



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

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**Date:** April 28, 2010  
**To:** Interested Person  
**From:** Mark Bello, Land Use Services  
503-823-7810 / [mark.bello@ci.portland.or.us](mailto:mark.bello@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 10-110880 AD**

**GENERAL INFORMATION**

**Applicant:** Steven M. and Roni Goodstein  
9228 SW 53rd Ave  
Portland, OR 97219-5008  
  
Oscar Herrera  
Nest Design & Construction  
7611 NE Fremont St.  
Portland, OR 97213  
  
**Site Address:** 9228 SW 53RD AVE  
  
**Legal Description:** BLOCK 21 LOT 17&18, WEST PORTLAND  
**Tax Account No.:** R894204150  
**State ID No.:** 1S1E30AB 11600  
**Quarter Section:** 3924  
  
**Neighborhood:** Ashcreek, contact Gary Miniszewski at 503-892-3903.  
**Business District:** None  
**District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.  
  
**Zoning:** R5 Residential 5,000  
**Case Type:** AD Adjustment  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

**Proposal:**

The applicant proposes to install an 8-ft high fence along the north (side) property line and a 10 ft. high fence along the east (rear) property line. The code allows fences up to 8 feet high in side or rear property lines. So, an adjustment is required to build the fence along the rear property line.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of zoning code section 33.805.040 A.-F., Adjustments, cited below.

**ANALYSIS**

**Site and Vicinity:** The site is a 10,000-sq. ft. lot on the east side of SW 53<sup>rd</sup> Avenue. The lot is 100-ft. by 100-ft. in dimension. The existing house is set back 30 feet from the rear property line. A hot tub and deck are located between the rear (east) property line and the house.

There is an approximate 10-foot drop in elevation from the rear property line to the front property line. The slope is relatively uniform so the hot tub and deck are below properties to the east.

The lot is an interior lot, to the south of, and adjacent to, the corner lot at the intersection of SW 53<sup>rd</sup> Avenue and SW Orchid Street. There are two houses directly to the east of the site's property line and one house to the northeast. These houses presently have clear views of the applicant site's backyard. There is an existing fence but it is too low to significantly screen the backyard of the site from the upper windows of the surrounding houses.

The site is in Ash Creek residential neighborhood. SW 53<sup>rd</sup> and SW 52<sup>nd</sup> Avenues are the major north-south streets, 200 feet apart so houses on SW 53<sup>rd</sup> and SW 52<sup>nd</sup> share a common rear property line. SW Orchid Street to the north and SW Baird Street to the south are 450 feet apart. Development and zoning are generally R5 with the exception of the area centered on SW Baird to the south which has R7 and R7c (conservation overlay) zoning. Several lots in the R5 zone are not developed to full density. In general, there are few fences in the vicinity.

**Zoning:** The site is zoned R5,000 (R5) or High Density Single-Dwelling Residential, and is intended to accommodate single-dwelling development, with an average of one unit per 5,000 square feet of site area.

**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 **March 31, 2010**. These following Bureaus have responded with no issues or concerns.

- Environmental Services
- Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Life Safety Plan Review Section of BDS.
- Parks-Forestry Division

**Neighborhood Review:** One written response was received in support from a notified neighbor.

**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.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; [see below] and
- 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
- 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
- E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and
- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Criterion A: The purpose of fence regulations is as follows:**

#### **33.110.255 Fences**

**A. Purpose.** The fence standards promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.

## **FINDINGS AND CONCLUSIONS**

The applicants' proposal meets all of the relevant approval criteria.

The zoning code allows an 8-foot high fence beyond the front yard setback, away from the street. The applicant proposes to maintain this height limit along the north and south property lines where distances between houses are least. The 10-foot high fence will provide privacy to the applicant who has a relatively shallow backyard of only 30 feet and is down slope from neighbors to the east. Given the east to west sloping downward topography, only a 10-ft. high fence will completely obscure the hot tub and backyard deck adjacent to the hot tub.

Since this fence is at the rear property line, there is no impact to the public and access can be provided from SW 53<sup>rd</sup> Avenue for emergency access. The Fire Bureau has no concerns. There will be no impact on passers-by who will not experience a "wall" of any kind because the house would be between SW 53<sup>rd</sup> and the fence.

The potential for negative impact would be on neighbors to the east. In response to this notice staff has received one response, in favor of the application, from property owners at the northwest corner of SW 52<sup>nd</sup> Avenue and Baird.

The fence is isolated by development to the north, south, east, and west and will not have an impact on the livability or appearance of the residential area because it is hidden. This application would not meet approval criterion B if it were proposed for the front yard but it is to be located along the rear property line.

Only one adjustment is requested and this site is not in a scenic or environmental zone.

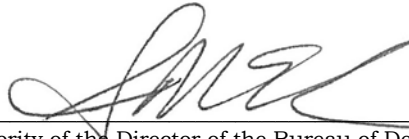
The fence will be constructed per the Bureau of Development's requirements as a fence over 8 feet requires a building permit. The permit will ensure safe construction of the fence.

**ADMINISTRATIVE DECISION**

Approval of a ten-foot high fence along the rear property line per the approved site plan, Exhibit C.1 – C.2, signed and dated April 22, 2010, subject to the following conditions:

- 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 Exhibit C.1 – C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 10-110880 AD."

**Staff Planner: Mark Bello**

**Decision rendered by:**  **on April 26, 2010**

By authority of the Director of the Bureau of Development Services

**Decision mailed: April 28, 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 February 11, 2010, and was determined to be complete on March 2, 2010.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on February 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 further extended by the applicant, **the 120 days will expire on: June 30, 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 May 12, 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](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 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 **May 13, 2010**.
- 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.

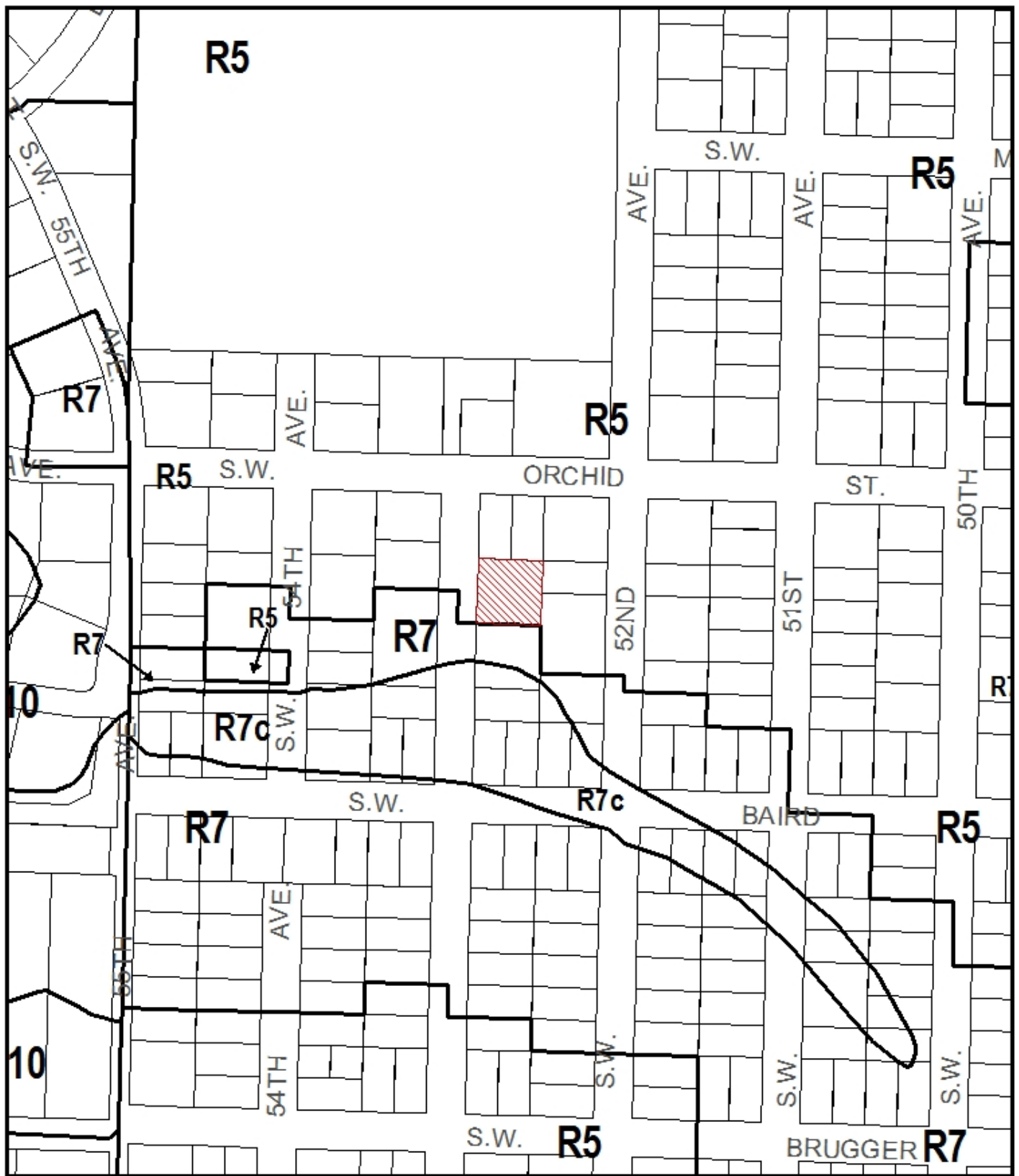
**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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. Fence Construction Details (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Plans Examiner, BDS
- F. Correspondence:
  - 1. Eugene & Opal Smith, stated approval
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Incomplete Letter to Applicant, February 25, 2010



# ZONING



Site



NORTH

File No. LU 10-110880 AD  
 1/4 Section 3924  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E30AB 11600  
 Exhibit B (Feb 16, 2010)

# IMPERVIOUS AREA

DRIVEWAY 2000 sf  
DECK 1130 sf  
SHEDS 160 sf

# ROOF AREA

(INCL. OVERHANG) 3051 sf

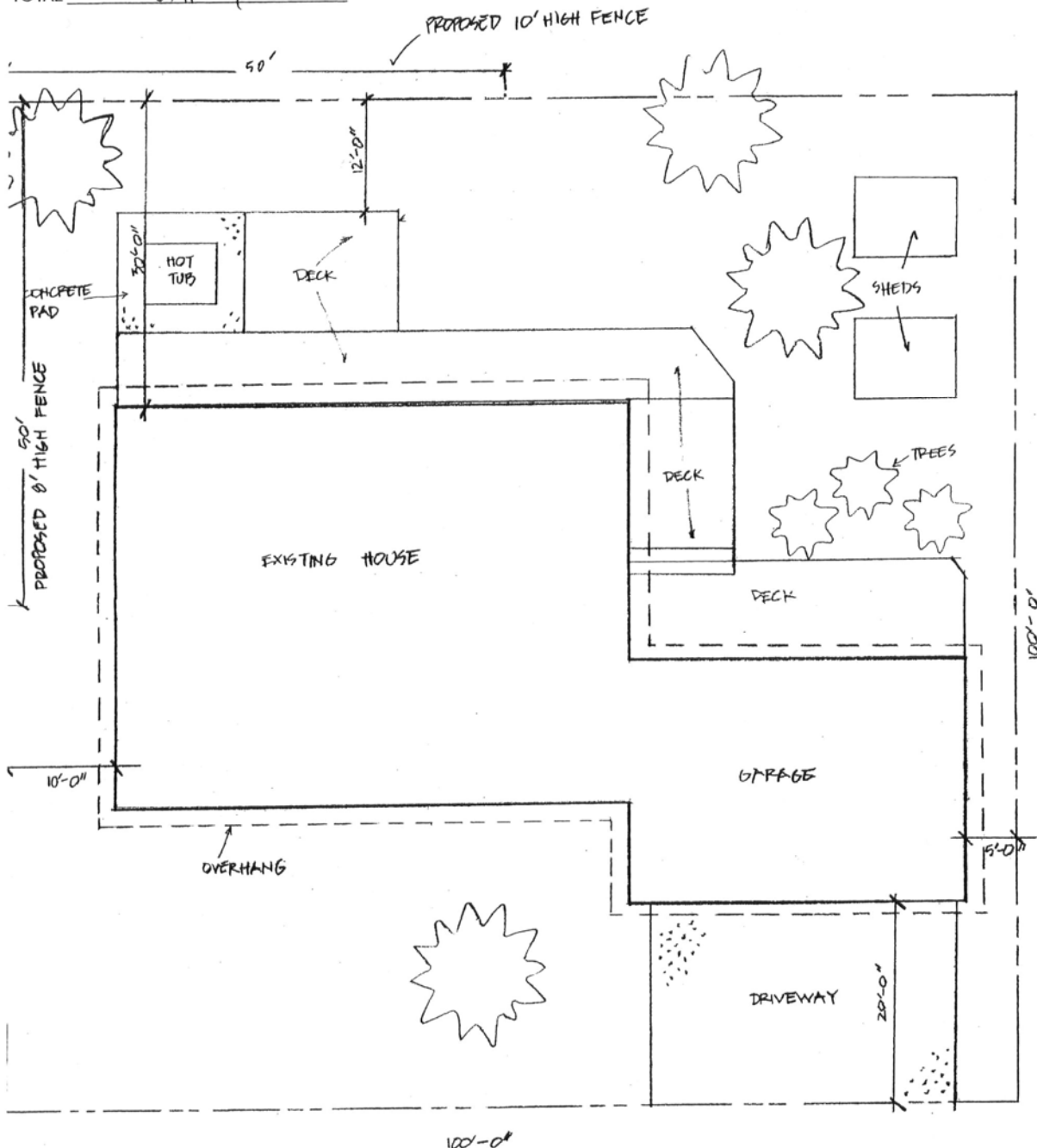
TOTAL 6341 sf

# BUILDING COVERAGE

BUILDING FOOTPRINT 2875 sf

# LOT AREA

10,020 sf .23 acres



SW 53rd AVE

CASE NO. 10-111850  
EXHIBIT C1

# PROJECT LEGAL

West Portland  
Lot 17 & 18 Block 21  
Property ID P301726

# PROJECT ADDRESS

9229 SW 53rd Ave  
Portland, OR 97219

# SITE PLAN

SCALE 1" = 10'

2' 10'



10-111850 A-1

\* Approved

City of Portland - Bureau of Development Services

Date 4/22/10

Bello

This approval applies only to the reviews requested and is subject to all other applicable rules and regulations of approval. Additional zoning requirements may apply.



Ph: (503) 238-0633 ; Fax: (503) 238-0533

By: Matthew V. Nava, P.E.  
Date: 01/07/2010

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This approval applies only to the reviews requested and is subject to all applicable local and national zoning requirements. 10/1/2017

CASE NO. 10 111880 AD  
EXHIBIT C2