



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: May 5, 2008
To: Interested Person
From: Ronda Fast, Land Use Services
503 823-7839 / FastR@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 07-185959 AD

GENERAL INFORMATION

Applicants/Owners: Daniel & Sally Chinn
1919 SE Mountain View Dr
Portland, OR 97215-3552

Site Address: 1919 SE MOUNTAIN VIEW DR
Legal Description: LOT 11&12, MTN VIEW FLORAL TR
Tax Account No.: R590100370
State ID No.: 1S2E05CA 02900
Quarter Section: 3237
Neighborhood: Mt. Tabor, Dave Hilts at 503-780-0826.
Business District: Eighty-Second Avenue, Nancy Chapin at 503-774-2832.
District Coalition: Southeast Uplift, Gary Berger at 503-232-0010.
Zoning: R5, Single-Dwelling Residential 5,000
Case Type: AD, Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant demolished an attached carport structure then built a garage in its place. The garage addition was built on the north end of the site attached to an existing two-car garage. The addition does not meet the minimum 5-foot setback requirements of Section 33.110.220 of the Portland Zoning Code. The Zoning Code requires a setback of 5 feet from a side property line in the R5 zone. Thus, the applicant has requested an Adjustment to reduce the side setback along the north property line to allow the garage addition to be 3' 2" to the building wall and 1' 2" to the eaves.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The site is a 19,500 square foot lot on the back side of Mount Tabor. The applicant's site is developed with a ranch-style home with a relatively large footprint. The property is close to the corner of SE Harrison and SE Mountain View but is not a corner lot. The lot slopes down from the back of the lot towards the street and slightly towards the south. The residential area steepens north of the site along SE Mountain View Drive.

Single-dwelling development is the dominant development pattern in the area with homes on relatively large lots. Homes in the area vary in style and age. There are examples of reduced side setbacks in the residential area within the notification area.

Zoning: The zoning on the site is R5, a single-dwelling residential zone with a maximum density of one unit per 5,000 square feet of site area. Lot sizes for new lots can range between 3,000 square feet and 8,500 square feet. The zone is intended to preserve land for residential uses.

Land Use History: City records indicate that there are no prior land use reviews for this site.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **January 28, 2008**. The following Bureaus have responded with no issues or concerns:

- Water Bureau
- Fire Bureau
- Bureau of Transportation Engineering
- Bureau of Parks – Forestry Division
- Bureau of Environmental Services

The Site Development Section of BDS responded that the Stormwater Management Manual requires all new or redeveloped impervious area over 500sf to manage their stormwater on-site to the maximum extent practicable. The original proposal included 502 square feet of new impervious surface. The applicants have revised their proposal to remove the eave along the north property line, thereby reducing the amount of impervious area under 500 square feet. (Exhibit E-1 contains more information.)

The Life Safety/Plan Review Section of BDS responded that a building permit is required for the work proposed and the project must meet applicable building code requirements. There were considerable building code issues with this structure. Staff recommends that the applicants work closely with Plans Examiners and staff in the Get Legal program (Exhibit E-2 and IQ 07-181275).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **January 28, 2008**. Three neighbors responded with comments in response to the garage addition.

The neighbor to the south, downhill from the site, responded with supportive comments stating that the new structure is an improvement when judged against what was previously there. Exhibit F-1.

The neighbor to the north, uphill from the site, responded with concerns with the overall design and appearance of the structure, the materials used, privacy, access along the common property line. They ultimately would like the structure removed.

Another neighbor responded with similar concerns about the appearance of the garage addition and that the side setback adjustment should not be approved because the neighborhood has become more "cramped" over the years.

Staff Note: Concerns that are pertinent to the approval criterion will be addressed under the next section. Staff has visited the site, surveyed the residential area, and sympathizes with concerns regarding the appearance of the structure as viewed from the street. Staff encourages the applicants to improve the street-facing appearance of the garage addition so that it is more

consistent with the existing home. The focus of the review, however, is limited to a side setback adjustment.

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 Adjustment Approval Criteria

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

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

Findings: 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 working towards legalizing the construction of an attached garage built without permits. The applicants state that the garage replaces a carport that had been on the property since the 1950's. The garage addition originally included a stairway off of the back leading to a deck above. The deck and railing are no longer part of this proposal due to structural issues and concerns for privacy. No living area or recreation area is proposed on top of the garage addition. Options for privacy remain the same as under current conditions.

Based on the information provided by the applicant, there is 3' 2" between the garage addition wall and the north property line. In this space, there is a nearly 4-foot high rock retaining wall with a chain link fence above. In the original proposal, the applicants provided plans showing a 2' eave, supporting the deck above, that extends to nearly 1 foot from the property line. With the eave, access for firefighting is potentially hindered. Additionally, comments from neighbors to the north noted that access to a row of shrubs on their property is hindered by the eave/deck/railing. Since the deck and railing above the garage is no longer part of the proposal, the eave will be cut back to provide more separation for light, air, and access for fire fighting. This will be required via a condition of approval to ensure that the work is done.

The residence to the north, potentially the most directly affected by the garage addition, is more than 15 feet away from the side property line. According to the applicant and aerial photo records, a carport was located in the same location along the side property line previously (in the side setback). Aside from the appearance, which will be addressed in Criterion B, below, the garage addition (without the deck above) better serves the needs of the applicant by

allowing an enclosed space for storage protected from wind and weather, and the distance between structures is the same as it was before. Additionally, a row of existing arborvitae shrubs extends from the front property line to the front of the garage. Mature trees and shrubs extend the length of the common property line.

The request for a side setback adjustment from 5 feet to 3' 2" (without the eave per the condition of approval) would not create an uncharacteristic development pattern in the area. There are other examples of nonconforming side setbacks in the area within 150 feet of the site likely due to the age of the homes in the area.

With a condition of approval that requires that no part of the building may project closer than 3' 2" inches from the property line, so that access for fire fighting is maintained, 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 focus of the Adjustment is a side setback. Staff recognizes that, when viewed from the street, the materials used for the garage addition do not match rest of the house, made entirely of brick. The materials used for the addition is in stark contrast with the materials on the existing home. Staff encourages the applicants to make improvements to the appearance, notably from the street, but staff cannot require this through this review since the scope of the review is a *side* setback.

The residential area is developed with single-dwelling residences on lots that range in size. Like some homes in the area, there is a considerable distance between the addition and the adjacent property to the north. There are examples of existing, older homes in the residential area with reduced side setbacks. Additionally, mature trees and shrubs provide an additional buffer between the residences. The request to modify a side setback, given the distance between structures and the existing vegetative screening between the residences, is not anticipated to have any impact on 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: One adjustment is being requested. Therefore, this criterion does not apply.

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

Findings: There are no scenic or historic resources on this site. Therefore, this criterion does not apply.

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

Findings: No impacts are anticipated from the adjustment given the distance between structures and the amount of mature trees and shrubs between the residences. Without a deck above, and a condition of approval that no part of the structure will extend closer than 3' 2" from the property line, 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 does not apply.

DEVELOPMENT STANDARDS

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

CONCLUSIONS

All of the approval criteria have been met. The request to modify a side setback for a garage addition will not have an impact on options for privacy since the proposal no longer includes the deck above. Additionally, given the distance between structures and the existing vegetative screening between the residences, is not anticipated to have any impact on the livability or appearance of the residential area. With a condition of approval to remove the eave, which potentially hinders access for fire fighting, the adjustment can be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.220 to reduce the side setback for a garage addition from 5 feet to 3' 2" inches, per the approved site plans, Exhibits C-1 through C-2, signed and dated May 1, 2008, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition B and C 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 07-185959 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. No portion of the building may extend closer than 3' 2" to the property line. The eave, as proposed in this land use review, must be removed.

Decision rendered by:  **on May 5, 2008.**
By authority of the Director of the Bureau of Development Services

Decision mailed: May 5, 2008
Staff Planner: Ronda Fast

About this Decision. This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. 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 January 25, 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 waived. (See Exhibit G.3)

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on May 19, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

Appeal fee waivers. Multnomah County may cover the appeal fees for their recognized associations. An appeal filed by a recognized association must be submitted to the City with either the appropriate fee or the attached form signed by the County. Contact Multnomah County at 503-988-3043, 1600 SE 190th, Portland, OR 97233.

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 **May 20, 2008 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-7967.

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, or
- In situations involving only the creation of lots, the land division has been recorded.

The applicant, builder, or their representative may record the final decisions on these other land use decisions 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.

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

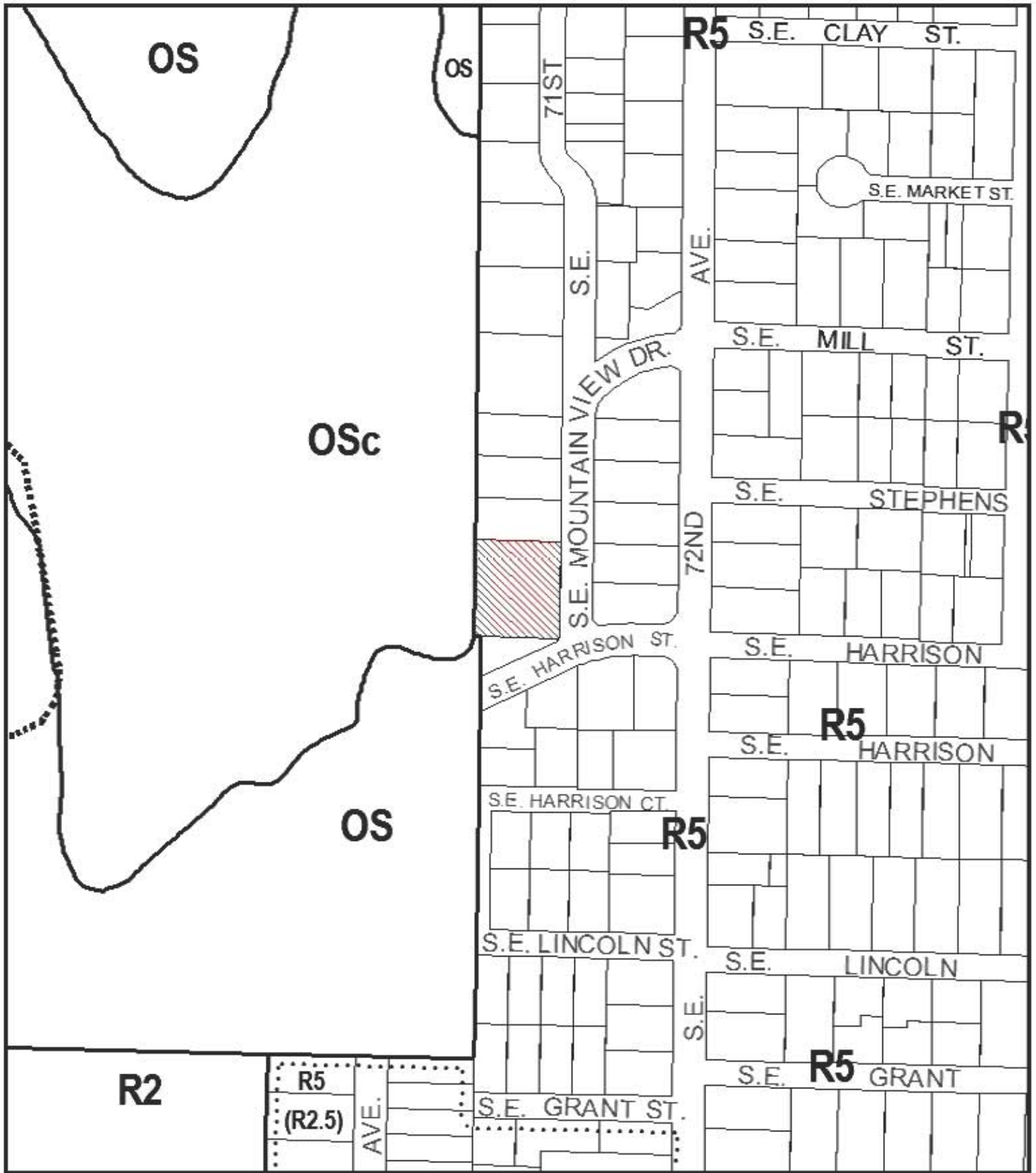
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Partial East Elevation Drawing (attached)
 - 3. South Elevation
 - 4. Northwest Elevation
 - 5. North Elevation
 - 6. Floor Plan
 - 7. Cross Section Drawing
- 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. Police Bureau
 - 6. Site Development Review Section of BDS
 - 7. Bureau of Parks, Forestry Division
 - 8. Bureau of Planning
- F. Correspondence:
 - 1. Jack Wells, 2/10/2008, letter in support stating garage addition is an improvement over the previous carport,
 - 2. Nola Wilken & Theresa Demarest, 2/15/2008, comments in oppositions citing concerns with privacy, separation and access, appearance and compatibility in the neighborhood.
 - 3. Concerned neighbor, 2/14/08, comments in opposition citing concerns with inconsistency in style, inadequate materials, and density.
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Waiver of Right to a Decision in 120 days

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).

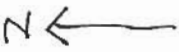


ZONING

 Site

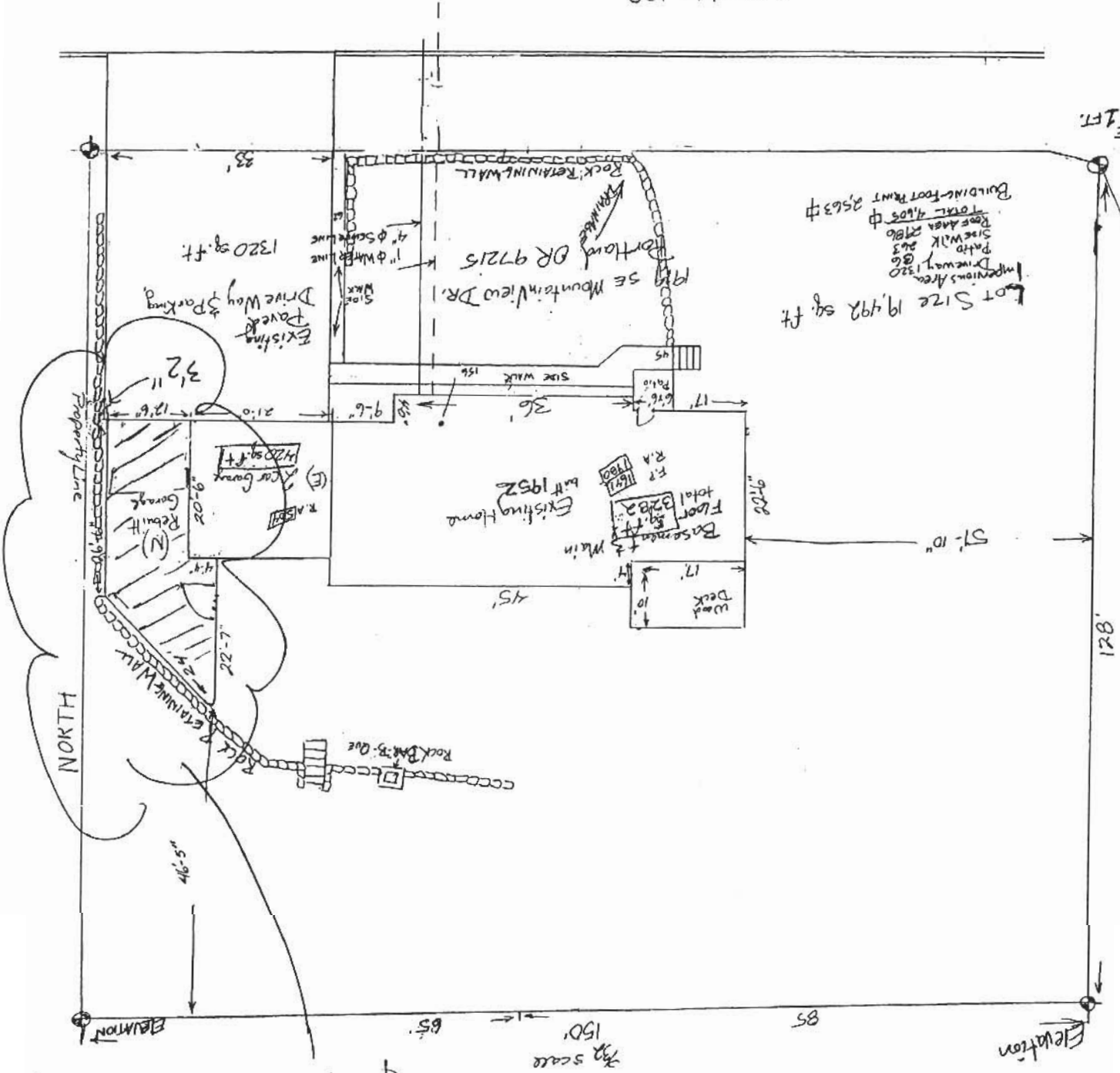


File No. LU 07-185959 AD
 1/4 Section 3237
 Scale 1 inch = 200 feet
 State Id 1S2E05CA 2900
 Exhibit B (Jan 07,2008)



S.E. MOUNTAIN VIEW DR.

SCALE 3/32" = 1 FT.



newly-rebuilt garage within setback
 (proposed: 3'-2" - NO EAVE)

DA 656581-LO M

90# ROLL ROOFING

ROOF SHEATHING

ROOF PLYWOOD

CDX EMULSION TAR

3/4" ASPHALT

12'-6"

11"

9/16" EXTERIOR GRADE

WOOD FIBER BOARD SIDING

8'-0" x 7'-0" GARAGE DOOR

1'-6"

2'-8"

8'-0"

1'-9"

3'-2"

PROPERTY LINE

CHAIN LINK FENCE

ROCK RETAINING WALL

PROPERTY LINE

CAVE TO BE REMOVED FOR NEW HYDRO-CARB.

CAVE TO BE REMOVED FOR NEW HYDRO-CARB.

TILE ROOF

EXISTING BRICK GARAGE

1'-6"

2'-8"

8'-0"

1'-9"

3'-2"

PROPERTY LINE

CHAIN LINK FENCE

ROCK RETAINING WALL

PROPERTY LINE

CAVE TO BE REMOVED FOR NEW HYDRO-CARB.

CAVE TO BE REMOVED FOR NEW HYDRO-CARB.

1/4" = 1'-0"

(PARTIAL) EAST ELEVATION