



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

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**Date:** April 28, 2011  
**To:** Interested Person  
**From:** Mieke Keenan, Land Use Services  
503-823-0624 / [Mieke.Keenan@portlandoregon.gov](mailto:Mieke.Keenan@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 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 11-119077 AD**

#### **GENERAL INFORMATION**

**Applicant:** Steven and Linda Elliott  
1029 SE 55th Ave  
Portland, OR 97215

**Site Address:** 1029 SE 55TH AVE

**Legal Description:** LOT 7, GAYLORD  
**Tax Account No.:** R309100130  
**State ID No.:** 1S2E06AC 01800  
**Quarter Section:** 3136  
**Neighborhood:** Mt. Tabor, contact Bruce Treat at [bruce.treat@mttaborpd.org](mailto:bruce.treat@mttaborpd.org)  
**Business District:** Belmont Business Association, contact John Barker at 503-231-9118.  
**District Coalition:** Southeast Uplift, contact Leah Hyman at 503-232-0010.  
**Zoning:** R5 (Residential 5,000)  
**Case Type:** AD  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The owners propose to remodel and upgrade the existing detached two car garage located in the southwest corner of the lot, facing SE Taylor Street. As part of the project, the applicants propose to add a deck to the top of the flat roofed garage. The deck on the top of the garage will include a 4 foot high solid railing/wall that will be finished in the same siding materials and painted to match the garage and house. Because the garage is located closer to the side property line than the required 5 foot setback, the applicant requests an adjustment to reduce the side setback to 1 foot for the garage remodel and deck addition. The applicant notes that the footprint, size and location of the existing garage will not change as part of the remodel and upgrades. Attached to this Notice is a site plan depicting the proposal.

**Relevant Approval Criteria:**

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 subject property is located at the northwest corner of the SE Taylor Street and SE 55<sup>th</sup> Avenue intersection, one block south of SE Belmont Street. The site and surrounding area are relatively flat and characterized by single family homes on lots approximately 5,000 square feet in size. S.E. Belmont Street is flanked on the north and south by the R2 zone, which allows for medium density multi-dwelling development.

**Zoning:** R5—Single-dwelling Residential 5,000. The R5 zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Newly created lots must have a maximum density of 1 lot 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, 2011**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on March 31, 2011. One written response has been received from a notified property owner in support of the proposal, stating that they approve of the proposed upgrade of the deck on top of the garage, and the overall upgrade of the garage.

**ZONING CODE APPROVAL CRITERIA****Title 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 to provide certainty and rapid processing for land use applications.

**Title 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. have been met.

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

**Findings:** The purposes of the setback standards are to: maintain light, air, separation for fire protection, and access for fire fighting; reflect the general building scale and placement of houses in the city's neighborhoods; promote a reasonable physical relationship between

residences; promote options for privacy for neighboring properties; require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards; 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 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 proposal to reduce the side setback in order to allow a rooftop deck on top of the existing garage would have no impact on light, air, separation for fire protection, and access for fire fighting as the entire site is developed and the distances between structures would not change. The existing garage is currently one foot from the side property line and has been in place since 1925. Reducing the setback for a rooftop deck and 4 foot tall fence would not significantly change the scale of the garage or its placement. Since the garage is a detached structure the rooftop deck will have no impact on the existing residence. Privacy for neighboring properties would not change. The existing garage on which the new deck will locate, is adjacent to the abutting westerly property's detached garage. In addition, this neighbor's garage has a pitched roof that will effectively screen the residence from the proposed deck. In addition two large trees located northwest of the subject garage will screen the deck from the neighbors.

The front setback and front yard of the residence will not change, and will remain larger than the existing side and rear setbacks. No new buildings are proposed as part of this Adjustment, so flexibility to site buildings with respect to neighborhood compatibility, the relationship of the topography and the buildings on the site, and architectural diversity would not change. The setback Adjustment would not reduce the land available for the outdoor area below what is required by the Zoning Code (at least 250 square feet and at least 12 feet by 12 feet). The setback Adjustment would have no impact on the room available for a car to park in front of the existing garage without overhanging the street or sidewalk. The setback Adjustment would also not change driver visibility when backing onto the street.

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 proposal of a rooftop deck includes a four foot high fence that will be painted to match the existing garage and residence. At 4 feet tall the fence will be lower than the adjacent neighbor's garage roof and will not significantly detract from the livability or appearance of the residential area. The garage will stay in its same location.

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:** Only one adjustment is requested. This criterion is not applicable.

- 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. 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:** As shown in the previous findings, no impacts will occur by reducing the setback of the rooftop deck from 5 feet to 1 foot, consistent with the placement of the existing garage. Since the deck is screened from the residence immediately adjacent to the proposal no impacts are anticipated. In addition a large tree, located northwest of the garage will provide screening from the property to the west and the residence to the northwest.

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, which is designated on the zoning map by either a "c" or "p" overlay. Therefore, 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

All of the approval criteria have been met. The applicants' proposal to adjust the west side setback to allow for a rooftop deck equally meets the purpose of the setback standards. The reduced setback will not significantly detract from the livability or appearance of the residential area because the location of the garage will not change. The proposed four foot tall fence will not exceed the height of the adjacent garage. The Adjustment can be granted.

## ADMINISTRATIVE DECISION

Approval of an adjustment to 33.110.220 to reduce the side building setback from 5 feet to 1 foot for the addition of a rooftop deck on the roof of an existing detached garage per the approved site plans, Exhibits C-1 and C-2, signed and dated April 26, 2011.

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 and C-2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 11-119077 AD.

**Staff Planner: Mieke Keenan**

**Decision rendered by:**  **on April 26, 2011**

By authority of the Director of the Bureau of Development Services

**Decision mailed: April 28, 2011**

**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 March 9, 2011, and was determined to be complete on **March 28, 2011**.

*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 March 9, 2011.

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 May 12, 2011** 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. 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 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, 2011 – (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.

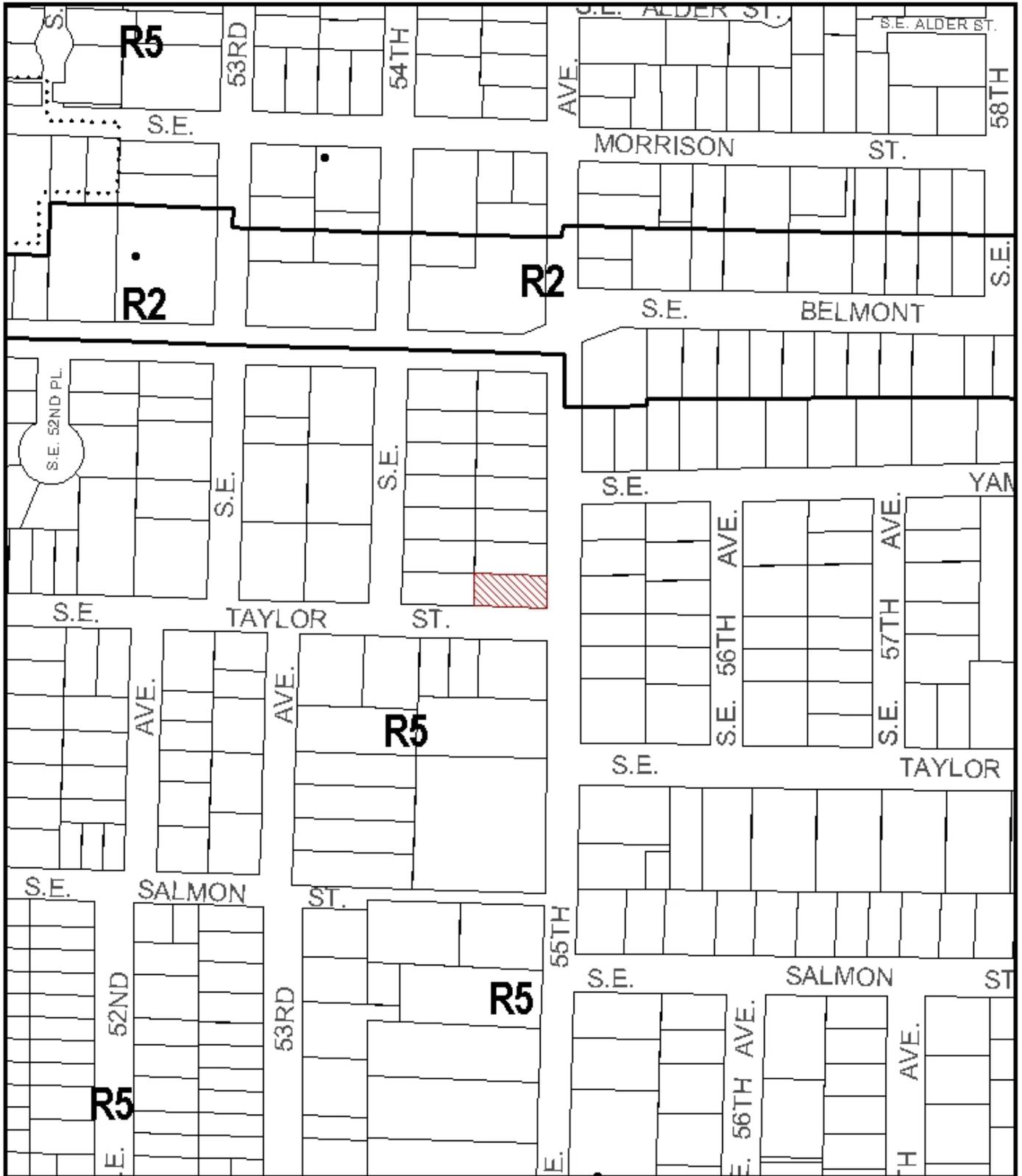
**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
- 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
- F. Correspondence:
1. Tarah Pond, neighbor
- G. Other:
1. Original LU Application

**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



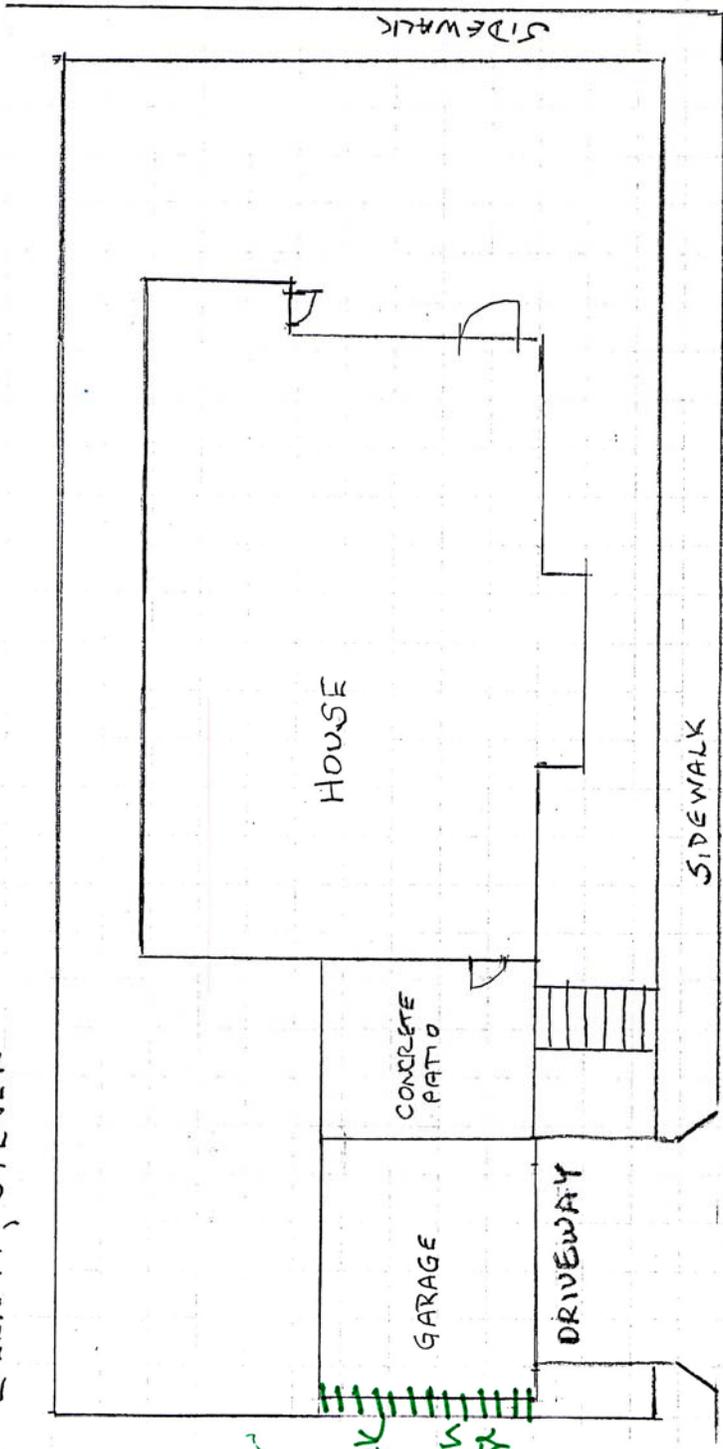
Historic Landmark



File No. LU 11-119077 AD  
 1/4 Section 3136  
 Scale 1 inch = 200 feet  
 State\_Id 1S2E06AC 1800  
 Exhibit B (Mar 30, 2011)

SITE PLAN  
1029 SE 55TH AVE  
PORTLAND OR 97215

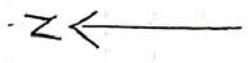
3/7/11 ELLIOTT, STEVEN



Area of slow setback for deck addition on top of garage

SE TAYLOR ST

CASE NO. 11-19077  
EXHIBIT C



1/4" = 4'

\*Approved\*  
City of Portland - Bureau of Development Services  
Planner Michele Korman Date 3/26/11  
This approval applies only to the reviews requested and is subject to the terms and conditions of approval. Additional zoning requirements may apply.