



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

1900 SW Fourth Ave. Suite 5000  
Portland, Oregon 97201  
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[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** September 2, 2008  
**To:** Interested Person  
**From:** Suzanne Savin, Land Use Services  
503-823-5888 / [Suzanne.Savin@ci.portland.or.us](mailto: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 07-185932 AD**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Mark Bartlett  
Hapless LLC  
5828 SE Yamhill St  
Portland, OR 97215-2750

**Site Address:** 5822 SE YAMHILL ST

**Legal Description:** KAI, LOT 2  
**Tax Account No.:** R438150100  
**State ID No.:** 1S2E06AA 14102  
**Quarter Section:** 3136  
**Neighborhood:** Mt. Tabor, contact Dave Hilts at 503-780-0826.  
**Business District:** Belmont Business Association, contact Don Porth at 503-823-3615.  
**District Coalition:** Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.  
**Plan District:** None  
**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 build a single-dwelling residence on the site. The site is one of 5 lots created through a recently platted subdivision, which was approved via Casefile 05-140337 LDS. The site is a corner lot that has frontage on both SE Yamhill Street and SE 58<sup>th</sup> Place (a recently constructed private street). The residence's main entrance will face SE Yamhill Street, but the garage entrance will face SE 58<sup>th</sup> Place.

Zoning Code Section 33.110.253.F.3 states that a garage wall that faces a street may be no closer to the street lot line than the longest street-facing wall of the dwelling unit. The longest street-facing wall of the dwelling unit will be the west wall of the dwelling unit, which will be approximately 10 feet, 10 inches from the street lot line of SE 58<sup>th</sup> Place at its closest point. However, the proposed garage will be closer to SE 58<sup>th</sup> Place than the longest street-facing wall, as it will be approximately 5 feet, 8 inches from the street lot line at its closest point. Therefore, the applicant is requesting an Adjustment to Section 33.110.253.F.3, to allow the

garage to be approximately 5 feet, 2 inches closer to the street lot line than the longest street-facing wall of the dwelling unit.

**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 Zoning Code Section 33.805.040.A – F.

## ANALYSIS

**Site and Vicinity:** The site is located at the southeast corner of the intersection of SE Yamhill Street and SE 58<sup>th</sup> Place, and is approximately 7,845 square feet in size. The site is presently vacant. To the north of the site, on the north side of SE Yamhill Street, are properties zoned R5 and R2, developed with detached and attached single-dwelling residences. To the east of the site are R5-zoned properties, developed with detached single-dwelling residences. To the south of the site are R5-zoned properties, developed with detached single-dwelling residences. To the west of the site are R5-zoned properties, developed with detached single-dwelling residences.

**Zoning:** The site is zoned R5, Single-Dwelling Residential 5,000. The single-dwelling zones are intended to preserve land for housing, and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing.

**Land Use History:** City records indicate that there is one prior land use review that involves this site:

LU 05-140337 LDS was a request for a 5-lot land division of an approximately 39,083 square foot parcel. The land use review for the land division was approved on February 21, 2006, and the final plat for the land division was approved on January 8, 2008. The site of this Adjustment request is Lot 2 of the approved land division.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **July 16, 2008**. The following Bureaus have responded with no issues or concerns:

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

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on July 16, 2008. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### 33.805.010 Purpose 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., below, have been met.

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

**Findings:** The site is a corner lot that has frontage on both SE Yamhill Street and SE 58<sup>th</sup> Place (a recently constructed private street). The residence's main entrance will face SE Yamhill Street, but the garage entrance will face SE 58<sup>th</sup> Place. According to the floor plan information submitted as part of the building permit (07-185359 RS), the longest street-facing wall of the dwelling unit will be the west wall of the dwelling unit, which is proposed to be approximately 10 feet, 10 inches from the street lot line of SE 58<sup>th</sup> Place. The proposed garage will have a setback of approximately 5 feet, 8 inches from the same street lot line. The applicant is requesting an Adjustment to Section 33.110.253.F.3, to allow the garage to be 5 feet, 2 inches closer to the street lot line than the longest street-facing wall of the dwelling unit.

The purpose of the regulation, as stated in Zoning Code Section 33.110.253.A (Garages – Purpose), is 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 applicant notes that the layout and location of the proposed residence and garage on the site are intended to allow preservation of the existing large trees in the northwest corner of the site, and to utilize the natural site grade. The applicant states that the proposed location of the garage will nonetheless allow the residence to comply with the above-referenced purpose of the regulation, due to several factors.

First, the site has frontage on both SE Yamhill Street and SE 58<sup>th</sup> Place. SE Yamhill Street is the more prominent of the two streets, as it is a public street and a through street, while SE 58<sup>th</sup> Place is a private street that provides access to only 5 lots and terminates in a cul-de-sac. The main entrance of the residence will be located on its north side, facing the more prominent SE Yamhill Street. In contrast, the garage's entrance will face the less prominent SE 58<sup>th</sup> Place.

Second, as shown on the north and west elevations, the first-floor living area of the residence will be located at or above the site's highest grade. In contrast, the garage will be nestled adjacent to a berm and partially below grade, so that it will be lower and less visible than the first-floor living area of the residence, when viewed from both SE Yamhill Street and SE 58<sup>th</sup> Place.

Third, as shown on the west elevation and site plan, the southwest corner of the garage, which is the portion of the garage that is closest to SE 58<sup>th</sup> Place, is proposed to be screened by a row of 4 shrubs.

For these reasons, the garage's proximity to SE 58<sup>th</sup> Place will not obscure the view of the residence's main entrance from SE Yamhill Street; the pedestrian entrance will be more prominent than the garage entrance; there will be a physical and visual connection between the living area of the residence and the street; the garage will not dominate the views of the neighborhood from the sidewalk; the garage will not block views of the street from inside the residence; and the location and amount of the living area of the residence, as seen from the street, will be more prominent than the garage.

A condition of approval is warranted, requiring the landscape plan for the building permit to show the row of 4 shrubs at the southwest corner of the garage, consistent with the location of the shrubs as shown on the site plan. The shrubs must be an evergreen species that will achieve a height of at least 6 feet. With compliance with this condition, 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 proposal to place the garage approximately 5 feet, 2 inches closer to SE 58<sup>th</sup> Place than the longest street-facing wall of the residence will not significantly detract from the livability or appearance of the residential area, for a couple of reasons. First, the garage will be set back further from SE Yamhill Street than the living area of the residence, and therefore it will be minimally visible from SE Yamhill Street. Second, the garage will be nestled adjacent to a berm and partially below grade, while the first-floor living area of the residence will be at or above grade. As a result, the garage will appear subordinate to the living area of the residence when viewed from SE 58<sup>th</sup> Place, and will not have a negative visual impact when viewed from that street frontage.

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 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 any city-designated scenic or historic resources, therefore this criterion is not applicable.

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

**Findings:** A potential impact of the adjustment would be a garage entrance that dominates views of the neighborhood from the sidewalk, and is more prominent than the residence's pedestrian entrance. However, the proposed garage entrance will be located along the site's less prominent street frontage (SE 58<sup>th</sup> Place), whereas the pedestrian main entrance will be located facing the site's more prominent street frontage (SE Yamhill Street). In addition, the applicant has proposed to mitigate for the adjustment to the extent practical, by nestling the garage within the site grade, thus giving it a lower profile than the living area of the house, and by screening the

west wall of the garage with a berm and a row of shrubs, to further minimize its visibility.

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, 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.

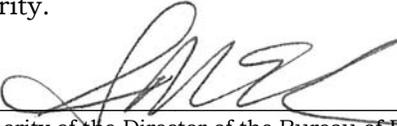
## CONCLUSIONS

The applicant has requested an Adjustment to Section 33.110.253.F.3, to allow the proposed garage to be approximately 5 feet, 2 inches closer to the street lot line (SE 58<sup>th</sup> Place) than the longest street-facing wall of the residence. The applicant has provided information to demonstrate that this adjustment will comply with the Adjustment Approval Criteria, with a condition of approval requiring screening shrubs on the west side of the garage as shown on the site plan. With that condition, the adjustment can be approved, per the plans and elevations. Approval of building permits is still required, after the decision is final and has been recorded with Multnomah County.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to Section 33.110.253.F.3, to allow the proposed garage to be approximately 5 feet, 2 inches closer to the street lot line (SE 58<sup>th</sup> Place) than the longest street-facing wall of the residence, per the approved plans, Exhibits C-1 through C-2, signed and dated August 28, 2008, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (Condition B) 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 07-185932 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The landscape plan must show a row of 4 shrubs adjacent to the southwest corner of the garage, at a location consistent with the location of the shrubs shown on the approved site plan (Exhibit C-1). The shrubs must be an evergreen species that will achieve a minimum height of 6 feet at maturity.

Decision rendered by:  on August 28, 2008.

By authority of the Director of the Bureau of Development Services

Decision mailed: September 2, 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 December 31, 2007, and was determined to be complete on June 17, 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 December 31, 2007.

*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 requested that the 120-day review period be extended from June 17, 2008 to July 27, 2008, and from August 1, 2008 to August 27, 2008 (a period of 65 days), as stated with Exhibits A-2 through A-6.

**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 September 16, 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. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal

to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](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 **September 17, 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;

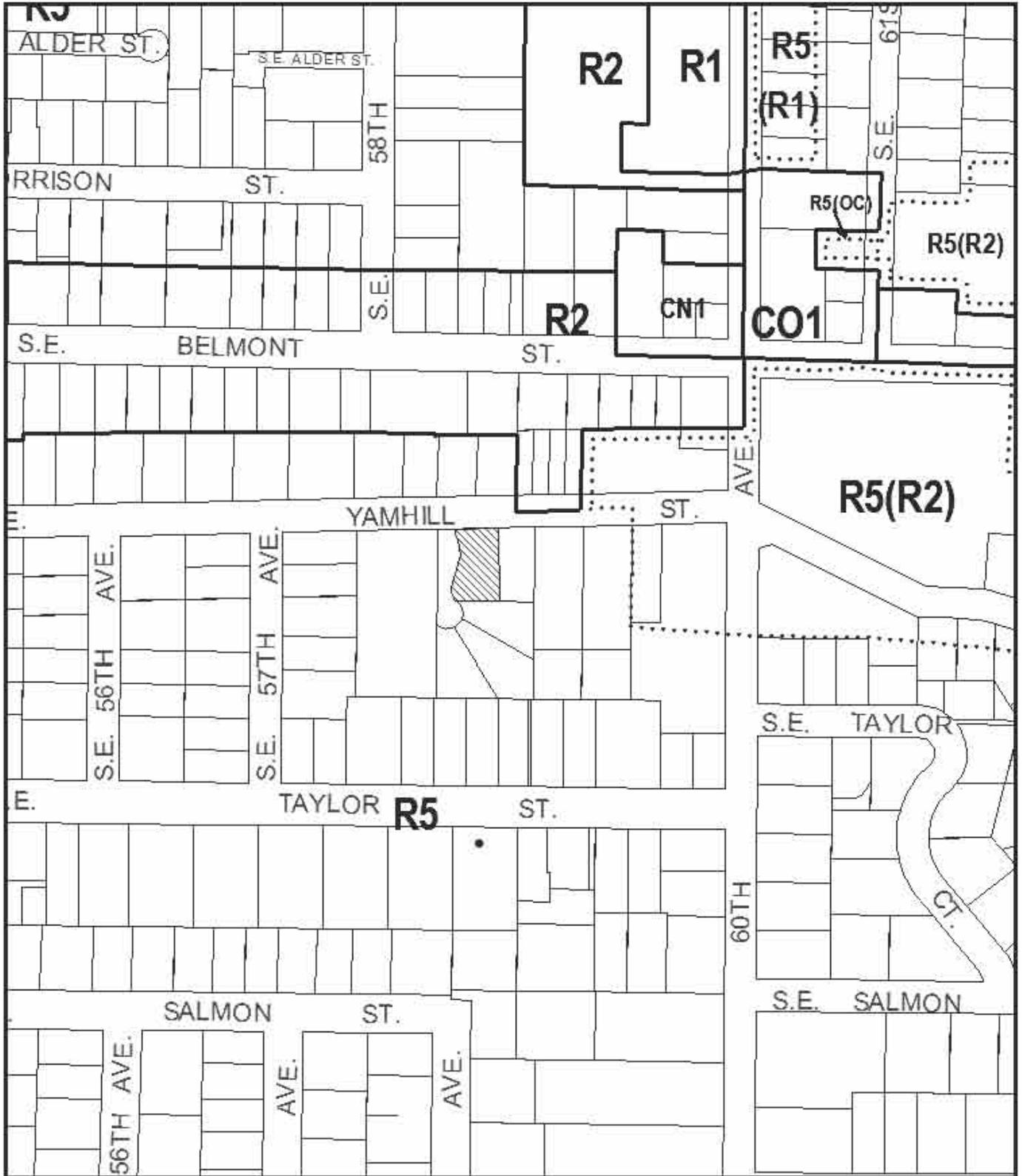
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittal
  - 1. Applicant's Written Statement
  - 2. Applicant's Request to Stop the 120-Day Clock from June 17, 2008 to July 27, 2008
  - 3. Applicant's Request to Stop the 120-Day Clock from August 1, 2008 to August 11, 2008
  - 4. Applicant's Request to Stop the 120-Day Clock from August 12, 2008 to August 14, 2008
  - 5. Applicant's Request to Stop the 120-Day Clock from August 14, 2008 to August 20, 2008
  - 6. Applicant's Request to Stop the 120-Day Clock from August 20, 2008 to August 27, 2008
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. North & West Elevations (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. "No concerns" responses from Bureau of Environmental Services, Bureau of Transportation Engineering and Development Review, Water Bureau, Fire Bureau, Site Development Review Section of BDS, Bureau of Parks - Forestry Division
- F. Correspondence:
  - 1. No correspondence submitted.
- 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



Site

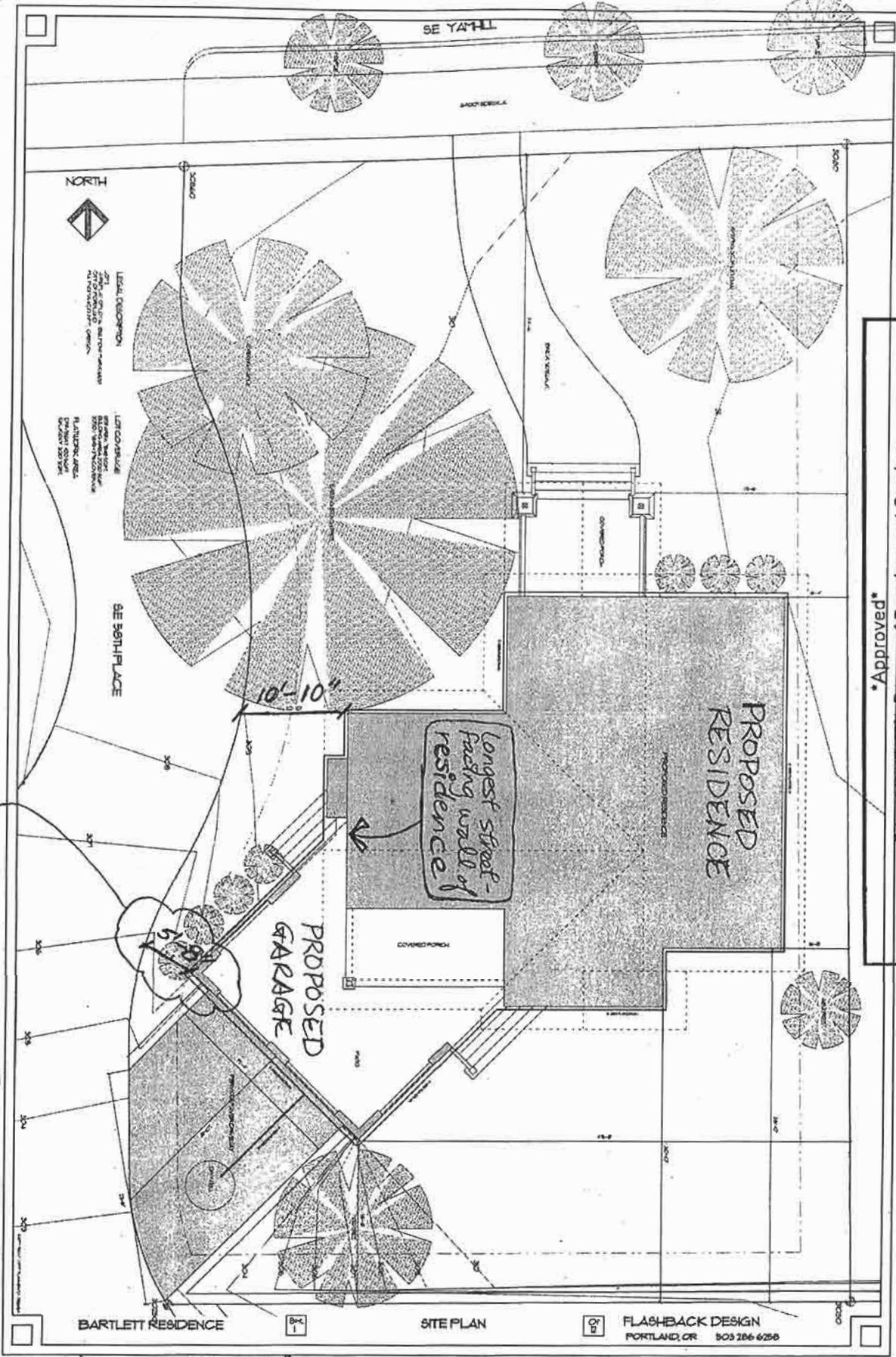


Historic Landmark



File No.	LU 07-185932 AD
1/4 Section	3136
Scale	1 inch = 200 feet
State_Id	1S2E06AA 14102
Exhibit	B (Jul 15, 2008)

LU 07-185932 AD



Adjustment Request to allow garage to be 5'-2" closer to street lot line than longest street-facing wall.

SITE PLAN

EXHIBIT C-1

\* Approved\*  
 City of Portland - Bureau of Development Services  
 Planner *Suzanne Levin* Date *August 28, 2008*  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

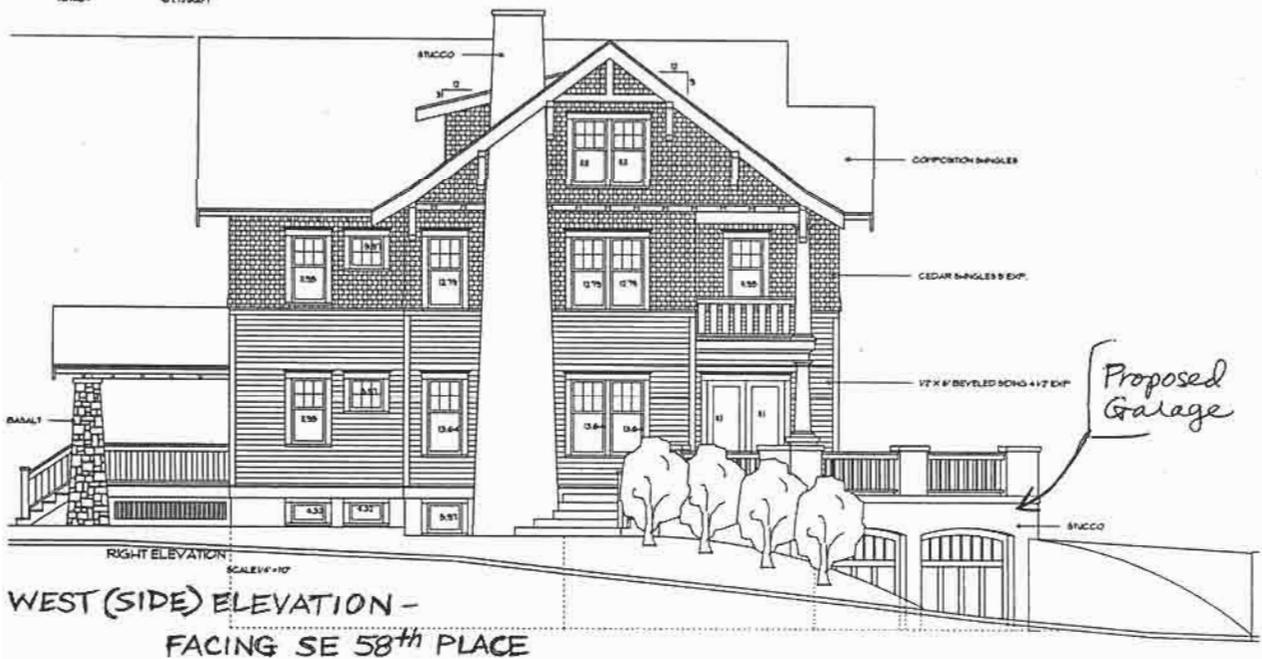


**NORTH  
(FRONT) ELEVATION - FACING SE YAMHILL STREET**  
SCALE 1/4" = 1'-0"

LU 07-185932AC

**\*Approved\***  
 City of Portland - Bureau of Development Services  
 Planner Suzanne Levin Date August 28, 2008  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

FACADE AREA = 1330 SQFT X 3 = 3990 SQFT SHOODS  
 WINDOW AREA = 2 X 432 = 864  
 2 X 187 = 374  
 6 X 139 = 834  
 2 X 127 = 254  
 2 X 138 = 276  
 2 X 138 = 276  
 2 X 138 = 276  
 DOORS (GLASS ONLY) 2 X 51 X 123  
 TOTAL = 1178 SQFT



**RIGHT ELEVATION -  
WEST (SIDE) ELEVATION -**  
SCALE 1/4" = 1'-0"  
**FACING SE 58th PLACE**

**ELEVATIONS**

**EXHIBIT C-2**