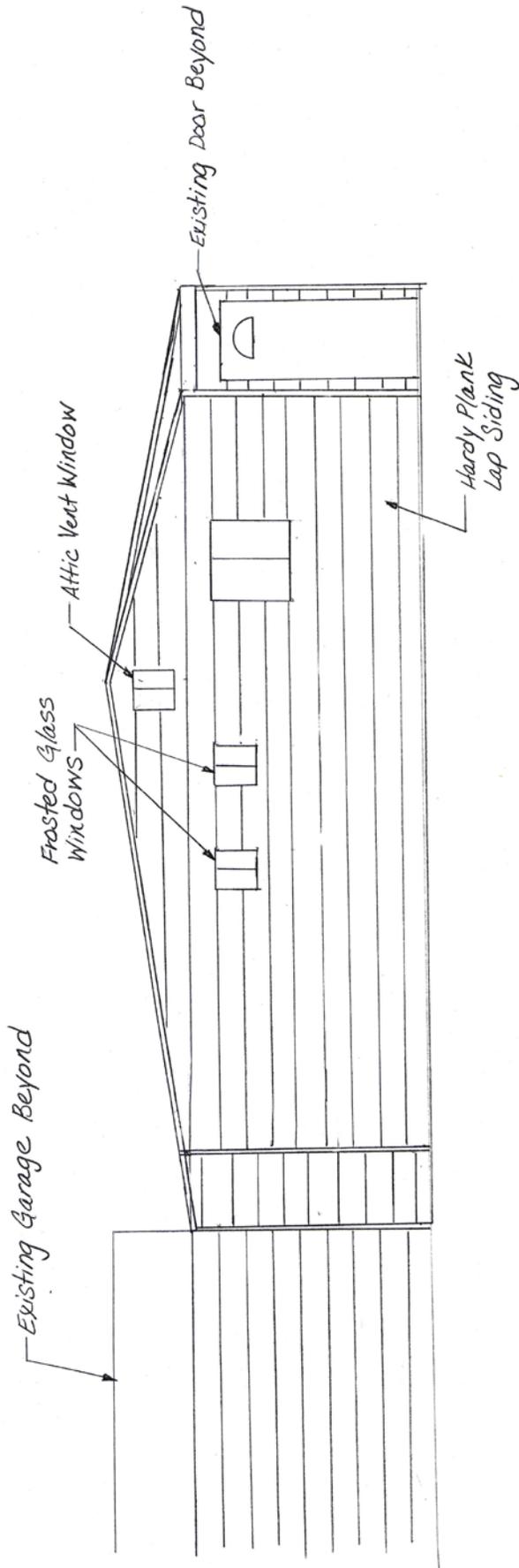
Project Legal

S E' of Lot 3 N 50' of Lot 4  
Block 22  
Brentwood Subdivision

Project Address

7403 SE 65th Ave.  
Portland, OR 97206

**\*Approved\***  
City of Portland - Bureau of Development Services  
Planner WIKETROM Date 8-24-16  
\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



South Elevation

Scale 1/4" = 1'0"

LU 16-101577 AP

Exhibit C-2