



City of Portland
Bureau of Development Services
Land Use Services Division

1900 SW Fourth Ave. Suite 5000
Portland, Oregon 97201
Telephone: 503-823-7300
TDD: 503-823-6868
FAX: 503-823-5630
www.portlandonline.com/bds

Date: May 5, 2008
To: Interested Person
From: Kathleen Stokes, Land Use Services
503-823-7843 / kstokes@ci.portland.or.us

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-113807 AD

GENERAL INFORMATION

Applicant: Kathryn A Dusza
1913 N Sumner St
Portland, OR 97217-3862

Stanley Figgins, A.F. Figgins Construction (builder)
PO Box 2431
Estacada OR 97023

Site Address: 1913 N SUMNER ST

Legal Description: LOT 22 BLOCK 3, RIVERSIDE ADD
Tax Account No.: R709601420
State ID No.: 1N1E21AA 11400
Quarter Section: 2528

Neighborhood: Overlook, Claire Paris at 503-998-4878.
Business District: North Portland Business Assoc, Steve Weir at 503-283-3883.
District Coalition: North Portland Neighborhood Services, Mary Jaron Kelley at 503-823-4099.

Plan District: Albina Community
Zoning: R5 (R5,000, High Density SIngle-Dwelling Residential)

Case Type: Adjustment Review
Procedure: Type II, administrative decision with appeal to Adjustment Committee.

Proposal: The applicant proposes replacing the existing garage on this site with a larger structure in the same location. The proposed garage would be 18 feet wide by 23 feet, 8 inches long and 10 feet, 10.5 inches tall. The new garage would be located with the west wall 2 feet, 6 inches from the side property line, incorporating an existing retaining wall as a part of the construction.

The garage roof would have 6-inch-wide eaves. The front of the proposed structure, with the garage entrance would be located 5 feet from the front property line. This would place the

garage in front of the residence, with 1 foot, 9 inches of the structure overlapping the front of the house.

The Standards of the Portland Zoning Code for the R5 zone require the walls of structures to be located 5 feet from side and rear property lines and 10 feet from the front property line. Roof eaves must be 4 feet from side and rear property lines. Garage entrances are required to be located at least 18 feet from the adjacent street lot line. Garages are not allowed to be located closer to the street lot line than the longest street-facing wall of the dwelling unit. Requests for exceptions to these standards are approved through Adjustment Reviews if all of the approval criteria are met or can be met through conditions of approval.

Therefore, the applicant is requesting approval of the following adjustments in order to build the proposed garage:

1. To reduce the minimum west side building setback from 5 feet to 2.5 feet for the building wall and from 4 feet to 2 feet for the roof eave (Code Section 33.110.220 B);
2. To reduce the minimum front building setback from 10 feet to 5 feet (Code Section 33.110.220 B);
3. To reduce the minimum garage entrance setback from 18 feet to 5 feet (Code Section 33.110.220 B), and
4. To allow the garage to be closer to the street lot line than the longest street-facing wall of the dwelling unit (Street lot line setback, 33.110.253 F).

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

ANALYSIS

Site and Vicinity: The site is a 5,000 square-foot parcel that is located on the north side of North Sumner Street, one lot to the east of the intersection with North Denver Avenue. The lot is developed with a single-dwelling residence, with a single-car, detached garage that is located approximately 2.5 feet from the west side property line and 5 feet from the front property line. The garage is set at a grade level that is 2.5 feet lower than the house, with a retaining wall along the edge of the front yard, and abutting both sides of the recessed driveway. The nonconforming garage is proposed to be demolished and the new, larger garage is proposed to be constructed in the same location. The area around the site is mainly developed with single-dwelling structures of a similar age and size. Some other properties in the area also have detached garages that are located between the street and the front of the dwelling unit.

Zoning: The site is zoned R5, (R5,000, High Density Single-Dwelling Residential). This zone requires structures over 6 feet in height to be set back 5 feet from the side and rear property lines. Structures are required to be located a minimum of 10 feet from the front property line.

Land Use History: City records include the following prior land use review for this site:
VZ 300-65 (65-035598) 1965 approval of a variance to reduce the garage setback, from the required 40 feet from the south front lot line on North Sumner, in order to construct a 17-foot, 4-inch by 24-foot garage. The approval noted that the proposal for the garage construction included a masonry wall adjacent to the west side lot line.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **April 9, 2008**. The following Bureaus have responded to indicate that there are no issues or concerns regarding approval of the requested Adjustments. Agencies that provided information on requirements for building permits are noted with exhibit numbers:

- Environmental Services provided information on requirements for storm water management (Exhibit E-1).
- Transportation Engineering placed a comment in the BDS database that stated there were no concerns, "provided that the location of the new garage's setback is not located any closer to the front/street property line and that the new garage is also limited to being a one

car garage. The new garage is anticipated to continue to be consistent with existing conditions."

- Water Bureau
- Fire Bureau
- Site Development Section of BDS provided information on the types of acceptable storm water disposal systems (Exhibit E-2).
- Life Safety Plan Review Section of BDS provided information on building permit requirements (Exhibit E-3).
- Parks-Forestry Division

Neighborhood Review: One written response was received from the property owner that shares the common property line where the side setback adjustment has been requested. This neighbor expressed support for approval of the requested Adjustments, stating that he prefers that the garage be closer to his property line than the Code requires (Exhibit F-1).

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of Adjustments The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below, have been met.

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

Findings: Adjustments to front and side building setbacks and garage entrance setback (33.110.220): *The relevant purposes of building setback requirements are*

- *to maintain light, air, separation for fire protection, and access for fire fighting*
- *to reflect the general building scale and placement of development in the City's neighborhoods and promote a reasonable physical relationship between residences*
- *to promote options for privacy for neighboring properties and*
- *to 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.*

Larger front setbacks are required to promote open, visually pleasing front yards.

The minimum garage entrance setback requirement is intended to provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and to enhance driver visibility when backing onto the street. The development standards for lots in the R5 zone require structures to be set back a minimum of 5 feet from side and rear property lines and 10 feet from the front property line. The applicant is requesting approval of Adjustments to reduce the west side and the front setbacks for the proposed garage. The request to reduce the required side setback to 2.5-feet, for the building wall and to 2 feet for the roof eave will not have any impact on light and air or on privacy for the adjacent property because the reduced setback would be along the side yard of the adjacent property to the west. (Note that technically, according to the Zoning Code definitions of property lines, this common property line is the rear of the neighbor's lot. However, have the garage abut either a side or a rear property line would result in the same lack of impacts since the

neighbor's driveway is adjacent to the shared property line). For the same reason, there will be no impacts on separation for fire protection or access for fire fighting. Furthermore, the proposed garage will be required to meet fire-rated construction standards of the building code.

The proposed garage structure would incorporate the existing retaining wall in the southwest corner of the property, so it will continue the historic physical relationship of structures. The request to reduce the front building setback to 5 feet would also retain the setback of the existing garage. The proposed design calls for a slightly wider and taller structure, but the impacts on the street edge will remain essentially the same. The minor encroachment into the existing raised front yard area will still allow an open and pleasing front yard to be retained between the dwelling and the sidewalk edge. Similarly, there will be no change in the garage entrance setback from the existing situation. Although the proposed garage will be somewhat wider than the existing structure, it will still have a single-car garage door that is located 5 feet from the front property line. This distance is close enough to the curb that there will not be room to park a car in front of the garage without extending into the roadway. This will discourage parking a vehicle so that the sidewalk is blocked. Therefore, based on these considerations, the proposed setbacks equally meet the purposes of the setback regulations and, for these Adjustments, this criterion is met.

Adjustment to street lot line setback (33.110.253 F): *The purposes for the special regulations for garages are stated in the Code, as follows: "These standards*

- *Together with the window and main entrance standards, ensure that there is a physical and visual connection between the living area of the residence and the street;*
- *Ensure that the location and amount of the living area of the residence, as seen from the street, is more prominent than the garage;*
- *Prevent garages from obscuring the main entrance from the street and ensure that the main entrance for pedestrians, rather than automobiles, is the prominent entrance;*
- *Provide for a more pleasant pedestrian environment by preventing garages and vehicle areas from dominating the views of the neighborhood from the sidewalk; and*
- *Enhance public safety by preventing garages from blocking views of the street from inside the residence.*

The proposed garage would be located at the front of the lot, with the front wall of the dwelling unit set six feet behind the rear wall of the garage. The street lot line setback standard states that a garage wall that faces the street may be no closer to the street lot line than the longest street-facing wall of the dwelling unit. The proposed garage will be located in the same position as the existing garage, but will be enlarged to better accommodate the needs of the applicant. It will not obscure the main entrance to house or prevent a visual connection between the living area and the street because it will be set over to the side of the lot and also because the grade level for the house is 2.5 feet higher than the grade level for the garage. While the proposed plan calls for the garage to be physically in front of the west edge of the house, it will only overlap by 1 foot, 9 inches. Because of the lower grade level, the garage will not dominate the view of the residential development of the site. The proposed structure is not expected to have a detrimental impact on the pedestrian environment and will not block views of the street from the inside of the house. Therefore, the purposes of this regulation are equally met. For this adjustment, 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: As stated in the findings above, the proposal to reduce the required setback from the west side and front property lines will still meet the purposes of maintaining fire safety, privacy, light and air and will still reflect the scale and placement of buildings in the area and preserve a reasonable relationship between residences. The neighbor who owns the abutting property to the west wrote a letter stating that he preferred that the existing

reduced setback from his property be retained for the new structure. There will not be a temptation to park in front of the garage, due to the reduced garage entrance setback because there would not be enough room for a vehicle to be parked there without projecting into the roadway. The structure will not dominate the streetscape or prevent any visual communication between the house and the public area because the garage will be set over to the side and at a lower grade level than the house. Therefore, the requested exceptions to the setbacks for the proposed garage will not have any significant negative impacts on the appearance or livability of the residential area and this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Adjustments have been requested for exceptions to the front and side building setbacks, the garage entrance setback and the street lot line setback. All or these adjustments were requested so that the new garage could be built in the same location as the existing garage. The purpose of the R5 and other single-dwelling zones is to preserve land for housing and to provide housing opportunities for individual households. The effect of approving all of the requested adjustments would be to allow the applicant to improve the utility of an accessory structure for the existing household on this site, without any detrimental impacts to the character of the residential area. Therefore, the proposal is consistent with the overall purpose of the zone and this criterion is met.

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

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

- 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: There are no scenic or historic resources on the site. No impacts have been identified and the site is not located in an environmental zone. Therefore, these criteria do not apply.

DEVELOPMENT STANDARDS

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

CONCLUSIONS

All of the relevant approval criteria have been met. Approval of the request to reduce the required setback from the west side and the front property lines is not expected to have significant impacts on light, air, privacy, fire protection or access for fire fighting. The open front yard will be retained. The existing situation for the garage entrance will also remain. The proposed development is compatible with the scale and placement of structures and the relationship of residences in the adjacent area. Therefore there will be no significant impacts on the livability or appearance of the residential area. The requested Adjustments can be approved, subject to compliance with the site plan and elevation drawings.

ADMINISTRATIVE DECISION

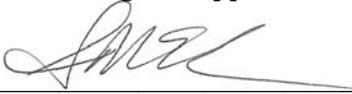
Approval of Adjustments:

1. To reduce the minimum west side building setback from 5 feet to 2.5 feet for the building wall and from 4 feet to 2 feet for the roof eave (Code Section 33.110.220 B);

2. To reduce the minimum front building setback from 10 feet to 5 feet (Code Section 33.110.220 B);
3. To reduce the minimum garage entrance setback from 18 feet to 5 feet (Code Section 33.110.220 B), and
4. To allow the garage to be closer to the street lot line than the longest street-facing wall of the dwelling unit (Street lot line setback, 33.110.253 F).

Approvals are subject to general compliance with the approved site plan and elevation drawings, Exhibits C-1 through C-2, signed and dated May 1, 2008, and also subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 08-113807 AD."

Decision rendered by:  **on May 1, 2008.**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 5, 2008

Staff Planner: Kathleen Stokes

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 6, 2008, and was determined to be complete on April 7, 2008.

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 6, 2008.

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 19, 2008** 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. Recognized neighborhood associations are not subject to the appeal fee. 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 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 **May 20, 2008 – (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:

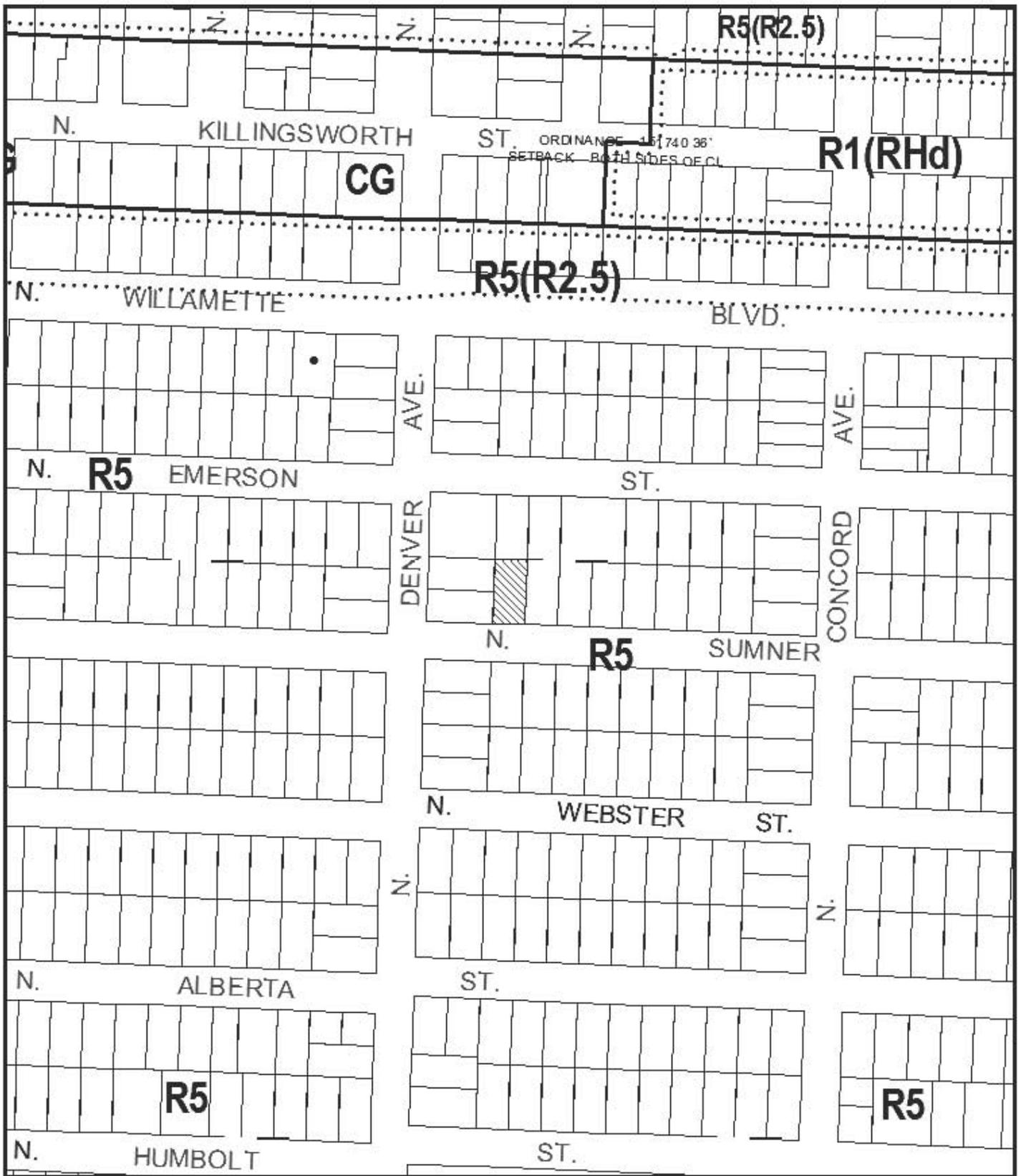
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Application and original submittal materials
 - 2. Supplemental information, received April 3, 2008
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation Drawings (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Site Development Review Section of BDS
 - 3. Life Safety Plan Review Section of BDS
- F. Correspondence:
 - 1. Robert Thomasson
- G. Other:
 - 1. Land Use History
 - 2. Letter from Kathleen Stokes to Kathryn Dusza, March 21, 2008

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING



Site



Historic Landmark

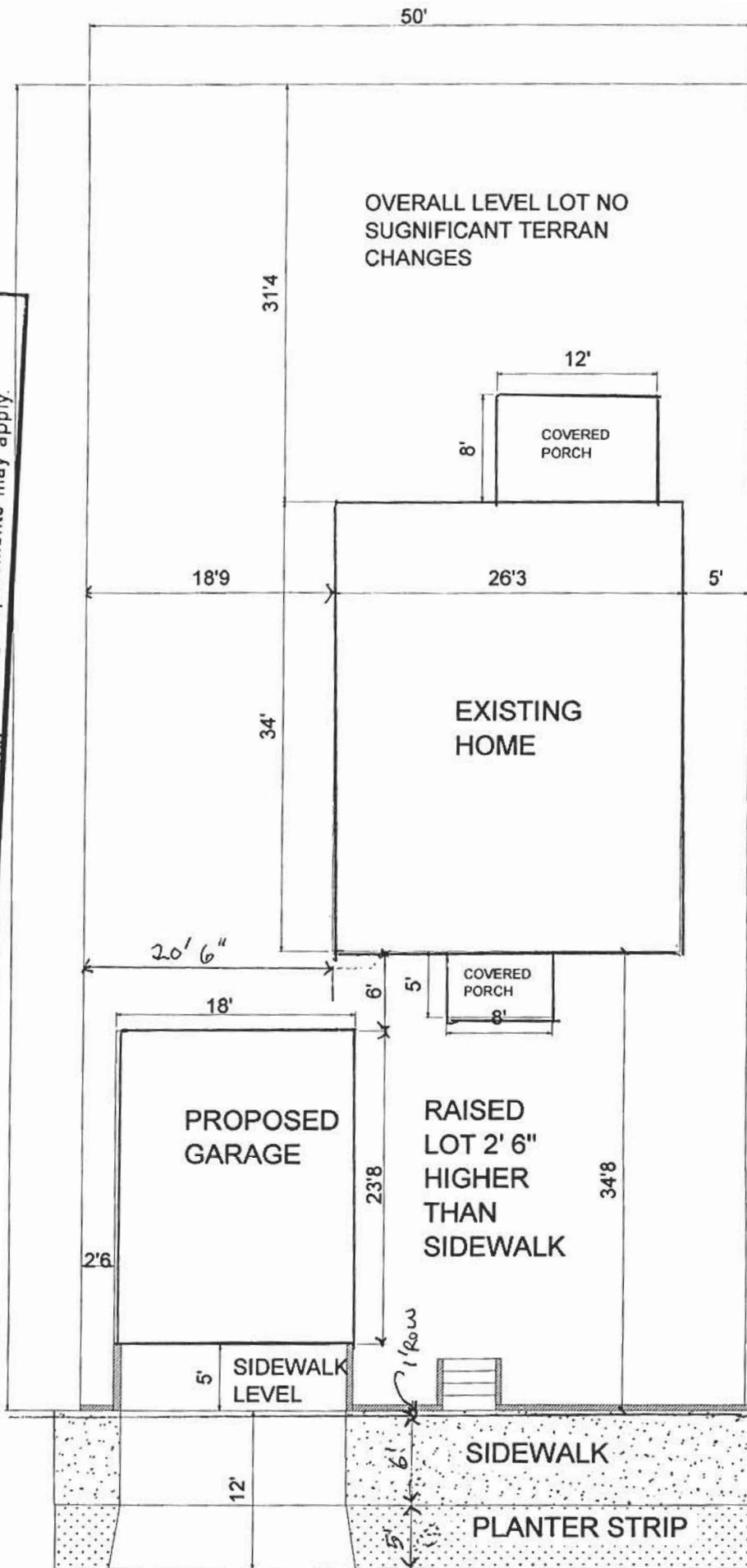


NORTH

This site lies within the:
ALBINA COMMUNITY PLAN DISTRICT

File No. LU 08-113807 AD
 1/4 Section 2528
 Scale 1 inch = 200 feet
 State_Id 1N1E21AA 11400
 Exhibit B (Mar 10, 2008)

Approved
 City of Portland - Bureau of Development Services
 Planner *Kathleen A. Stokes* Date *May 1, 2008*
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



North
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LU08-113807AD
 Exhibit C-1



NORTH ELEVATION

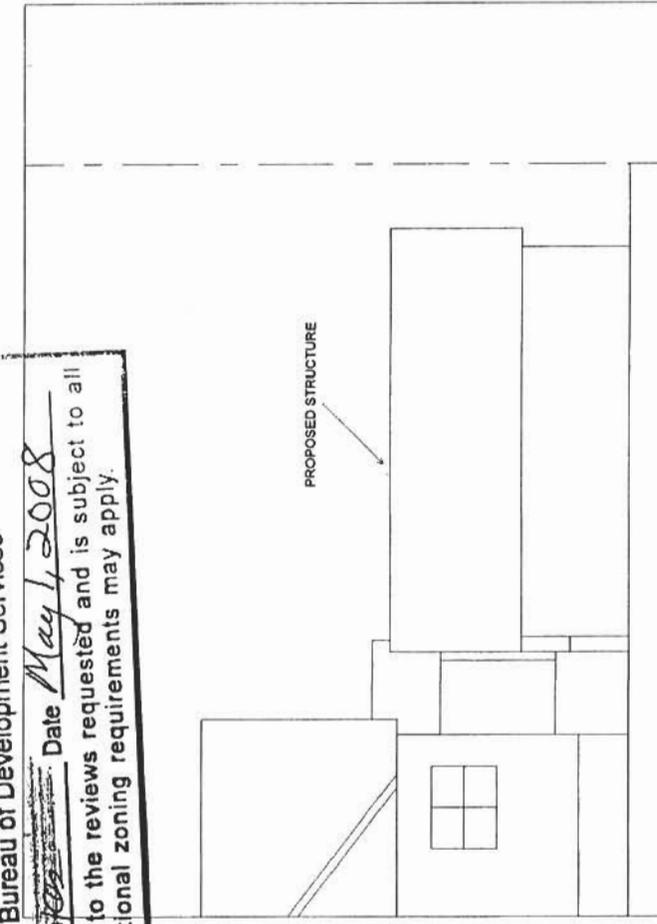
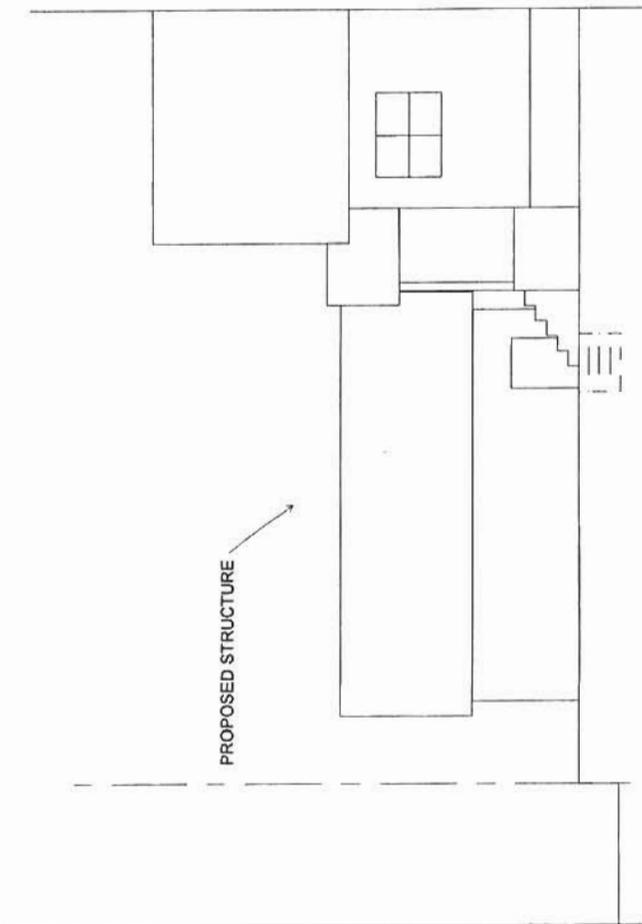
WEST ELEVATION

Approved
 City of Portland - Bureau of Development Services
 Planner Kathleen A. Stokes Date May 1, 2008
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



SOUTH ELEVATION

EAST ELEVATION



LV 08-113807 AD
 Exhibit C-2