

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 28, 2008

To: Interested Person

From: Suzanne Savin, Land Use Services

503-823-5888 / Suzanne.Savin@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 08-121753 AD

GENERAL INFORMATION

Applicant: Jesse R Morgan

5835 N Boston Ave Portland OR 97217

Owner: Tina L Morgan

5835 N Boston Ave

Portland, OR 97217-4244

Site Address: 5835 N BOSTON AVE

Legal Description: LOT 20 BLOCK 2, GAYS ADD

Tax Account No.: R309600450

State ID No.: 1N1E16DC 08800

Quarter Section: 2428

Neighborhood: Overlook, contact Claire Paris at 503-998-4878.

Business District: North Portland Business Assoc, contact Steve Weir at 503-283-3883. **District Coalition:** North Portland Neighborhood Services, contact Mary Jaron Kelley at

503-823-4099.

Plan District: Albina Community

Zoning: R5 (Single Dwelling Residential 5,000)

Case Type: AD (Adjustment Review)

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

Proposal:

The applicant is planning to demolish the existing detached garage on the site that is located adjacent to the south (side) property line, and to construct a two-story, 28-foot by 24-foot accessory structure in the southwest portion of the site. The first floor of the proposed structure will be a garage, and the second floor of the structure will be an art studio.

The setback standards of Zoning Code Section 33.110.220 and Table 120-3 require a minimum building setback of 5 feet from rear and side property lines. Section 33.110.220 also limits the eave extension into a required setback to 20 percent of the depth of the setback. Therefore, for a minimum 5-foot setback, an eave may project 1 foot into the setback and be as close as 4 feet to the property line.

The proposed accessory structure is proposed to be 5 feet from the west (rear) property line, in accordance with those standards. However, the accessory structure's south wall is proposed to be set back approximately 3 feet from the south (side) property line, with its south eave at 2 feet from the south property line. Therefore, the applicant is requesting an adjustment to Section 33.110.220 and Table 120-3, to allow the south wall and south eave of the proposed accessory structure to be set back 3 feet and 2 feet, respectively, from the south property line.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are the Adjustment Approval Criteria of Section 33.805.040.A – F.

ANALYSIS

Site and Vicinity: The site is located on the west side of N Boston Avenue, between N Ainsworth Street and N Jessup Street, and is approximately 5,000 square feet in size. The site contains a single-dwelling residence, built in 1943, and a detached garage that is located along the south (side) property line. The surrounding properties to the north, east, south and west are zoned R5 and are developed within single-dwelling residences with attached or detached accessory structures, such as garages. Many of the detached accessory structures on the surrounding properties have setbacks of less than 5 feet from side and/or rear property lines, according to GIS aerial photo information.

Zoning: The site is zoned Single-Dwelling Residential 5,000 (R5). The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households.

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 **May 1, 2008**. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Bureau of Parks-Forestry Division

The Bureau of Environmental Services (BES) responded that BES has no objections to the proposed setback adjustment. The response included requirements that must be met at time of building permit. (Exhibit E-1)

The Site Development Section of BDS responded that Site Development has no objections to the proposed setback adjustment. The response included requirements that must be met at time of building permit. (Exhibit E-2)

The Life/Safety Plan Review Section of BDS responded that a separate building permit is required for the work proposed. Roofs and eaves may project not closer than 2 feet to a property line. Eaves less than 3 feet to a property line must be protected on the underside as required for one-hour fire-rated construction. (Exhibit E-3)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 1, 2008. Two written responses have been received from notified property owners in response to the

proposal. The first response, from a property owner who lives on the opposite (east) side of N. Boston Avenue, stated support for the applicant's request, and stated that demolition of the existing garage and construction of a new structure would have a positive effect on the neighborhood, and that nothing about the new structure would be out of keeping with the existing tenor of the neighborhood.

The second response was from the owner of the property that abuts the site to the south, which is the property that would be most directly affected by the proposed adjustment. The letter stated, "My primary concerns with respect to the building to be constructed next door to my house are as follows:

- 1. It is important that no windows be allowed on the south side of the building that would impact my privacy.
- 2. I am hopeful that the necessary steps will be taken to ensure that the south wall of the structure will be aesthetically pleasing to look at from my property.
- 3. I have an interest in the new building being constructed as close to the rear property line as possible, so that the east wall of the new structure will not be less than 23 feet from the west wall of my house (in addition to the side yard requirements).
- 4. The removal of the existing garage will leave a gap of approximately 20 feet of open area between our properties. I am hopeful that new fencing will be constructed which will allow us to maintain our privacy."

Staff: As indicated on the elevations of the proposed south wall (attached to this Notice of Decision), in order to preserve the privacy of the property to the south, the applicant is not proposing any windows in the south wall of the structure, which addresses the first concern above. Regarding the second concern, the applicant has proposed texture and color variations on the south wall of the structure to break up its visual mass and make it more aesthetically pleasing; these measures are discussed in the following section of this report, under Adjustment Criterion B.

As shown on the site plan (attached to this Notice of Decision), the proposed location of the structure is a minimum of 5 feet from the rear (west) property line, in order to comply with minimum building setbacks from that property line, and approximately 23 feet west of the west wall of the house on the abutting property to the south. The proposed location of the structure addresses the third concern above.

In order to mitigate for visual impacts of the structure to the abutting property to the south, the applicant is proposing a 6-foot, solid fence along the portion of the south property line that includes the area currently occupied by the south wall of the garage, which addresses the fourth concern above.

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 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 purpose of the setbacks regulation, as stated in Section 33.110.220.A, is as follows:

The setback regulations for buildings and garage entrances 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 applicant notes that the proposed accessory structure will have a greater separation distance from the residence on the abutting property to the south than the garage that it will replace. As shown on the site plan, the south wall of the garage is located along the south property line, and is offset approximately 4 feet to the west of the closest portion of the residence on the abutting property to the south.

In contrast, the south wall of the proposed accessory structure will be 3 feet north of the south property line. In addition, the entire structure will be offset approximately 23 feet to the west of the closest portion of the residence on the abutting property to the south. The applicant notes that the proposed separation distance is sufficient to maintain light, air, separation for fire protection, and access for fire fighting, between the proposed accessory structure and the residence on the property to the south. In addition, this separation distance will promote a reasonable physical relationship between the accessory structure and the residence on the property to the south. A condition of approval is warranted, requiring the accessory structure to be located in substantial conformance with the location shown on the site plan (approximate 23-foot offset to the west of the residence on the abutting property to the south, as well as a minimum 3-foot setback from the south property line).

Regarding general building scale and placement, the applicant identified no other two-story detached accessory structures within the block that are less than 5 feet from side or rear property lines. However, there are numerous one-story detached accessory structures within the block that are less than 5 feet from side and/or rear property lines. According to GIS aerial photo information, of the 22 other properties within the block, approximately 13 properties contain detached accessory structures that are less than 5 feet from the side and/or rear property line. In addition, the applicant has identified at least 3 properties within 1 to 3 blocks of the site that contain detached, 2-story accessory structures that are less than 5 feet from side and/or rear property lines. Therefore, the general building scale and placement of the proposed accessory structure is not inconsistent with the pattern of development within the neighborhood.

Regarding privacy, the applicant notes that the south elevation of the accessory structure will not contain any windows, and therefore, the structure will maintain the privacy of the abutting property to the south. A condition of approval is warranted, requiring the south elevation to have no windows, as proposed by the applicant.

For the reasons listed above, the 3-foot setback from the south property line for the proposed accessory structure will equally meet the purpose of the setback regulation.

With compliance with conditions of approval requiring the structure to be offset approximately 23 feet west of the residence on the abutting property to the south as shown on the site plan, and for the south wall of the structure to have no windows as shown on the elevations, 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 site is within a residential zone. The applicant notes that the proposed accessory structure will be approximately 71 feet west of the east (front) property line and the street, and more than half of the structure will be behind the residence on the site. Therefore, the visibility of the structure from the street will be minimized.

The proposed accessory structure will be closest to the abutting property to the south, and since it is two stories in height, it will be taller than the one-story garage that it will replace. The tallest portion of the proposed structure is the shed dormer on the structure's west side, the roof of which has an average height of approximately 22.5 feet. Because the structure is two stories in height and is closer than 5 feet to the south property line, the structure has the potential to detract from the livability of the abutting property to the south by presenting a tall blank wall to that property. The applicant has proposed to mitigate for this potential impact by varying the color and texture of the south wall façade to visually break up its mass. The proposed variation in texture consists of siding the gable area on the south wall with shakes, and siding the remainder of the south wall with horizontal Hardi-plank siding. The proposed variation in color consists of a 3-color scheme in which the trim and central horizontal belly band will be painted a light color, the gable will be painted a dark color, and the remainder of the south façade will be painted a medium color.

In addition, the applicant has proposed two alternative means of screening the lower portion of the structure's south wall from view, from the abutting property to the south.

- Alternative 1 is a 6-foot, solid fence that would extend from the southwest corner of the property eastward, to the location of the southeast corner of the garage (the garage will be demolished).
- Alternative 2 is a 6-foot, solid fence that would extend from the southwest corner of the property eastward for 5 feet to the southwest corner of the proposed accessory structure. From the southwest corner of the proposed accessory structure, a row of bamboo plants in galvanized metal above-ground containers would extend along the south property line to the southeast corner of the garage (the garage will be demolished).

The applicant states that Alternative 2 is proposed because bamboo can typically achieve a height of well over 6 feet. The bamboo is proposed to be planted in above-ground containers to prevent its invasion into the abutting property to the south. Staff concurs that bamboo can be an effective visual screen, and concurs that its placement within containers rather than planting in the ground is prudent to prevent its spread onto abutting properties. However, container plantings are impermanent due to their portability. Staff has concerns with an impermanent measure to screen what will likely be a permanent structure. Staff also has concerns that if the site was sold in the future to another property owner, the new property owner could remove or relocate the portable container plantings, leaving the accessory structure unscreened on its south

side. For these reasons, Staff will require implementation of Alternative 1 (6-foot, solid fence) to screen the lower portion of the proposed accessory structure.

Staff concludes that the proposed textural and color variations on the south wall, in combination with the proposed 6-foot solid fence along the south property line to screen views of the lower part of the south wall from the abutting property to the south, will result in the south wall of the structure not significantly detracting from the livability or appearance of the residential area. Conditions of approval are warranted, requiring the applicant to implement the above measures. With compliance with those conditions of approval, this criterion will be 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 being requested. Therefore, this criterion is not applicable.

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

Findings: The site does not contain a city-designated scenic or historic resource. Therefore, this criterion is not applicable.

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

Findings: A potential negative impact of the accessory structure, at two stories in height and 3 feet from the south property line, is to present a tall, blank wall to the abutting property to the south.

The applicant has addressed this potential impact by proposing variations in the south wall's texture and color, in order to visually break up the mass of the south wall. The applicant has also proposed a 6-foot, solid fence along the south property line, between the south wall of the accessory structure and the abutting property to the south. The proposed textural and color variations of the south wall, and the proposed fencing, are described in detail under Approval Criterion B, above. Implementation of these measures will mitigate the impacts resulting from the adjustment to the extent practical.

Conditions of approval are warranted, requiring the applicant to implement the above measures. With compliance with those conditions of approval, this criterion will be 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. 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

The applicant has requested adjustments to the south (side) building setback for a two-story detached accessory structure. The applicant has demonstrated that the adjustment will comply with the Adjustment Approval Criteria, with the imposition of conditions of approval to screen the lower portion of the south wall and to visually break up its mass. Therefore, the adjustment can be approved with conditions. Approval of building permits is still required, after the decision is final and has been recorded with Multnomah County.

ADMINISTRATIVE DECISION

Approval of:

A setback adjustment to Section 33.110.220 and Table 120-3, to allow the south wall and south eave of the proposed detached accessory structure to be set back a minimum of 3 feet and 2 feet, respectively, from the south property line,

per the approved plans, Exhibits C-1 through C-2 signed and dated May 23, 2008, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through F) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE Case File LU 08-121753 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The gable area of the structure's south wall must be sided with shakes, and the remaining area of the south wall must be sided with horizontal siding.
- C. The structure's south wall must have a 3-color paint scheme. The south wall's trim and horizontal belly band must be painted a light color, the gable area must be painted a dark color, and the remaining wall area must be painted a medium color.
- D. A 6-foot, solid, site-obscuring fence must be constructed, to extend from the southwest property corner eastward along the south property line to the southeast corner of the existing garage (a length of approximately 49 feet).
- E. The structure's south wall must not contain windows.

F. The location of the structure must be in substantial conformance with the site plan, Exhibit C-1, in that the structure must comply with the minimum 5-foot building setback from the west (rear) property line and be approximately 23 feet west of the west wall of the residence on the abutting property to the south.

Decision rendered by:

on May 23, 2008.

By authority of the Director of the Bureau of Development Services

Decision mailed: May 28, 2008

Staff Planner: Suzanne Savin

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 April 11, 2008, and was determined to be complete on April 28, 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 April 11, 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 June 11, 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 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 June 12, 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:

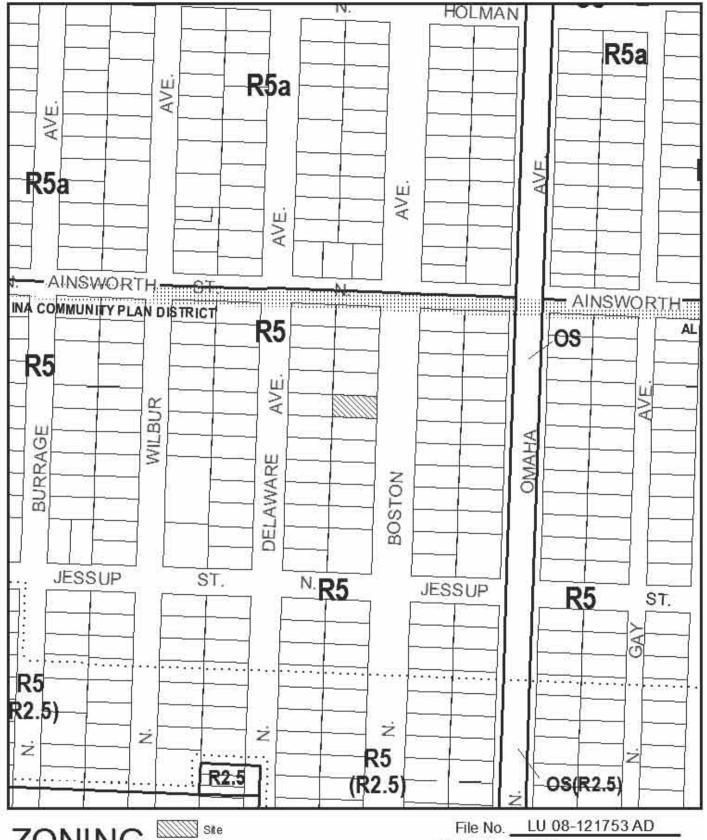
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review:
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations (attached)
 - 3. Floor Plan
 - 4. Cross Section
 - 5. Color Rendering of South Wall
- 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
 - 4. "No concerns" responses from Bureau of Transportation Engineering and Development Review, Water Bureau, Fire Bureau, Bureau of Parks Forestry Division
- F. Correspondence:
 - 1. Max Bauch, May 2, 2008, expressed support for the proposal.
 - 2. Dennis Dillon, May 23, 2008, expressed concerns about the proposal.
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

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

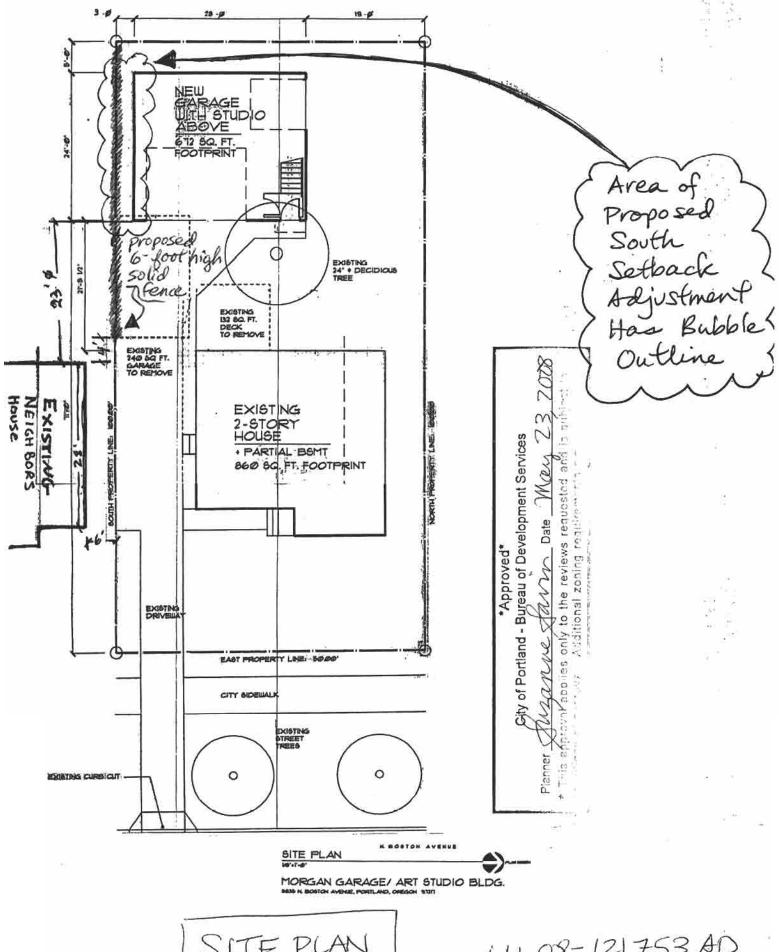
2428 1/4 Section.

1 inch = 200 feet Scale. 1N1E16DC 8800 State Id

В (Apr 16,2008) Exhibit.

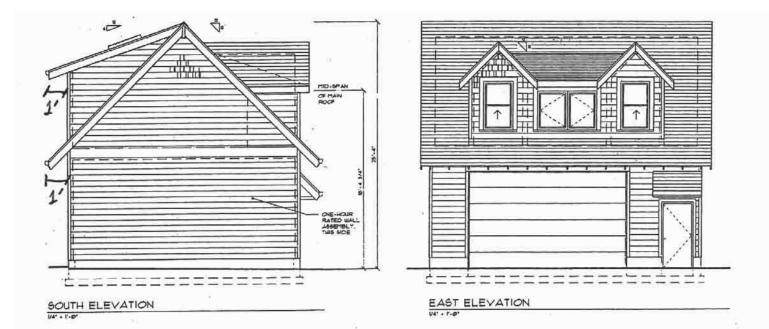


This site lies within the: ALBINA COMMUNITY PLAN DISTRICT



SITE PLAN

LU 08-121753 AD

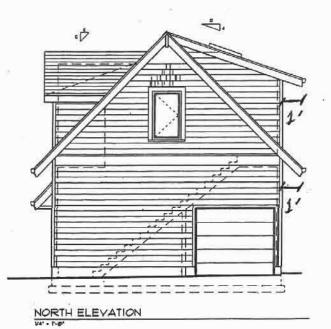


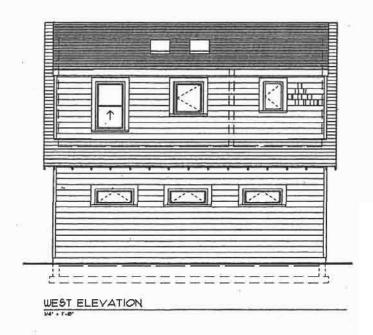
Approved

Gity of Portland - Bureau of Development Services

Date May 23, 2008 Planner

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





ELEVATIONS

LU08-121753 AD