



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

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Portland, Oregon 97201
503-823-7300
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www.portlandonline.com/bds

Date: March 24, 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 09-105857 AD

GENERAL INFORMATION

Applicant: Michael Cadigan
Element Design/Build
1327 SE Main St.
Portland, OR 97214

Property Owner: Jennifer Noll and Borg Norum
3312 SE 54th Ave
Portland, OR 97206-2149

Site Address: 3312 SE 54TH AVE

Legal Description: LOT 8 BLOCK 28, EAST CRESTON
Tax Account No.: R223802710
State ID No.: 1S2E07AC 05100
Quarter Section: 3336

Neighborhood: South Tabor, contact Bob Progulske at 503-774-1005.
Business District: Division-Clinton Business Association, contact Darice Robinson at 503-233-1888.
District Coalition: Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.

Zoning: R5a, Single-dwelling 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 applicant is proposing to locate a new, 2-story, 16' x 24' structure in the northeast corner of the lot. The proposed structure contains a garage/studio on the first floor and an accessory dwelling unit (ADU) on the second floor. The proposed garage/ADU is located 3 feet from the

north side property line, and the associated eave is located 2 feet from the north side property line, and is located 51 feet from the front property line. The proposed garage/ADU replaces an existing single-story, single-car garage, located 2 feet from the north side property line and 55 feet from the front property line. The proposed garage/ADU will be built in approximately the same location as the existing garage, except that it will be 1-foot further away from the side property line, 4 feet closer to the front property line, and about 4 feet closer to the house. The front wall of the proposed garage/ADU is about 2 feet forward of the rear wall of the home. The proposed structure will be designed in a similar style as the existing home, as required by Section 33.205 of the Portland Zoning Code.

The R5 zone requires a 5-foot side building setback. Eaves are allowed to extend into the required setback for up to 20% of the setback, which would be 1 foot with a 5-foot setback. The ADU standards require that an ADU be located at least 60 feet back from the front lot line or 6 feet behind the house. Therefore, the applicant is requesting the following two Adjustments:

1. To zoning code section **33.110.220, Setbacks, and Table 110-3**, in order to locate the proposed structure 3 feet from the north side property line and the associated eave 2 feet from the north side property line; and
2. To zoning code section **33.205.030.D.1, ADU Setbacks**, to allow the front wall of the ADU to be located 51 feet from the front lot 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 4,055 square foot site is located on the east side of SE 54th Avenue, just north of SE Powell Boulevard and just south of SE Franklin Street. The site is developed with a single-story, single-dwelling home originally built in 1908, and a detached single-car garage. The site is landscaped along the property lines and contains an open grassy rear yard in the southeast corner. The topography in this location gently slopes down from SE Powell Boulevard toward SE Franklin Street, and down from SE Woodward toward SE Franklin. Lots closer to SE Powell are elevated slightly above lots to the north, and lots closer to SE Franklin are elevated slightly above lots to the south. The site is accessed from SE 54th by a paved driveway to the north of the home and cement steps leading up from the public sidewalk. SE 54th is improved with a 4-foot planting strip, a 5-foot sidewalk, and an additional 2-foot right-of-way behind the sidewalk.

Development within 200 feet north, east, and west of the subject site is predominantly single-dwelling residential with some multi-dwelling residential. The site directly adjacent to the south is developed with a single-dwelling home. Development several blocks to the south includes St. Mark's Evangelical Lutheran Church and a commercial site occupied by the An Dong Market, both fronting on SE Powell Boulevard. South of the subject site is approximately 23,000 square feet of parking area associated with the church and about 6,750 square feet of parking and outdoor storage associated with the market. Residential structures in the surrounding vicinity are one- or two-story structures, and most lots contain an attached garage located beside the home or a detached garage located at a rear corner of the lot.

Zoning: The site and surrounding area to the north, east, and immediate west and south are zoned R5a, single-dwelling residential 5,000 with an Alternative Design Density Overlay Zone.

The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. The 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 a side building setback of 5 feet.

The Alternative Design Density Overlay Zone allows for increased density for development that meets additional design compatibility requirements. The proposal does not take advantage of the provisions of this overlay zone, and therefore the standards of the Alternative Design Density Overlay are not relevant to this Adjustment request.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A “Request for Response” was mailed on February 26, 2009. The following Bureaus have responded with no issues or concerns (Exhibits E.1-E.4):

- Bureau of Transportation Engineering
- Fire Bureau
- Bureau of Parks-Forestry Division
- Life Safety Bureau

The following Bureaus have submitted additional comments:

- The **Bureau of Environmental Services** (Exhibit E.5): BES has no objection to the proposed adjustments. BES noted that it appears stormwater management requirements can be met based on the submitted site plan, but changes will be required to include stormwater management facilities prior to building permit issuance. Stormwater management requirements must be met through onsite infiltration or offsite discharge with onsite pollution reduction and flow control. The proposed adjustments do not appear to affect which stormwater management option will be necessary.
- The **Site Development Section of BDS** (Exhibit E.6): Site Development has no objection to the requested Adjustment. In order to determine if onsite infiltration is feasible at this location, a utility plan and stormwater report, including infiltration test results, will be required at the time of permit review. If it is not feasible to infiltrate stormwater on the site, treatment and flow control will be necessary.

Neighborhood Review: A “Notice of Proposal in Your Neighborhood” was mailed on February 26, 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 Adjustments to two regulations.

Adjustment 1; 33.110.220 Setbacks:

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 proposed new 18-foot tall structure will be located 3 feet from the north side property line and about 10 feet from the adjacent home. This distance provides adequate separation for fire safety, and reflects a typical separation were each structure located at a 5-foot setback from the common property line. Adequate access for fire fighting remains to all sides of the structure. The proposal provides an additional foot of separation on the common property line from the existing site conditions.

The proposed ADU/garage structure is located in approximately the same location of the existing garage, with 1 additional foot of setback provided. The additional shade cast by the new, taller structure at a 3-foot setback does not significantly reduce light or air on the adjacent lot from the existing conditions nor beyond what would occur were the proposed structure located at a 5 foot setback.

The proposed 2-story structure meets the height and floor area requirements for ADU's and will be smaller in footprint and lower in height than the primary structure on the site. Residential structures in the neighborhood are a mixture of one- and two-story structures. Accessory structures are typically located in side and/or rear setbacks, behind or beside primary structures. As noted under the Site and Vicinity description above, the immediate neighborhood generally slopes downward to the north from SE Powell toward SE Franklin, and downward to the south from SE Woodward toward SE Franklin. Lots on the uphill side are elevated above lots on the downhill side. The subject site is slightly lower in elevation than the adjacent lot to the south, which has a two-story home. The subject site and its one-story structure are slightly higher in elevation than the adjacent lot to the north, which also has a one-story home. The proposed structure on the subject site will appear taller than the home on the lot to the north, due to the elevated grade of the subject site and the fact that it is a two-story structure and that on the adjacent lot is a one-story structure. However, considering the contours of the neighborhood which create higher lots and lower lots, and the pattern of mixed one- and two-story structures with some two-story structures on higher elevations adjacent to one-story structures on lower elevations, the proposed accessory structure remains in scale with surrounding structures and reflects the typical pattern of development in the neighborhood.

The proposed new structure is located about 10 feet from the adjacent home to the north, at least 40 feet from the adjacent home to the south, about 70 feet from the adjacent home to the east, about 50 feet from the adjacent home to the southeast, and

about 10 feet from the adjacent shed to the east, which provides a reasonable physical relationship between the proposed new garage/ADU and adjacent residences.

The north elevation, which faces a residential structure, contains no windows, and the front yard area for the ADU is concentrated on the south side of the site, in the existing outdoor area. Options for privacy for neighboring properties are maintained.

The proposal to locate the ADU with a reduced side building setback provides the flexibility to construct an additional housing unit on the site while retaining a reasonable physical separation between the new structure and the existing home and while preserving most of the existing outdoor area.

This purpose statement is equally met.

Adjustment 2; 33.205.030 Accessory Dwelling Unit Design Standards:

Standards for creating accessory dwelling units address the following purposes:

- *Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;*
- *Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;*
- *Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and*
- *Provide adequate flexibility to site buildings so that they fit the topography of sites.*

The R5 zone is a high density, single-dwelling zone. The R5 zone allows attached and detached single-dwelling structures and duplexes. The proposal to construct a detached ADU is compatible with the characteristics of the R5 zone.

As detailed under the findings for Adjustment 1 above, the proposed accessory structure remains in scale with surrounding structures and reflects the typical location of accessory structures in the neighborhood. Existing common outdoor areas, including the rear yard and driveway, are shared.

The primary structure on the site is a 1,383 square foot, one-story home located toward the front of the lot. The floor area of the proposed ADU is about 27% of the floor area of the home, which is less than the allowed 33%. The existing home is one-story and the proposed structure two-stories in height. The ADU is located above the garage. The street-facing façade of the garage/ADU structure contains a vehicle door and person door leading to the garage, and two windows on the second story. No decks, doors, or stairways for the ADU face the street, and so the garage portion of the structure is the most significant feature of the structure as viewed from the street. The proposal to locate the ADU 51 feet back from the front property line rather than 60 feet back, with the front wall of the ADU approximately in line with the rear wall of the home, will not increase the appearance of the ADU in relation to the home.

The proposal to locate the ADU closer to the front property line than 60 feet provides the flexibility to construct an additional housing unit on the site, utilizing existing paved area for the expansion as much as possible while preserving most of the existing outdoor area. The ADU remains less visually or physically significant than the home. This purpose statement is equally met.

Both purpose statements are equally met, and therefore this criterion is met.

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

Findings: The proposed garage/ADU will meet the design requirements for ADU's, and so will be compatible with the appearance of the existing home and surrounding residential area. The outdoor living area on the adjacent lot to the north is separated from the proposed structure by the home on the adjacent lot. The outdoor living areas on the adjacent site to the east and southeast are separated from the proposed structure by distance and landscaping. The proposal to locate the structure 2 feet closer to the side property line and 9 feet closer to the front property line does not significantly detract from the appearance of the residential area and does not create any situations which would significantly detract from livability. 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 are requested in order to allow the proposed location of the structure. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The proposal to locate the two-story structure at a 3 foot setback from the side property line and 51 feet back from the front property line provides an additional housing opportunity and does not compromise housing or housing opportunities on adjacent lots. The request remains consistent with the purpose of the zone and therefore 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 proposed ADU contains no windows on the north side and is located away from the outdoor area of the adjacent lot to the north. Landscaping is located along the common property line, offering screening and softening of the north wall. There are no perceived impacts resulting from the request to allow a 3-foot side building setback. The proposed structure reflects the style of the existing home, and the design of the street-facing façade minimizes the appearance of the ADU in relation to the garage and primary home. There are no perceived impacts resulting from the request to locate the ADU 51 feet from the front property line.

- 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 proposal to locate the two-story, 18-foot high garage/ADU structure 3 feet from the north side property line and 51 feet from the front property line, with the north eave located 2 feet from the north property line, results in a project that meets the applicable review criteria. Therefore, the Adjustments should be approved.

ADMINISTRATIVE DECISION

Approval of the following two Adjustments in order to allow the construction of a new, two-story garage/ADU, in significant conformance with the approved site plan and Exhibits C.1 and C.2:

1. To zoning code section **33.110.220, Setbacks, and Table 110-3**, in order to locate the proposed new, 2-story, 18-foot high garage/ADU structure 3 feet from the north side property line with the associated eave located 2 feet from the north side property line; and
2. To zoning code section **33.205.030.D.1, ADU Setbacks**, to allow the front wall of the ADU to be located 51 feet from the front lot line;

signed and dated **March 20, 2009**, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-105857 AD."

Staff Planner: Crystal Hitchings

Decision rendered by:  **on March 20, 2009.**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 24, 2009

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

Procedural Information. The application for this land use review was submitted on February 2, 2009, and was determined to be complete on February 23, 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 February 2, 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 7, 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 8, 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.

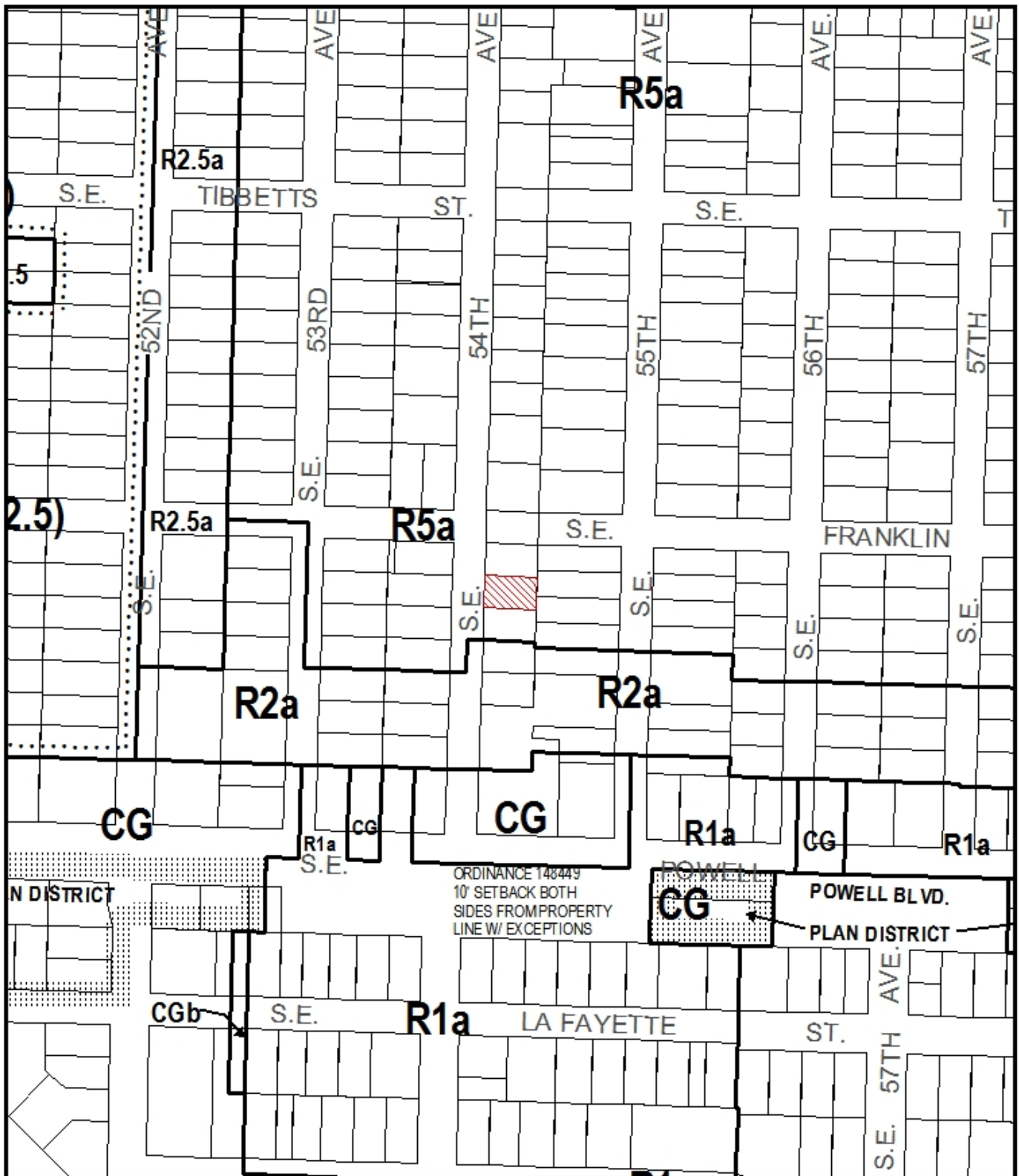
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations (attached)
 - 3. Floor Plans
 - 4. Photos
 - 5. Illustrative street views and bird's eye perspectives
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Transportation Engineering and Development Review
 - 2. Fire Bureau
 - 3. Bureau of Parks, Forestry Division
 - 4. Life Safety Bureau
 - 5. Bureau of Environmental Services
 - 6. Site Development Review Section of BDS
- 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 503-823-7300 (TTY 503-823-6868).



ORDINANCE 148449
10' SETBACK BOTH
SIDES FROM PROPERTY
LINE W/ EXCEPTIONS

ZONING

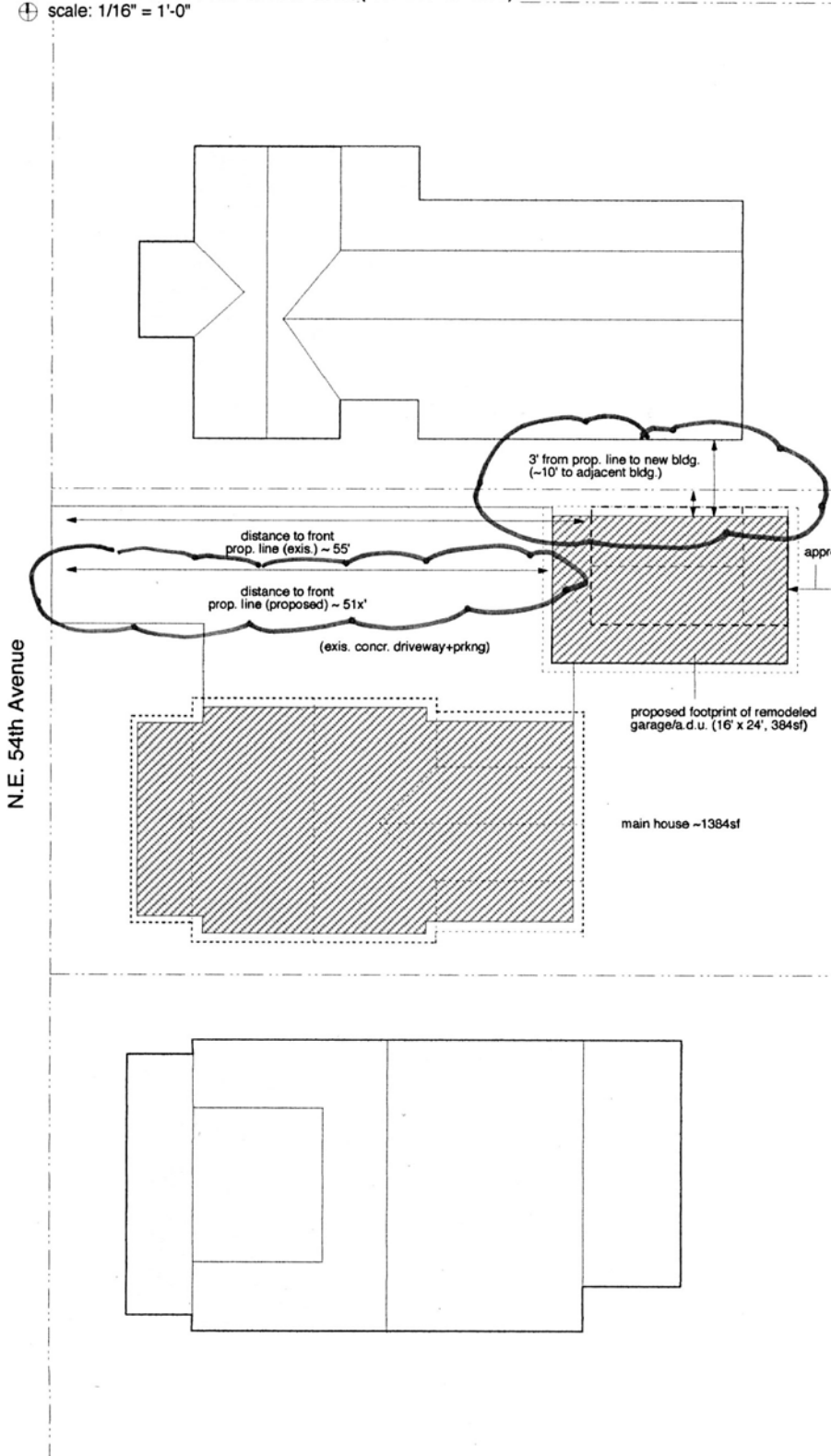
 Site



File No. LU 09-105857 AD
1/4 Section 3336
Scale 1 inch = 200 feet
State_Id 1S2E07AC 5100
Exhibit B (Feb 03,2009)

RECEIVED
FEB 23 2009
By _____

3312 NE 54th Ave.: **SITE PLAN** (Revised 2.18.09)
 ⊕ scale: 1/16" = 1'-0"

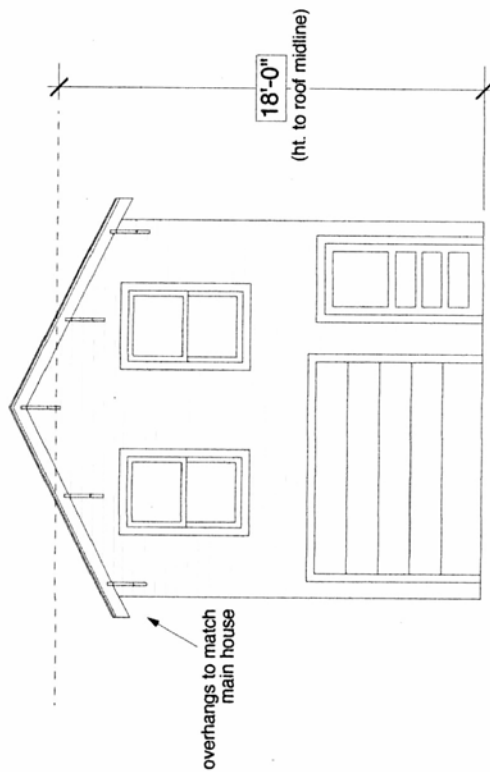


Approval to allow 18' tall garage/AOU to be located 3 feet from north property line + 51 feet from Front property line.

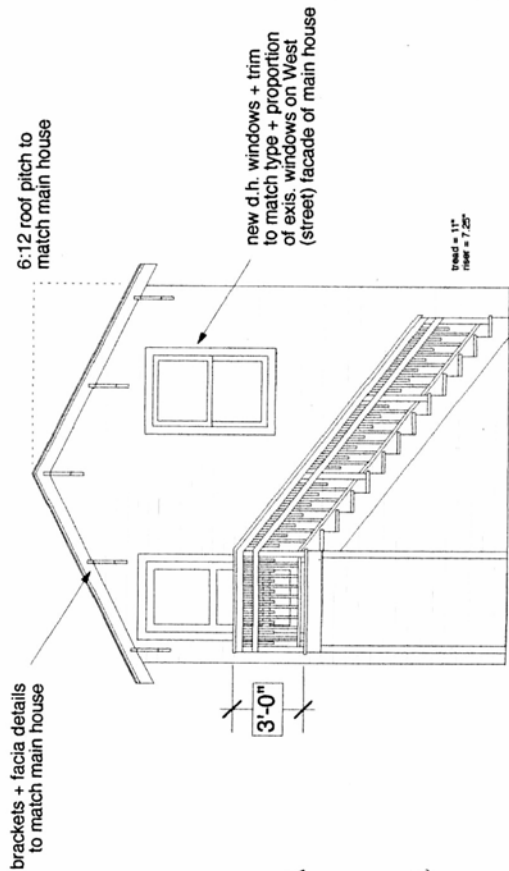
Approved
 City of Portland - Bureau of Development Services
 Planner Cynthia Hittinger Date 3-20-09
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

Exhibit C-1

3312 SE 54th Avenue: GARAGE/A.D.U. ELEVATIONS (Revised 2.18.09)
 scale: 1/16" = 1'-0"



WEST



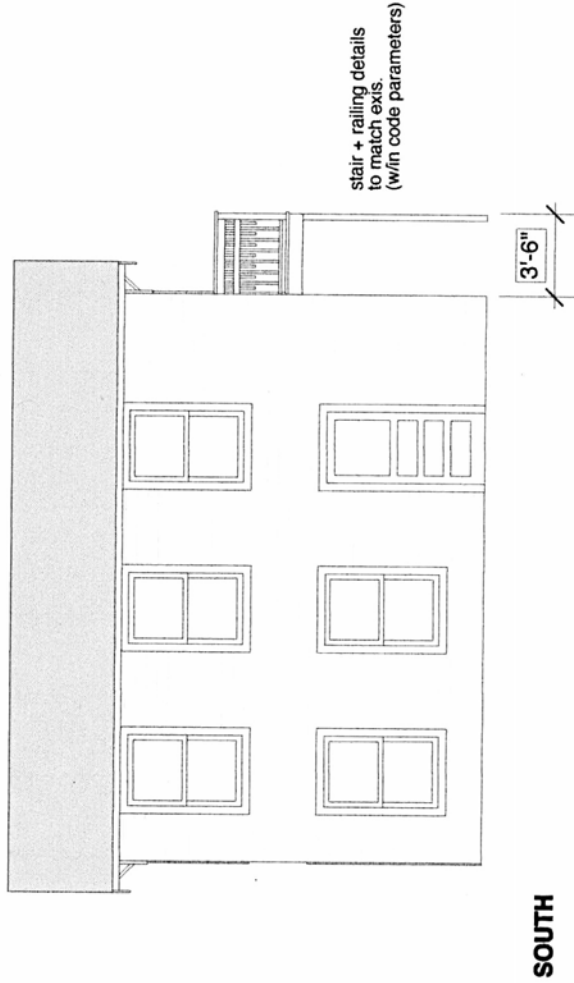
EAST

Approved

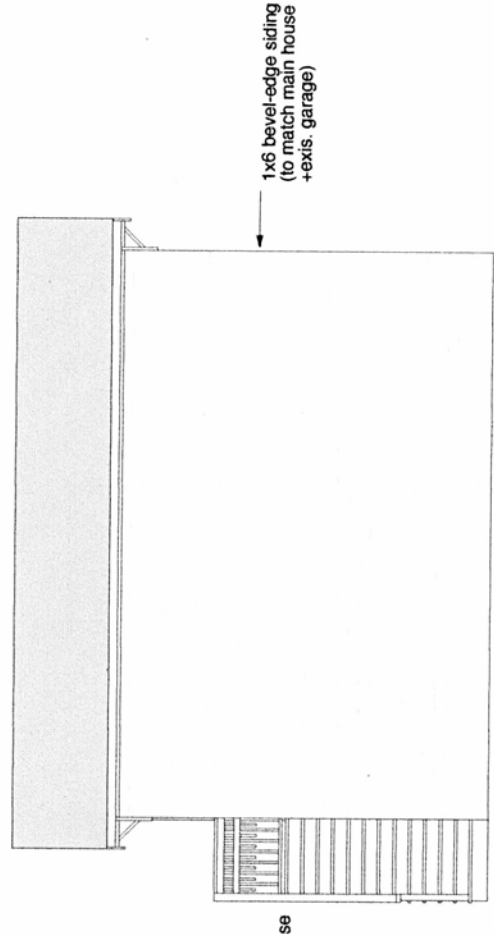
City of Portland - Bureau of Development Services

Planner Crystal Harding Date 3-20-09

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



SOUTH



NORTH

Exhibit C-2