



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
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Date: July 16, 2013
To: Interested Person
From: Shawn Burgett, Land Use Services
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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 the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 13-157748 AD

GENERAL INFORMATION

Applicant: Brian D Bontempo
1141 SE 72nd Ave / Portland, OR 97215-2215

Site Address: 1141 SE 72ND AVE

Legal Description: BLOCK 6 LOT 4 N 5' OF LOT 5, WELCHBOROUGH
Tax Account No.: R890301140
State ID No.: 1S2E05BD 00400
Quarter Section: 3137 3138
Neighborhood: Mt. Tabor, contact Stephanie Stewart at 503-230-9364.
Business District: None.
District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010.
Zoning: R5 (Single Family Residential 5,000)
Case Type: AD (Adjustment)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant is proposing to rebuild the existing detached garage located along SE 72nd Avenue. The garage is approximately 10 feet wide by 19 feet in depth (for a total of 190 square feet) and does not conform to current Zoning Code setback standards due to its location in the front and side setbacks. The site is considered a through lot with frontage along both SE 71st Avenue and SE 72nd Avenue; both streets are defined as front property lines per Zoning Code. The front of the existing house is oriented toward SE 71st Avenue. The applicant has proposed to rebuild a new 19 ft. wide by 19 ft. deep detached garage (361 square feet) in the same location as the existing garage with an additional 9 ft. of width along the north facade. In addition a deck with approximately 3 foot high railing is proposed on top of the new detached garage.

The applicant had an adjustment approved under LU 12 167685 AD on September 20, 2012 for a smaller detached garage (19 feet in depth by 14 feet in width) in the same location. This

modified proposal widens the proposed structure an additional 5 feet (to 19 feet in width) along the north facade, adds a door along the east façade facing SE 72nd Avenue and adds a bathroom within the structure.

The previous adjustment (LU 12 167685 AD) approved the proposed garage location and roof top deck within the side setback along the southern property line. Zoning Code section 33.110.220 (Table 110-3) requires a 5 foot building setback between a structure and the side property lines. The applicant is proposing a 1 ft. side setback between the proposed detached garage and the adjacent property line to the south. Since the dimensions of the new garage façade within the side (southern) setback are not changing between the current proposal and the previous proposal (LU_12 167685 AD), the approved side setback adjustment is still in affect.

The applicant is requesting adjustments to standards found in Zoning Code sections 33.110.220 (Table 110-3, Setbacks) and 33.110.250.C.3.b (Setbacks for Accessory Structures):

- 1) Zoning Code section 33.110.220 (Table 110-3) requires an 18 ft. garage entrance setback from the street. The applicant has proposed to locate the garage 3 feet from the front property line along SE 72nd Ave.
- 2) Zoning Code section 33.110.250.C.3.b (1) does not allow uncovered accessory structures (decks) that are more than 2.5 feet above ground to extend into the required building setback more than 20 percent and must maintain at least 3 feet from the lot line. The applicant is proposing a deck on top of the detached garage which does not meet the setback standard in regard to the front lot line.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. 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 9,612 square foot lot is developed with a multi-story single dwelling residence that was built in 1914. The home is located on a through lot with two street frontages (SE 72nd Ave and SE 71st Ave), the primary entrance to the home faces SE 71st Ave. The homes between SE 72nd Ave and SE 71st Avenue on this block have a variety of architectural styles and were built between 1910 and 1956. Four of the nine homes located on this block have garages abutting SE 72nd Avenue. SE 72nd Ave is fully improved with sidewalks, curbs and a paved road. SE 71st Ave, is improved with curbs and a paved road along the eastern half of the street abutting this site, no sidewalks are currently in place.

Zoning: The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

Land Use History: The applicant had an adjustment approved under LU_12_167685_AD on September 20, 2012 for a smaller detached garage (19 feet in depth by 14 feet in width) in the same location. This modified proposal widens the proposed structure an additional 5 feet (to 19 feet in width) along the north facade, adds a door along the east façade facing SE 72nd Avenue and adds a bathroom within the structure.

The previous adjustment (LU_12_167685_AD) approved the proposed garage location and roof top deck within the side setback along the southern property line.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed June 6, 2013. The following Bureaus have responded with no issues or concerns:

- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division
- Bureau of Environmental Services (BES)
- Water Bureau
- Bureau of Transportation Engineering (PBOT)
- Life Safety Plans Examiner

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 6, 2013. No written responses have been received from notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

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 providing 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 standards for accessory structures is explained under Section

33.110.250.A as follows:

This section regulates structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site. The standards provide for necessary access around structures, help maintain privacy to abutting lots, and maintain open front setbacks.

Further, the purposes of the setback standard requested for Adjustment are found in Section 33.110.220, Setbacks. The setback regulations for Garages 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.*
- *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 is requesting an Adjustment to reduce, from 18 feet to 3 feet, the front (east) setback requirement for the detached garage. The applicant is also requesting an adjustment to allow the deck proposed on top of the detached garage within the front (east setback).

This situation is unique because the lot is a through lot with frontage on two streets (SE 71st Ave and SE 72nd Ave). Both streets are defined as front property lines in the Zoning Code, although the existing house on the site is oriented toward SE 71st Ave. The existing detached garage on the site measures approximately 10 ft. in width by 19 feet in length (for a total of 190 square feet) and is located 3 feet from the eastern (front) property line. The applicant has proposed to build a new 19 foot wide by 19 foot deep (for a total of 361 sq. ft.) detached garage in the same location as the existing garage with the additional 9 feet of width along the north façade internal to the subject site. The proposed increase in width of the detached garage will move the structure out of conformance with the Zoning Code. The applicant has also added a bathroom within the detached garage and a door facing SE 72nd Avenue which breaks up the south façade of the garage and creates a better connection to the street since the proposed door includes a glass window which softens the appearance of a door located close to the street.

No increase in the length of the proposed detached garage is proposed. The garage is proposed to be approximately 11 feet, 4 inches in height to the roof line. The garage is set back 3 feet from the right of way along SE 72nd Ave, which matches the previous garage location. The applicant has indicated (exhibit A-1) that the garage will include a street vision convex mirror on the driver's side of the façade, to allow safe existing from the garage. The garage meets the purpose statement and allows adequate room for a vehicle to park within the garage (the garage is 19 feet in depth, the code requires a parking space to be 18 feet in depth) without overhanging onto the street or sidewalk, while also having a mirror which enhances driver visibility when backing onto the street.

The abutting lot to the south is developed with a detached single dwelling home located approximately 55 feet from the right of way along SE 72nd Ave according to the City's GIS mapping. It appears to have a similar setback as the primary residence on subject site which is shown to be set back 65 feet from its front property line along SE 72nd Ave on the applicant's site plan. The adjacent home to the south is set back approximately 10 feet from its northern property line. The proposed detached garage will not impact the setback associated with the property to the south since the existing detached garage is currently located in approximately the same location as the new proposal. The 9 foot increase in width of the proposed detached garage will extend the footprint north into the subject site, and will maintain a setback of approximately 60 feet from the property to the north which will also not be effected by this proposal.

Allowing the new detached garage to be located within the same front setback on the site as the existing detached garage will not impact any of the adjacent property owners negatively. Several homes located along SE 72nd Ave have garages that abut SE 72nd Ave within the front setback, including the home directly to the south. Allowing this detached garage to be re-built within the front setback matches the existing character of the street.

The requested setback Adjustment will result in a project that is consistent with the overall development pattern in the immediate area, which in turn creates a typical physical relationship between homes and existing detached garages along SE 72nd Ave. Because of the separation maintained between the existing homes to the north and the south, there are no anticipated impacts on privacy.

The applicant has also requested an adjustment to allow a deck with approximately 3 ft. high railings on top of the new detached garage located 3 feet from the front property line. Zoning Code section 33.110.250.C.3.b does not allow uncovered accessory structures (decks) that are more than 2.5 feet above ground to extend into the required building setback by more than 20 percent and must be maintained at least 3 feet between the structure and the lot line.

As previously indicated, the subject site is a through lot with frontage on two streets. While both streets are considered front lot lines per the Zoning Code definition, SE 71st Ave is the street the existing house is oriented toward, thus SE 72nd Ave appears more like a rear lot line. The home to the south which would be most effected by this request is located approximately 35 feet southwest of the detached garage and would not appear to have its privacy compromised by allowing a deck on the roof of the proposed detached garage. As previously indicated, the previous adjustment (LU_12_167685_AD) approved the proposed garage location and roof top deck within the side setback along the southern property line. The subject site and the lot to the south are both sloped downward toward SE 72nd Ave, thus the detached garage and associated deck will be located at a lower grade than the single family home located on the lot located to the south.

In addition to the large setbacks and grade difference separating the home to the south from the proposed detached garage and associated deck, mature landscaping currently provides another large visual buffer between the deck proposed on the roof of the detached garage and the front yard of the adjacent home to the south. It should be noted that the Zoning Code would allow the applicant to install a deck less than 2.5 feet above the ground right along the southern property line directly west of the detached garage. There is a substantial grade change between the right of way along SE 72nd Ave and the subject site, which slopes upward toward the house on the site. The front yard facing SE 72nd Ave (east of the primary home on the subject site) is at the same grade and greater as the roof of the proposed detached garage. Any grade level decks built in the front yard of the subject site facing SE 72nd Ave would be located at approximately the same grade (or above) as the roof of the detached garage within the front setback.

The home directly to the south of the subject site (1151 SE 72nd Ave) and another home located along SE 72nd Ave (1203 SE 72nd Ave) both have detached garages with railings on top which indicate that these structures may be potentially used as roof top decks. Allowing a deck on the new detached garage would allow it to blend in well with the other detached garages abutting SE 72nd Ave. In addition, it would give the subject site a better connection to SE 72nd Ave which is considered a front setback, but operates more like a rear setback based on the location of the detached garage and the orientation of the primary home toward SE 71st Ave. The addition of the deck would enhance this site's connection to SE 72nd Ave.

For the reasons stated above, 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 above, the reduced front setback of the detached garage and associated roof top deck will not detract from the livability of nearby residences. The new detached garage and deck will fit in nicely with the existing development already located along SE 72nd Ave at this location. For these reasons, the 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: The applicant is requesting two Adjustments. Individually and cumulatively, the requested Adjustments for the new detached garage and associated roof top deck are consistent with the purpose of the zone and this criterion is met

- 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, and by historic and conservation districts. 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 found under criterion A and B, the requested Adjustments will not create impacts and therefore do not require mitigation to lessen their effect. This approval criterion is satisfied.

- 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. 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

Based upon the findings of this report, the new detached garage with bathroom and associated roof top deck are consistent with the purpose of the zone and each applicable approval criterion is met.

ADMINISTRATIVE DECISION

Approval of Adjustments to: (1) reduce the required front (east) building setback and garage entrance from 18 feet to 3 feet for the detached garage; and (2) reduce the required front (east) setback for an uncovered accessory structure (roof top deck) that is more than 2.5 feet above grade to encroach more than 20 percent into the required front setback, per the approved plans, Exhibits C.1 and C.2 signed and dated July 11, 2013, 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 and C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-157748 AD."

Staff Planner: Shawn Burgett

Decision rendered by:  **on July 11, 2013**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 16, 2013

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 May 22, 2013, and was determined to be complete on June 4, 2013.

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 May 22, 2013.

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 July 30, 2013** 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.

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 **July 31, 2013**.
- 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.

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.

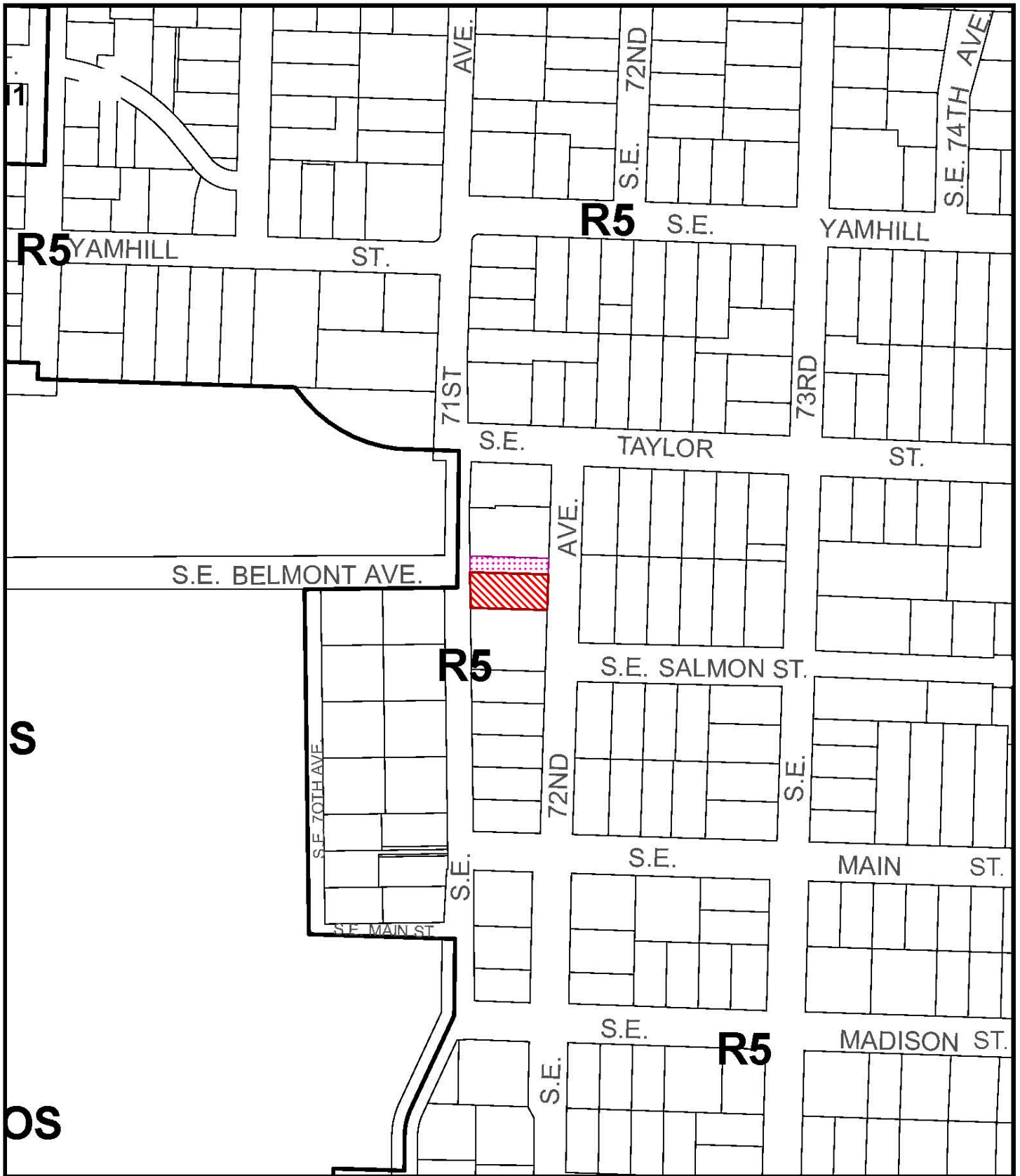
EXHIBITS

NOT ATTACHED UNLESS INDICATED

A. Applicant's Statement

1. Narrative
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Elevations (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: (None received)
- 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. 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

 Also Owned

File No. LU 13-157748 AD

1/4 Section 3137,3138

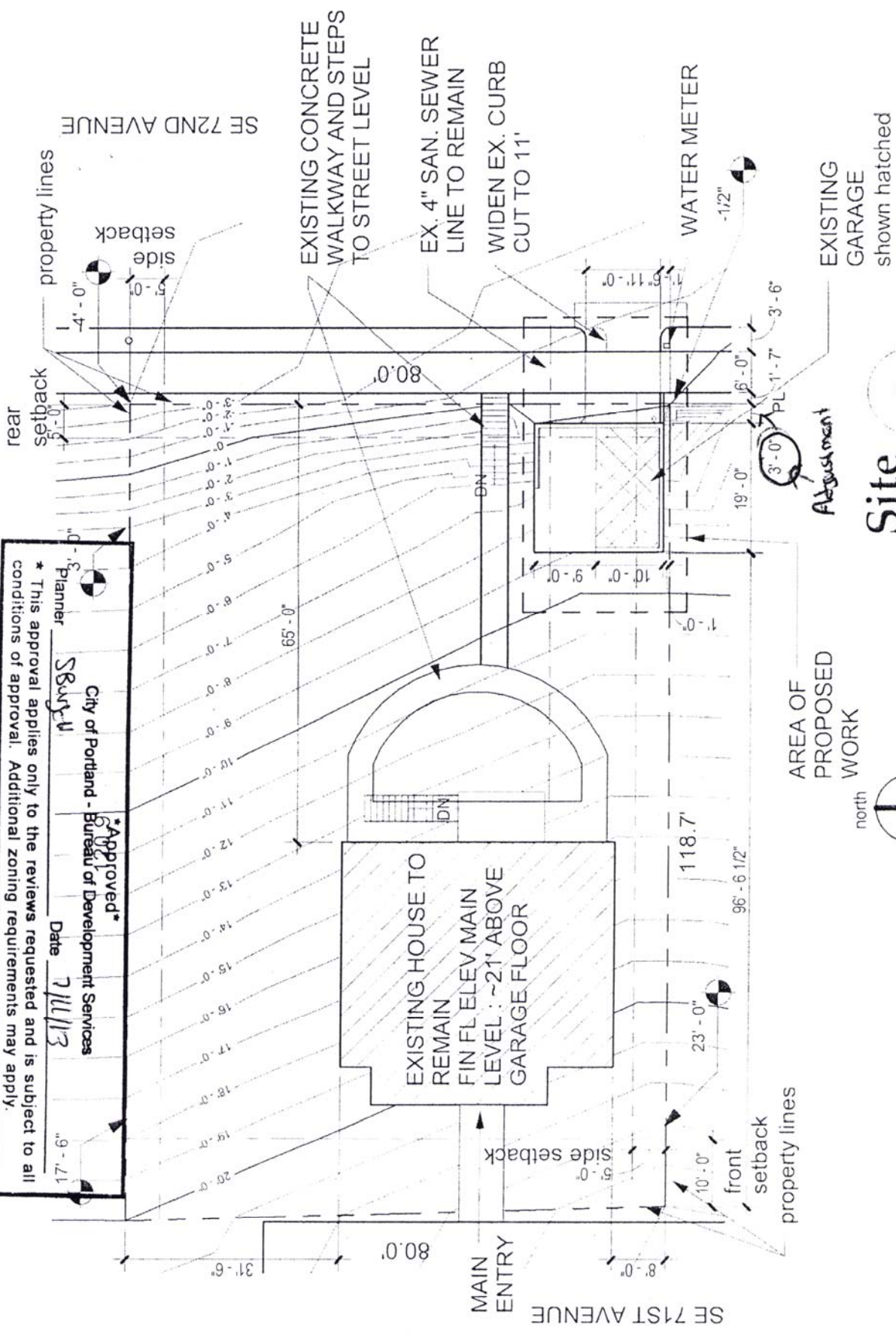
Scale 1 inch = 200 feet

State Id 1S2E05BD 400

Exhibit B (May 23,2013)



City of Portland - Bureau of Development Services
 Approved*
 Planner: *S. Bay*
 Date: *7/11/13*
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



Site 1
 1" = 20'-0"

CASE NO. 13-157748
 EXHIBIT C-1

Approved

City of Portland - Bureau of Development Services

Planner SBurgott

Date 7/11/13

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

Wood Framed 'Cornice' Parapet guard (fence) min 3' above roof surface, with trim panels, max 4" and openings

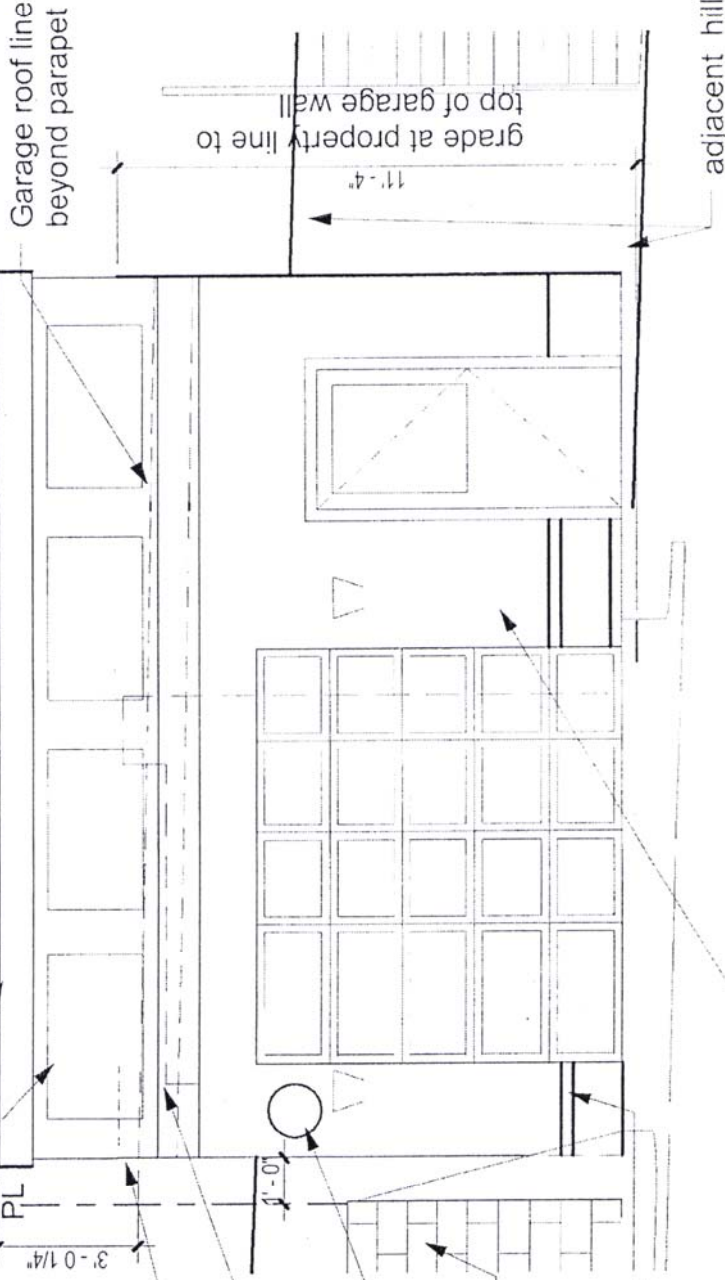
Concrete Parapet Wall

Remove existing garage vision mirror

Adjacent Lot existing retaining wall

Water board + fascia trim: Hardipanel

Cap siding: cementitious planks w/ 6" face



PROPERTY LINE

EAST ELEVATION

4

1/4" = 1'-0"

CASE NO. 13-157748
EXHIBIT C-2