



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

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Date: March 10, 2009
To: Interested Person
From: Sheila Frugoli, Land Use Services
503-823-7817 / frugolis@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 09-105470 AD

GENERAL INFORMATION

Applicants/Owners: David and Linda Haack
2909 NE Siskiyou St.
Portland, OR 97212

Site Address: 2909 NE SISKIYOU ST

Legal Description: LOT 12 BLOCK 1, DUNSMEADE
Tax Account No.: R220300150
State ID No.: 1N1E25BA 11100
Quarter Section: 2733

Neighborhood: Alameda, contact Kenneth Bailey at 503-287-1685.
Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321.
District Coalition: Northeast Coalition of Neighborhoods, contact Lauren McCartney at 503-823-4135.

Plan District: None
Zoning: R5h, Single-Dwelling Residential 5,000 zone and "h", Aircraft Landing overlay zone

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

Proposal: The applicants propose to replace their existing garage with an attached double-car garage with living area above. This will replace a smaller detached one-story garage and breezeway that provides a covered connection between the house and garage. The applicants intend to use the upper-story of the new garage as a bonus room. The new garage will follow the existing foundation. The north, south and east walls will be in the same location as the existing garage.

In order to address Zoning Code standards, the applicants are requesting an Adjustment to reduce the required rear building setback, from 5 feet to 2 feet for the east building wall and to allow for an eave to extend within 1 foot of the east property line and to reduce the required garage entrance setback from 18 to 17 feet.

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 subject site is located at the northeast corner of NE Siskiyou and NE 29th Avenue. The site contains a 2-story, English Tudor style home with a detached 1-car garage. The front of the house faces NE Siskiyou Street. The home and garage are elevated from the adjacent public rights-of-way by approximately 3 feet. The adjacent streets are fully improved with, sidewalks, curbs, planter strips with mature street trees and wide roadways that can accommodate on-street parking.

Similar single-dwelling residences surround the site. Most of the homes in the vicinity have detached garages, except for the home at 2943 NE Siskiyou. The home at the northwest corner of NE 30th and Siskiyou has an attached garage that is located approximately 17 feet from the street property line. Most of the other homes in the immediate area have detached garages that are set back further from the street than the house. The eastern and northern abutting lots have detached garages that are located over 40 feet from the streets.

Zoning: The R5, Single-Dwelling Residential zone provides housing opportunities for individual households. This zone is generally developed with detached homes on individual lots at a density of one unit per 5,000 square feet. The h, Aircraft Landing overlay zone provides safer operating conditions for aircraft in the vicinity of the Portland International Airport by limiting the height of structures and vegetation. The height limit in the R5 zones is more restrictive than the height limit of 380 feet, applied north of this lot, through the “h” overlay zone.

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 **February 6, 2009**. The following Bureaus have responded with no issues or concerns:

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

The Site Development Section of BDS had no concerns related to the requested setback adjustments. Site Development staff offered comments that directly respond to Building Permit requirements, as follows: Due to the discrepancies in the measurements shown on the plans and elevation drawings, the size of the new addition is unclear. It appears that with the eaves, the structure will create approximately 600 square feet of impervious area, and approximately 50 feet of new pavement is proposed for the driveway. As part of the building permit submittal, the applicant must clearly identify the size of the addition and driveway extension, and provide a site utility plan to show all existing and proposed utilities and stormwater facilities. If the new garage creates over 500 square feet of impervious area, onsite stormwater facilities must be designed in accordance with the Stormwater Management Manual and the results from an infiltration test must be provided. If the project creates less than 500 square feet of impervious area, then existing subsurface connections to the combined sewer can be used. (Exhibit E.1)

The Bureau of Environmental Services (BES) also had no concerns related to the requested setback adjustments. BES staff offered comments that directly respond to Building Permit requirements, as follows: There is no public storm-only sewer available to serve this property. The Stormwater Management Manual requires that stormwater runoff from new or redeveloped impervious area be managed on-site through surface infiltration facilities to the maximum extent feasible. Roof runoff may be managed in drywell or soakage trenches. Pollution reduction is required for all non-rooftop runoff, and all runoff that is not infiltrated on-site. Stormwater runoff from driveways and other ground-level impervious surface must be treated by means of vegetated surface facilities with overflow directed to an appropriate discharge location. The applicant is advised to discharge all stormwater onsite. With a 17-foot front setback, there appears to be adequate space under the driveway for onsite infiltration using a drywell, flowell or soakage trench. (Exhibit E.2)

The BDS Life Safety Plan Review Section responded with the following comments that related to the Building Permit requirements: A separate Building Permit is required for the proposed work and the work must be designed to meet all applicable building codes, ordinances and accepted engineering practices. Exterior walls, less than three feet to a property line, shall be one-hour fire-rated construction with no openings allowed. Eaves less than three feet to a property line must be protected on the underside as required for on-hour fire rated construction. Roofs and eaves may project no closer than two feet to a property line. (Exhibit E.3)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on February 6, 2009. 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 (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 building setback regulations per Zoning Code Section 33.110.220.A is explained 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 applicants are requesting an Adjustment to reduce the required rear building setback from 5 feet to 2 feet and to allow the eave to extend within 1 foot of the east property line. The Portland Zoning Code defines the shortest section of street frontage on a corner lot as the front property line, which in this case is the property line along NE 29th Avenue. However, this area essentially functions as the side yard because the front of the house is oriented toward the south property line along NE Siskiyou. Because NE 29th is the front property line, the eastern property line is identified as the rear property line. In addition, the proposed garage will be located 17 feet, rather than the required 18 feet, back from the street property line. An Adjustment to the garage entrance standard is also requested.

Building scale and placement and reasonable physical relationship: The structure will reflect the general building scale and setback of the three homes facing NE Siskiyou on the block of the subject site. The street setback along the NE Siskiyou property line is similar for all three houses. The house at 2943 SE Siskiyou has an attached garage that is located approximately the same distance from the south property line as the proposed garage.

Homes in the immediate area are not dominated by garages. Most of the lots are developed with small detached garages that are tucked back behind the homes. Even though it will be attached, the proposed garage will not dominate or obscure the prominence of the house. The street facing façade of the garage will be 23.5 feet wide. In comparison, the house has 58 feet of street facing façade and is closer to the street than the garage. The garage wall will be less than 30 percent of the entire south (street-facing) elevation. The covered porch entry and large front windows provide a strong visual connection between the living area of the house and the street. The proposed garage will be located 3 feet behind the longest street-facing wall of the house. Because the new garage wall will be less than 30 percent of the total south facing façade and be set back, the proposed garage will not diminish the home's prominence.

The street-facing façade of the attached garage will include a window in the upper story and in the garage doors. Windows on the street facing façade of the structure provide for a more pleasant pedestrian environment.

Privacy and Fire Safety: The reduction of the east (rear) building setback from 5 feet to 2 feet and the one foot deep eave will not have significant impacts on privacy. A driveway on the adjacent eastern lot provides approximately 10 feet of separation between the proposed garage and the home on the neighboring lot. The submitted plans show a horizontal window with multiple panes of glass, which the applicant describes as "obscured", on the upper east building wall. If constructed, as proposed, the window will not significantly impact the privacy of the eastern abutting neighbors. Building code restrictions may limit the use of a window on the east building wall, however. The written response from the BDS Life Safety Plans Review section states that exterior walls less than 3 feet to a property line must be one-hour fire-rated construction with no openings allowed. Further, roofs and eaves may not project closer than two feet to a property line. The window and projecting eave will only be allowed if the applicants request and receive a Building Code appeal. In either

approach, with or without the window opening, the privacy impacts to the east neighbors will be negligible.

The proposed garage will not restrict light, air, or emergency access to the property. The two-foot setback will be adequate to maintain emergency access. Fire fighting access is available from multiple sides of the property. In its response, the Fire Bureau expressed no concerns about the proposed setback reduction. At building permit review, the applicants will be required to show that the east wall and eave address building code one-hour fire-rated requirements.

Garage entrance: A reduction from 18 to 17 feet will not measurably impact the visibility of drivers backing from the garage or driveway into the public right-of-way. There will be adequate area for vehicles to park in front of the garage, without standard size vehicles overhang into the sidewalk. When staff visited the site, a station wagon was parked in front of the garage. There was approximately 3 feet separating the bumper of the station wagon and the sidewalk. The Portland Transportation staff reviewed this proposal and has no concerns regarding impacts into the right-of-way.

For all the reasons stated above the requested adjustment to reduce the rear building setback and the garage entrance setback are consistent with the purpose of the regulation and therefore 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 located in a residential zone, surrounded by single-dwelling homes on similarly sized lots. The garage is designed to replicate architectural elements of the home. The applicants' submittal shows on the street-facing elevation horizontal double-hung casement windows with metal panels, similar siding, trim pieces and roof pitch. The upper-story details and the garage doors, with glazing help reduce the bulk of the structure at street level and offer an attractive residential structure. The garage will be appropriate in terms of size and scale to the house: it will be 23.5 feet wide, while the existing residence is approximately 58 feet wide, along the NE Siskiyou facade. The garage will not obscure the main entrance of the house from the street.

The north, south and east garage walls will be placed in the same location as the existing garage. Even though larger and taller, the garage will not adversely impact the livability of the nearby residents. The north façade will have no windows, and the proposed east-facing upper-story window, if constructed, will provide an obscured opening. The proposed windows on the south façade provide eyes on the street and create a visually appealing façade.

For these reasons, the proposal will not significantly detract from the livability or appearance of the residential area. Therefore, 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: Two setback Adjustments are requested. Individually and collectively, the requested Adjustments will still result in a project that is consistent with the overall purpose of the Single-Dwelling zone. This criterion is met.

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

Findings: City-designated scenic and historic resources are indicated on City zoning maps. There are no scenic or historic resources designated on the subject site. Therefore this criterion is not applicable.

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

Findings: There are no impacts anticipated that would require mitigation. Therefore, this criterion does not apply.

- 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: Environmental zones are indicated on City zoning maps. There is no environmental zoning on the subject site. 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 new attached garage with upper-level living area will be appropriate in terms of size and scale to the house and will visually match the house in terms of architectural style. The proposed adjustment meets the applicable approval criteria and should therefore be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to the setback requirements (Section 33.110.220.B) to reduce the garage entrance setback from 18 feet to 17 feet and to reduce the rear (east) building setback from 5 feet to 2 feet and to allow an eave to extend up to 1 foot from the east property line for an attached two-car garage with an upper-story living area, per the approved plans, Exhibits C.1 and C.2, signed and dated March 6, 2009, 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 09-105470 AD. No field changes allowed."

NOTE: At Building Permit review the applicant must submit plans that also address building code (Fire Separation Distance) and stormwater management requirements. The Adjustment to reduce the building wall and eave setback requirements along the east property line does not supercede the requirements of the Building Code and Stormwater Management Manual. Only if the applicant seeks and receives building code appeals will this project be permitted, as currently designed.

Decision rendered by:  on March 6, 2009
By authority of the Director of the Bureau of Development Services

Decision mailed: March 10, 2009

Staff Planner: Sheila Frugoli

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 January 29, 2009, and was determined to be complete on February 4, 2009.

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 January 29, 2009.

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 March 24, 2009** 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.

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 **March 25, 2009 – (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. Proposed Garage South (Front) Elevation (attached)
 - 3. Proposed Garage East Elevation
 - 4. Proposed Garage North Elevation
 - 5. Existing Garage South Elevation
 - 6. Photo of Existing Garage
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Site Development Review Section of BDS
 - 2. Bureau of Environmental Services
 - 3. Life Safety Plan Review Section of BDS
 - 4. TRACS Printout – Bureau Responses of “No Concerns”
- F. Correspondence: NONE
- 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



File No. LU 09-105470 AD

1/4 Section 2733

Scale 1 inch = 200 feet

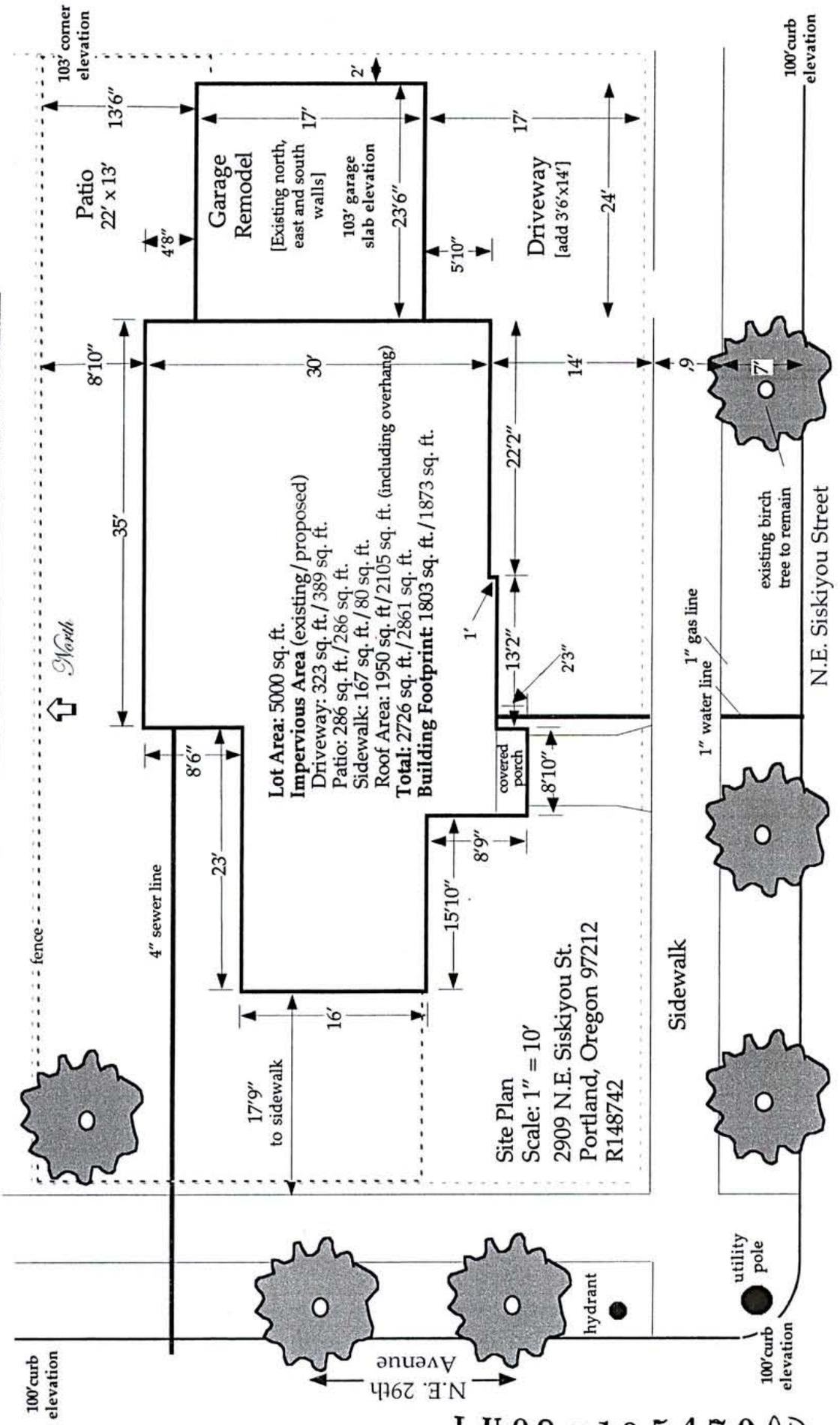
State_Id 1N1E25BA 11100

Exhibit B (Feb 02,2009)



NORTH

Approved
 City of Portland - Bureau of Development Services
 Planner Shelley Meyer Date March 6, 2009
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



LU09 - 105470AD

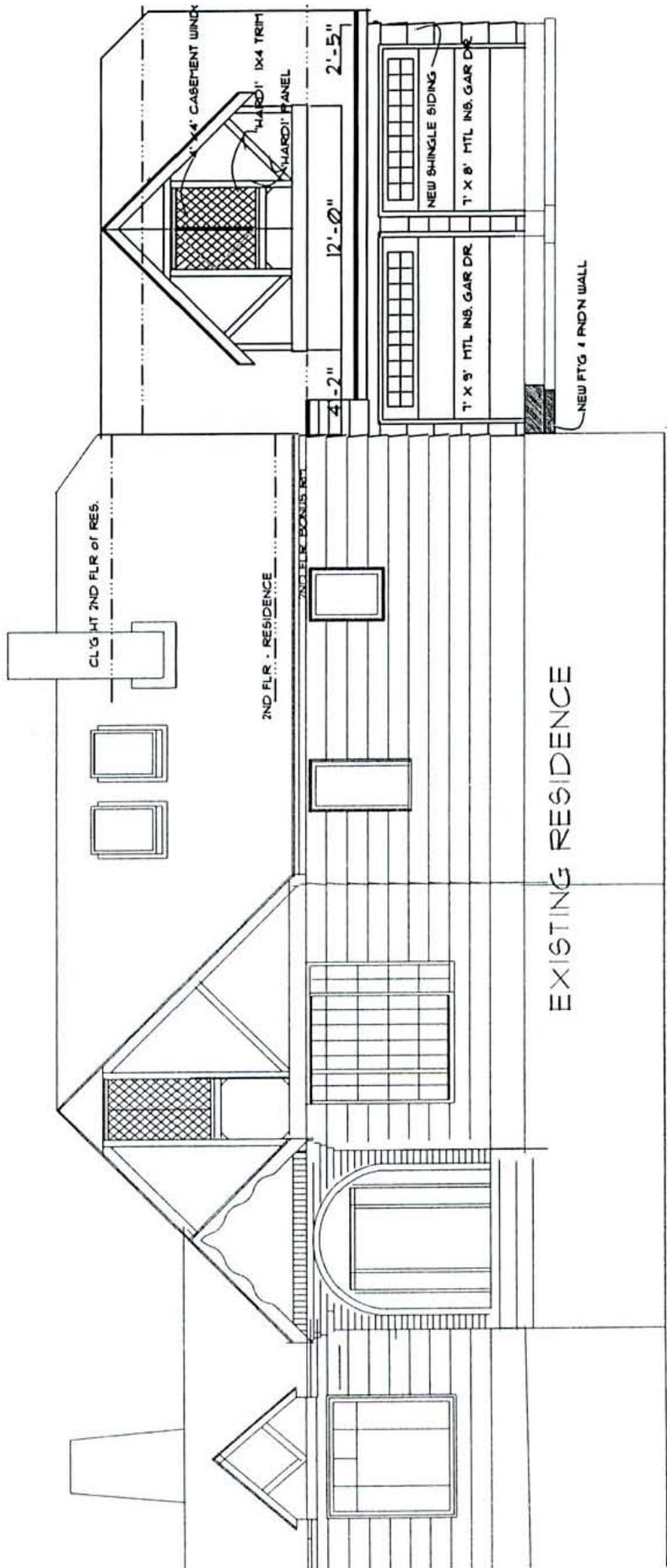
Exhibit C.1

Approved

City of Portland - Bureau of Development Services

Planner Shirley Truzeli Date March 6, 2009

This approval applies only to the reviews requested and is subject to all City's rules of approval. Additional zoning requirements may apply.



SOUTH ELEVATION (EXISTING RES. & NEW GARAGE)
Scale: 1/8" = 1'-0"

GARAGE REMODEL
DAVE & JOY HAACK
2025 NE. SIXTH ST
PORTLAND, OR 97212
R148T42

LU09-105470

Exhibit C.2